



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
 Decision ID DE-0900204
 Case ID HK-0800187
 Disputed Domain Name www.長江集團.com
 Case Administrator Dennis CAI
 Submitted By Lulin Gao
 Participated Panelist

Date of Decision 03-03-2009

Language Version : English

The Parties Information

Claimant 1.Cheung Kong (Holdings) Limited; 2.Cheung Kong Center Property Management Limited
Respondent Jenny Glover

Procedural History

The Complainants of this case are Cheung Kong (Holdings) Limited and Cheung Kong Center Property Management Limited. The address of both the two Complainants is 7/F., Cheung Kong Center, 2 Queen's Road Central, Hong Kong. Their authorized representative is Wilkinson & Grist.

The Respondent of this case is Jenny Glover with the address at 3900 West Century Boulevard Inglewood, Los Angeles, California 90303, US.

The Disputed Domain Name is長江集團.com. The Registrar of the Disputed Domain Name is DYNADOT, LLC.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") implemented by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center ("ADNDRC") Supplemental Rules for Policy, was received by ADNDRC Hong Kong Office on 31 July 2008. On 16 August 2008, the ADNDRC Hong Kong Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and the registration information was confirmed by the Registrar on 20 August 2008.

Having verified that the Complaint satisfied the formal requirements of Policy, the ADNDRC Hong Kong Office issued to the Respondent on 4 September 2008, a Notification of the Commencement of the Proceedings to email address of the Respondent, advising the Respondent to submit a Response to the Complaint within the 20 days scheduled time (on or before 25 September 2008).

On 10 September 2008, the Complainants informed the ADNDRC Hong Kong Office that the Disputed Domain Name holder had been changed from Jenny Clover to Sichuan Changjiang Group Corp., Ltd. and inquired that whether the transfer of the Disputed Domain Name subsequent to the filing of Complaint should be nullified.

On 22 September 2008, ADNDRC Hong Kong Office requested the Registrar to provide the updated registration information of the Disputed Domain Name and clarifications of the issue in question.

On 23 September 2008, the ADNDRC Hong Kong Office received from the Registrar the updated registration information of the Disputed Domain Name and the clarifications of the issue in question.

On 24 September 2008, the ADNDRC Hong Kong Office informed the Registrar that the transfer of the Disputed Domain Name was in violation of Paragraph 8(a) of the Policy and requested the Registrar to cancel the transfer of the Disputed Domain Name.

On 23 October 2008, the ADNDRC Hong Kong Office found that the owner transfer of the Disputed Domain Name had been cancelled.

On 24 October 2008, the ADNDRC Hong Kong Office issued another Notification of the Commencement of the Proceedings by email and requested the Respondent to file a Response within the 20 days scheduled time (on or before 12 November 2008). On the same day, the ADNDRC Hong Kong Office received a request from the Respondent to file the Response in Chinese instead of English in order to better protect the interests of the Respondent.

On 28 October 2008, the ADNDRC Hong Kong Office agreed that the Respondent might file the Response in Chinese.

On 11 November 2008, the ADNDRC Hong Kong Office notified the Complainants that it had received the Response from the Respondent and would shortly appoint Panelist(s) for this matter.

On 28 November 2008, the ADNDRC Hong Kong Office received the Complainants' Reply to the Response of the Respondent.

On 30 November 2008, the ADNDRC Hong Kong Office received the Respondent's supplemental Response.

On 11 February 2009, the ADNDRC Hong Kong Office informed the parties by email that Dr. Lulin Gao would be the sole Panelist of this case and transferred the files of this case to the Panel formally on the same day.

On 11 February 2009, the Panel received the file from the ADNDRC Hong Kong Office and should render the Decision on or before 4 March 2009.

Factual Background

For Claimant

For the Complainant

(1) The 1st 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 (“长江集团”), the leading Hong Kong based multinational conglomerate. (See Exhibit 4: Copy Certificate of Incorporation of the 1st Complainant and Exhibit 5: Copy Certificate of Change of Name of the 1st Complainant).

(2) The 1st Complainant, was established on 8 June 1971 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008. The 1st Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Cheung Kong Group (“长江集团”) include the 1st 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. Exhibit 6 is background information on the 1st Complainant and the Cheung Kong Group (“长江集团”). Mr. Li Ka Shing is a strong believer in synergy-the power of combined efforts. This is reflected in his naming the 1st Complainant after the Yangtze River (扬子江 or 长江) that flows through China, a great river that aggregates countless streams and tributaries.

(3) The 1st 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 1st Complainant.

(4) In China, the 1st 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 1st 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.

(5) Pursuant to the enormous effort put by the 1st Complainant in its businesses and excellent quality of the 1st Complainant's real estate development and services in Hong Kong and China, the 1st Complainant has won the following awards: -
Hong Kong:

1998-99 REVIEW 200: Asia's Leading Companies Award – ranked No.3 of “Top 10 Hong Kong Companies doing Business in Asia”(Far Eastern Economic Review)

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

1999 World Most Recommended Real Estate Development Company (PricewaterhouseCoopers)

- 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:
 1998 Asia's Best Managed Companies Award (Mainland & Hong Kong) (Asiamoney)
 - Organizer invited 250 fund managers from 150 institutional investors worldwide to nominate the best managed companies.
 2001 China Best Quality Services and Brands: the Best Real Estate Developer (Capital)
 - Organizer aimed to praise companies which were rapidly expanding the China market and which have contributed a lot to mainland economy.

(6) The 2nd Complainant, a member of the Cheung Kong Group “长江集团”, was incorporated on 3 May 1998 in Hong Kong. Exhibit 10 is a copy of the Certificate of Incorporation of the 2nd Complainant. The Cheung Kong Group “长江集团” began to build Cheung Kong Center in December 1995. After the building was completed in 1999, part of the building was used as the headquarter of the Cheung Kong Group “长江集团”. Exhibit 11 is information concerning Cheung Kong Center located at 2 Queen's Road Central, Hong Kong. The 2nd Complainant was incorporated by the Cheung Kong Group to manage and administer all affairs relating to Cheung Kong Center.
 1st and 2nd Complainants are hereinafter collectively referred to as “The Complainants”.

For Respondent

The Respondent registered the Disputed Domain Name on January 17, 2006.

Parties' Contentions

Claimant

The Complainant's contentions are as follows:

The Disputed Domain Name is identical or confusingly similar to trademarks or service marks to which the Complainants have rights

(1) “长江集团” is not only the service marks/trade names adopted by the Cheung Kong Group of which the Complainants form part, they are also the most distinctive part of the trade names/service marks of the 2nd Complainant. The Complainants claim rights in the service mark “长江集团” /“Cheung Kong Group”. Since 1980, the Complainant and the Cheung Kong Group began to use “长江集团” /“Cheung Kong Group” as their service marks/trade names. Exhibit 12 are copies of annual report published by the 1st Complainant from the year 1997 to 2006 showing extensive use of “长江集团” /“Cheung Kong Group” as their service marks/trade names.

(2) Based on the above, the service mark/trade name “长江集团” has been well-recognized by the public and trade to be distinctive of and identified with the Complainants and their group of companies but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江集团” /“Cheung Kong Group”. One can also find countless publications and reports on the internet about the Complainant and its group of companies by reference to the service marks/trade names “长江集团” and “Cheung Kong Group” (See Exhibit 13: random collection of printouts of articles published on the Internet). As such, the Complainants undoubtedly have rights in the service marks “长江集团” and “Cheung Kong Group”.

(3) Further, on 20 September 2006, the 1st Complainant registered the domain name “长江集团.公司”. Exhibit 14 is a copy of the registration particulars of this domain name.

(4) The major part of the Disputed Domain Name “长江集团” is identical to the service marks/trade names of the Complainants and their group of companies.

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

(5) The Respondent is not in any way related to the Complainants, nor was the Respondent authorised by the Complainants to use the mark “长江集团”

(6) On or before the registration date of the Disputed Domain Name i.e. 17 January 2006:

(i) The Complainants and their group of companies have widely used “长江集团” as the service mark/trade name;

(ii) Substantial goodwill and reputation subsisted in the service mark/trade name “长江集团” ;

(iii) The service mark/trade name “长江集团” has been identified by the public as the service mark/trade name of the Complainants and their group of companies and none other;

(iv) The 2nd Complainant was incorporated with a business name incorporating the Chinese characters “长江集团” ;

(v) The 1st Complainant has registered the domain name “长江集团.公司”; and

(vi) The Complainants are using the services mark/trade name "Cheung Kong Group" and the Disputed Domain Name is a translation of "Cheung Kong Group".

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

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

(8) The Complainants' service mark/trade name "长江集团" has 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 Complainants have prior rights in service mark/trade name "长江集团". As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the Complainants' mark and name "长江集团" taking into account that the Respondent has never had any rights or legitimate interests in the said mark/name. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent's act is authorized by the Complainants. 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 2006.

(9) Further, since the registration of the Disputed Domain Name, the Respondent has not put the same into use (See Exhibit 15: Internet printouts showing non-use of the Disputed Domain Name). 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 the Reply to Response of the Respondent, the Complainants allege that:

1. In the response, the Respondent alleged that she has legitimate rights and interests in the Disputed Name, The Complainants disagree with the Respondent. The name of the Respondent is not "長江集團" and no evidence has been produced to show that the Respondent is commonly known by the Disputed Domain Name. Further, despite the Respondent alleged in the Response that the purpose of registering the Disputed Domain Name is to provide a platform for providing information in relation to companies bearing the name "長江", the Complainant noted that prior to the date of filing the Complaint, the Respondent was not using or had it made demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services. All these help to demonstrate that the Respondent has no legitimate rights or interests in the Disputed Domain Name.

2. After filing the Complaint on 31 July 2008, the Complainants authorized representative received an email from email address idn365@gmail.com, which the Complainants believed was from the Respondent, indicating that the dispute could be settled amicably by way of negotiations on an equal basis subject to a "not too high" payment. If the Complainants were not willing to negotiate, the Disputed Domain Name would be transferred for free Sichuan Changjiang Group Corp. Ltd. Exhibit B is a copy of the email dated 5 September 2008 from idn365@gmail.com to the Complainants' authorized representative.

3. A "whois" search conducted by the Complainants' authorized representative on 9 September 2008 revealed that the Respondent had already transferred the Disputed Domain Name to Changjiang Group Corp. Ltd. (which transfer was later cancelled upon the request of the Complainants). Exhibit C is a copy of the "whois" search dated 9 September 2008.

4. Not only that the act of the Respondent in transferring the Disputed Domain Name after the Complainants have filed the Complaint indicated the Respondent's lack of legitimate interest, this also demonstrated bad faith on the part of the Respondent in preventing the Complainants from reclaiming the Disputed Domain Name which reflected the trade name/ trade mark of the Complainants.

5. The Disputed Domain Name has never been put into use by the Respondent. Such passive holding of the Disputed Domain Name also amounts to bad faith use of the Disputed Domain Name on the part of the Respondent.

6. Certificate

The Complainant certifies that the information contained in this Reply is to the best of the Complainant's knowledge, complete and accurate, that this Complaint is not being presented for any improper purpose, such as to harass, and that the assertions in this Complaint are warranted under the Rules and under applicable law, as it now exists or as it may be extended by a good-faith and reasonable argument.

Respondent

1、投诉人对争议域名的主要识别部分“長江集團”不享有商品商标或服务商标的权利。

(1) 首先，投诉人并不享有“長江集團”文字组合的商标权。理由如下：被投诉人登录中华人民共和国国家工商行政管理总局主办的中国商标网、香港特别行政区政府知识产权署进行查询，均未检索到与争议域名主要识别部分“長江集團”及对应的简体中文“长江集团”文字组合相同的商标已被注册的任何记录（检索结果截图分别是 附件1和附件2），随后，被投诉人再分别以商标申请人的方式查询：长江实业(集团)有限公司、CHEUNG KONG (HOLDINGS) LIMITED，检索结果同样不显示投诉人对“長江集團”文字组合享有商标权（检索结果截图分别是 附件3和附件4）。并且投诉人也并没有在投诉书附件中提交此文字组合的商标注册证书。由此可见，就连投诉人也无法否认：投诉人并不享有“長江集團”文字组合的商标权。

(2) 其次，通过附件3我们可以清楚的看到投诉人实际取得了包括“长江实业集团有限公司；KH”、“长江实业(集团)有限公

司”在内的一系列商标所有权，但这些商标无论是在读音、含义、文字个数、文字排列方式还是外观上均和争议域名的主要识别部分“長江集團”存在巨大差异，并且这些商标除了中文字符以外还排列有标点符号、英文字母等组合，与“長江集團”差别明显，故不构成相同或混淆。结论：争议域名的主要识别部分“長江集團”与投诉人的商标“长江实业集团有限公司；KH”或“长江实业(集团)有限公司”不构成混淆性相似，投诉人以“长江实业集团有限公司；KH”或“长江实业(集团)有限公司”的商标权来对争议域名“長江集團.com”主张权利没有法律依据。

(3) 退一步来说，“长江集团”也并非投诉人所独创。众所周知，长江是中国第一大河流被称作中华民族的“母亲河”，“长江”的知名度也有千年以上的历史，从古到今以长江二字为主体而命名的个人、网站、公司企业不胜枚举，实际上与“长江集团”有关而取名的网站、公司也有很多，并非某个公司所独有，其通用性不容置疑。被投诉人通过著名搜索引擎Google.com查询到大量与“长江集团”为主体命名的公司，虽然“长江实业(集团)有限公司”也位列其中，但被淹没在51万多条检索条目之中，只检索到很少量与投诉人公司相关的资料，检索结果表明“长江集团”并不与投诉人的公司产生必然的、排他的联系（仅列举前3页，检索结果截图分别是附件5、附件6和附件7），随后，被投诉人以“长实”、“长江实业”、“长江实业(集团)有限公司”为关键词进行查询，分别检索到597000、559000和295000条信息（检索结果截图分别是附件8附件9和附件10），而此次检索结果和投诉人的企业关联度非常高，这说明了投诉人企业的知名度和“长实”“长江实业”、“长江实业(集团)有限公司”有关而与“长江集团”无关或关系不大。此外，投诉人在投诉书附件中提交的相关证据也不能证明“长江集团”为其独创且具有唯一性从而自动享有专属权。

(4) 事实上，就连投诉人自己也承认多年来已广泛地使用“长实”及“长实集团”而不是“长江集团”作为对投诉人本身及投诉人集团公司的简称。这是有充分依据的，在亚洲域名争议解决中心（香港秘书处）审理的HK-0800191、HK-0800189和HK-0800175这三个案件中，投诉人均在投诉书中多次确认了这一事实（案件判决书的截图分别请看附件11、附件12和附件13），证据表明，投诉人对争议域名“長江集團.com”不享有合法利益。以下节选了投诉人在上述三个相关案件中对其公司的部分描述：

节选开始：〔多年来投诉人广泛地使用“长实”及“长实集团”作为对投诉人本身及投诉人集团公司的简称。无论是根据香港上市规则对外发出的书面公告或向各大报章和传媒所发出的新闻稿均用上“长实”及“长实集团”简称。在本案被争议域名注册之前(即2006年9月28日之前)：(a) 投诉人及其集团已广泛使用“长实”及“长实集团”作为投诉人及其集团的服务商标；(b) 投诉人及其集团的“长实”及“长实集团”的服务商标已享负盛名；(c) “长实”及“长实集团”均被广泛辨认为投诉人及其集团成员的商号。〕节选结束.....

(5) 投诉人提出以其公司拥有的域名“长江集团.公司”来对“長江集團.com”主张权利，没有法律依据。

基于以上，投诉人对“長江集團”不享有商品商标或服务商标的权利。投诉人的投诉不符合《统一域名争议解决政策》第4(a)(i)中所规定的条件。

2、被投诉人对争议域名“長江集團.com”享有权利或合法利益。

被投诉人作为一名在校大学生，2005年在美国学习期间接触到有关中文域名的一些知识，经过一段时间的观察了解到很多中国常用文字都被外国人注册成为了域名比如：中國.com、旅遊.com等优秀名词，然而这些域名都并非中国人所拥有，被投诉人对此感到痛心和惋惜，于是萌生了要注册中国的母亲河“長江.com”的想法，但此域名不知为什么始终都没有能注册成功，随后想到了長江集團.com，经过多方面查询均没有找到有关“長江集團”被注册成为商标的资料，从而推断没有任何团体或个人对“長江集團”拥有商品商标或服务商标的权利，所以被投诉人在不侵犯他人权利的前提下于2006年1月17提交材料并交纳注册费合法的注册了“長江集團.com”，这一行为完全符合先注先得的国际惯例，理应受到法律保护。被投诉人对“長江集團.com”享有合法利益。

3、被投诉人对争议域名的注册和使用没有恶意。

(1) 投诉人并未主张，亦未举证说明被投诉人注册域名是为了向投诉人或其竞争对手出售、出租或转让该域名，以获取直接与域名注册相关费用之外的额外收益。

(2) 我们注意到，投诉人早在2006年就注册了“长江集团.公司”和“長江實業集團有限公司.com”这二个域名（“长江集团.公司”的Whois信息请看投诉书附件14“長江實業集團有限公司.com”的Whois信息截图请看本答辩书附件14），很显然，被投诉人注册“長江集團.com”域名的行为，并不能阻止投诉人以域名的形式在互联网上使用与其拥有商标权相应的文字组合；投诉人在互联网上使用其享有合法权益的名称不存在任何障碍。他人阻止投诉人以域名的形式在互联网上使用其享有合法权益的名称的客观可能性并不存在。

(3) 客观上，被投诉人亦不可能干扰和破坏投诉人的正常业务，混淆与投诉人区别。投诉人的主要业务领域为地产、电讯等，而被投诉人注册争议域名的目的仅仅是为了建立一个免费的、小型的分类网址导航网站，主要内容就是收集所有与“长江”有关联的企业或者社会团体的名称和其网址，以方便访问者集中免费查阅，这一形式的网站在互联网上随处可见，已被广大公众所喜爱。被投诉人的网址所服务的领域与投诉人的业务领域有显著差异。被投诉人注册争议域名的行为并不可能使投诉人的直接或潜在的用户转向被投诉人以寻求相关的服务。因此这一行为不导致混淆其与投诉人之间的区别、误导公众的客观结果。被投诉人还认为：是否会造成混淆和误导还应以该文字组合“长江集团”是否为投诉人所特有或享有权利为

前提，投诉人对“长江集团”并不享有商标权，该词汇也不是投诉人所特有，因此公众不会认为使用“长江集团.com”这个域名会与投诉人存在特定的、必然的联系，不存在产生误认、混淆甚至玷污投诉人的可能，故不会给投诉人民事权利造成损害，而投诉人亦没有提供证据来证明被投诉人的行为已给其造成实际的损害。

(4) 投诉人指责被投诉人没有把“长江集团.com”投入使用，这一说法不符合事实。实际上并非被投诉人主观上故意不使用该域名，而是互联网发展的大环境造成了目前所有的IDN域名（IDN介绍：http://www.icann.org/en/topics/idn/idn-glossary_zh-CN.htm）也包括世界上其它非英语国家的IDN域名，比如：日文.com/阿拉伯文.com等均无法像英文域名那样正常有效地使用。造成这一现象的主要原因是，IDN域名目前还处在开发测试阶段，全球大多数浏览器都不能支持IDN域名，IDN域名管理机构的网站详细说明了这情况（截图是附件15，也可以访问其官方网站：<http://www.idnnow.com/index.jsp>来证实这一点），在这一情形之下，被投诉人暂时不可能也没有必要投入时间和金钱来运营和维护这一网站，因为这会浪费被投诉人的时间和金钱，而只有等到IDN域名可以像英文域名那样无障碍访问的时候，被投诉人把争议域名投入实际使用的行为才成为可能。此外，投诉人自己所拥有的“长江集团.公司”也因为同样的原因不能使用，而是转到了微软公司的搜索页面（截图是附件16），这充分说明了争议域名不使用的原因为并非被投诉人造成，被投诉人没有恶意。投诉人也没有提交证据证明被投诉人具有恶意。

综上所述，投诉人的投诉不符合《统一域名争议解决政策》第4(a)中所规定的条件，不在相关条款保护范围，请求予以驳回。

In the supplemental Response, the Respondent further responds as follows:

关于投诉人在补充材料中新提出的投诉和观点，被投诉人对此并不认同。理由如下：

1、被投诉人对争议域名“长江集团.com”享有合法利益的理由，被投诉人在答辩书中已经有详细论述，在此不再赘述。

2、被投诉人作为争议域名的合法注册人在不侵犯任何第三者商品商标和服务商标权的前提下有权与任何人进行谈判和协商。首先，在收到投诉人投诉后，被投诉人并不知道投诉人为什么要投诉？目的是什么？基于上述原因，被投诉人通过电子邮件与投诉人取得联系，想听取投诉人的意见，或者有没有什么好的提议？本着解决问题的态度，整个过程中被投诉人的态度是积极的、善意的。其次，被投诉人按相关规定缴纳注册费并合法取得争议域名的行为完全正当，对已付出的注册费，被投诉人有权在任何谈判中保留索要的权利。除非被投诉人愿意，否则没有人有权要求被投诉人免费赠送。再者，本案中的投诉人并不是“长江集团”商品商标或服务商标的所有人（投诉人没有提交拥有“长江集团”商品商标或服务商标的注册证书），被投诉人也并没有向任何人索要直接与域名注册相关费用之外的额外收益。因此，被投诉人对争议域名的管理、解析和使用理应受到法律保护，被投诉人对域名的使用不符合《统一域名争议解决政策》中规定的恶意情形。

3、本案的关键：由于投诉人并不是争议域名主要识别部分“长江集团”的商品商标或服务商标的所有人，首先就不符合《统一域名争议解决政策》第4(a)中所规定的条件，所以对被投诉人的其它指责无从谈起，而投诉人在明知不拥有争议域名主要识别部分“长江集团”的商品商标或服务商标的情况下，牵强附会、恶意地利用《政策》中的有关规定以企图剥夺注册域名持有人持有域名的行为具有反向域名侵夺的嫌疑，希望专家组给予认定和谴责。

4、投诉人的投诉不能同时满足《统一域名争议解决政策》第4(a)中的三种条件。

a. 适可的争议一旦第三方（投诉人）根据《程序规则》，向一适格的争议解决机构提出如下主张时，你方有义务加入该强制性的行政程序：

- (i) 你方域名与投诉人享有权利的商品商标或服务商标相同或混淆性相似；且
- (ii) 你方对该域名并不享有权利或合法利益；且
- (iii) 你方对该域名的注册和使用具有恶意。

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。

综上所述，投诉人的投诉不能同时满足上述三种条件，不符合《统一域名争议解决政策》的规定，请求驳回。

Findings

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 followings:

- (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.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right.

The Complainant claims that "長江集團" is not only the service marks/trade names adopted by the Cheung Kong Group of which the Complainants form a part, they are also the most distinctive part of the trade names/service marks of the 2nd Complainant. Since a dispute between a trade name and a domain name is not within the scope of proceeding of the Policy, the Panel does not consider the Complainants' claim on the trade name.

With respect to the claim on the service mark, the Panel finds that, although there is no evidence regarding registered mark rights over "長江集團" put before the Panel, the evidence provided by the Complainants has proved that "長江集團" has been and is being extensively and consistently used by the Complainants and its group of companies well before the registration date of the Disputed Domain Name (January 17, 2006). The Panel notes that the Complainants are located in Hong Kong and their business are also operated mainly in Hong Kong. Hong Kong is a common law jurisdiction and common law rights in a trade/service mark are recognized and protected accordingly. Given this, the Panel finds that the Complainants have prior common law rights over the service mark "長江集團".

As such, what the panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainants' service mark and the Disputed Domain Name. It is easily observable that the identifying part of the Disputed Domain Name is exactly the same as the Complainants' service mark in which the Complainants have common law right.

In the Response, the Respondent defends that "長江集團" is not originally created by the Complainants because "長江" is a common word which means the Yangtze River of China and is named after by many other companies. Thus, the Complainants shall not enjoy exclusive right over "長江集團". With regard to this point, the Panel considers that though "長江集團" is not coined words and is named after by many other companies, the Complainants are companies with high reputation not comparable by other companies which name after "長江集團" and a close association between "長江集團" and the Complainants has been established through Complainants' long-term use of the mark. Therefore, the registration of the Disputed Domain Name easily tends to cause confusion between the Dispute Domain Name and the Complainants' mark.

Based on the above, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainants' service mark, and the Complainants have satisfied the first condition under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

The Panel makes the decision based on the evidence provided by both parties and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainants claim that 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 Complaints, nor was the Respondent authorized by the Complainants to use the mark "長江集團". The Panel finds that the Complainants have already fulfilled the burden of proof required by the second condition under Paragraph 4(a) of the Policy, thus the burden of proof regarding "rights or legitimate interests" is generally on the party making the defense in the dispute resolution of a domain name, the Respondent.

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 Complainants' claim. In the Response, the Respondent contends that he registered the Disputed Domain Name as he felt regretful that many excellent Chinese characters were registered as domain names by foreigners, and his registration act did not infringe upon others' rights. However, he fails to provide any evidence to prove he has any rights or legitimate interests whatsoever in respect of the mark "長江集團", or there was any association between the mark "長江集團" and his activities before registering the Disputed Domain Name. Given that there is no evidence from the Respondent on his contention that he has legitimate right, the Panel cannot draw conclusion that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name and nothing so far could lead the Panel to conclude otherwise.

Meanwhile, the Panel cannot agree with the Respondent's contention that he legally registered Disputed Domain Name in conformity to international conventions, and thus has legitimate right over the Disputed Domain Name, since the fact of legally registering Disputed Domain Name by the Respondent is not the grounds to prove the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name either. If the registration act per se were the grounds for the Respondent to have the right or legitimate interests, then the whole Policy would lose its meaning.

In view of the foregoing, the Panel comes to the conclusion that the Respondent has no legitimate right or interest in respect of the Disputed Domain Name. Accordingly, the Complainants have satisfied the second condition under Paragraph 4(a) of 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.

First of all, the evidence submitted by the Complainants shows that the Complainants' service mark "長江集團" has achieved a high reputation through a long history of use. As such, the public has come to recognize and associate the Complainants' service mark "長江集團" as originating from the Complainants and no other. This entitles the Panel to infer that the Respondent knew, or should have known, of the existence of the Complainants and their service mark. Further, the Panel finds that it could not be a mere coincidence that the Respondent registered a domain name that is identical to the Complainants' service mark "長江集團", taking into account that the Respondent has never had any rights or legitimate interests in the said service mark. None of these findings lead the Panel to conclude that the Disputed Domain Name has been registered by the Respondent out of good faith.

Second, Exhibit 15 provided by the Complainants shows that the Disputed Domain Name has not been put into use by the Respondent. The Respondent contends that he registered the Dispute Domain Name for the purpose of creating a web directory website displaying search links for various categories, and collecting information of enterprises or social entities related to Yangtze River. The reason why he did not use the Dispute Domain Name is that it encountered some technical problems. However, the fact is that there is no evidence so far to show that the Disputed Domain Name is used in whatever way, and what the Respondent contends cannot be the grounds for not using the Dispute Domain Name for over two years.

As such, the panel is of the opinion that the conditions of bad faith may not be limited to the above four conditions according to the Policy. It is possible, in certain circumstances, for passive holding by the Respondent to amount to the domain name being used in bad faith. This point is acknowledged in the Panel Decision in *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Center Case No. D2000-0003).

As analyzed above, the Complainants' mark "長江集團" has a high reputation in China and Hong Kong, while, the Respondent provided no evidence whatsoever of any actual or contemplated good faith use by him of the domain name. Taking into account these particular circumstances, the panel may infer that the Respondent has no real intention of active use of the Disputed Domain Name, and such act of the Respondent has constituted passive holding of the Disputed Domain Name, which amounts to the domain name being used in bad faith.

In addition, according to the supplemental evidence provided by the Complainants, they received an email from the Respondent, indicating the Respondent had the intention of selling the Disputed Domain Name to the Complainants, and in case the Complainants were not willing to negotiate, he would transfer the Disputed Domain Name for free to a Sichuan company, which has also been admitted by the Respondent in the Response. Although the Respondent contends that he is the rightful registrant of the Disputed Domain Name and thus has the legal right to sell it, as stated above, he fails to provide any evidence showing he has any right or legitimate interests in respect to the Disputed Domain Name. On the other hand, the act per se, that the Respondent transferred the domain name to another company for free in case the negotiation with the Complainants failed, proves that the Respondent is neither using nor has made demonstrable preparations to use the Disputed Domain Name in good faith.

In light of all of the above circumstances, the Panel concludes that the Complainants have met the third condition under Paragraph 4 (a) of the Policy.

Status

www.長江集團.com

Domain Name Transfer

Decision

For all the forgoing reasons, the Panel has decided that the Complainants have proved sufficiently the three elements of Paragraph 4 (a) of the Policy. Accordingly, the Panel directs that the Disputed Domain Name be transferred to the Complainants.

Panelist: Gao Lulin

Dated: 27 February 2009

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