



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0700116
Case ID	CN-0700135
Disputed Domain Name	www.airchina.net
Case Administrator	xiechangqing
Submitted By	Shaojie Chi
Participated Panelist	
Date of Decision	09-07-2007

The Parties Information

Claimant	Air China Limited
Respondent	Hansoo Bae

Procedural History

On April 13, 2007, the Complainant submitted a first Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "Center"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") effected on February 28, 2002. The Center confirmed the receipt of the Complaint.

On April 16, 2007, the Center received the Registrar's confirmation on registration information of the disputed domain name.

On May 28, 2007, the Center sent the Complaint in English together with a Korean version to the Respondent.

On May 28, 2007, the Center notified the parties regarding the commencement of the proceeding, the Complaint being forwarded to the Respondent, and also sent the notification to both the ICANN and the Registrar.

Having received no response from the Respondent, the Center notified the Complainant on June 22, 2007 that the hearing is going to take place by default.

As no indicated choice by the disputing parties with regard to the constitution of a panel, the Center decides to have a sole panelist to hear the case. Upon receiving the declaration of impartiality and independency and the statement of acceptance from Mr. Chi Shaojie, on June 22, 2007, the Center informed the Complainant and the Respondent of the appointment of Mr. Chi Shaojie as the sole panelist to constitute the panel on June 25, 2007.

On June 27, 2007, the Center transferred the hard-copy documents submitted by the Complainant to the sole panelist, and the latter confirmed the receipt of the same.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

Having requested the Respondent to submit a response, the Center received no such a response from the Respondent during the entire proceedings.

The language of the proceeding could have been Korean owing to the language of the Domain Name Registration and Service Agreement pursuant to Paragraph 11(a) of the Rules. Considering

That English is the language used by the Complainant when filing the Complaint; and

That a Korean version was enclosed and sent to the Respondent who is supposed to having been acknowledged in what the Complainant intends to claim in the complaint, and should have been able to contact the Center for further information supposing he or she does not understand English but understands what is said in the Complaint in Korean; and

That not a single piece of message or enquiry even in Korean by the Respondent has been received in the whole proceeding; and

That the disputed domain name itself is in English but not in Korean, revealing to certain extent that the Respondent might understand English, at least to certain extent, and intend to make use of the domain name by attracting potential visitors who are supposed to understand English; and

That the Policy, the Rules and the Supplemental Rules are all in English; and it would be more accurate and clear to reason on the application of those governing stipulations under the documents; and

That by Article 11 (a) of the Rules, the panel is granted a power to “determine otherwise, having regard to the circumstances of the administrative proceeding” in terms of the procedural language; and the panel feels that it would be much easier to work out the administrative decision in English which is contemporarily a global language and universally used on the web; and

That under Article 11(b) of the Rules, “the Panel may order that any document submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding” ; and it would be a financial burden for the parties to submit documents in two languages, if Korean were taken as the procedural language; and

That the Center starts the proceeding in English and expressly indicated in its very first notice to the Respondent that “the Center decides to start the proceeding in English except your side raises an express objection on it” ; nevertheless, neither the Center nor the panel has so far received any response of any sort by the Respondent with regard to either the substantive defense or procedural arguments, especially the objection to the panel’ s decision on the procedural language;

The panel decides that the language used in this proceeding is English.

Factual Background

For Claimant

The predecessor of Air China Limited was established in 1988 being engaged in the business of air transportation, etc. Ever since its formation, the Complainant has been using AIR CHINA as its English name. In the year 2002, the Complainant was reshuffled from a limited liability company into a share company with limited liability, and all the tangible and intangible assets have been retained by the Complainant, including the registered trademarks, trade name and corporate logo, etc. By the end of 2005, the Complainant has had a fleet of 176 airplanes flying to 36 foreign and 70 domestic cities by 4160 regular flights each week. The Complainant has set up a global marketing network with 102 offices and as much as 10000 sales agents home and abroad. Under the Code Sharing Arrangement, the Complainant is partnering with the world leading airlines with a total of 1210 code sharing flights per week. In addition, the Complainant has been engaged in providing private flights for Chinese and foreign top leaders going in and out of China. In August 2004, the Complainant was authorized to be the sole passenger carrier for 2008 Beijing Olympics. Ever since its coming into being, the Complainant has been known world-wide as AIR CHINA, and acknowledged in the name of AIR CHINA by IATA, PRC General Administration of Civil Aviation.

The Complainant applied for the registration of a series of trademarks containing the words “AIR CHINA” in Mid-1990s; but started to use the marks in 1988 in a very broad range of services. Needless to say that the brand “AIR CHINA” has become a well-known trademark now due to the easy accessibility by the general public traveling in and out of China.

For Respondent

The Respondent is Hansoo Bae who registered the disputed domain name on March 29, 2000 through the Registrar CYDENTITY, INC. D/B/A CYPACK.COM, and makes no response to whatever the Complainant alleges after having been informed of the Complainant’ s allegations.

Parties' Contentions

Claimant

The Complainant registered a series of trademark containing the words “AIR CHINA” that has become famous to the

general public home and abroad. The Respondent has no rights and legitimate interests with regards to the domain name with “airchina” as its identifying part, which is identical to the marks registered and used widely by the Complainant. The Respondent has not used the disputed domain name, showing his hostile purpose for the registration. Thus the domain name should be transferred to the Complainant.

Respondent

The Respondent failed to submit a defense to argue against whatever the Complainant says and proves.

Findings

One of the prerequisites for a domain name registration through the Registrar is to accept the Policy as the binding regulations in terms of the procurement of the entitlement. As previously mentioned, the Policy governs the procedural and substantive issues in the domain name dispute resolution. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the other, the Complainant must prove each of the following:

- (i) That the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) That the domain name has been registered and used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine on whether the Complainant satisfies each of the afore-said prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant's claims shall be rejected.

With regard to the current dispute, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort; particularly did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits, unless proven otherwise or that the Panel based upon its professional experiences thinks that the Complainant's allegations are not logical to a common sense or obviously contradictory to a prior judgment or any other enforceable decisions.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has a right. In order to meet this requirement, the Complainant provides evidences proving its entitlement to a series of registered trademarks with “AIR CHINA” either as the sole component or together with a phoenix-shaped graph and/or with the Complainant's trade name in Chinese characters. Obviously, the Complainant's trademarks were registered well before the Respondent obtained the disputed domain name, as demonstrated by the Complainant's exhibits. As such, what the panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant's registered trademarks “AIR CHINA” or “AIR CHINA plus Graph/Chinese Characters” and the Respondent's registered domain name “airchina.net” .

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the claimed trademarks. It is observable that the identifying part of the domain name in dispute is “airchina” which is normally identified as composed of two words, namely “air” and “china” , by ordinary consumers who are supposed to understand English to certain extent. It is without any question that the identifying part of the disputed domain name “airchina” is identical to the Complainant's registered trademark “AIR CHINA” , ignoring the trivial gap in lettering form. Comparing the identifying part of the domain name in dispute with the Complainant's registered trademarks combining “AIR CHINA” with the corporate logo of the phoenix-shaped graph and/or the Complainant's trade name in Chinese characters, the panel may come to the conclusion that the identifying part of the dispute domain name is confusingly similar to those of the Complainant's registered trademarks.

Since the Policy requires the satisfaction by the Complainant of the first prerequisite by proving either the identity or confusing similarity between the disputed domain name and the Complainant's registered trademark or service mark, the panel may base itself upon either of the afore-said reasons, i.e. the disputed domain name is identical to the Complainant's registered trademark of “AIR CHINA” , or confusingly similar to those of the Complainant's registered marks containing the two words and other components, to hold that the Complainant satisfies the first requirement when claiming back a domain name registered by the other as set forth in the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant's claim. The Panel does not think that the Respondent may have any legitimate right or interest in respect of the disputed domain name owing to the fact that the Respondent has not claimed any of such a right or interest; and nothing so far could lead the Panel to conclude otherwise.

Though the burden of prove regarding "rights or legitimate interests" is generally on the party making the defense in the dispute resolution of a domain name, that is normally the Respondent, the Panel pays special attention to the allegations and supporting evidences provided by the Complainant when coming to the conclusion on the issue of "rights or legitimate interests".

As an entity involved in the business of air transportation, the Complainant made itself known to the general public as Air China as early as in 1988. As being known universally, in the business line of air passenger service, it is not unusual for a company providing such a service to name itself with the word "Air" and a country name, like "Air China", "Air Canada", "Air France", "Air Jordan", or "Air Kenya", just name a few. Thus it is universally understandable why the Complainant, as China's used-to-be unique and currently the largest state-run civil aviation service provider to be titled Air China which is recognized by the world air service organization IATA. Today, when traveling around China, or going in or out of China, or even staying at any of the major international airports, one can easily see the logo of Air China together with the Complainant's name. No wonder, the words Air China mean the Complainant in the mind of the consumers' home and abroad. It is needless to say more that the panel holds that the Complainant is entitled to a domain name using the words Air China as its identifying part.

Judging from the name of the Respondent, it seems to be an individual instead of a company intending to provide air transportation service. If true, the name sounds Korean, due to the fact that the way of spelling is not in conformity with the current way prevailing in continental China. Thus, it is hard for the panel to come to the conclusion that the Respondent could have had any right or legitimate interest in relation to the disputed domain name.

Based upon the above reasoning, the panel concludes that the Complainant has legal rights and legitimate interests in connection to the disputed domain name. In contrast, the panel does not see any chance for the Respondent to claim any of such a right or legitimate interest regarding the disputed domain name. Therefore, the panel thinks that the Complainant meets the second requirement as set forth under the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b)(i) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

- “(i) Circumstances indicating that you have registered or you have 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) You have 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) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your 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 your web site or location or of a product or service on your web site or location.”

It seems that the Complainant has tried to logon the disputed domain name to visit the website using the name, but failed to visit such a website. Thus, the fact is that there is no evidence so far to show that the disputed domain name is used in whatever way. That is why "it is apparently that the respondent intentionally acquired this domain name not for its business, but for hostile purpose", as stated by the Complainant in its complaint. The panel is of the opinion that register-and-no-use is regarded as a conduct of domain name squatting which prevents the party entitled to the domain name from registering and using the same in its website. Such a conduct is equivalent to the use of the registered domain in bad faith. On the other hand, so far the panel has not seen any argument from the Respondent that what the Complainant claims is NOT true.

Based on the above reasoning, the Panel finds that the Complainant has established the criteria of bad faith, thus meeting the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the panel rules that the Complainant fulfills all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be held.

Status

www.airchina .net

Domain Name Transfer

Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the panel holds:

- a) That the disputed domain name “airchina.net” is either identical or confusingly similar to the Complainant's registered trademarks “AIR CHINA” or “AIR CHINA plus graph and/or characters” ; and
- b) That the Respondent has not a right or legitimate interest with regard to the disputed domain name; and
- c) That the domain name was registered and subsequently utilized in bad faith.

As such, the panel requires that the registration of the domain name “airchina.net” be transferred to the Complainant.

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