



**ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(HONG KONG OFFICE)**

— A charitable institution limited by guarantee registered in Hong Kong

Decision Submission

Decision ID	
Case ID	HKcc-0700001
Disputed Domain Name	法国东方汇理银行.cc
Case Administrator	Dennis CAI
Submitted By	Lulin Gao
Participated Panelist	Lulin Gao
Date of Decision	31-07-2007

The Parties Information

Claimant Calyon

Respondent Yun Feng

Procedural History

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October, 1999, and under ICANN Rules for UDRP and Asia Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for UDRP, was received by ADNDRC Hong Kong Office on 20 April 2007. The ADNDRC Hong Kong Office confirmed receipt of the Complaint on 23 April 2007. On the same day, the ADNDRC Hong Kong Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Dispute Domain Name, and the registration information was confirmed by the Registrar on 24 April 2007.

Having verified that the Complaint satisfied the formal requirements of UDRP, the ADNDRC Hong Kong Office issued to the Respondent on 19 May 2007, a Notification of the Commencement of the Proceedings (NCP) to email address of the Respondent, advising the Respondent to submit a Response to the Complaint within the required period of time.

On 21 June 2007, the ADNDRC Hong Kong Office notified the Complaint that the Respondent had failed to submit a Response.

On 12 July 2007, the ADNDRC Hong Kong Office gave notice to the potential candidate of the panelist Dr. Lulin Gao, requesting him to confirm whether he would accept the appointment as a panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On 13 July 2007, the ADNDRC Hong Kong Office notified the parties that the Panelist in this case had been selected, with Dr Lulin Gao acting as the sole panelist and transferred the files of this case to the Panelist formally thereafter.

Factual Background

For Claimant

Introduction to Calyon and the Crédit Agricole Group

The origins of Crédit Agricole Group, of which the financing and investment banking business is known as Calyon, trace back to 1863 when Crédit Lyonnais was founded by Henri Germain. A timeline setting out the long-standing history of the Crédit Agricole Group, as published on the Complainant's website, is annexed at **Annexure 2**.

The Crédit Agricole Group is now the world's sixth largest bank. A global ranking list of the world's largest banks in 2006 is annexed at **Annexure 3**. Headquartered in Paris, Calyon has, since its establishment in 2004, become a major player in the global financial market. Calyon has operations in 60 countries around the world and boasts amongst its clientele some of the world's largest corporations, financial institutions and other enterprises. Some examples of the awards and rankings that Calyon has received in recent years are set out in an extract from Calyon's website annexed at **Annexure 4**.

In Asia where the majority of the world's Chinese speaking population is based, Calyon has a presence in 13 countries, making Calyon one of the most widely represented foreign banks in Asia. Most of Calyon's branches in Asia are fully licensed and offer local currency capabilities. A booklet prepared by the Complainant describing its operations, services and activities of Calyon in Asia and which demonstrate Calyon's status as a leading financing and investment bank in Asia is annexed at **Annexure 5**.

The Crédit Agricole Group expanded its business to China in 1888. Building on over a century of activity in China, Calyon now has fully operational branches in Shanghai, Beijing, Guangzhou, Tianjin, Xiamen as well as a representative office in Shenzhen. Calyon China is one of the top foreign debt financing institutions in the region and is among the first foreign banks to be licensed for Chinese currency (RMB) operations. An overview of Calyon's operations in China is annexed at **Annexure 6**.

Calyon also has a significant presence in other Chinese speaking countries. The Asia regional head office of Calyon is in Hong Kong, where Calyon was the 5th bank to be registered. The origins of the Crédit Agricole Group's operations in Hong Kong, an overview of which is annexed at **Annexure 7**, date back to 1894.

Calyon was amongst the first foreign banks to enter the Taiwanese market, establishing a representative office in Taipei in 1970, and obtaining a licence to operate as a registered foreign bank in 1984. Calyon has also had operations in Singapore, another predominantly Chinese speaking country, since 1905. Overviews of Calyon's operations in Taiwan and Singapore, respectively, are annexed at **Annexure 8**.

Introduction to the 法国东方汇理银行 brand

法国东方汇理银行 was adopted as the official Chinese trade name for the financing and investment banking business of the Crédit Agricole Group (i.e. Calyon) in the PRC in May 1991. In Hong Kong, where the French origins of Calyon were already well known, the word " 法国" was omitted from the Chinese name and 东方汇理银行 adopted in its place. 东方汇理银行 is registered as a trade mark in Hong Kong. An extract from the Hong Kong trade mark database evidencing the registration is annexed at **Annexure 9**.

The history of 法国东方汇理银行's operations and activities in China and other Chinese speaking countries has been widely documented in numerous Chinese language publications, a selection of which is annexed at **Annexure 10**. Calyon is widely reported by reference to its Chinese name 法国东方汇理银行 in Chinese newspapers and online publications for the significant role it plays in the Asian financial market. Annexed at **Annexure 11** is a selection of articles about or quoting Calyon by reference to its Chinese name 法国东方汇理银行 (or in some cases 东方汇理银行) downloaded from the website of China's People's Daily Online and from various other online newspapers and publications targeted at and available to Chinese speakers all over the world.

Calyon uses its Chinese name 法国东方汇理银行 (or 东方汇理银行) in all of its Chinese language publications and documents, such as name cards, letterheads and account opening forms. A selection of such documents bearing the name 法国东方汇理银行 (or 东方汇理银行) is annexed at **Annexure 12**. The Complainant has also used its Chinese name 法国东方汇理银行 (or 东方汇理银行) in a number of high profile events in Asia which have generated widespread public interest and participation. Examples of such events include the recent co-hosting of an international forum in China on the topic of the liberalization of the Chinese financial market, which received the support of and was attended by bankers and financial experts from all over the world. Copies of a selection of reports published in relation to events hosted and/or sponsored by Calyon, including the international forum on the liberalization of the Chinese financial market, together with a print advertisement for an event bearing Calyon's trademark (which incorporates 东方汇理银行), are annexed at **Annexure 13**.

Calyon's Chinese name 法国东方汇理银行 was used by Calyon in applying for all necessary approvals, licences and certificates required for Calyon to operate its banking business in China. A selection of approvals, licences and certificates issued by various Chinese government departments reflecting Calyon's Chinese name 法国东方汇理银行 is attached at **Annexure 14**. Calyon's use of its Chinese name in China is also evidenced by references to its Chinese name 法国东方汇理银行 (or 东方汇理银行) on the websites of Chinese government departments, such as the China Banking Regulatory Commission, the Ministry of Commerce and other official associations such as the China Banking Association. A selection of relevant pages from such websites is annexed at **Annexure 15**.

Calyon also uses its Chinese name in Taiwan as evidenced by references to its Chinese name 法国东方汇理银行 by the Taiwanese government. Relevant web pages downloaded from the website of Taiwan's Financial Supervisory Commission are annexed at **Annexure 16**.

In Hong Kong, Calyon's use of its Chinese name 东方汇理银行 is evidenced on the websites of various government departments, such as the Hong Kong Monetary Authority, the Student Financial

Assistance Agency and the Treasury Branch of the Financial Services and the Treasury Bureau. These official references are annexed at **Annexure 17**.

For Respondent

Respondent has failed to file a response in this matter.

Parties' Contentions

Claimant

The Disputed Domain Name is identical and/or confusingly similar to trade or service marks in which the Complainant has rights

The Complainant submits that the Disputed Domain Name is identical and/or confusingly similar to marks in which the Complainant has rights on the following grounds:

- (a) the Disputed Domain Name is identical to the Complainant's Chinese trade name 法国东方汇理银行 is confusingly similar to the Complainant's registered Hong Kong trade mark 东方汇理银行;
- (b) the Complainant has acquired an extensive reputation and goodwill in its Chinese trade name 法国东方汇理银行, which is identical to the Disputed Domain Name, among the Chinese speaking population worldwide.

The Disputed Domain Name is identical to the Complainant's Chinese trade name 法国东方汇理银行 and is confusingly similar to the Complainant's Hong Kong registered trade mark 东方汇理银行. The omission of the word 法国 does not serve to distinguish the Complainant's Hong Kong registered trade mark from the Disputed Domain Name on the basis that the word 法国 is merely descriptive of the Complainant's national origins. It is also well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extensions, in this case <.cc>, respectively, should be disregarded. The Complainant refers the panelist to the WIPO Arbitration and Mediation Center's decision of Rohde & Schwarz GmbH & Co. HG v. Perthshire Marketing Ltd (Case No. D2006-0762), a copy of which is attached as **Annexure 18**.

The Complainant also has civil rights in 法国东方汇理银行 as an unregistered trade mark in Chinese speaking countries around the world by virtue of the extensive reputation and goodwill that the Complainant has acquired in this trade mark through use, particularly in the PRC, Taiwan and Hong Kong, which collectively hold the vast majority of the world's Chinese speaking population (as discussed in more detail above).

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to both a trade name and (unregistered) trade mark in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The Complainant submits that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name on the following grounds:

- (a) The Disputed Domain Name do not reflect the Respondent's name or the name of the Respondent's Company;
- (b) Neither the Respondent nor the Respondent's Company has any registered trade mark rights in the predominant Chinese speaking countries, being the PRC, Hong Kong or Taiwan, which reflect the Disputed Domain Name;
- (c) Neither the Respondent nor the Respondent's Company has acquired any reputation in the Disputed Domain Name in the predominant Chinese speaking countries, being the PRC, Hong Kong or Taiwan.
- (d) Neither the Respondent nor the Respondent's Company has a presence in the Caicos Islands.

The Disputed Domain name neither reflects the Respondent's name nor any other name trade mark in which the Respondent has any registered rights or interests in the PRC, Hong Kong or Taiwan. The Complainant's legal representative conducted proprietor trade mark searches in the names of "Yun Feng" (the Respondent) and "Jinanlihaishangwuyouxiangongsi" / "济南利海商务有限公司" (the Respondent's Company) which revealed neither to be the owner of any registered trade marks in the these countries (let alone trade marks incorporating or reflecting the Disputed Domain Name). Copies of the trade mark search results are attached at **Annexure 19**.

Internet Searches were also carried out by the Complainant's legal representative on localised versions of popular Chinese language search engines Baidu, Sohu, Yahoo! and Google. The following search terms:

“Yun Feng” and 法国东方汇理银行

济南利海商务 and 法国东方汇理银行

were used to determine whether there is any objective connection between either the Respondent and 法国东方汇理银行 or the Respondent's Company and 法国东方汇理银行 (i.e. any such connection would go *some* way to establishing that the Respondent or the Respondent's Company had acquired *some* reputation in 法国东方汇理银行 and therefore in the Disputed Domain Name). The results of the searches revealed no such connection to exist. Copies of the results of searches conducted on the localised Chinese versions of each of Baidu, Sohu, Yahoo! and Google are attached at **Annexure 20**.

In the absence of any other evidence of use, neither the Respondent nor the Respondent's Company can be said to have acquired any reputation in 法国东方汇理银行 in any of the predominant Chinese speaking countries, and certainly not a reputation sufficient to confer upon the Respondent (whether itself or through the Respondent's Company) any legitimate right or interest in the Disputed Domain Name.

Further, it is relevant to note that the use of the word “银行” is strongly regulated in Chinese speaking countries including in the PRC, Taiwan and Hong Kong. Article 11 of the PRC Commercial Bank Law prohibits the use of the word “银行” in the name of any entity which has not obtained approval from the banking regulatory authority of the State Council. A copy of the PRC Commercial Banking Law is annexed at **Annexure 21**. Similarly, the use of the word “银行” in the name or description of an entity in Hong Kong is restricted under section 97 of the Banking Ordinance (Chapter 155, Laws of Hong Kong). A copy of section 97 of the Banking Ordinance is annexed at **Annexure 22**. In Taiwan, a non-banking entity is also prohibited from using the word “银行” in its name under Article 20 of the Banking Act. A copy of the Banking Act of the Taiwan Republic of China is annexed at **Annexure 23**.

In the absence of any evidence that the Respondent has obtained the requisite approvals from the respective banking regulatory authorities in any of the PRC, Taiwan or Hong Kong, there is an irrefutable presumption that any use of the use by the Respondent (whether itself or through the Respondent's Company or another entity) of any name incorporating 银行 would be unlawful in those countries having the largest Chinese speaking populations. This being the case, in the absence of such evidence it is submitted that the Respondent could not possibly have any legitimate rights or interests in the name 法国东方汇理银行 (or 东方汇理银行) and accordingly, nor in any of the Disputed Domain Name.

Internet searches were also conducted using:

“Yun Feng” and “凯科斯群岛”

济南利海商务 and “凯科斯群岛”

which similarly did not produce any affirmative results, indicating the lack of any connection between the Respondent and/or the Respondent's Company, and the Caicos Islands. Copies of the results of searches conducted on the localised Chinese versions of each of Baidu, Yahoo! and Google are attached at **Annexure 24**.

The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of any of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the ICANN UDRP.

The Disputed Domain Name has been registered and are being used by the Respondent in Bad Faith

The Complainant submits that the Disputed Domain Name has been registered by the Respondent in bad faith on the following grounds:

- (a) The Respondent does not have any legitimate rights or interests in the Disputed Domain Name;
- (b) The Respondent, as a Chinese individual and/or a PRC based individual, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name by virtue of the Complainant's reputation in 法国东方汇理银行, at least in the PRC;

- (c) The Respondent's knowledge of the Complainant's reputation and goodwill in 法国东方汇理银行 (at least in the PRC) gives rise to a presumption that the Respondent registered the Disputed Domain Name for the purpose of trading the Disputed Domain Name for financial gain and/or otherwise for the purpose of taking a free ride on, and leveraging off, the Complainant's reputation in the PRC;
- (d) The Respondent has indicated in writing a clear intention to sell the Disputed Domain Name to the Complainant for US\$60,000; and
- (e) The Respondent is not making any use of any of the Disputed Domain Name.

The fact that the Respondent has registered the Disputed Domain Name without having any legitimate right or interest in it, and furthermore that the Respondent has incorporated "银行" in the Disputed Domain Name (being a word reserved under the banking regulations of each of the PRC, Taiwan and Hong Kong exclusively for use by entities which have obtained regulatory approval to provide banking services), constitute clear evidence of bad faith on the part of the Respondent in registering the Disputed Domain Name. It is also submitted that the Caicos Islands are not a Chinese speaking territory (attached at **Annexure 25** is a list of the world's 127 Chinese speaking countries) which gives rise to the further presumption that the Respondent cannot, in registering the Disputed Domain Name, have intended to make any legitimate commercial use of it.

The Complainant also submits that, in light of its extensive worldwide reputation in 法国东方汇理银行 in the PRC (where the Respondent is located) as well as in other Chinese speaking countries such as Taiwan and Hong Kong, the Respondent must have known about the Complainant's rights in 法国东方汇理银行 at the time of registering the Disputed Domain Name. The Respondent's registration of the Disputed Domain Name cannot be bona fide in circumstances where the registration was made in the full knowledge of the Complainant's prior rights in 法国东方汇理银行, and in circumstances where the Respondent did not seek permission from the Complainant to such registration.

The Complainant refers the panel to the case of Hugo Boss AG v. Wenzhou Lucheng District Shangshu Sunbird Department Store and Zhao Ke Jian (Case No. DCN-0300008), a copy of which is attached at **Annexure 26**. In that case, in deciding that the registrant had registered the domain name in bad faith, the panel took into account the fact that the respondent registered the domain name with knowledge of the Complainant's longstanding prior rights.

The Complainant's legal representatives sent an anonymous email to the Respondent on 27 February 2007 enquiring as to whether the Respondent would be willing to transfer the Disputed Domain Name to the Complainant at a price of US\$1,000. The Respondent replied on 3 March 2007 and 19 March 2007, respectively, indicating that he had registered the Disputed Domain Name (among other domain names bearing the trade name of the Complainant) for "investment purposes" and that he intended to sell the Disputed Domain Name to the Complainant at a price of US\$60,000. A copy of the email correspondence between the Complainant's legal representatives using the email account alicec2325@yahoo.com.hk and the Respondent is attached at **Annexure 27**. The response given by the Respondent is an unequivocal indication that the sole purpose of the Respondent's registration of the Disputed Domain Name was to resell the Disputed Domain Name for financial gain. This

constitutes illegitimate and unfair use of the Complainant's trade name and trade mark, and the deliberate manipulation of the ccTLD registration system.

The submission that the sole purpose of the Respondent's registration of the Disputed Domain Name was to resell it for financial gain is strengthened by the fact that the Respondent has not used the Disputed Domain Name to the Complainant's knowledge. Certainly, the Respondent was not using the Disputed Domain Name as at the date of this Complaint. A copy of the site generated by entering the Disputed Domain Name into the Internet Explorer window browser is attached at **Annexure 28**.

The WIPO decision of Telstra Corporation Limited v Nuclear Marshmallows (Case No. D2000-0003), a copy of which is attached at **Annexure 29**, makes it clear that the concept of "use in bad faith" in paragraph 4(a)(iii) is not limited to positive action, and that inaction is within the concept. i.e. Inactivity by the Respondent may therefore amount to 'the use of the domain name in bad faith'. This conclusion is also supported by the actual provisions of the UDRP. It is noted that only paragraph 4(b)(iv) of the UDRP involves a positive action. It is therefore submitted that the non-use or passive holding of the Disputed Domain Name by the Respondent, especially in circumstances where the Respondent is actively trading the Disputed Domain Name and has admitted to holding the Disputed Domain Name for 'investment purposes', also amounts to the use of the Disputed Domain Name in bad faith.

The Respondent has engaged in a pattern of domain name hi-jacking involving the Complainant's Chinese trade name 法国东方汇理银行 having also registered, and offered to sell to the Respondent, the domain names < 法国东方汇理银行.com> and < 法国东方汇理银行.net> (Please refer to **Annexure 27**). The registration of the Disputed Domain Name is consistent with the hi-jacking of these two gTLDs on the basis that the .cc ccTLD extension is often mistaken for a gTLD extension, thereby increasing the value and popularity of such domain names amongst domain name hi-jackers.

The Complainant accordingly submits that it has proved that the Respondent has registered and is using the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

Respondent

The respondent did not file a response within the stipulated time.

Findings

According to Paragraph 4a of the Policy which is applicable hereto, the Complainant has the burden of proving that:

- 1) that 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) that the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) that the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

According to the evidence provided by the Complainant, the Panelist finds that the Complainant obtained the registration of “東方匯理銀行” as a trademark (Registration No.: 2000B15231) in Hong Kong in 1999, which by a renewal shall remain valid at present, and the registration date (23 May 2006) of the Disputed Domain Name is much later than that of the Complainant’s trademark. Thus, the Panelist is of the view that the Complainant enjoys the prior trademark right to “東方匯理銀行”. Additionally, the current evidence reveals that the Complainant’s trademark and Chinese trade name have been used for a long period of time and achieved the extensive reputation by such use, particularly in China Mainland, Taiwan and Hong Kong. As such, what the Panelist needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “東方匯理銀行” and the Disputed Domain Name “法国东方汇理银行.cc”.

It is easily observable that the identifying part of the Disputed Domain Name “法国东方汇理银行” is composed of the country name “法国” and the part “东方汇理银行”, which is obviously the simplified characters of the Complainant’s Hong Kong registered trademark “東方匯理銀行”. Generally speaking, both the simplified and traditional characters are identical in terms of pronunciation and meaning except for the font style, thus shall be deemed to be identical or confusingly similar. Meanwhile, the Panelist finds that the addition of the country name “法国” to “东方汇理银行”, merely serves a function of identifying the origin of the country, which does not serve to distinguish the Disputed Domain Name from the Complainant’s prior trademark.

Therefore, Considering the Complainant has prior rights in trademark “東方匯理銀行”, in combination with its reputation and goodwill in China, the Panelist finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

It has been sufficiently proved by the Complainant that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name. Based on the submission and evidence, the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to use its name or trademark. In light of “東方匯理銀行”, in the financing and banking industry, being the trademark that has been registered and extensively used by the Complainant for a long term, instead of the generic word, the Respondent would not legitimately choose unless seeking to create an impression of an association with the Complainant, thus the Panelist can fathom no possible legitimate connection or interest between the Respondent and the Disputed Domain Name.

Furthermore, the Respondent has not filed any response and failed to demonstrate he has any rights or legitimate interests in respect of the Disputed Domain Name. Based on the default and the evidence in the Complaint, it is presumed that Respondent has no rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panelist finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

In accordance with Paragraph 4 (b) of UDRP, it sets out four non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith:

- (i) the respondent has registered or has 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 trade mark or service mark or to a competitor of that complainant for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location.

First of all, given the inherent distinctiveness and extensive worldwide reputation of the Complainant's trademark, the Complainant's long-standing commercial and promotional activities in China where the Respondent is based, the Panelist finds it difficult to accept that the Respondent registered the Disputed Domain Name without knowledge of the Complainant's rights in the trademark and Chinese trade name. And it cannot be a mere co-incidence that the Respondent has chosen the Disputed Domain Name, which is confusingly similar to the Complainant's trademark, as his domain name. Furthermore, according to relevant laws and regulations, any entity incorporating “银行” in its trade name and the business operation in the banking field should obtain special approval from the banking regulatory authority or go through special procedures. In the absence of any evidence that the Respondent has obtained the requisite approvals from the respective banking regulatory authorities, the Panelist may come to a conclusion that the Respondent registered the Disputed Domain Name for the purpose other than conducting business related to banking. These facts, together with the finding above that the Respondent has no rights or interests in the Disputed Domain Name lead the Panelist to conclude that the Disputed Domain Name has been registered by the Respondent in bad faith.

Secondly, when the authorized representative of Complainant tried to contact the Respondent for a request of domain name transfer, the Respondent replied on 19 March 2007, indicating that he registered a series of domain names involving the Complainant's Chinese trade name “法国东方汇理银行” and intended to sell to the Complainant at a price of US\$60,000 per domain name, which is far more than the Respondent's out-of-pocket expenses. All these behaviors of the Respondent have led the Panelist to believe that the Respondent has registered or acquired the domain names for the purpose of selling, transferring the domain names to obtain unjustified benefits. Meanwhile, it is worthy of mentioning that according to the copy of the email correspondence attached at **Annexure 27**, the

Complainant's legal representative ever sent the email to Respondent's mailbox intyuming@mainone.cn registered under the Registrar, while the Respondent replied by using a private mailbox header9999@sina.com. Based on the current evidence, it is difficult for the panelist to decide whether such private mailbox is owned by the Respondent. However, considering the Respondent did not oppose the above facts, it can be presumed that the Respondent has registered the domain names with knowledge of Complainant's prior rights and longstanding goodwill for the purpose of obtain unjustified benefits.

Thirdly, the Complainant has alleged that the non-use or passive holding of the Disputed Domain Name by the Respondent, especially in circumstances where the Respondent is actively trading the Disputed Domain Name and has admitted to holding the Disputed Domain Name for 'investment purposes', also amounts to the use of the Disputed Domain Name in bad faith. According to **Annexure 28** the Complainant provides, the panelist finds that the web page shows nothing on display at the domain name “法国东方汇理银行.cc”. Also, The Panelist notes that bad faith conditions may not be limited to the above four conditions according to UDRP. 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 Panelist Decision in *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Center Case No. D2000-0003).

Based on the above analysis, the Complainant's trademark has high reputation and is widely known, as evidenced by its substantial use and promotion in China and other countries or regions. Meanwhile, the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the Disputed Domain Name. Taking into account these particular circumstances, the panelist may infer that the Respondent has no real intention of active use of the Disputed Domain Name, and such acts of the Respondent have constituted the passive holding of the Disputed Domain Name, which amounts to the domain name being used in bad faith.

In light of all of the above circumstances, the Panelist concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

Status

法国东方汇理银行.cc

Domain Name Transfer

Decision

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