



Asian Domain Name Dispute Resolution Centre  
*- a charitable institution limited by guarantee registered in Hong Kong*

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1300483
<b>Complainant:</b>	China Fishery Group Limited
<b>Respondent:</b>	Tsoi Pochung

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**1. The Parties and Contested Domain Name**

The Complainant is China Fishery Group Limited, of Room 3201-10 Hong Kong Plaza, 188 Connaught Road West, Hong Kong.

The Respondent is Tsoi Pochung, of 1502 Metropole Bldg, Kings Road, Hong Kong.

The domain name at issue is <chinafishery.com> ("**Disputed Domain Name**"), registered by the Respondent with ENOM, INC., of 5808 Lake Washington Blvd, NE, Ste. 300, Kirkland, WA 98033, USA.

**2. Procedural History**

On 31 January 2013, the Complainant filed a Complaint in relation to the Disputed Domain Name with the Asian Domain Name Dispute Resolution Centre ("**ADNDRC**"). On 1 February 2013, the ADNDRC confirmed with the Complainant the receipt of the Complaint and on 14 February 2013, confirmed receipt of the required administrative filing fee.

On 1 February 2013, the ADNDRC notified the Registrar of the Disputed Domain Name ("**Registrar**") of the proceedings by email and requested the Registrar provide verification in connection with the Disputed Domain Name. On 2 February 2013, the Registrar confirmed by email to the ADNDRC that, amongst other things, the Respondent is the registered holder of the Disputed Domain.

As the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy ("**the Policy**"), on 14 February 2013, the ADNDRC sent a Written Notice of Complaint, together with a copy of the Complaint and annexures to the Respondent by courier to the contact address (as recorded in the ENOM, INC., WHOIS

database). The Written Notice of Complaint was also sent by email to the email contact address recorded on the ENOM, INC., WHOIS database as well as to [postmaster@chinafishery.com](mailto:postmaster@chinafishery.com). The ADNRC also attempted to send the Written Notice of Complaint to the fax number recorded on the ENOM, INC., WHOIS database however the fax was unable to be transmitted.

The proceedings commenced on 14 February 2013 and by the Written Notice of Complaint, the Respondent was informed that he had 20 days to submit a Response, i.e., on or before 6 March 2013.

The Respondent did not submit a Response within the required period of time.

The Panel, comprised of Matthew Laight as a single panelist, was appointed on 21 March 2013. The papers were delivered to the Panel by email on the same day.

Paragraph 11(a) of the Policy Rules of Procedure provides that:

*“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.”*

In the present case, the registration agreement for the Disputed Domain Name is in English and the Registrar is resident in Hong Kong, which has English as one of its official languages. Further, the Complaint was drafted and filed in English and the Respondent has not filed a Response or requested that the proceedings be conducted in a language other than English. In these circumstances, the Panel considers that it would be appropriate for the present proceedings to be conducted in English.

As two of the exhibits submitted with the Complaint were in Chinese, on 8 April 2013, the Panel ordered the Complainant to provide an English translation of Exhibits 1 and 9 on or before 15 April 2013 and the Respondent to provide any response to the English translation thereof on or before 22 April 2013.

The Complainant provided an English translation on 9 April 2013. No response was received from the Respondent.

### **3. Factual background**

The Complainant is a member of a group of companies which operate coastal fishing and deep sea industrial fishing across the Pacific, the Atlantic and the Indian Oceans under the English trade name and trade mark “China Fishery”/ “China Fishery Group” and the Chinese trade name and trade mark “中漁”/ “中漁集團”.

The Complainant is an investment holding company that operates in the PRC, Japan, Korea, Southeast Asia, Europe, West Africa, and North and South America. The Complainant sources, harvests, onboard-processes, and delivers fish internationally, as well as manages and operates fishing vessels, and sells fish in various forms and other marine catches. The Complainant is also involved in the provision of logistic and warehousing

services for fishing industry; operating several fishmeal plants in Peru; and property holding activities. It also acts as a procurement and marketing agent for fishmeal.

The Complainant was founded by Pacific Andes International Holdings Limited (“**Pacific Andes**”) joining forces with China National Fisheries Corporation (“**CNFC**”). At the time, Pacific Andes had been a public listed company in Hong Kong for 19 years and engaged in seafood business including frozen seafood trading, fish and seafood processing, shipping agency services and frozen seafood products retail in China, Singapore and the USA. The CNFC is a state owned fishing enterprise of the PRC and one of the executing arms of the bilateral fishing agreements entered into by the PRC government with other countries. CNFC subsequently disposed of its interest in the Complainant.

The evidence provided by the Complainant shows that the “China Fishery” /“中漁” industrial fishing business commenced trading on 1 January 2001. The evidence before the Panel shows that the Complainant’s business has grown rapidly since its inception, with its net profit after tax jumping from US\$1.8 million in financial year 2002 to US\$4.3 million in financial 2003, then increasing to US\$17.6 million in financial year 2004. The Complainant was listed on the Mainboard of Singapore Exchange Securities Trading Limited on 25 January 2006. In financial year 2011, the Complainant’s worldwide revenue was HK\$7 billion. As at 30 January 2013, the Complainant was ranked amongst its peers as 4<sup>th</sup> in revenue and 3<sup>rd</sup> in net income.

The Complainant is the owner of the trade name and trade mark “China Fishery Group Limited” and device and has trade mark registrations incorporating “China Fishery” in Hong Kong, the PRC, Singapore, the European Community and Taiwan (“**the Trade Marks**”). The earliest date of registration is 20 December 2005 in Hong Kong, followed by 21 December 2005 in Singapore.

The Complainant registered the domain name [www.chinafisherygroup.com](http://www.chinafisherygroup.com) on 28 December 2009 and has registered the Internet keywords “chinafishery” and “中漁集團” since 28 December 2005.

The Respondent is an individual by the name of Tsoi Pochung.

#### **4. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

- i. As at the date of registration of the Disputed Domain Name, the reputation of the Complainant was well established in the fishing industry, as well as amongst the general public. As a result, the likelihood of confusion between the Disputed Domain Name and the Complainant is real and imminent.
- ii. The Complainant contends that the public and members of the trade have come to recognize and associate the Complainant's trade mark “China Fishery” as originating from the Complainant and no other. As a result, the Respondent should be aware of the existence of the Complainant and the fact that “China Fishery” is the trade mark and/or trade name of the Complainant.

- iii. The Disputed Domain Name is identical to the Complainant's trade mark "China Fishery" as the Disputed Domain Name incorporates the Complainant's trade mark and trade name in its entirety.
- iv. The Respondent has no rights or legitimate interest in respect of the Disputed Domain Name as there is no evidence that the Respondent is commonly known by the Disputed Domain Name, it does not operate a business, have a corporate name, company, product or services under the Disputed Domain Name and has no rights to any trade names or registered trademarks including the name "China Fishery".
- v. Further, the Respondent has no relationship with the Complainant or permission to use the Complainant's trade mark or trade name "China Fishery". An internet search of the Disputed Domain Name shows a web link featuring "Find Cash Advance, Debt Consolidation and more at Chinafishery.com. Get the best insurance or Free Credit Report, browse our section on Cell Phones or..." however the link does not resolve into anything. Further, screenshots from 8 February 2008 feature the website at the Disputed Domain Name stating "*This domain is for sale or lease*".
- vi. The Disputed Domain Name has been registered and is being used in bad faith by the Respondent as the Respondent has deliberately chosen a domain name which is identical to the Complainant's trade mark/trade name "China Fishery".
- vii. The Respondent has no intention whatsoever to genuinely use the Disputed Domain Name and has only registered the Disputed Domain Name for the purpose of disrupting the business of the Complainant and selling it at a substantial profit. On 15 January 2013, the Complainant received an email from Ms. Lobby Kwong of Huyi Global offering to sell the Disputed Domain Name at HK\$40,000. The Respondent has also registered in bad faith another party's mark as a domain name [www.bici.com](http://www.bici.com) and was thus ordered to transfer the domain name back to the trade mark owner who filed a domain name complaint.
- viii. Further, the Disputed Domain Name does not resolve into any web pages to show anything meaningful despite the fact that it has been registered since 30 August 2001, which means that the Respondent has no intention whatsoever to genuinely use the Disputed Domain Name.
- ix. The Respondent is clearly also attempting to prevent the Complainant from registering the Disputed Domain Name for its legitimate use as the Respondent is not related to and does not have any permission from the Complainant to register or use the Disputed Domain Name.

B. Respondent

- i. The Respondent did not file a Response to the Complainant's contentions.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. the Respondent's domain name 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 Respondent's domain name has been registered and is being used in bad faith.

The Panel notes that while a Respondent is not obliged to participate in a proceeding under the Policy, if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant: *Reuters Limited v Global Net 2000, Inc* D2000-0441 and *Microsoft Corporation v Freak Films Oy* D2003-0109.

### *A) Identical / Confusingly Similar*

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

The Complainant has established that it is the owner of registered Trade Marks which incorporate the words "China Fishery" in Hong Kong, Singapore, PRC, Taiwan, as well as being the owner of a community trade mark which incorporates the words "China Fishery". The earliest trade mark registration which contains the words "China Fishery" is 20 December 2005 in Hong Kong.

The Panel notes that Paragraph 4(a)(i) of the Policy embodies no requirement that the Complainant's trademark rights must have arisen before the Disputed Domain Name was registered. See *Valve Corp. v. ValveNET, Inc.*, WIPO Case No. D2005-0038 and the cases there cited. Whether the Complainant had any trademark rights at common law prior to the registration of the Disputed Domain Name is an issue that arises only in relation to the elements of legitimacy and bad faith.

The predominant elements of the Trade Marks are the words "China Fishery" and the device. The design elements of a trade mark cannot be replicated in a domain name and are thus not included in comparing the similarity between the alphanumeric sequence portions of the mark and domain name, see *General Machine Prods. Co., v Prime Domains*, Case No. FA0092531. The incorporation in the Disputed Domain Name of the predominant elements of the Complainant's Trade Marks, being "China Fishery", establishes confusing similarity, *Christian Dior Couture SA v Liage Int'l Inc* D2000-0098. The overall impression left by the Disputed Domain Name suggests that it belongs to the Complainant and consumer confusion will inevitably result. Accordingly, the Panel finds that the Disputed Domain Name is similar to the Trade Marks.

## ***B) Rights and Legitimate Interests***

Paragraph 4(a)(ii) of the Policy requires the Complainant to prove that the Respondent has no rights or legitimate interests in the Disputed Domain.

For the purposes of Paragraph 4(a)(ii), Paragraph 4(c) of the Policy sets out three specific circumstances (set out below) which can help the Respondent demonstrate it has a right or a legitimate interest in the Disputed Domain. Paragraph 4(c) of the Policy provides that if the Panel considers it proven that, based on its evaluation of all evidence presented to it, the Respondent satisfies any of the following circumstances, the Respondent will have shown that it has a right or legitimate interest in the Disputed Domain Name:

- i) before the Respondent has any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name is in connection with a bona fide offering of goods or services; or
- ii) the Respondent (as an individual, business, or other organisation) has been commonly known by the Domain Name, even if the Respondent has acquired no trade mark or service mark; or
- iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The onus is on the Complainant to demonstrate that the Respondent has no rights or legitimate interests in the Disputed Domain. Once prima facie evidence has been adduced, the burden shifts to the Respondent to prove otherwise (see *Six Continents Hotels, Inc v Patrick Ory*, WIPO Case No D2003-00098).

The Panel finds that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interest in the Disputed Domain Name, and the Respondent has not satisfied any of the circumstances (i) to (iii) as set out under Paragraph 4(c) of the Policy. The Panel's reasons are provided below.

The evidence presented to the Panel indicates that the Respondent has not used the Disputed Domain Name since it was registered in August 2001. The Complainant indicates that despite web links being shown on an internet search, they do not resolve into anything. The Complainant has also provided a screenshot from February 2008 which show that the Disputed Domain Name has been offered for sale or lease by the Respondent.

From the screenshot, there are various images that appear to be for mobile telephone ring tones/services and images of movies however there is no offering of goods or services that are related to the generic or descriptive meaning of "China Fishery". It appears that other screenshots were available however they have not been submitted to the Panel by the Complainant. However, as the Respondent has not provided a response, the Panel draws the inference that there was no evidence that Respondent could provide to demonstrate that he uses the Disputed Domain Name for a bona fide offering of goods, see *Pharmacia & Upjohn AB v. Dario H. Romero*, WIPO Case No. D2000-1273. Given the above, the Panel

finds that the Disputed Domain Name has not been used for a bona fide offering of goods and paragraph 4(c)(i) of the Policy is not satisfied by the Respondent.

There is no evidence before the Panel to show that the Respondent is commonly known by the Disputed Domain Name. The Complainant contends that it has no relationship with the Respondent or permission to use the Complainant's Trade Marks or trade name and as the Respondent did not provide a response to the Complaint, there is no evidence to the contrary. Accordingly, paragraph 4(c)(ii) of the Policy is not satisfied by the Respondent.

Similarly, given the above, there is no evidence before the Panel to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name without intent for commercial gain to misleadingly divert consumers. Accordingly, paragraph 4(c)(iii) of the Policy is not satisfied by the Respondent.

On this basis, the Panel finds that the Respondent does not satisfy circumstances (i) to (iii) under Paragraph 4(c) of the Policy and therefore has not answered the prima facie finding that the Respondent has no rights or legitimate interest in the Disputed Domain Name.

### ***C) Bad Faith***

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove that the Disputed Domain is registered and is being used by the Respondent in bad faith.

For the purposes of Paragraph 4(a)(iii), Paragraph 4(b) of the Policy sets out four non-exclusive criteria which, if satisfied, shall be evidence that the Respondent's registration and use of the Disputed Domain is in bad faith:

- i) the Respondent has registered or acquired the Disputed Domain primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain registration to the Complainant who is the owner of the trade mark or service mark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain; or
- ii) the Respondent has registered the Disputed Domain in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, providing that the Respondent has engaged in a pattern of such conduct; or
- iii) the Respondent has registered the Disputed Domain primarily for the purpose of disrupting the business of a competitor; or
- iv) by using the Disputed Domain, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The Complainant has provided details of its trade mark registrations for “China Fishery Group Limited” and device in Hong Kong, PRC, Singapore and Taiwan, as well as a Community Trade Mark registration. The earliest trade mark registration dates back to 20 December 2005, being the Hong Kong trade mark registration.

The evidence before the Panel shows that the Complainant was established on 1 January 2001 and that the domain name was registered by the Respondent on 30 August 2001, being some 8 months after the Complainant was established.

The Complainant contends that as at the date of registration of the Disputed Domain Name, the reputation of the Complainant was well established in the fishing industry, as well as amongst the general public. While there are financial results referred to in the evidence for the financial year ending 2002, there is no evidence before the Panel as to the extent of use by the Complainant of the trade mark/trade name “China Fishery” as at 30 August 2001. Having said that, the Respondent has not filed a response and disputed the contention of the Complainant that the Complainant was well known at the time the Disputed Domain Name was registered.

In relation to paragraph 4(b)(i), the Complainant contends that it first became aware of the Disputed Domain Name being registered by the Respondent when it received an email on 15 January 2013 offering to sell the Disputed Domain Name to it for HKD \$40,000. The Panel has considered the email and it is prepared to accept that the Complainant was not aware of the Disputed Domain Name prior to this email correspondence. The Panel does not however accept this email constitutes an offer to sell the Disputed Domain Name nor is it evidence of bad faith of the Respondent for the reasons set out below.

The email was sent to the Complainant from “Huyi Global Law Firm” and rather than offering to sell the Disputed Domain Name, the law firm is offering its services to assist the Complainant in registering similar domain names and to lodge administrative proceedings to obtain a number of domain names that have been registered by third parties, including the Disputed Domain Name. The fee for taking action in relation to the Disputed Domain Name is stated to be HKD\$40,000. There is nothing on the face of the email to indicate that the law firm is related to the Respondent. Accordingly, the Panel does not accept that the email is evidence of bad faith of the Respondent.

The Complainant has also submitted in support of bad faith, a decision of the National Arbitration Forum in *Boehringer Ingelheim Chemicals, Inc. v Tsoi Pochung* in relation to the domain name <bici.com> involving the Respondent in which the Panelist there found that the Respondent had registered the domain name in bad faith and ordered that the domain name be transferred. The Panel notes that one prior finding of bad faith in relation to a Respondent is usually not sufficient to find that a Respondent has engaged in a pattern of conduct. However, the Panel will consider this in light of all of the circumstances of this matter.

In the decision of *Telstra Corporation Limited v Nuclear Marshmallows* D2000-0003, the passive holding of a domain name without any active attempt to sell or contact the trade mark owner constituted use of a domain name in bad faith when all of the cumulative circumstances were considered. In the present case and upon consideration of all of the circumstances, and in particular, that the evidence before the Panel is that the Disputed Domain Name has been offered for sale or lease and there is no evidence of the Disputed



Domain Name being legitimately used since it was registered over 11 years ago and the Respondent having previously been found to have registered a domain name in bad faith, the Panel therefore finds that the Disputed Domain Name has been used in bad faith.

As the Disputed Domain Name was registered some 8 months after the Complainant was established and that there is no evidence before the Panel that the Respondent registered the Disputed Domain Name for a permissible purpose, the inference that the Panel draws, particularly given its finding that the Disputed Domain Name is being used in bad faith, is that the Respondent registered the Disputed Domain Name to disrupt the business of the Complainant and to prevent the Complainant from reflecting the "China Fishery" component of the Trade Marks in a corresponding domain.

Accordingly, the Panel finds that the Disputed Domain Name has been registered and used in bad faith.

## 6. Decision

For the foregoing reasons, the Panel concludes that the Complainant has sufficiently proven all of the three elements set out in Paragraph 4(a)(i) to (iii) of the Policy. The Complaint is therefore allowed and the Panel orders that the Disputed Domain Name be transferred to the Complainant.



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Matthew Laight  
Panelist

Dated: 2 May 2013