



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

— A charitable institution limited by guarantee registered in Hong Kong

IN THE MATTER OF

The Policy on Transfer of Registrations between Registrars adopted by Internet Corporation for Assigned Names and Numbers ("**ICANN**") on 07 November 2008 and effective 15 March 2009 ("**Transfer Policy**");

The Registrar Transfer Dispute Resolution Policy adopted by ICANN on 12 July 2004 ("**Dispute Policy**"); and

The Asian Domain Name Dispute Resolution Centre ("**ADNDRC**") Supplemental Rules to the Internet Corporation for Assigned Names and Numbers Registrar Transfer Dispute Resolution Policy in effect as of 12 November 2004 ("**Supplemental Rules**").

Filing Registrar: HiChina Zhicheng Technology Ltd.

Respondent Registrar: eNom Incorporated

Case Number: HKT0900001

Contested Domain Name: GUPZS.COM

Panel Member: Peter Bullock

1. Parties and Contested Domain Name

The Filing Registrar is HiChina Zhicheng Technology Ltd. of Dongcheng District, Beijing, China ("**Filing Registrar**"). The Respondent Registrar is eNom Incorporated of Bellevue, Washington State in the United States of America ("**Respondent Registrar**"). The contested domain name is "GUPZS.com" ("**Disputed Domain**").

2. Procedural History

A Request for Enforcement was filed with the ADNDRC Hong Kong Office on 15 June 2009 in the prescribed form.

These proceedings were suspended at the request of the Filing Registrar as the parties sought to resolve the dispute amicably. These discussions were unsuccessful. The Filing Registrar notified the ADNDRC Hong Kong Office on 06 August 2009 that the proceedings should recommence and the ADNDRC Hong Kong Office recommenced the proceedings on 10 August 2009.

The ADNDRC Hong Kong Office notified the Respondent Registrar of the commencement of proceedings by email on 11 August 2009 to the Respondent Registrar's email address (legal@eNom.com), provided them with a copy of the Request for Enforcement and asked them to provide a Response to the Request for Enforcement.

This constitutes valid service of these proceedings upon the Respondent Registrar.

No Response to the Request for Enforcement was filed with the ADNDRC Hong Kong Office on or before the prescribed deadline of 18 August 2009.

This Panel was appointed on 09 September 2009, with papers being delivered to the Panelist on 14 September 2009.

3. Factual Background

3.1 For the Filing Registrar

The parties are accredited ICANN registrars for top level domain names. On 23 July 2007 Yang Chuan Lin ("**Registrant**") registered the Disputed Domain with the Filing Registrar.

On 15 December 2008 someone applied to transfer the Disputed Domain in the name of the Registrant. The Filing Registrar believed the transfer request to be legitimate and transferred the Disputed Domain to the Respondent Registrar on 22 December 2008.

Subsequently, the Filing Registrar discovered that the documents provided to it to procure the transfer were false. They contacted the Respondent Registrar on 19 February 2009 and asked for the Disputed Domain to be returned to them. The Respondent Registrar replied on 21 February 2009 refusing to transfer the Disputed Domain to the Filing Registrar.

The Registrant filed suit against the Filing Registrar with the Haidian District People's Court of Beijing Municipality in the People's Republic of China. The Haidian District Court gave its decision on 05 May 2009 ("**Haidian Judgment**") holding that the Disputed Domain had been transferred without proper authorisation and ordered that the Disputed Domain should be restored to the Registrant.

The Filing Registrar notified the Respondent Registrar on 07 May 2009 and provided a translation of the decision on 25 May 2009. The Filing Registrar requested that the Respondent Registrar transfer the Disputed Domain to them in accordance with the Haidian Judgment.

The parties entered into email correspondence to try to agree on the transfer of the Disputed Domain to the Filing Registrar subject to the agreement of an indemnity in favour of the Respondent Registrar if any claims were made against it. However, the Filing Registrar was unwilling to give an indemnity on terms that satisfied the Respondent Registrar.

The Respondent Registrar has not transferred the Disputed Domain to the Filing Registrar to date.

3.2 For the Respondent Registrar

As noted previously, no Response to the Request for Enforcement was filed with the ADNDRC Hong Kong Office by the Respondent Registrar. Therefore the facts are unchallenged.

4. Parties' Contentions

4.1 For the Filing Registrar

The Filing Registrar contends that the transfer to the Respondent Registrar was induced by deceit and was not requested by the Registrant.

In the alternative they contend that the Respondent Registrar was aware, or that after they became aware, of the circumstances that brought about the transfer, the Respondent Registrar acted in bad faith by refusing to return the Disputed Domain to the Filing Registrar.

The Filing Registrar asks that the Panel order the Disputed Domain be transferred back to them.

4.2 *For the Respondent Registrar*

As noted previously, no Response to the Request for Enforcement was filed with the ADNDRC Hong Kong Office by the Respondent Registrar.

5. Legal Findings

5.1 *Effect of Default of the Respondent Registrar*

Dispute Policy paragraph 4.2.1 provides that "[i]n the event that the Filing Registrar elects to submit a Request for Enforcement to the Dispute Resolution Provider ... the obligations and responsibilities set forth in Sections 3.1 through 3.2 above shall apply." In this case, the Filing Registrar has chosen to use the ADNDRC Hong Kong Office, which is a Dispute Resolution Provider and consequently this Panel to resolve the dispute.

Dispute Policy paragraph 3.2.3 provides that "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Registry Operator shall decide the dispute based upon the Request for Enforcement."

The Panel finds no exceptional circumstances to exist, and will proceed to determine the dispute based upon the Request for Enforcement.

5.2 *Standard of Proof*

Under the Dispute Policy paragraph 4.2.2(iv) "...the Dispute Resolution Panel ... must weigh the applicable evidence in light of the Transfer policies and determine, based on a preponderance of the evidence, which Registrar should prevail in the dispute and what resolution to the Request for Enforcement will appropriately redress the issues set forth in the Request for Enforcement."

This Panel shall decide issues on the preponderance of evidence. Where presumptions are implied by the Transfer Policy or Dispute Policy, this Panel shall look to see whether the preponderance of evidence justifies rebutting the presumption.

5.3 *The Filing Registrar's First Argument*

The Filing Registrar contends that the transfer of the Disputed Domain was induced by deceit. They rely on the Haidian Judgment to support this contention as a decision of a court of competent jurisdiction. In essence the Haidian Judgment finds that the Disputed Domain was transferred to the Respondent Registrar without proper authorization.

Strictly speaking, this Panel is not bound by the Haidian Judgment. However, the Panel has not heard any submissions, and can not see any reasons in the evidence before it that displace the conclusion reached in the Haidian Judgment. Therefore this Panel accepts the findings made in the Haidian Judgment and thereby concludes that the transfer was procured by deceit and without the consent of the Registrant.

5.4 *The Filing Registrar's Second Argument*

The Filing Registrar contends that the Respondent Registrar has acted in bad faith in failing to transfer the Disputed Domain once it became aware that the transfer was fraudulent. In light of

the conclusion reached on the Filing Registrar's first argument (above), the Panel deals with this point briefly.

For conduct to be done in bad faith, it must be done with a malicious motive at the time that it was carried out. On the evidence before the Panel there is clearly insufficient evidence to conclude that the Respondent Registrar held such a motive. Therefore this Panel concludes that the Respondent Registrar did not act in bad faith.

6. Decision

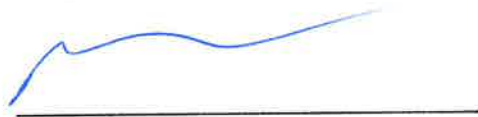
Based on the above analysis, the Panel decides that:

- (1) The transfer of the Disputed Domain to the Respondent Registrar was induced by deceit;
and
- (2) The Respondent Registrar did not act in bad faith by failing to transfer the Disputed Domain once it became aware of the background facts.

Accordingly, as provided in paragraph 4.2.2(v)(b) of the Dispute Policy, the Panel orders that the Disputed Domain be returned to the Filing Registrar.

Dated: 7th October 2009

Hong Kong



Peter Bullock