



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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Version	
Decision ID	DE-0900233
Case ID	HK-0800226
Disputed Domain Name	www.長實.com
Case Administrator	Dennis CAI
Submitted By	Timothy Sze
Participated Panelist	

Date of Decision 26-08-2009

Language Version : English

The Parties Information

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

Procedural History

The Complainant of this case is Cheung Kong (Holdings) Limited, its address is at 7th Floor, Cheung Kong Center, 2 Queen' s Road Central, Hong Kong. The authorized representatives of the Complainant in the proceedings are Wilkinson & Grist; their address is at 6th Floor, Prince' s Building, 10 Chater Road, Central, Hong Kong. The Respondent is Long Solid Pipelines Inc., their address is at Guangdong 510000 China, contact email is: LongSolidPipelines@hotmail.com

The disputed domain name is <長實.com >. The registrar/agency of the disputed domain name is Spot Domain LLC DBA DomainSite.com.

A complaint made pursuant to the Internet Corporation for Assigned Names and Numbers (ICANN) the Uniform Domain Name Dispute Resolution Policy, adopted by ICANN on 26 August, 1999 ("the Policy"), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure, approved by HKDNR on 30 November, 2004 ("the Rules of Procedure"), and the Hong Kong International Arbitration Centre ("HKIAC") Supplemental Rules, was filed with HKIAC dated 13 November 2008 in the prescribed form, and was received by HKIAC on 14 November 2008.

The HKIAC notified the Registrar of the Disputed Domain of the proceedings by email on 14 November 2008.

The Complaint was served upon the Respondent by the HKIAC by email on 5 December 2008 to the address, longsolidpipelines@hotmail.com provided by the Respondent as his contact email, according to the Complainant' s WHOIS search and Registrar's data base on 18 November 2008. The Compliant was re-sent to the Respondent by the HKIAC by email on 4 June 2009 per request of the Respondent. The Panel has ordered on 16 July 2009 that the Respondent shall submit its response on or before 23 July 2009., in order to ensure that the HKIAC took reasonable steps to try to notify the Respondent of this Complaint.

This constitutes valid service of these proceedings upon the Respondent.

No Response was filed with the HKIAC within the allotted time. The Sole Panel, Dr. Timothy Sze, was appointed on 6 June 2009, with the papers being delivered to the Panelist on the same day. In accordance with the HKDNR, in the absence of exceptional circumstances as determined by the Panel in its sole discretion, the Arbitration Panel shall forward its decision on the Complaint to the Provider within fifteen (15) business days of its appointment.

On 3 August 2009, HKIAC notified the parties on Respondent Default and Panel's order that decision shall be rendered on or before 20 August 2009.

Factual Background

For Claimant

The Complainant's company name is Cheung Kong (Holdings) Limited ("長江實業(集團)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. Exhibit 3: Copy Certificate of Incorporation of the Complainant and Exhibit 4: Copy Certificate of Change of Name of the Complainant. In Chinese, the Complainant is commonly known as "長實" or "長實集團" and there are countless publications and reports on the internet about the Complainant by reference to these service marks/trade names "長實" and "長實集團" Exhibit 5.

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) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index. 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\$687 billion as at 30 September, 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide. Exhibit 6 is background information on the Complainant and the Cheung Kong Group.

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. Exhibit 7: Copy of some of the advertisements in relation to real estate invested and 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.

The service marks/trade names "長實" and "長實集團" have been well-recognized by the public and trade to be distinctive of and identified with the Complainant but none other.

For Respondent

No Responses was filed by the Respondent, even after the Panel provided Respondent with a second opportunity to file a Response.

Parties' Contentions

Claimant

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

As "長實" and "長實集團" are the service marks/trade names adopted by the Complainant in the course of its business, the Complainant claims rights in these service marks/trade names.

The Complainant, Cheung Kong (Holdings) Limited ("長江實業(集團)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. (See Exhibit 3: Copy Certificate of Incorporation of the Complainant and Exhibit 4: Copy Certificate of Change of Name of the Complainant). In Chinese, the Complainant is commonly known as "長實" or "長實集團" and there are countless publications and reports on the internet about the Complainant by reference to these service marks/trade names "長實" and "長實集團"

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Cheung Kong Infrastructure Holdings Limited (stock code: 1038), Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715), TOM Group Limited (stock code: 2383) and CK Life Sciences Int'l., (Holdings) Inc. (stock code: 0775), which are companies listed on the Main Board of the Hong Kong Stock Exchange. 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\$687 billion as at 30 September, 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide. Exhibit 6 is background information on the Complainant and the Cheung Kong Group.

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.

(See Exhibit 7: Copy of some of the advertisements in relation to real estate invested and 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. (See Exhibit 8: Copy promotional materials of Oriental Plaza and Lido Place and a list of the real properties developed by the Complainant in Hong Kong and overseas countries.)

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:

Awards: 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.

Awards: 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:

Awards: 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.

Awards: 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.

(See Exhibit 9: Details of the said awards obtained by the Complainant)

As "長實" and "長實集團" 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 "長實" and "長實集團" 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 "長實" and "長實集團". As such, the Complainant undoubtedly has rights in both service marks/trade names.

Prior to the date of registration of the Disputed Domain Name (i.e. 31 May 2007), the Complainant has already registered the following domain names:-

Domain Name Date of Registration

長實.cc 6 December 2006

長實.net 6 December 2006

长实.公司 22 November 2006

长实.网络 22 November 2006

长实集团.网络 22 November 2006

长实集团.公司 14 December 2006

(Exhibit 10 are particulars of such domain name registrations).

The major part of the Disputed Domain Name “長實” is identical to the service marks/trade names and domain names of the Complainant.

The Respondent has no rights or legitimate interest in the captioned domain name.

The Respondent is not in any way related to the Complainant, nor was the Respondent authorised by the Complainant to use the marks/names “長實” or “長實集團”.

On or before the registration date of the Disputed Domain Name i.e. 31 May 2007: -

- i. The Complainant has widely used “長實” and “長實集團” as its service marks/trade names;
- ii. Substantial goodwill and reputation subsisted in the service marks/trade names “長實” and “長實集團”;
- iii. The said service marks/trade names “長實” and “長實集團” have been identified by the public as the service marks/trade names of the Complainant and none other; and
- iv. The Complainant has already registered the domain names “長實.cc”, “長實.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.

The Respondent has registered and used the captioned domain name in bad faith.

The Complainant’s service marks/trade names “長實” and “長實集團” 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 “長實” and “長實集團”. 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 “長實” and “長實集團” 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 (See Exhibit 11: 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.

Apart from the Disputed Domain Name, the Respondent has also registered the domain name “长实.com” which is the simplified Chinese characters version of the Disputed Domain Name. On 30 July 2008, the Complainant filed a Complaint against the domain name “长实.com”. A decision was issued by the Asian Domain Name Dispute Resolution Centre (Hong Kong Office) on 29 October 2008 ordering the transfer of the domain name “长实.com” to the Complainant. (See Exhibit 12: Copy decision).

Respondent

No Response was filed.

Findings

Pursuant to paragraph 4(a) of the Uniform Domain Name Dispute Resolution (UDRP) Policy (“the Policy”), in order to prevail the Complainant must prove that:

- i. the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- ii. 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 Panel finds that the disputed domain name is identical to the “長實” and “長實集團” trademarks as the only difference between the trade marks and the domain name at issue is the suffix “.com”. The difference “.com” is not relevant since it is generic top level domain names (gTLDs) derived from the specific configuration of the Domain Name System. The relevant part of a domain name for purposes of the similarity analysis is the second-level-domain (see *OSRAM GmbH, v. web4COMM SRL Romania* (WIPO Case No. DRO2005-0004)). Accordingly, the Panel finds that the Complainant has satisfied the first condition under paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Panel accepts that the Complainant has amply demonstrated that Respondent lacks any rights or legitimate interests, and by virtue of its default, the Respondent has failed to come forward with any evidence to rebut that finding (including the examples listed in paragraph 4(c) of the Policy).

The Respondent has not used or made preparations to use the domain name in connection with a bona fide offering of goods and services.

The Respondent was never commonly known as “長實”. A Google search turns up no results relating to the Respondent. On the other hand, Google results turn up many hits related to the Complainant, who owns the trademark in “長實” and 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) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index; Cheung Kong Infrastructure Holdings Limited (stock code: 1038), Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715), TOM Group Limited (stock code: 2383) and CK Life Sciences Int'l., (Holdings) Inc. (stock code: 0775), which are companies listed on the Main Board of the Hong Kong Stock Exchange.

There is similarly no evidence that the Respondent is making a legitimate non-commercial or fair use of the domain name without intent for commercial gain.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under paragraph 4(a)(ii) of the Policy.

Bad Faith

The Respondent’s conduct falls under paragraph 4(b)(iv) of the Policy, which states that “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.”

Status

www.長實.com Domain Name Transfer

Decision

Based on the above analysis, the Panel decides that:

- (1) the domain name 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.

Accordingly, pursuant to paragraph 4(a) of the Policy, and at the Complainant’s request, the Panel decides that the Disputed Domain <長實.com> should be transferred to the Complainant.

Sole Panelist: Dr. Timothy Sze

Dated: 20 August, 2009