



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version	
Decision ID	DE-0800161
Case ID	HK-0800175
Disputed Domain Name	www.长实.com
Case Administrator	Dennis CAI
Submitted By	Yun Zhao
Participated Panelist	

Date of Decision 29-10-2008

Language Version : English

The Parties Information

Claimant	Cheung Kong (Holdings) Limited
Respondent	Long Solid Pipelines Inc.

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). On 16 August 2008, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint. All correspondence to and from the ADNDRC described herein was in the English language.

On 16 August 2008, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 11 September 2008, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 18 September 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action and requested the Respondent to submit a Response within 20 calendar days. The notice failed to reach the Defendant for the reason that the mailbox is unavailable. Since the email address is the only address shown in the registration information. The ADNDRC sent the notice for the second time, but failed again to reach the Respondent. Consequently, the Respondent failed to submit a Response within the specified period of time. The ADNDRC notified the Respondent's default on 9 October 2008.

Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

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 Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. On 10 October 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days.

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.

Factual Background

For Claimant

The Complainant in this case is Cheung Kong (Holdings) Limited, a corporation registered in Hong Kong. The registered address is 7th Floor, Cheung Kong Center, 2 Queen's Road Central, Hong Kong.

For Respondent

The Respondent, Long Solid Pipelines Inc., is the current registrant of the disputed domain name <长实.com> according to the Whois information.

Parties' Contentions

Claimant

1. The Disputed Domain Name is identical or confusingly similar to trademarks or service marks to which the Complainant has rights

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 (長江地產有限公司), is the flagship of the Cheung Kong Group, the leading Hong Kong based multinational conglomerate. In Chinese, the Complainant is commonly known as “长实” or “长实集团” and there are countless publications and reports on the internet about the Complainant by reference to these service marks/trade names “长实” and “长实集团” .

The Complainant was established on 8 June 1971 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008. The Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Cheung Kong Group 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 Complainant and its group of companies 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. 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.

In China, the Complainant has also 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.

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 a lot of awards in Hong Kong and China.

As “长实” and “长实集团” are the service marks/trade names adopted by the Complainant in the course of its business, the Complainant therefore claims rights in these service marks/trade names. Based on the above, the service marks/trade names “长实” and “长实集团” have been well-recognized by the public and trade to be distinctive of and identified with the Complainant but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长实” and “长实集团” . As such, the Complainant undoubtedly has rights in both service marks/trade names. Prior to the date of registration of the Disputed Domain Name, the Complainant has already registered several domain names containing “长实” . The major part of the Disputed Domain Name is identical to the service marks/trade names and domain names of the Complainant.

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

The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the marks/names “长实” and “长实集团” . On or before the registration date of the Disputed Domain Name, the Complainant has widely used the marks/names as its service marks/trade names; substantial goodwill and reputation subsisted in the service marks/trade names; the said service marks/trade names have been identified by the public as the service marks/trade names of the Complainant and non other; and the Complainant has already registered the domain names “长实.cc” , “长实.net” , “长实.网络” , “长实集团.网络” and “长实集团.公司” . As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

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

The Complainant's service marks/trade names “长实” and “长实集团” have been used in Hong Kong and China respectively for more than 30 and 10 years before the registration date of the Disputed Domain Name and has a very strong reputation in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service marks/trade names “长实” and “长实集团”. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the Complainant's marks and names “长实” and “长实集团” 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 of registration is 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 2007.

Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into use. 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.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

The Respondent failed to submit a Response within the specified time period.

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:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The Complainant, established in 1971, is one of the largest property developers in Hong Kong. The evidence submitted by the Complainant sufficiently shows that the Complainant is a leading Hong Kong based company commonly known as “长实”. Through more than 30 years of continuous use of the service mark/trade name, the Complainant has been closely associated with “长实”. The public has also associated “长实” with only the Complainant and no other. Further, the Complainant has, through extensive use and promotion of “长实” in the business, achieved common law rights in the service mark “长实”. The Panel finds that the Complainant enjoys the indisputable prior rights and interests in the service mark/trade name “长实”. As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <长实.com> is identical with the Complainant's service mark/trade name “长实”.

The Panel therefore 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 fails to submit a Response, neither does it put forward any evidence to show any positive interests that it relies on. No evidence shows that the Respondent has acquired any trademark rights or other proprietary interests relevant to support its claim to the dispute domain name. The registration of a certain domain name does not of itself confer upon the registrant rights or legitimate interests in the domain name or in the subject matter of the domain name.

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

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 website 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 website or location or of a product or service on your website or location.

The Complainant has been continuously using the service mark/trade name “长实” for more than 30 years. As stated above, the evidence has sufficiently shown that the Complainant is a leading company in Hong Kong and has closely associated with the service mark/trade name “长实”. “长实” is not a name commonly used in trade. Through years of use and promotion, the Complainant's mark/name “长实” has achieved a strong reputation. As such, the public has come to recognize and associate the Complainant's mark/name “长实” as originating from the Complainant and no other. The above facts entitle the Panel to infer that the Respondent should be aware of the existence of the Complainant and its mark/name “长实”. The action of registering the disputed domain name per se has constituted bad faith. Further, the passive holding of the disputed domain name has in all the circumstances been able to serve as evidence to show the Respondent's bad faith.

The Panel concludes 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.长实.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 <长实.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 10 October 2008