



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

English Print

Decision ID	DE-0700121
Case ID	CN-0700141
Disputed Domain Name	www.宏碁.com
Case Administrator	xiechangqing
Submitted By	Lulin Gao
Participated Panelist	
Date of Decision	30-07-2007

### The Parties Information

<b>Claimant</b>	Incorporated Acer
<b>Respondent</b>	Conan Liu

### Procedural History

On December 12, 2006, the Complainant submitted a first Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "Center"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") effected on February 28, 2002. The Center confirmed the receipt of the Complaint.

On April 7, 2007, the Center received the Registrar's confirmation on registration information of the disputed domain name.

On June 18, 2007, the Center sent the Complaint to the Respondent.

On June 18, 2007, the Center notified the parties regarding the commencement of proceedings, the Claims has been confirmed and forwarded, and had also sent the notification to both ICANN and the Registrar.

On July 11, 2007, having received no response from the Respondent, the Center notified both parties that the hearing will take place by default.

As chosen by the Complainant and no choice to the contrary from the Respondent, a sole Panelist is to be constituted to hear the case. Upon receiving the declaration of impartiality and independency and the statement of acceptance from Mr. Gao Lulin on July 12, 2007, the Center informed the Complainant and the Respondent of the appointment of Mr. Gao Lulin as the sole panelist to constitute the panel on July 12, 2007.

On July 13, 2007, the Center transferred the written documents submitted by the Complainant to the panelist by courier; the latter confirmed the reception.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Having requested the Respondent to submit a response, the Center received no such response during the entire proceeding.

The language of the proceedings is English owing to the language of the Domain Name Registration and Service Agreement pursuant to Paragraph 11(a) of the Rules, and considering that it is the language used by the Complainant

when filing the complaint and that there is no express agreement to the contrary by the disputing parties, or at least no express objection by the Respondent.

## Factual Background

### For Claimant

The Complainant established in Taiwan in 1976, registered and owns the trademarks “宏碁ACER & DEVICE” (Reg. Nos 346225, 346244, 345410 and 345411) and trademarks “宏碁” (Reg. Nos 736141, 778505) in P.R.China. The Complainant owns the exclusive right to the registered trademarks “宏碁ACER & DEVICE” and “宏碁” in Class 9, Class 16 and Class 35, and the service and goods on which the trademarks are specified include computer hardware and computer software in Class 9, brochures and presswork in Class 16 and import & export agent service in Class 35.

The Complainant formed Beijing Acer Information Ltd in Beijing in 1993. On October 10, 2005, Acer Incorporated moved its headquarters to Shanghai and changed its name to Acer Computer (Shanghai) Co., Ltd. As far it has set up 7 subsidiaries in Beijing, Shanghai, Guangzhou, Wuhan, Chengdu, Shenyang and Xi'an, in whose names “宏碁” is the substantial and key part and constitutes the object of the Complainant's enterprise name.

After years of operating, the Complainant has rooted its products and service in the hearts of consumers. Meanwhile, the Complainant has registered numerous Chinese domain names, including but not limited to 宏碁.tw, 宏碁.中国, 宏碁.公司, 宏碁.cn and 宏碁.公司.cn, etc. Thanks to substantial investment of effort, the Complainant has become one of the four largest makers of PCs in the world, and has registered and been using the trademark “宏碁” in Taiwan, Hongkong, Macao and Mainland China. In 1999 the Complainant's “宏碁” trademark was regarded as one of the Key Nationally Protected Trademarks in Mainland China.

### For Respondent

The Respondent is Conan Liu who registered the disputed domain name on July 6, 2006 through the Registrar eNom, Inc., and made no response to any allegations made by the Complainant.

## Parties' Contentions

### Claimant

The Complainant owns the exclusive right to the registered trademarks “宏碁ACER & DEVICE” and “宏碁” which are famous in the field of computers manufacture. The Respondent has no legitimate right or interest regarding the disputed domain name and has registered and used the name in bad faith. The disputed domain name has confusing similarity to the Complainant's registered mark. Thus, the disputed domain name should be transferred to the Complainant.

### Respondent

The Respondent failed to submit any defense.

## Findings

One of the prerequisites for a domain name registration through the Registrar is to accept the Policy as the binding regulations in terms of the procurement of the entitlement. As previously mentioned, the Policy governs the procedural and substantive issues in the domain name dispute resolution. As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the following:

- (i) that the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) that the domain name has been registered and is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will

make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant's claims shall be rejected.

With regard to the current dispute, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort. Particularly, the Respondent did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or any other enforceable decisions.

### Identical / Confusingly Similar

The Complainant claims that it owns exclusive right to registered trademarks “宏碁”, and the disputed domain name is identical or confusingly similar to these marks.

On the other hand, the Respondent do not submit any defense.

The Panel holds that, pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided proof certifying its entitlement to the registered trademark “宏碁” in China (Reg. Nos 736141 & 778505), which are still valid by renewal. As demonstrated by the Complainant's exhibits, the Complainant's trademark was registered well before the Respondent had registered the disputed domain name. Additionally, the Complainant's exhibits reveal that “宏碁” mark has become a mark with some reputation by consecutive use. As such, what the panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademark “宏碁” and the Respondent's registered domain name “www.宏碁.com”.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the disputed domain name with that of the claimed trademark. It is observable that the identifying part of the disputed domain name is “宏碁”, which is obviously identical to the Complainant's registered trademark.

In light of the above reasoning, the Panel holds that the identifying part of the disputed domain name is identical to the registered trademark belonging to the Complainant, thus the Complainant satisfies the first requirement when claiming back a domain name registered by Respondent as set forth in the Policy.

### Rights and Legitimate Interests

The Complainant argues that the Respondent does not have any trademark right to “宏碁”, and the Complainant has never transferred or licensed “宏碁” trademark to the Respondent, nor authorized the Respondent to use “宏碁” trademark, nor is the Respondent one of the agents or distributors of the Complainant, therefore, the Respondent does not have any rights or legitimate interests in respect of the disputed domain name. And the Respondent fails to submit any defense.

The Panel considers that, Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant's claim. And the Panel can not come to the conclusion that the Respondent has any legitimate right or interest in respect of the disputed domain name owing to the fact that the Respondent has not claimed any such a right or interest and nothing so far could lead the Panel to conclude otherwise. Accordingly, the Panel is entitled to infer that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Based upon the above reasoning, the Panel finds that the Complainant has legal rights and legitimate interests in connection to the disputed domain name. In contrast, the Panel does not see any chance for the Respondent to claim any of such a right or legitimate interest regarding the disputed domain name. Therefore, the Panel thinks that the Complainant meets the second requirement as set forth under the Policy.

### Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

"(i) Circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the

trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) You have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or  
(iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or  
(iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location."

The Complainant alleges that, earlier than the registration date of the disputed domain name, the Complainant's "宏碁" trademark had achieved great popularity in the world market as a result of intensive promotion, advertising, market development and successful brand building by the Complainant throughout the world, and its reputation in China has been recognized due to listing of the Key Nationally Protected Trademarks. So the Respondent registered the disputed domain name out of bad faith.

However the Respondent fails to submit any defense.

The Panel notices that "宏碁" is not an inherent term in Chinese, and the evidence submitted by the Complainant shows that the Complainant is well-known in the filed of PC manufacture. It is reasonable to infer that the Respondent knows or should know the Complainant and "宏碁" mark before he registered the disputed domain name. Therefore the Panel holds that the Respondent registered the disputed domain name in bad faith.

And such conduct prevents the Complainant from reflecting the mark in a corresponding domain name, which shall be deemed that the registration and use of the disputed domain name in bad faith.

Based on the above reasoning, the Panel comes to the conclusion that the Complainant has established the criteria of bad faith, thus meeting the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant fulfills all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be held.

## Status

www.宏碁.com

Domain Name Transfer

## Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) that the disputed domain name "www.宏碁.com" is confusingly similar to the Complainant's registered trademark "宏碁"; and
- b) that the Respondent has no right or legitimate interest with regard to the disputed domain name; and
- c) that the domain name was registered and subsequently used in bad faith.

As such, the Panel requires that the registration of the domain name "www.宏碁.com" be transferred to the Complainant.

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