



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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Version	
Decision ID	DE-0900189
Case ID	HK-0800172
Disputed Domain Name	www.长江.com
Case Administrator	Dennis CAI
Submitted By	David Kreider
Participated Panelist	

Date of Decision 02-01-2009

Language Version : English

The Parties Information

Claimant	Cheung Kong (Holdings) Limited
Respondent	Simon S.Y. Chiou

Procedural History

On 30 July 2008, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

Based on a Whois Record search conducted on 25 July 2008, the Complainant had identified the Registrant as Simon S.Y. Chiou, whose address is 200 Garfield Avenue, Alhambra, California, USA 91801; whose fax and phone number is +1 886933400989; and whose email address is 999@9333.com. On 15 August 2008, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. Except as otherwise specified, all correspondence to and from the HKIAC described herein was in the English language.

On 16 August 2008, the ADNDRC transmitted by email to the Registrar, Name.com LLC, a request for registrar verification in connection with the Disputed Domain Name. On 27 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, identifying Simon S.Y. Chiou, as the registered holder of the subject domain and confirming his contact particulars, as recited above.

On 2 October 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action, by email directed to 999@9333.com, requiring that a Response be submitted on or before 22 October 2008.

On 13 October 2008, by email to the ADNDRC, the Respondent requested an extension of time until 30 December 2008. The ADNDRC invited Complainant to comment on the Respondent's request for an extension of time. Claimant responded that it was prepared to agree to an extension of time up to 15 November 2008. Making reference to article 5(d) of the Rules, the ADNDRC notified the parties that the deadline for the Respondent to file a response would be extended to 15 November 2008.

Thereafter, on 4 November 2008, Respondent communicated with the ADNDRC by email, requesting leave to file a response in Chinese. The Respondent's said request was not copied to the Complainant. The ADNDRC replied by email that same day, alerting Respondent to the prohibition against ex parte communications, found in article 2(h) of the Rules, as well as to the language requirement found in article 11 of the Rules. The ADNDRC's email invited the Complainant to comment upon

Respondent' s request.

The Complainant responded that, although the language of the administrative proceedings should be in English, in accordance with the Rules, the Complainant would raise no objection if the Respondent filed its Response in the Chinese language. Whereupon, on 6 November 2008, the ADNDRC, by email to the parties, clarified that, although the language of the proceedings would be the English language, in consideration of the views expressed by both parties, the Respondent would nonetheless be permitted to file its response form in Chinese.

On 15 November 2008, Respondent filed its Response by email, in Chinese, noting therein the Respondent' s election to have the complaint determined by a single panelist.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Chapter 5 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 19 December 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 5 January 2009.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

Notwithstanding that the language of these proceedings is English, inasmuch as the Respondent sought and, with the concurrence of Complainant, was granted leave by the Centre to submit its Response in Chinese, the Panel has reviewed and considered the Respondent' s Chinese-language Response with the same effect as if the Response had been submitted in English.

It should be noted that the Panelist is solely responsible for the accuracy of the translation of all text and passages taken from the original Chinese-language documents in these proceedings.

Factual Background

For Claimant

The Complainant in this case is Cheung Kong (Holdings) Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including “长江”, “长江实业”, and “长江集团”, and their corresponding marks/names in English namely, “Cheung Kong”, “Cheung Kong Holdings” and “Cheung Kong Group” .

For Respondent

The Respondent, Simon S.Y. Chiou, is the current registrant of the Disputed Domain Name <长江.com>, according to the Whois information. The registered address of the Respondent is 200 Garfield Avenue, Alhambra, California, USA 91801; whose fax and phone number is +1 886933400989; and whose email address is 999@9333.com.

Parties' Contentions

Claimant

The Complainant' s contentions may be summarized as follows:

I. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights

(a) The Complainant, Cheung Kong (Holdings) Limited (“长江实业(集团)有限公司”), formerly known as Cheung Kong Real Estate Company Limited / Cheung Kong Real Estate & Investment Company Limited (长江地產有限公司), is the flagship of the Cheung Kong Group (“长江集团”), the leading Hong Kong based multinational conglomerate.

(b) The Complainant, was established on 8 June 1971 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008, and since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings” / “长江实业”. The Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Complainant’s group of companies, which is known as the Cheung Kong Group (“长江集团”), include the Complainant (stock code: 0001), Hutchison Whampoa Limited (stock code: 0013), Cheung Kong Infrastructure Holdings Limited (stock code: 1038) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index; Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715) and TOM Group Limited (stock code: 2383), which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int’l., (Holdings) Inc. (stock code: 8222), a company listed on the Growth Enterprise Market. Based in Hong Kong, businesses of the Cheung Kong Group (“长江集团”) encompass such diverse areas as property development and investment, real estate agency; estate management; ports and related services; telecommunications; hotels; retail; energy; infrastructure; finance; e-commerce; building materials; multimedia and life science. The combined market capitalization of the Cheung Kong Group’s Hong Kong listed companies amounted to HK\$817 billion as at 30 June, 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide.

(c) The founder of the Complainant and the Cheung Kong Group (“长江集团”) is a strong believer in synergy – the power of combined efforts. This belief is reflected in his naming the Complainant and a series of companies within the Cheung Kong Group (“长江集团”) after the Yangtze River (扬子江 or 长江) that flows through China, a great river that aggregates countless streams and tributaries. As a result, there is a large number of companies within the Cheung Kong Group incorporated with names beginning with the Chinese characters/words “长江” / “Cheung Kong” .

The Complainant is mainly a property development and strategic investment company and it is one of the largest developers in Hong Kong of residential, commercial and industrial properties. About one in seven private residences in Hong Kong were developed by the Complainant.

(d) The Complainant has always aimed to maintain a strong presence in overseas property markets as a quality property developer of choice residential and commercial projects. For example, in China, the Complainant has invested in a lot of important real estate development projects including being the largest shareholder of the project “Oriental Plaza” , the most prestigious project in the middle of downtown Beijing with project value of HKD7,000 million and covering a total gross floor area of 920,000 meter square. In addition, the Complainant has in 1994 purchased “Lido Place” in Beijing, a commercial/residential complex that accommodates a large number of Beijing's expatriate community and multinational companies.

(e) Pursuant to the enormous effort put by the Complainant in its businesses and excellent quality of the Complainant’s real estate development and services in Hong Kong and China, the Complainant has obtained the following awards: -
Hong Kong

Award: 1998-99 REVIEW 200: Asia’s Leading Companies Award – ranked No.3 of “Top 10 Hong Kong Companies doing Business in Asia”

Organizer: Far Eastern Economic Review

Nature: Organizer invited subscribers to choose the leading companies from 525 Asia and International companies.

Award: 1999 World Most Recommended Real Estate Development Company

Organizer: PricewaterhouseCoopers

Nature: Organizer conducted survey on 754 CEO from state-owned enterprise, large-scale incorporations, self-owned companies and listed companies of 715 countries to elect the world most recommended enterprises in different sectors.

China

Award: 1998 Asia’s Best Managed Companies Award (Mainland & Hong Kong)

Organizer: Asiamoney

Nature: Organizer invited 250 fund managers from 150 institutional investors worldwide to nominate the best managed companies.

Award: 2001 China Best Quality Services and Brands: the Best Real Estate Developer

Organizer: Capital

Nature: Organizer aimed to praise companies which were rapidly expanding the China market and which have contributed a lot to mainland economy.

(f) “长江” is not only the service mark/trade name adopted by many companies within the Cheung Kong Group (“长江集团”), of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” .

(g) Based on the above, the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”, have been well-recognized by the public and trade to be distinctive of and identified with the Complainant and the Cheung Kong Group but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. One can also find countless publications and reports on the Internet about the Complainant and Cheung Kong Group by reference to the service marks/trade names “长江实业”, “长江集团” and “长江” .

(h) Further, as early as 13 December 1995, the Complainant has already registered the domain name “cheungkong.com” . On 1 February 2000, the Complainant further registered the domain name “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org” .

(i) The major part of the Disputed Domain Name “长江” is:

- i. identical to the major portion of the service marks/trade names of the Complainant and its group of companies;
- ii. the Chinese translation of the major part of “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” ; and
- iii. the Chinese translation of the major portion of the Complainant domain names “cheungkong.com”, “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org” .

II. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

(a) The Respondent is not in any way related to the Complainant, nor was the Respondent authorised by the Complainant to use the mark/name “长江” .

(b) On or before the registration date of the Disputed Domain Name i.e. 24 July 2005: -

- i. The Complainant and the Cheung Kong Group have widely used “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” as service marks/trade names;
- ii. Substantial goodwill and reputation subsisted in the service marks “长江实业”, “长江集团” and “长江, and their corresponding marks/names in English” ;
- iii. The service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English have been identified by the public as the service marks/trade names of the Complainant and the Cheung Kong Group and none other; and
- iv. The Complainant has registered the domain names “cheungkong.com”, “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org” .

(c) As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

III. The Disputed Domain Name has been registered and is being used in bad faith

(a) Service marks/trade names “长江实业”，“长江集团” and “长江”，and their corresponding marks/names in English namely, “Cheung Kong Holdings”，“Cheung Kong Group” and “Cheung Kong”，have been used by the Complainant and the Cheung Kong Group in Hong Kong and China respectively for more than 30 and 10 years before the registration date of the Disputed Domain Name. All these service marks/trade names have very strong reputation in Hong Kong and China. Undoubtedly, the Complainant and the Cheung Kong Group have prior rights in the service marks/trade names “长江实业”，“长江集团” and “长江”，and their corresponding marks/names in English. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the most distinctive portion of the service marks/trade names and/or which is a Chinese translation of the most distinctive portion of the English service marks/trade names of the Complainant and the Cheung Kong Group, taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’s act in registering the Disputed Domain Name authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in 2005.

(b) Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into active use but is merely linked to a webpage providing information search services. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant.

Respondent

The Respondent’s contentions may be summarized as follows:

一、 答辩人域名与投诉人享有权利的商品商标或服务商标不相同或并无混淆性

a. 投诉人在中国大陆对“长江”二字商标并无享有权利或登记商品商标或服务商标权。

投诉人是香港一个经济体的地区性公司“長江實業(集團)有限公司(長實)”，其名称主体是繁体字“長江實業”四个字，投诉人在简体字<长江.com>的使用地中国大陆并没有“长江”二字的商标，也没有“长江”二字名称的产品，在中华人民共和国工商行政管理总局商标局292个“长江”二字商标中，投诉人一个也没有，投诉人在中国大陆的“长江”二字商标的占有率是292分之0，0/292=0，也就是说，投诉人在中国大陆没有任何一个“长江”二字的商标，所以连投诉人自己都不能在中国大陆销售以“长江”二字为商标的任何商品。

投诉人的网站自称该公司简称为“長實”，香港居民也普遍以“長實”称呼该公司，无人称之为“长江”。故此投诉人不应主张在中国大陆广大的土地上已建立商标或拥有商标权。

b. 答辩人域名<长江.com>与投诉人主张的“長江實業”并不相同或并不混淆。

投诉人拥有的英文商标Cheung Kong，在中国大陆及联合国官方正式用法中，是不能被用来代表“长江”，Cheung Kong与“长江”并无相关性，“长江”的正式英文名称是the Changjiang River，或外国人古称the Yangtze River，而非Cheung Kong，Cheung Kong不是中国政府及联合国的正式用法。汉语拼音是中国的国家标准，也是联合国采用的标准，在中华人民共和国教育部所属的政府网站中有[联合国秘书处关于采用“汉语拼音”的通知：从1979年6月15日起，联合国秘书处采用“汉语拼音”的新拼法作为在各种拉丁字母文字中转写中华人民共和国人名和地名的标准。]，其中“长江”的汉语拼音就是Changjiang River，请参阅政府网站：http://www.china-language.gov.cn/126/2008_2_18/3_126_3306_0_1203318574906.html亦即，Chang Jiang才是“长江”的正式英文标准拼法，而非投诉人的Cheung Kong。Cheung Kong是投诉人“取其音”自创的公司名，而非“长江”的英文名称，“长江”的中国通用汉语拼音是Chang Jiang，而非Cheung Kong。

答辩人查阅到香港居民的习惯用法，Cheung应该是“祥”的译音，例如Lui Cheung Kwong Lutheran College 吕祥光中学，请参阅该校网站<http://www.lck.edu.hk/>，而Kong应该是“港”的译音，例如众所皆知的Hong Kong“香港”，根据上述译音，则Cheung Kong的音译应该是“祥港”，而非“长江”。

“長江實業(長實)”不等于<长江.com>，香港使用繁体字“長江實業(長實)”，而<长江.com>是简体字，主要是中国大陆居民访问，不影响投诉人的香港业务。况且，简体字<长江.com>与繁体字“長江實業(長實)”也存在明显差异。事实上，在域名来说，即使简体字<长江.com>与繁体字<長江.com>也是两个不同的域名，简体字<长江.com>的punycode是xn--9sW509f.com，而繁体字<長江.com>的punycode是xn--9sWp09F.com，中文域名在线转码请至《中国互联网络信息中心》网站：

<http://www.cnnic.cn/html/Dir/2003/10/29/1112.htm?3445523843=472717611>

香港居民都是使用繁体字，投诉人公司的网站中文版全部都是繁体字版，请参阅投诉人公司的网站：

<http://www.ckh.com.hk/big5/index.htm>

既然投诉人香港長江實業公司的网站中文版全部都是繁体字版，而且投诉人的公司名称主体是“長江實業”四个字，且他们自称简称为“長實”，因此投诉人香港長江實業公司要争取的应该是繁体字<長實.com>或是繁体字<長江實業.com>，而不是简体字<长江.com>。

另外，说到“长江”，一般人会直接联想到中国第一大河“长江”，而且在中国大陆名称中含有“长江”的单位团体及公司行号有数万家，在中国大陆，无人会把简体字<长江.com>联想到繁体字香港長江實業公司，因此不会产生混淆或误导的情形。

c. “长江”是家喻户晓的通用地理名称，属于公权范畴。“长江”在中国已经使用了1700年，“长江”同时也是城镇地名（长江镇），通用地理名称的公益性、社会通用性，属于公权范畴，任何人无独占权与专用权。参阅“中国知识产权研究网”

http://www.iprcn.com/view_new.asp?idname=1053

的论述：“论地理名称在商标法中的权利定位”一文及其它相关文献资料，可以了解地理名称公权与商标私权的一些冲突矛盾现象，兹归纳其重点如下：

★ 地理名称在商标领域的影响及与商标权的冲突。

★ 由于地理名称的公益性、社会通用性，使得地名商标相较一般商标，专用性受到弱化，呈现“弱保护性”。

★ 地名商标权人注册一个地名商标，就应意识到其专用权受到了一定的限制。由于商标是用于识别商品和证明商品来源的标志，地名商标即将地理名称直接登记注册为商标，而地名属公共领域的词汇，具有公共性的特点，其区别性就小，这决定了地名商标具有“弱保护性”的法律特征。即法律不绝对排斥他人对该地名的合理使用。下述行为都可以构成对地名商标专用权的有效抗辩：1、善意地使用自己的名称或者地址；2、善意地说明商品或者服务的特征或者属性，尤其是说明商品或者服务的质量、用途、地理来源、种类、价值及提供日期。”

★ 关于地理名称在商标领域合理定位的建议，

★ 正确认识地名商标形成的历史特殊性，尊重历史，又要面向未来，区别对待。

中国大陆有数万家名称含有“长江”的单位团体及公司行号，其中包含长江流域水资源保护局、长江水土保持局、长江航务管理局、长江航道局、长江海事局、长江水利委员会、长江水文局、长江镇、长江引航中心、长江水产研究所、长江通信管理局、长江航道测量中心、长江河道采砂管理局、长江三角洲、长江日报、长江大学、长江中学、长江小学及股票上市公司长江证券（股票代码000783）、长江精工（股票代码600496）及长江电力（股票代码600900）……等等，不胜枚举，仅仅在百度黄页中国电信黄页里<http://yp.baidu.com>就登录有9,800个以“长江”为名的单位团体及公司行号，但其中并无香港長江實業公司，可见投诉人在中国大陆并没有普遍性或独占性，因此，在中国大陆，无人会把简体字“长江”联想到繁体字香港長江實業公司，因此不会产生混淆或误导的情形，否则，是不是中国大陆数万家名称含有“长江”的单位团体及公司行号都会与投诉人混淆？数万家都需要改名？

中华人民共和国工商行政管理总局商标局商标数据库中，以“长江”二字为商标名称的商标共有292个，我们清楚发现这292个“长江”二字商标分别属于218个公司及或个人，分散很广，无人独占，就是谁先注册谁先得，这意味着，不管多么富裕或知名，世界上没有任何一家公司或个人对“长江”二字拥有独占权或专用权，这也可以看出“长江”这个众所皆知的通用地理名词是属于公众的，属于公权，人人皆可用，先注册者就拥有使用权。

答辩人在查阅商标局的商标数据库时，发现数家公司名为“长江实业”，但皆与“香港長江實業”不相干，其中有一家为“杭州长江实业有限公司”<http://www.cjindustry.com/>，在中国大陆，“杭州长江实业有限公司”甚至比“香港長江實業有限公司”更行得通，能直接销售“长江”品牌产品，“香港長江實業有限公司”都无权干涉更神似、更容易混淆的“杭州长江实业有限公司”，那么投诉人还有什么理由禁止答辩人使用<长江.com>？

“中国商标网”是中华人民共和国工商行政管理总局商标局主办的唯一在线查询商标注册信息的网站

<http://sbcx.saic.gov.cn/trade/SelectTdInfo/SelectTdInfo.jsp>

上述政府网站可以查询“长江”二字商标，注：“中国商标网”偶尔因访问量过大而开展很慢，可以从中华人民共和国工商行政管理总局<http://www.saic.gov.cn/>或<http://sbj.saic.gov.cn/>进入。

中国大陆使用“长江”的单位团体、公司行号有数万家，如果答辩人无权使用<长江.com>，是不是意味着数万家使用“长江”的单位团体及公司行号都要改名？“长江”是家喻户晓的通用地理名词，所以使用“长江”来作为名称的单位很多，因此，若非拥有“长江”商标的公司遭受到同行业的侵权，则任何公司不应反对他人使用“长江”，没有公司对“长江”有全部的独占权。

设若把“长江”是通用地理名词的因素排除，中国大陆尚有数百家拥有“长江”二字商标的公司行号比没有商标的投诉人更有资格使用“长江”，例如长江证券（上市公司股票代码000783）、长江精工（上市公司股票代码600496）及长江电力（上市公司股票代码600900）等等。

在世界最大的搜索网站google.com 及世界最大的中文搜索网站baidu.com 搜索“长江”二字，在前十个页面都找不到投诉人的香港長江實業公司，仅仅在百度黄页中国电信黄页里<http://yp.baidu.com>就登录有9,800个以“长江”为名的单位团体及公司行号，但其中并无投诉人的香港長江實業公司，可见投诉人在中国大陆并没有普遍性或独占性，甚至并没有什么业务可言（其老板或股东的相关投资并不能算是投诉人本身的业务）：

<http://yp.baidu.com/m?tn=baiduyp&ct=553648128&rn=20&a=-1&word=%B3%A4%BD%AD&lm=-1&z=-1>

二、 答辩人对该域名享有权利或合法利益

自2005年7月24日起，答辩人已经登记使用<长江.com>，可以正式访问，已经运行超过三年，<长江.com>自2006年6月1日起改用杭州三六五网络有限公司（365.com,Inc.）的DNS服务器正式建设网站迄今，<长江.com>使用杭州三六五网络有限公司（365.com,Inc.）的DNS服务器为dns1.365.com, dns2.365.com, dns3.365.com, dns4.365.com, 兹有杭州三六五网络有限公司（365.com,Inc.）盖章证明的证明书以资证明，<长江.com>自2006年6月1日起是合法的分类信息网站，并于2006年6月1日起使用中国浙江省杭州市的DNS服务器正式建设合法的分类信息网站。答辩人合法注册、合法持有<长江.com>，答辩人对<长江.com>拥有合法持有及使用权。

任何域名数据库皆可查询到域名持有人，例如：

https://www.domainsite.com/whois_result.php , Domain Name: xn--9sw509f.com (长江.com) Creation Date: 2005-07-24, Expiration Date: 2009-07-24, ADMINISTRATIVE CONTACT INFO: Simon S.Y. Chiou, 从数据库可以证明<长江.com>是答辩人合法注册，合法持有。

<长江.com>为一分类信息网站, 提供各种行业的信息服务。<长江.com>网站信息分类为：（一）、工商业,（二）、电脑网络,（三）、教育培训,（四）、休闲,（五）财经,（六）、健康,（七）、生活,（八）、购物等八大类，在这八大分类之下尚有67个小分类，经过三年来的推广及与维护，<长江.com>网站已有自然流量，也就是自然访问者，累积三年的访问者已经很多，有很多人知晓<长江.com>，缘于“长江”二字的高度公众性与高度通用性，也使得<长江.com>拥有极高的知名度。因此,答辩人对<长江.com>享有权利及合法利益，投诉人无权剥夺答辩人既有的权利及合法利益。

三、 答辩人对该域名的注册和使用不具有恶意

<长江.com>在2008年10月1日接到有关争议通知之前，答辩人已善意地使用。投诉人没有提出任何证据足以证明答辩人注册<长江.com>是为了出售或出租，因此投诉人关于答辩人对<长江.com>的注册和使用具有恶意之投诉完全不能成立。

除了上述合法网页信息外，答辩人计划结合国家公益团体，将<长江.com>建设成“保护母亲河-长江”环境保护公益网站。

“长江”不仅是中国第一大河，也是亚洲第一大河，“长江”源远流长，成为中华民族的摇篮，哺育了一代又一代中华儿女，被誉为“母亲河”。“长江”是中国的生命线，对中华民族至关重要，甚至对地球环境的影响甚巨，近三十年来，由于长江流域、长江三角洲的经济建设一日千里，经济发展突飞猛进，但同时也对“长江”的生态环境造成巨大的伤害，我们这一代这三十年，因为发展经济所带来对“长江”的污染破坏，超过亿万年来积累，“长江”污染了，“长江”生病了，我们不能短视逐利，杀鸡取卵，为了子孙孙的幸福，为了世世代代的繁衍，我们必须努力“保护母亲河-长江”。

答辩人希望赋予<长江.com>最神圣的使命，将<长江.com>建设成最完善的“保护母亲河-长江”公益网站，计划将<长江.com>捐赠给国家公益团体之后，答辩人以义务工作者的身份，投入“保护母亲河-长江”公益活动的行列，为“保护母亲河-长江” <长江.com>公益网站奉献绵薄之力。

答辩人已经公开寻求将<长江.com>免费捐赠给与“长江”有关的中国政府部门单位或公益团体，并已经得到数个单位的肯定答复（中华人民共和国交通运输部长江航务管理局信息中心、中华人民共和国交通运输部长江航道局，回复单位所使用的email都是该单位网站上的email，而且搜索网站都可以搜索得到，百分之百真实，如果最后有多个单位团体想要<长江.com>，答辩人将请各单位协调以一个公认最重要的、公益性最强的单位团体为主，其他为辅，共创一个最完善的“保护母亲河-长江”公益网站<长江.com>，这是<长江.com>的最佳归宿。

综上所述，投诉人的投诉不符合三个基本条件：根据统一域名争议解决政策4a(i) (ii) (iii)投诉人在行政程序中必须举证证明以上三种情形同时具备。

Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

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

Identical / Confusingly Similar

The evidence submitted by the Complainant shows that “长江” is not only the service mark/trade name adopted by many companies within the Cheung Kong Group (“长江集团”), of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” .

Since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings” / “长江实业” and that there is a large number of companies within the Cheung Kong Group incorporated with names beginning with the Chinese characters/words “长江” / “Cheung Kong” . As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel finds that the Disputed Domain Name <长江.com> is identical to the Complainant’ s service marks/trade names.

The Respondent seeks to draw a distinction by reason that the Disputed Domain Name appears in simplified Chinese characters (as are typically used in the mainland of China), whereas the Complainant utilizes the same Chinese characters in their traditional form on its website and in various publications (the traditional form of Chinese characters continue to be used in Hong Kong and Taiwan, and in much of the rest of the Chinese-speaking world outside the mainland of China). The Respondent argues that this distinction evidences that the Disputed Domain Name is dissimilar to the Complainant’ s marks and renders the possibility of confusion between the Disputed Domain Name and Complainant’ s service marks/trade names unlikely.

The Panel finds Respondent’ s arguments unpersuasive. Firstly, it is noted that the allegations in the Complaint that “the Complainant and the Cheung Kong Group have widely used ‘长江实业’, ‘长江集团’ and ‘长江’, since before the date of registration of the Disputed Domain Name” show the Chinese characters comprising each of the marks/names written in the simplified form. Moreover, from the evidence presented, including media reports and publications where these same marks/names appear in simplified Chinese characters, Respondent’ s assertion appears factually incorrect, even if it could fairly be said that the people of Hong Kong are likely far more accustomed to seeing the Complainant’ s marks/name written in traditional Chinese characters, as is the custom in Hong Kong.

Additionally, it must be noted that although ICANN does assign simplified and traditional Chinese characters different puny codes, even under the Implementing Regulations to the Trademark Law of The People’ s Republic of China, the registration for a trademark in simplified Chinese characters will cover the traditional Chinese characters and vice versa. That is, Chinese Trademark Law does not discriminate between trademarks registered in either simplified or traditional Chinese characters, as against the same characters written in the other form, but, rather, treats the marks as being identical and equally deserving of protection regardless whether the mark registered appears in the simplified, or in the traditional form.

Respondent further argues that the two Chinese characters in simplified form, “长江”, are recognized by the government of The People’ s Republic of China and by the United Nations as referring to the “Changjiang River” (which is also sometimes known as the “Yangtze River”), and not by the English words “Cheung Kong” . The Respondent observes that these same two Chinese characters are written in English, in accordance with China’ s Han Yu Pin Yin system (a standard system by which Chinese characters are alphabetised), as “Chang Jiang” , and not “Cheung Kong” , the English name by which the

Complainant's group of companies is known.

Respondent's observations, while substantially accurate, appear to this Panelist to be misplaced. As but one example to illustrate the point, adopting Respondent's analysis, the two Chinese characters that comprise the immediately recognisable city name "Hong Kong" – "香" (meaning "fragrant") and "港" (meaning "harbour") – would be alphabetized in accordance with China's Han Yu Pin Yin system as "Xiang Gang".

While speakers of the Mandarin dialect of Chinese (Putonghua) the world over would immediately recognise the spoken word "Xiang Gang" as referring to Hong Kong, the same spoken word would be meaningless to an English speaker, unskilled in Mandarin Chinese, if pronounced in this way.

The Panel considers that the closeness between the pronunciation/alphabetisation of "长江" as "Cheung Kong" (like the pronunciation/alphabetisation of "香港" as "Hong Kong"), may be more readily apparent when those words are pronounced in the Cantonese dialect of the Chinese language (the dialect of Chinese principally spoken in the Hong Kong Special Administrative Region and in Guangdong (Canton) Province, China), rather than in Mandarin Chinese, as is used by China's Han Yu Pin Yin system.

The Panel holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name – the two Chinese characters of which refer to China's greatest river, the Yangtze River (扬子江), or Changjiang River (长江).

Respondent has helpfully raised to this Panel's attention the matter of ADNDRC case HK-0800174, involving the same Complainant's claims in relation to the materially identical domain name "长江.net".

The administrative decision in that case recites:

Without any other specific reference or connotation, "长江" means nothing but the name of the [Yangtze or Changjiang] River. Although Complainant has established the common law right in the mark "长江", it cannot and should not deprive others from using the River's name normally. The right that the Complainant can assert in the mark "长江" is linked to its businesses and services as to which the mark is used. The Complainant is, by no means, entitled to claim any monopoly over the River name "长江", per se.

Referring to paragraph 4 (c)(iii) of the Policy, the administrative decision in ADNDRC case HK-0800174 continues:

... [A] respondent may demonstrate its right and legitimate interest in the disputed domain name through proving that it is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Deciding that the Complainant had in that case failed to satisfy paragraph 4(a)(ii) of the Policy, the Panelist in ADNDRC case HK-0800174 dismissed the Complaint, observing:

In the present case, the disputed domain name is being used for a website providing the information of Yangtze River. If any Internet user is attracted by the River name in the domain name to visit the website that is genuinely presenting information of the River, the domain name is apparently not misleading and will not cause either initial or subsequent confusion. Since there is no evident [sic] that the Respondent has any commercial gains through the use of the domain name, the Respondent should have right [sic] or legitimate interest to make such noncommercial use legitimately.

Here, the Respondent acknowledges that his is an "information website" listing eight categories of goods and services, including: (1) industry, (2) computer networks, (3) educational training, (4) leisure, (5) finance, (6) health, (7) lifestyle, and (8)

shopping, which are further classified into 67 searchable sub-categories. Respondent has submitted no evidence to suggest that its website has any connection or relation whatsoever with China's renowned Yangtze, or Changjiang River, other than its use of the same name.

This Panel finds that Respondent's website bears no connection with the Changjiang River and that the facts presented in ADNDRC case HK-0800174, concerning as they did a not-for-profit website established by a China traveler who "enjoyed many adventures near the Yangtze River" and wished to share with others her "pictures and stories related to the Yangtze River" through the website, differ materially from the facts of the instant case.

Having considered the evidence, the Panel concludes that this case is distinguishable on its facts from ADNDRC case HK-0800174, and that a contrary result is required.

The Panel finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

The Response recites that, in addition to its "lawful operation of the information website", the Respondent plans to collaborate with a social service organization to "donate" its website for use as a public environmental protection website to "protect 'Mother river' - the Yangtze", which is "China's lifeline", from the ravages of pollution, neglect and mismanagement. Respondent's evidence in relation to the steps it has taken to achieve this praiseworthy goal, however, consists of an Internet blog posted by Respondent on 30 October 2008, wherein the Respondent offered to "donate" its website to a suitable organisation, along with a single email reply from the "Information Centre" of the "Changjiang Navigation Management Bureau" of China's Ministry of Transportation, dated 31 October 2008, enquiring how the donation of Respondent's website would be accomplished and directing the Respondent to the Bureau's website for information about the Bureau.

Significantly, as was noted above, the ADNDRC had transmitted the Complaint to the Respondent in this action on 2 October 2008, several weeks prior to the date of Respondent's blog seeking a suitable donee for its website.

This Panel views the above-referenced evidence as proof merely of a belated attempt by Respondent to manufacture a connection between its website and the River of the same name, where no normal or bona fide connection exists, for the purpose of refuting the Complainant's allegations of "bad faith", of which the Respondent was at the time already fully aware.

On balance, this Panel considers that it was not a mere coincidence, but an indication of Respondent's bad faith and guilty knowledge, that the Respondent took half-hearted steps to donate its website to charitable causes only after receiving the Complainant's Complaint in this cause.

Further, as is noted in the Complaint, "since the registration of the Disputed Domain Name, the Respondent has not put the same into active use but is merely linked to a webpage providing information search services". On its part, the Respondent acknowledges that its use of the River's name has drawn significant numbers of visitors to its website.

It appears to this Panel to be a reasonable inference from the evidence and circumstances of this case, that prior to the filing of the instant proceeding, Respondent had been biding his time and passively operating its information search website under the Disputed Domain Name, with a view to securing a financial benefit or advantage at some future time.

This Panel finds that Respondent's intention was to ride on the reputation of the Complainant and to create confusion that the Respondent's use of the Disputed Domain Name was authorised by the Complainant.

In conclusion, the Panel finds that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

Status

www.长江.com

Domain Name Transfer

Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the <长江.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER
Sole Panelist

Dated: 1 January 2009