



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

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In the Asian Domain Name Dispute Resolution Centre (Hong Kong Office)

**In the Matter of an Appeal in Accordance with the ICANN Registrar Transfer
Dispute Resolution Policy**

Between Web Commerce Communications Limited Appellant

And

ENOM.INC Appellee

Decision

In this matter there are certain jurisdictional and factual problems. It will be seen later in the decision that the Panel has put a series of questions to the Appellant and that the Appellant has answered them. The Panel is grateful for the contribution so made by the Appellant. However, the problems remain and the Panel is of the view that if the substance of the matter is to proceed any further, those concerned will have to reassess the whole factual structure. It appears to the Panel that there is some confusion or overlap between several cases which needs to be rectified. As things stand at the moment, the Panel can only make its decision on the basis of the papers presented to it. The Panel will therefore proceed on the basis of the facts provided to it.

This is an Appeal in Accordance with the ICANN Registrar Transfer Dispute Resolution Policy (“the Policy”).

The Appeal is brought by Web Commerce Communications Limited, (“Web Commerce”) a company whose address is in Malaysia. The Respondent to the Appeal is ENOM.INC, a company in the United States of America. As the matter unfolded, the Appellant stated that the Respondent was a different party. The Panel can only repeat that the Respondent on the papers provided is clearly stated to be ENOM.INC.



The subject of the Appeal is the domain name 26888.com (“the domain name”). Again, the Appellant suggested during the proceeding that it concerned different domain names. The Panel can only repeat that the domain name on the papers provided is clearly stated to be 26888.com and only that domain name.

The incident that is said to have given rise to the dispute is that it was found that the domain name had been transferred from the Appellant, by implication a registrar of domain names and in fact described as “the Losing Registrar”, to “another Registrar”, the Respondent. The incident complained of is described at some length, although it seems that the incident also concerns other domain names as well as the domain name in question. In any event, the incident complained of is along the lines that someone changed the email address of the registrant or registrants of the domain names, as the result of which it appeared they had consented to the change of registrar, whereas in fact they had not. The Appellant makes it clear that this is the real ground of complaint by the further statement in the notice of appeal that:

“The Agent account had been hacked into and the Agent email address along with customer email addresses were then changed without the consent of the Administrative Contact and the Original Registrants. Hackers used the modified email addresses to do transfer operation. So, the related domain name was transferred without the real authorization of Administrative Contact and the Original Registrant.”

Clearly, if those facts were established, they would be a good basis for a complaint and for steps to be taken to reverse the registration to the original registrar.

However, the Panel’s concern with this Appeal is not so much the proper interpretation of the facts, but whether the Appeal has been properly instituted and whether the Panel has jurisdiction to hear the Appeal. The Panel’s conclusion is that on the facts submitted to the Panel it has no jurisdiction to entertain this Appeal



The Appeal under consideration is brought pursuant to the ICANN Registrar Transfer Dispute Resolution Policy 12 July 2004 ("The Policy").

Paragraph 4.1(ii) of the Policy provides that:

"The non-prevailing Registrar in a First-Level dispute proceeding may submit an appeal of the applicable Registry Operator's decision to the Dispute Resolution Provider."
"

The Appellant is proceeding on the basis that it is a non-prevailing registrar in a First-Level dispute proceeding, i.e. that it is a domain name registrar who lost the first round of dispute resolution proceedings, designed in its case to have the registration of a domain name removed from its registration with another, or gaining, registrar and restored to its rightful and previous place with the Appellant.

However, the Appellant was not a non-prevailing Registrar in a First-Level dispute.

The Panel should first explain the meaning of the expression "a First-Level dispute." How that comes about is as follows. The Policy provides for two dispute resolution processes. The first is a First –Level dispute which is in the form of a complaint to the appropriate registry operator, brought by virtue of paragraph 3.1.1 of the Policy that provides:

"Either the Gaining or Registrar of Record ("Filing Registrar") may submit a Request for Enforcement."

The Second-Level dispute is an appeal from that process to a dispute resolution provider by the non-prevailing or losing registrar. Its jurisdictional basis is paragraph Paragraph 4.1(ii) of the Policy referred to above.

The present Appellant says that this is a Second Level dispute because it, the Appellant, was a non-prevailing or losing registrar in a First-Level dispute.

The file of papers provided to the Panel shows that there was indeed a First Level dispute that took place and some of the papers relate to that dispute. However, the Appellant was not a non prevailing registrar in that dispute.



The papers relating to the First-Level dispute are a copy of a Request for Enforcement. That is the process that initiates the First-Level Dispute. The document makes it quite clear that the Claimant, i.e. the party bringing the Request for Enforcement to initiate its complaint was Bai Jian, who is also described as the “Original Registrant “.

Moreover, the last page of the Request shows that it was apparently signed by the Claimant described on the first page as Bai Jian. It cannot therefore be suggested as the Appellant may be suggesting, that the Request was really made by Web Commerce; it was not; it was made by the person calling him or herself “ the Claimant “ and that was Bai Jian.

There are two problems for the Appellant with those facts. The first is that the Claimant in the proceedings is not Web Commerce. It is true that it is mentioned on the Request for Enforcement, but only as the “ Original Registrar (Losing Registrar) “ and not as a party initiating the Request, which is the First –Level dispute.

The second problem is that the initiator of the First Level dispute, described as the Claimant is not a registrar and hence not one of those entities who can activate the process. The Request should never have been initiated by the registrant of the domain name as he or she had no standing to do so.

The Appeal was thus not initiated properly and the Panel has no jurisdiction. That is so for two related reasons. First, there may only be an appeal from a proper First-Level dispute and in the present case there was no such First Level dispute brought by a registrar. Secondly, the Appellant must be a non-prevailing registrar to a First -Level dispute and Web Commerce was not the non prevailing registrar to a First-Level Dispute.

There is a further problem with the jurisdiction of the Panel.

The purported Appeal is brought under the second part of paragraph 4.3.2 of the Policy which provides as follows:



“ 4.3 Appeal of First Level Dispute Decision or Registry Operator Finding of "No-Decision."

4.3...

4.3.2 In the event that the Registry Operator issues a finding of "no-decision" in accordance with Section 3.3.4 above, either Registrar may file an appeal of such decision with a Dispute Resolution Provider, provided that such appeal is filed no later than fourteen (14) calendar days after the date on which the First-Level decision was issued."

In other words, the Appellant is not claiming that the registry's decision as wrong but that it did not make one. It is quite clear that the Appellant is claiming that it has the right to bring the Appeal because this is a case of a "no-decision." Indeed, the Appellant says so in paragraph 6 of the notice of appeal in the following words:

"The relevant Registry-Operator has issued a finding of "no decision" (case #45242)."

But that is not so. The papers provided to the Panel include an email from the registry dated Tuesday, May 24, 2011 which provides as follows: "Please be advised that Verisign has completed its review of Request for Enforcement Case #45245 and has rendered a decision in favour of the Respondent as the transfers appear valid under all considerations."

It should be noted however that the case number on the email relates to a different case than the one about which the Appellant has stated the registry issued a finding of "no decision" and also that the emails refer to the case as being about several domain names, none of which is the domain name the subject of this Appeal.

There also seems to be further confusion as to what this Appeal is about because the Request for Enforcement on its terms deals with several domain names, none of which is the domain name that is the subject of this Appeal.

The Panel is also of the view that even if there were jurisdiction to entertain the Appeal, which there is not, it would be impossible to do so in the absence of a Response that enables the Panel to see the competing arguments. There is a document in the form of an email dated June 15, 2011 that may be the Response, but it apparently comes from joz.cn and not from the Respondent ENOM.INC and in any event , like many of the



papers provided to the Panel, relates to a series of domain names none of which is the domain name referred to in the notice of appeal.

The Panel naturally wanted to obtain the Appellant's view on these apparent problems and accordingly issued a Procedural Order in the following terms:

“IN THE MATTER OF AN APPEAL UNDER THE
ICANN Registrar Transfer Dispute Resolution Policy
12 July 2004

Between

Web Commerce Communications Limited Appellant

And

Enom, Inc Web Commerce Communications Limited Appellee

Questions submitted by Dispute Resolution Panel to the Appellant.

WHEREAS Paragraph 4.3.8 of the ICANN Registrar Transfer Dispute Resolution Policy 12 July 2004 provides that :

... (i) The Dispute Resolution Panel may submit questions to the Registry, the Appellant or Appellee.

(ii) Responses to all such questions must be received by the Dispute Resolution Panel within 7 days.'

NOW, I, The Honourable Neil Anthony Brown, QC, the Dispute Resolution Panel appointed by the Asian Domain Name Dispute Resolution Centre for the abovementioned Appeal, hereby submit to the Appellant the following questions arising in the said Appeal and require it to answer those questions within 7 days from receiving this Notice.

1. (a) The Registrar Transfer Dispute Resolution Policy 12 July 2004 (‘The Policy’) provides in paragraph 3.1.1 of the Policy that: , Either the Gaining or Registrar of Record (“Filing Registrar”) may submit a Request for Enforcement.,

(b) The Request for Enforcement that is the subject of the Appeal was brought in the name of Bai Jian who was not the Gaining or Registrar of Record (‘Filing Registrar’) in the transactions in question but was described in the Request for Enforcement as



Claimant (Original Registrant): Bai Jian. There is no provision in the Policy for a Request for Enforcement to be brought by a Registrant. How then is it said that the Request for Enforcement was validly brought and that a purported Appeal from such a Request can be valid?

2. (a) The Policy provides in paragraph 4.1(ii) that:

, The non-prevailing Registrar in a First-Level dispute proceeding may submit an appeal of the applicable Registry Operator's decision to the Dispute Resolution Provider.

(b) The Appeal is submitted by Web Commerce Communications Limited which was not a non-prevailing Registrar in the dispute proceeding submitting an appeal of a Registry Operator's decision as it was not a party to the Request for Enforcement. How then is it said that the Appeal has been instituted validly?



3. The Respondent in the Appeal is Enom, Inc. Enom, Inc was not a party to the Request for Enforcement. How then does Enom, Inc come to be the Respondent to the Appeal?

4. The Appeal states that the domain name that is the subject of the Appeal is 268888.com, but that domain name does not appear in the Request for Enforcement, which concerned several other domain names. What is the explanation for that discrepancy? 5. The Notice of Appeal states in paragraph 6 that the Registry Operator issued a finding of 'no decision'. However, the decision does not appear to have been a 'no decision' as the decision was as follows:

„Please be advised that Verisign has completed its review of Request for Enforcement Case # 45245 and has rendered a decision in favor of the Respondent as the transfers appear valid under all considerations.‘ What is the explanation for this discrepancy?

6. (a) Paragraph 4.3.4 of the Policy provides that:

„The Appellant shall submit the Appeal in electronic form and shall:

... (vi) State the basis for such appeal, including specific responses to the findings of the Registry Operator in the First-Level Dispute process.‘

(b) The Appeal also does not seem to contain any grounds for appeal. What are the grounds of appeal? 7. Is there a Response in the Appeal? If so, where is the Response to be found?

Dated the 3rd day of August 2011
The Hon Neil Anthony Brown QC

Dispute Resolution Panel.”

The Appellant duly relied to the questions put to it and below are its answers:

1. (a) The Registrar Transfer Dispute Resolution Policy 12 July 2004 („The Policy“) provides in paragraph 3.1.1 of the Policy that:

„Either the Gaining or Registrar of Record („Filing Registrar“) may submit a Request for Enforcement.,

(b) The Request for Enforcement that is the subject of the Appeal was brought in the name of Bai Jian who was not the Gaining or Registrar of Record („Filing Registrar“) in the transactions in question but was described in the Request for Enforcement as Claimant (Original Registrant): Bai Jian. There is no provision in the Policy for a Request for Enforcement to be brought by a Registrant. How then is it said that the



Request for Enforcement was validly brought and that a purported Appeal from such a Request can be valid?

A: The Request for Enforcement was submitted by us, Web Commerce Communications Limited, as the registrar of record, in receiving the claim by Bai Jian whom domain account was being hacked, and transferred out his domains without his acknowledgement. The transfer are not valid transfer; Bai Jian has provided documents to prove his identity, and the ownership over his domains 4749.com, 4947.com, Y880.com, 333600.com, 333700.com, lhcbm .com, lhckj.com, lhckjjg.com, 28700.com and 38700.com.

We received notification of the decision rendered on Request for Enforcement Case # 45245 for domains 4749.com, 4947.com, Y880.com, 333600.com, 333700.com, lhcbm .com, lhckj.com, lhckjjg.com, 28700.com and 38700.com is Decision Rendered / Undo Denied, Please be advised that Verisign has completed its review of Request for Enforcement Case # 45245 and has rendered a decision in favor of the Respondent as the transfers appear valid under all considerations. The decision is not in the favor of WebNIC's registrant claim, thus, WebNIC again submitted the appeal as per the registrant, Bai Jian request and to favor the rights and interest of the registrant, Bai Jian.

2. (a) The Policy provides in paragraph 4.1(ii) that:

The non-prevailing Registrar in a First-Level dispute proceeding may submit an appeal of the applicable Registry Operator's decision to the Dispute Resolution Provider. ,

(b) The Appeal is submitted by Web Commerce Communications Limited which was not a non-prevailing Registrar in the dispute proceeding submitting an appeal of a Registry Operator's decision as it was not a party to the Request for Enforcement. How then is it said that the Appeal has been instituted validly?



A: Web Commerce Communications Limited was the registrar who submits both the Request for Enforcement (RFE) for the above domains as well as the appeal. We confirm the validity of the appeal.

3. The Respondent in the Appeal is Enom, Inc. Enom, Inc was not a party to the Request for Enforcement. How then does Enom, Inc come to be the Respondent to the Appeal?

A: Appeal case HKT-1100002 which is further to Request for Enforcement Case # 45245 for domains 4749.com, 4947.com, Y880.com, 333600.com, 333700.com, lhcbm .com, lhckj.com, lhckjjg.com, 28700.com and 38700.com, the respondent is Internet.bs.

The respondent is not Enom, Inc.

4. The Appeal states that the domain name that is the subject of the Appeal is 268888.com, but that domain name does not appear in the Request for Enforcement, which concerned several other domain names. What is the explanation for that discrepancy?

A: The domains that involved in the appeal case no. HKT-1100002 are 4749.com, 4947.com, Y880.com, 38700.com, 333600.com, 333700.com, lhcbm.com, lhckj.com, lhckjjg.com and 28700.com, but does not include 268888.com. The above domains are submitted in RFE #45245, while the domain 268888.com is submitted in the RFE #45242. The domain 268888.com is also submitted in the appeal case no. HKT-1100004.

5. The Notice of Appeal states in paragraph 6 that the Registry Operator issued a finding of "no decision". However, the decision does not appear to have been a "no decision" as the decision was as follows:



"Please be advised that Verisign has completed its review of Request for Enforcement Case#45245 and has rendered a decision in favor of Respondent as the transfers appear valid under all considerations." what is the explanation for this discrepancy?

A: The decision that rendered as "No decision" was actually for the domain 268888.com is in RFE #45242:

"Please be advised that VeriSign has completed its review of Request for Enforcement Case # 45242 and is unable to render a decision in favor of either party based on the information provided"

While the decision that rendered for the domain in this case is as below:

"Please be advised that Verisign has completed its review of Request for Enforcement Case # 45245 and has rendered a decision in favor of the Respondent as the transfers appear valid under all considerations."

Hence in relation to this appeal, the Registry Operator decision was in favor of the Respondent hence this appeal is submitted.

6. (a) Paragraph 4.3.4 of the Policy provides that:

"The Appellant shall submit the Appeal in electronic form and shall:

...(vi)State the basis for such appeal, including specific responses to the findings of the Registry Operator in the first level Dispute process."

(b)The Appeal also does not seem to contain any grounds for appeal. What are the grounds for appeal

A: We had submitted the case to the registry Verisign, that the transfer for the domain was falsely authorized. We are not disputing the transfer process, as we had gave our



comment that the transfer was without the real authorization from the original administrative contact. In other words, the authorization was false.

In response to the RFE, the registry has accepted the confirmation of originality of the respondent's customer. However, no additional information is currently available on how this process was conducted and concluded.

Therefore, we would request that the panelist seek for such documents from the registry to prove that the respondent's customer is in fact the original registrant for the domains before they falsify authorization could take place.

7. Is there a Response in the Appeal? If so, where is the Response to be found?

A: The response from Internet.bs can be found under the RFE #45245, which is attached together with this reply. The document is 45245_TDRS."

The answers are, of course, useful, but the factual problems remain and there are many discrepancies between the facts as set out in the papers provided to the Panel and the facts set out by the Appellant in answer to the questions.

On the papers provided to the Panel and in contrast to the answers of the Appellant, Web Commerce was not the party who initiated the Request for Enforcement, the domain names listed do not include the only domain name referred to in the notice of appeal, the Respondent is in fact ENOM.Inc, the sole decision in the papers referred to the Panel is not a "no decision" and it is difficult for the Panel to see any response that has been filed.

This reinforces the view expressed above that there seems to be some confusion about the facts of the present case. As also indicated above, the Panel can only give a decision based on the facts and the documents supplied to it. It has done this and for the reasons given, the Panel has no jurisdiction to proceed with this Appeal.

24 August 2011

The Honourable Neil Anthony Brown QC