



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

— ADNDRC is a charitable institution limited by guarantee registered in Hong Kong

### Decision Submission

[English](#)
[Print](#)

Decision ID	DE-0200003
Case ID	CN-0200002
Disputed Domain Name	www.intercytex.com
Case Administrator	anitaw
Submitted By	Yong Li
Participated Panelist	Yong Li

Date of Decision	09-08-2002
------------------	------------

### The Parties Information

<b>Claimant</b>	Intercytex Ltd
<b>Respondent</b>	Chuan Sheng Wang

### Procedural History

On June 11, 2002, Beijing Office of the Asian Domain Name Dispute Resolution Center (hereinafter referred to as the Office) received the Complaint Form from the Complainant.

On June 12, 2002, the Office informed the Complainant of receipt of the Complaint.

On June 25, 2002, the Office transmitted the Complaint to the Respondent.

On June 25, 2002, the Office received the payment from the Complainant. On the same day, the Office notified the Complainant to make changes to the Complaint according to the requirements of the ICANN Policy, the Rules and the ADNDRC Supplemental Rules and to resubmit the Complaint along with a fee of USD150 within 5 working days.

On June 28, 2002, the Office received an e-mail from the Complainant informing the Office that the requested information had been completed and he was arranging the transaction of the fee.

On July 2, 2002, the Office sent the Complaint and the Notification of the Commencement of the Proceedings to the Respondent in which the Office notified the Respondent that he had 20 calendar days to submit a Response to the Complaint. On the same day the Office notified ICANN and the Registrar about the case. On the same day the Office informed the Complainant that the Complaint had been reviewed and forwarded to the Respondent.

On July 4, 2002, the Office sent to the parties a notice with a five-candidates list and asked them to rank the candidates in order of preference to enable the Office to determine a panelist based on the parties' selection.

On July 19, 2002, the Office received the ranking of the candidates made by the Claimant.

On July 23, 2002, the Office sent out a Notification of Hearing by Default.

On July 24, 2002, the Office contacted Mr. Li Yong to inquire about the possibility of being appointed as the panelist. Mr. Li Yong accepted the appointment in his e-mail of July 24, 2002.

On July 26, 2002, the Office sent an e-mail to the Registrar eNom Inc. to verify whether the domain name at issue was registered at eNom Inc. On July 31, 2002, eNom Inc. replied that the domain name was registered at the Registrar.

On July 31, 2002, the Office informed the parties that Mr. Li Yong had been appointed as the panelist for the case and the day of submitting the decision was set to August 14, 2002.

### Factual Background

#### For Claimant

According to the hard copy of the Compliant and the Annexed documents, the Complainant is Intercytex Ltd, a limited company with its place of incorporation in the United Kingdom. The address of the company is Suite the Incubator Building, 48 Grafton Street, Manchester, United Kingdom. The authorized representative of the Complainant is Colin Hepplestone with address as Suite 6b Windsor Court, Christopher Street, Manchester, M5 4PT.

## For Respondent

The Respondent has not participated in this administrative proceeding and submitted any documents. According to the Complaint furnished by the Complainant, the Respondent is Wang Chuan Sheng with his address as 2F, No. 30-2 Kun Min Street, Taipei City.

## Parties' Contentions

### Claimant

Intercytex is a trading name under which patents for medical research has been developed. Intercytex is recognized worldwide for its development of biotech research and is a constant resource for International Medical bodies/Hospitals and Universities. Skin replacement/Kidney Disease/Connective Tissue Biomatrix/Hair regeneration and Therapeutic use of stem cells are all products which are being developed by intercytexas. Intercytexas have registered 15 patents which are unique to Intercytexas Ltd and are recognized by the governing body for licensing patents.

Intercytexas.com was registered by one of the Directors of Intercytexas Ltd. The domain was purchased in conjunction with the Company Name "INTERCYTEX Ltd". No notification of renewal was issued and upon immediate expiry of the 2-year registration, the name was immediately purchased by Mr. Wang. The Complainant communicated with Mr. Wang who attempted to re-sell the domain name back to Intercytexas for \$1200.00. The Directors of Intercytexas objected to this demand and are seeking to resolve the issue by involving an ICANN representative.

Mr. Wang has no legitimate interests in respect of the domain name as the web site being hosted on intercytexas.com has no bearing on the name or activity now being advertised.

The domain name is considered as being registered and used in bad faith in attempting to primarily sell the intercytexas.com domain to the Complainant for valuable consideration in excess of the registrants documented out of pocket costs directly related to the domain name involved.

By using the domain in question, the Respondent attempted to attract for commercial gain, Internet users to his web site, by creating confusion with the name intercytexas.

In addition, Intercytexas Ltd own or have registered all domain extensions .co.uk/.net/.biz/.info/.org and it is noted that no other company has an "Intercytexas" presence on the Internet. The now transferred Intercytexas.com is advertising search engine facilities and offers a FOR SALE option at the top center of the index page clearly utilizing the search engine facility to route traffic to their site. This has been purchase with the clear intention of using the domain name in bad faith, both in offering the name back to the client at a hugely inflated price and to utilize the name which has no resemblance to their company activity to promote search facilities. Thus devaluing the Intercytexas presence on the Internet. In the interim period, the Complainant has moved all the mail routing and web address to intercytexas.net and a complete stationary suite has been re-printed adding to the cost of this dispute.

Intercytexas are a Regenerative Medicine company with laboratories and offices located in Manchester, UK and Lexington, Massachusetts, U.S.A and the web name intercytexas.com was fundamental in allowing prospective investors and shareholders access to information about the company activities, global positioning and research technologies. Global interest in this type of research and development is critical to the medical industry and patients waiting for this type of treatment. By removing this site/domain has caused disruption in communications due to the mail handling through exchange, confusion for investors and clients and embarrassment for the client of intercytexas Ltd who conduct business in a fair and honest way.

The Complainant asks for transferring the ownership back to Intercytexas Ltd at the earliest convenience or agreeing a nominal cost to purchase the domain name from Mr. Wang.

### Respondent

The Respondent failed to submit its contentions during the administrative proceeding.

## Findings

### Identical / Confusingly Similar

In accordance with the ICANN Policy, the Claimant asking for transfer of the domain name must prove the Respondent's domain name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights (ICANN Policy, 4 (ai)).

It is noted that the Complainant does not provide any evidence showing that it has registered trademarks or registered service marks for the word "intercytexas". However the Complainant contends and has provided evidence that

"Intercytexas" is the registered company name of the Complainant. In addition, the Complainant contends, the Respondent has not denied and the panel so believes that "intercytexas" has been used by the Complainant as a trading

name under which patents for research has been developed, and Intercyex Ltd has registered 15 patents which are unique to the company and recognized by the governing body for licensing patents.

This Panel now agrees with the principle established by a previous panel making decision based on the ICANN Policy, that the ICANN Policy is “broad in scope” in that the reference to a trademark or service mark in which the complainant has rights means that ownership of a registered mark is not required, unregistered or common law trademark or service mark rights will suffice to support a domain name complaint under the Policy. See *Brooklyn Institute of Arts and Sciences v. Fantastic Sites, Inc.*, No. FA95560

This Panel now also agrees with the principle established by a previous Panel making decision based on the ICANN Policy, that a corporate name might acquire intellectual property rights over time as goodwill is accumulated in the name through business practice, reputation, notoriety, advertising, etc., even if not registered. See *Onu S.R.L. v. Online Sales, LLC*, No. AF0672

Taking into consideration that “intercytex” is the company name of the Complainant, “intercytex” has been used by the Complainant as the trading name to do business and research, Intercytex Ltd has registered 15 patents, Intercytex Ltd owned the disputed name “intercytex.com” before its expiration and its registration by the Respondent, and Intercytex Ltd owns or had registered all domain extensions .co.uk/.net/.biz/.info/.org, the Panel holds that the Complainant has intellectual property right and has common law trademark right in the word “intercytex” .

By simple comparison, the Panel finds that the disputed domain name “intercytex.com” is identical or confusingly similar to the trademark in which the Complainant has rights.

### Rights and Legitimate Interests

In accordance with the ICANN Policy, the Complainant asking for transfer of the domain name must prove the Respondent has no rights or legitimate interests in the domain name (ICANN Policy, 4 (a)).

The Complainant contends that the Respondent has no legitimate interests in respect of the domain name. Since the Complainant is not in the position to know how the Respondent has rights or legitimate interests in the disputed name, the Respondent now carries the burden of proof regarding the establishment of rights or legitimate interests with the domain name. The Respondent has not provided evidence of circumstances of the type specified in the ICANN Policy, 4 (c). There exists no evidence that the Respondent, before receipt any notice of the dispute, has used the domain name or a name corresponding to the domain name in connection with bona fide; or that the Respondent has been commonly known by the domain name; or that the Respondent is making a legitimate noncommercial or fair use of the domain name. Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. As such, the Panel believes that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

### Bad Faith

In accordance with the ICANN Policy, the Complainant asking for transfer of the domain name must prove the Respondent has registered the domain name and is using it in bad faith (ICANN Policy, 4 (a)).

Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. They include: (i) circumstances indicating that the holder of the domain name 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or (ii) the holder of the domain name has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or (iii) the holder of the domain name has registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) by using the domain name, the holder of the domain name has intentionally attempted to attract, for commercial gain, Internet users to his 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 his web site or location or of a product or service on his web site or location.

It should be noted that the circumstances of bad faith are not limited to the above according to the ICANN Policy 4(b).

The Complainant has alleged and the Respondent has not denied that Intercytex.com was registered by one of the Directors of Intercytex Ltd and the domain was purchased in conjunction with the company name “INTERCYTEX Ltd” ; no notification of renewal was issued and upon immediate expiry of the 2 year registration, the name was immediately purchased by Mr. Wang; the Complainant communicated with Mr. Wang who attempted to re-sell the domain name back to Intercytex for \$1200.00. To prove this, the Complainant furnished an e-mail sent on March 1, 2002 by Lee who introduced herself as the secretary of the Respondent. Lee mentioned in the e-mail that the price for the domain name “intercytex.com” is USD 1,240 and asked the Complainant to “fill in the following required information for the new registrant and sent it back to us” .

Considering the above, the Panel finds that the circumstance of the Policy 4(b)(i) has appeared in this case, namely, the holder of domain name has registered the domain name primarily for the purpose of selling, renting the domain name registration to the complainant or to a competitor of the complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name.

The Panel also holds that it is an indication of bad faith for a registrant to register a domain name, in which he has no

rights or legitimate interests, immediately after an unintentional failure of renewal by the former holder of the domain name who has rights in that name. The Panel finds that this circumstance has appeared in this case.

In addition, the Panel agrees with and adopts the principle established by previous panels that Respondent's failure to respond to Complainant's specific allegations supports the contention that the domain name was registered and used in bad faith. See *Vapor Blast Mfg Co. v. R&S Technologies, Inc.*, No. FA96577 and *Global Media Group, Ltd v. Damir Kruzicevic*, No. FA96558.

In the light of the above, the Panel finds that bad-faith within the meaning of the Policy 4(a)(iii) is established.

### Status

www.intercytex.com

Domain Name Transfer

### Decision

The Panel concludes (a) that the domain name "intercytex.com" is identical to the trademark owned by the Complainant, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the domain name at issue has been registered and used in bad faith. Therefore, pursuant to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "intercytex.com" be transferred to the Complainant, namely, Intercytex Ltd. which is represented by Colin Hepplestone.

---

Li Yong  
Sole Panelist

Dated: August 9, 2002