



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No:</b>	<b>HK-2001411</b>
<b>Complainant:</b>	<b>SOFTBANK GROUP CORP.</b>
<b>Respondent:</b>	<b>Xiang Gang Ruan Yin Ji Tuan Gu Fen You Xian Gong Si</b>
<b>Disputed Domain Name:</b>	<b>&lt;softbank.hk.com&gt;</b>

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

The Complainant is SOFTBANK GROUP CORP. (the “**Complainant**”) of 1-9-1, Higashi-shimbashi, Minato-ku, Tokyo 105-7303, Japan.

The Respondent is Xiang Gang Ruan Yin Ji Tuan Gu Fen You Xian Gong Si (the “**Respondent**”) of Xiang Gang Zhong Huan Guang Chang 28 Ceng, China.

The domain name at issue is <softbank.hk.com> (the “**disputed domain name**”) registered by the Respondent with TopNets Technology Co. Ltd. (the “**Registrar**”) of Shenzhen, China.

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “**Centre**”) on December 17, 2020. On December 18, 2020 the Centre transmitted to the Registrar a request for registrar verification in connection with the disputed domain name. On December 18, 2020, the Registrar transmitted to the Centre its verification response disclosing registrant information for the disputed domain name which differed from the named Respondent information in the Complaint. The Centre sent an email communication to the Complainant on December 22, 2020, providing the registrant information disclosed and by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on December 23, 2020.

On December 23, 2020, the Centre has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”), the Rules of Procedure under the Policy (the “**Rules**”) and the Centre’s Supplemental Rules (the “**Supplemental Rules**”).

On the same day, in accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceeding commenced. In accordance with the Rules, the due date for the Response was January 12, 2021.

On December 30, 2020, the Center sent an email communication to the Respondent requesting the Respondent to comment on the language of the proceeding by January 4, 2021.

The Center did not receive any response from the Respondent and did not receive any comment from the Respondent on the language of the proceeding.

The Centre appointed Sebastian Hughes as the Panelist in this matter on January 20, 2021. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. Complainant**

The Complainant is the holding company of a Japanese multinational conglomerate established in 1981, and the provider of a wide range of goods and services under the trade mark SOFTBANK, and its Chinese language version, 軟銀 (the “**Trade Mark(s)**”).

The Complainant is the owner of numerous registrations for the Trade Marks in jurisdictions worldwide, including a large number of registrations in Hong Kong, most of which predate the date of registration of the disputed domain name.

#### **B. Respondent**

The Respondent is apparently an entity incorporated in the Hong Kong SAR of China.

#### **C. The Disputed Domain Name**

The disputed domain name was registered on April 29, 2016.

#### **D. The Website at the Disputed Domain Name**

The disputed domain name was previously resolved to a Chinese language website (the “**Website**”) apparently operated by a company incorporated in Hong Kong under a name comprising the 軟銀 Trade Mark, CSBV (Hong Kong) Limited 香港軟銀集團股份有限公司, and offering finance, technology and real estate investment services under the brand name 香港軟行集團 also comprising the 軟銀 Trade Mark (“**Hong Kong Softbank Group**”). At the date of this Decision, the disputed domain name is no longer being used.

#### **4. Parties' Contentions**

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

The Complainant contends that the disputed domain name is confusingly similar or identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

#### **5. Findings**

##### **5.1 Language of the Proceeding**

The language of the registration agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. However, paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Complainant filed the Complaint in English.

The Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

Although there does not appear to be conclusive evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes equally that there is no evidence to support the conclusion that the Respondent is not conversant in English, and the Respondent has chosen not to contest this proceeding.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost-effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be unduly prejudiced, should the language of the proceeding be English.

Having considered all the matters above, the Panel therefore determines, under paragraph 11(a) of the Rules, that the language of this proceeding shall be English.

## 5.2 Substantive Elements of the Policy

The 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 is 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.

### A) Identical / Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the SOFTBANK Trade Mark. Disregarding the generic Top-Level Domain (“gTLD”) “.com” and the second level domain “.hk”, it is identical to the Trade Mark.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

### B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent 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 in connection with a bona fide offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that the Respondent has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a bona fide offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, in order to offer finance, technology and real estate investment services in direct competition with those provided for many years by the Complainant under the Trade Mark, and under the brand name 香港軟銀集團 (“**Hong Kong Softbank Group**”) comprising the Complainant’s 軟銀 Trade Mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant’s *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and therefore finds that the requirements of paragraph 4(a)(ii) of the Policy are met.

### **C) Bad Faith**

In light of the Panel’s findings under section B) above, and in light of the undisputed evidence of the Respondent’s use of the Website in the manner described above, the Panel finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy. The Panel’s conclusion in this regard is fortified by the Respondent’s decision to take down the Website following receipt of a letter of demand from the Complainant’s solicitors dated August 7, 2020 and the filing of the Complaint herein.

For all the foregoing reasons, the Panel concludes that, for the purposes of the Policy, the disputed domain name has been registered and is being used in bad faith.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <softbank.hk.com> be transferred to the Complainant **SOFTBANK GROUP CORP.**



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Sebastian Hughes  
Sole Panelist

Dated: February 9, 2021