



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0800166
Case ID	CN-0800188
Disputed Domain Name	www.598.com
Case Administrator	Xinmin Cui
Submitted By	Shaojie Chi
Participated Panelist	

Date of Decision	14-04-2008
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The Parties Information

Claimant	Zhao wenbo
Respondent	chenmin

Procedural History

On January 24, 2008, the Complainant submitted the Complaint 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.

On January 26, 2008, the Center received the Registrar's confirmation on registration information of the disputed domain name.

On February 3, 2008, the Center sent the Complaint in English to the Respondent.

On March 4, 2008, the Center notified the parties regarding the commencement of the proceeding, and also sent the notification to both the ICANN and the Registrar.

Having received no response from the Respondent until March 24, 2008, the Center notified the Complainant on March 25, 2008 that the adjudication of the case is going to take place by default.

As no consensus with regard to the choice of a panel reached by the disputing parties, 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 of appointment from Mr. Chi Shaojie, on March 25, 2008, the Center informed the Complainant and the Respondent of the appointment of Mr. Chi Shaojie as the sole panelist to constitute the panel on March 28, 2008.

On March 28, 2008, 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 by the Respondent during the entire proceeding.

Having attended to the basic reasoning for the Complainant to claim on the disputed domain name, the panel asked the Center to remind the party of the legal and factual groundings for initiating the current proceedings, and expected the Complainant to do something in accordance with the Policy, the Rules and the ADNDRC Supplemental Rules, but failed to see any further act, either relating to the new submissions and the supporting evidences or to the request to

withdrawing the complaint.

The language of the proceeding is English owing to the language of the Domain Name Registration and Service Agreement pursuant to Paragraph 11(a) of the Rules.

Factual Background

For Claimant

The Complainant alleges that the complained individual chenmin stole the registered member ID and password of Beijing Innovative Linkage Technologies (referred to as Innovative Linkage) website www.dns.com.cn, which is a service company registered in the original domain name possessed by Zhao Wenbo, and modified the technical management mailbox of 598.com : YIXIUWANGLUO@188.COM to YIXIUWANG1UO@188.COM, and forged ID card of Zhao Wenbo, posted Application form for domain name registration provider transferring out of Innovative Linkage to Innovative Linkage, after Innovative Linkage received the Application form at 10:07 on Jan. 14, 2008, it posted the domain name transferring code of 598.com to the mailbox: YIXIUWANG1UO@188.COM, afterwards, 598.com was transferred to ENOM. The aforesaid act was found and reported to Beijing Public Security Bureau. The Complainant called eNOM and the dispute has not been settled.

For Respondent

The Respondent is chenmin who makes no response to whatever the Complainant alleges after having been informed of the Complainant's allegations.

Parties' Contentions

Claimant

The Respondent obtained the disputed domain name by improper means, and transferred it from the Innovative Linkage to eNOM. This kind of practice which was an illegal behavior, has greatly damaged proper interests of the holder Zhao Wenbo. The Complainant demands that the PANELIST will make a ruling domain name transferred to the complainant. The Complainant believes that the existing domain name holder shall not have the legal interest for the disputed domain name.

Respondent

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

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 in the other's name, 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.

Identical / Confusingly Similar

The fundamental prerequisite for talking on the basic issue of "Identical or Confusing Similarity" is that the Complainant does have a registered trademark or service mark that may be the subject matter for making comparison

between the disputed domain name and the mark. Nevertheless, after having been reminded by the panel, the Claimant fails to prove that it has a registered mark to which the Complainant is entitled. Lacking of this underlined fatal factor, the panel can hardly come to the conclusion that the Complainant satisfies the first condition for its requirement of getting back the disputed domain name.

Rights and Legitimate Interests

In accordance with the substantive requirements for the panel to make a decision in the Complainant's favor, the party has to satisfy simultaneously all the three conditions set forth under Paragraph 4(a) of the Policy. Since the panel fails to make a holding with regard to the first of the three in the Complainant's favor, due to the fact that the party does not claim and prove that it has a registered mark to which the disputed domain name is identical or confusingly similar, it is meaningless for the panel to make any further conclusion in relation to whether the Respondent has any legitimate interests in the disputed domain name.

Bad Faith

As mentioned in connection to the issue of "Rights or Legitimate Interests of the Respondent", since the Complainant has not satisfied the foremost requirement for claiming back the disputed domain name, it makes no significance to hold that whether the Complainant satisfies the third condition of "Bad Faith".

Based upon all the above findings and comments, the panel cannot but rules that since the Complainant does not claim its entitlement to a registered mark which the panel can make comparison with the disputed domain name, so as to come to the conclusion whether the two are identical or confusingly similar as regulated under the Paragraph 4 (a)(i) of the Policy, the panel can hardly hold that the Complainant fulfills all the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be rejected.

The panel attends to the difference in the subjects between the Respondent and those mentioned in the Complainant's requirement and thinks it necessary to point out that the nature of the dispute with regard to the getting back the domain name as described by the Complainant seems to be something within the range of civil law; whereas the current proceeding is going on in strict conformity with those stipulated in the Policy, the Rules and the ADNDRC Supplemental Rules. The rejection of the Complainant's claims does not prevent the party from initiating the proper judicial proceedings to try to get back the allegedly embezzled domain name, which is NOT the subject matter within the jurisdiction by the panel.

Status

www.598.com	Complaint Rejected
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Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a) of the Policy and other relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules, the panel holds:

The requirement by the Claimant that domain name 598.com be transferred to it is rejected.

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