



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

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### Decision Submission

[English](#)
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Decision ID	DE-0900230
Case ID	CN-0900252
Disputed Domain Name	www.银联.com
Case Administrator	Ivyan
Submitted By	Lulin Gao
Participated Panelist	

Date of Decision	17-04-2009
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#### The Parties Information

<b>Claimant</b>	China UnionPay Co., Ltd.
<b>Respondent</b>	Netego DotCom

#### Procedural History

The Complainant of this case is China UnionPay Co., Ltd. Its address is CUP Mansion, No.36, Hanxiao Road, Pudong New District, Shanghai City, China. Its authorized representatives are Haiying Fu and Ming Xu.  
The Respondent of this case is Netego DotCom with the address at Suit 115 17008-90th Avenue, Edmonton, Alberta, T5T1L6 CA.

The Disputed Domain Name is 银联.com. The Registrar of the Disputed Domain Name is Dotster, Inc.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy ( “Policy” ) implemented by the Internet Corporation for Assigned Names and Numbers ( “ICANN” ) on 24 October 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center ( “ADNDRC” ) Supplemental Rules for Policy, was received by ADNDRC Beijing Office on February 13, 2009. On the same day, the ADNDRC Beijing Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and the registration information was confirmed by the Registrar on February 14, 2008.

On February 20, 2009, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On February 25, 2009, ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. On the same day, ADNDRC Beijing Office requested the Respondent to file a Response within the 20 days scheduled time.

Having not received Response from the Respondent, ADNDRC Beijing Office decided to hear the case and make the Decision by default on March 20, 2009.

On March 30, 2009, ADNDRC Beijing Office notified Dr. Gao Lulin by email that he is being considered as the candidate for appointment as a sole Panelist and inquired whether he would act independently and impartially between the Parties.

Having received a declaration of impartiality and independence and a statement of acceptance from Dr. Lulin Gao, ADNDRC Beijing Office informed by email the parties that Dr. Lulin Gao would be the sole Panelist of this case on March 31, 2009.

On March 31, 2009, ADNDRC Beijing Office transferred the case to the Panel and the Decision should be rendered on or before April 14, 2009.

## Factual Background

### For Claimant

Headquartered in Shanghai, China UnionPay (CUP) was founded in March 2002. As a bankcard association established with the approval of the State Council and under the approval of the People's Bank of China, CUP underpins the development of Chinese bankcard industry. In 2004, CUP built up a national unified inter-bank transaction settlement system with independent intellectual property. An international-accepted system of standards and regulations for bankcards has also been primarily established and intensively applied to standard CUP cards through coordination with commercial banks. Since 2004, CUP has established the independent brand of CUP cards in cooperation with commercial banks.

“银联” is the trademark used and registered by the Complainant since its establishment in 2002. “银联” and its corresponding English translation “UnionPay” and other marks of this series, such as “China UnionPay” and “银联 UnionPay & Device” have been approved for registration in many countries in the world. In China, “银联” mark was approved for registration in respect of financial services in Class 36 on November 28, 2002, much earlier than the registration date of the disputed domain name. The following is the registration particulars of part of the Complainant's “银联” marks in China,

Trademark Class Reg. No.	Goods/Services	Valid Period
银联 & Device 36	1955091 Financial services, etc.	2002/11/28-2012/11/27
银联 8	3160348 Hand tools, etc.	2003/4/21-2013/4/20
银联 29	3160621 Eggs, milk, cans, etc.	2003/4/21-2013/4/20
银联 33	3160617 Alcohol drinks (except beer)	2003/4/21-2013/4/20

### For Respondent

The Respondent registered the Disputed Domain Name on July 11, 2005.

## Parties' Contentions

### Claimant

The Complainant's contentions are as follows:

(1) The effective part of the disputed domain name is identical with the trademark in which the Complainant has prior rights.

Among the domain “银联.com”, “.com” is only a gTLD postfix and “银联” is undoubtedly the effective and distinctive part of the said domain.

“银联” and “UnionPay” are the house marks of CUP. Since its establishment, the Complainant has filed worldwide applications for “银联” / “UnionPay” and its series marks such as “China UnionPay”, (CUP) and “银联 UnionPay & Device”. Till now, “银联” / “UnionPay” series marks have been approved for registration in many countries in the world. In China, “银联” mark was approved for registration in respect of financial services in Class 36 on November 28, 2002, much earlier than the registration date of the disputed domain name.

(2) The Respondent has no rights or legitimate interests in respect of the disputed domain name

According to our preliminary search, the Respondent, Netego DotCom has no trademark rights or other legitimate interests in the term “银联”. The Complainant has never authorized the Respondent to use the said mark as well. Thus, the Respondent has no rights or legitimate interests in respect of the domain name at issue.

(3) The domain name was registered and is being used in bad faith.

a)The Complainant enjoys high reputation over its marks “银联” and “UnionPay” not only in the domestic market but also in many foreign countries/regions.

As mentioned above, as the bankcard association established under the approval of the State Council and the People's Bank of China, the Complainant carries out functions to promote the rapid and sound development of bankcard sector and boost up China to be one of the countries with the fastest growth and the greatest potential in bankcard industry. This

special market position makes the Complainant being concerned by wide public even at the time it is just being founded.

In recent years, the Complainant has made great efforts to fulfill its social responsibilities. The statistics show that by the end of 2008, 196 CUP domestic member banks issued more than 1.8 billion cards. The number of domestic CUP merchants totaled 1,180 thousand with 1,850 thousand Point of Sale ( “POS” ) terminals, and Automated Teller Machines ( “ATMs” ) reached 160 thousand, increased by 7.8, 8.4 and 4.2 times respectively over the end of 2001 (prior to CUP’ s establishment).

In the meantime, the Complainant also paid great efforts on building up the brands of its own. Because of its role and responsibilities, the brands of CUP do not only represent itself but also the whole bankcard industry in China. Only from the respect of advertisement, in 2003, it cost the Complainant 15, 910,000 RMB for designing and publishing the advertisement of CUP cards, while in 2006, the cost has increased to 117,440,000 RMB.

Together with the popularization of CUP cards, the brands of CUP, “银联” and “UnionPay” have become familiar by the public. As early as in 2005, the Trademark Office of the State Administration of Industry and Commerce has issued a notice stating that the trademark of the Complainant, “银联”, was recognized as well-known trademark in China.

In fact, the CUP brand “银联” not only enjoys high reputation in the domestic market but also is known by the consumers in many other countries that can use CUP cards. At present, the Complainant has made itself a bankcard association with more than 200 domestic and overseas members serving not only China but also more and more countries and regions. The acceptance network of CUP cards covers nationwide, and is extended to many countries and regions in Asia, Europe, America, Africa and Oceania. Together with the spread use of CUP cards , the CUP brands “银联” and “UnionPay” also have become familiar by many bankcard users, not only in China, but also in other countries/areas that use CUP cards.

b)The registration and use of the disputed domain name is in bad faith

i The registration of the disputed domain name is in bad faith.

According to our search on the search engine GOOGLE, the Respondent has registered large amount of domain names, many of which with the effective parts as Chinese characters. For example, “临沂市.com” (临沂市 refers to a city in Shangdong Province of China, which is a manufacture center of small household appliances). According to the search of Domain Tools (a Registrar), the Respondent at least owns 2585 domain names and its administrative email admin@longzhi.com is associated with about 3,097 domains.

From the above, it is obvious that the Respondent is a domain name speculator. If not, there seems no reasonable reason for a party to hold so many domain names, most of which have no relationship with its own company name or trademark. And, the Respondent is also a party who has much concern to the Chinese market and Chinese brands because it is almost impossible for a party who does not know Chinese or has no concern to the Chinese market to register so many domain names with the Chinese characters as the effective parts of the same.

As mentioned above, the CUP brands enjoy high reputation in the Chinese market. Under such circumstances, it can be assumed that the Respondents had notice of Complainant’ s marks at the time of the domain name registration; especially taking into consideration that “银联” is a coined word without any dictionary meanings. Generally speaking, there are slim chances for a party to design a trademark or domain name identical with or similar to that of other parties that enjoys high reputation in certain fields, especially for a coined word like “银联” . In fact, there is no reasonable explanation for the Respondent’ s registration of the disputed domain name other than to profit from the goodwill associated with the brands of CUP cards.

ii The use of the disputed domain name is in bad faith.

At present, the disputed domain name is on the status of parking. The home page of the website under the disputed domain name is designed as a searching engine and the “information attracts most attention” showed on the said web page are all links to the web advertisements. Thus, if someone goes to the said website (people might mistake the same for the website operated by the Complainant), it is probable that he/she might click on those ads. In fact, this is just the way those speculators used to make profits. They induce the consumers to click on the advertisements and make profits based on the increasing hits rate.

In addition, although “银联” has no natural meanings, it has been chosen by the Complainant as the trademark, which has already obtained high reputation in the market place. In the meantime, “银联” is also the abbreviation of the company name of the Complainant. Through use, the one and only relationship between the term “银联” and the Complainant has been built up and from the respect of most card holders, when referring to “银联”, they would associate and only associate it with the Complainant. When searching for “银联” on GOOGLE, 2,230,000 pieces of information could be found, which are all showed as news, reports or service introductions to the Complainant. Under

such circumstances, the domain name in question, of which the effective and distinctive part is just showed as “银联” , is so obviously connected with the Complainant, that use by someone with no connection with the Complainants would suggest bad faith.

In a summary, the effective part of the disputed domain name is identical with the trademark in which the Complainant has prior rights; the Respondent has no rights or legitimate interests in respect of the disputed domain name; and, the domain name was registered and is being used in bad faith.

### **Respondent**

The Respondent did not submit Response within the scheduled time limit.

### **Findings**

As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the followings:

- (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 is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine 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**

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has right to. In order to meet this requirement, the Complainant provided evidences certifying that the mark “银联” has been approved for registration in China covering the goods in Classes 8, 29, 33 and 36 as early as in the year of 2002 and 2003, which proves its entitlement to the registered trademark “银联” . Besides, the Complainant’s mark “银联” is also registered in many other countries and regions including Switzerland, Mexico, Monaco, Taiwan and Hong Kong, which are still valid. As demonstrated by the Complainant’s evidences, the Complainant’s trademark was registered much earlier than the Respondent registered the Disputed Domain Name (July 11, 2005). Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to “银联” .

Obviously, “银联” , as the identifying part of the Disputed Domain Name, is exactly the same as the Complainant’s registered trademark, which tends to easily cause confusion among the public.

Therefore, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

### **Rights and Legitimate Interests**

The Panel makes the decision based on the evidence provided by both parties and in case that either party fails to meet its burden of proof, such party shall undertake the risk of the possible unfavorable result against it. The Complainant claims that the Respondent has no rights or legitimate interests in the mark “银联” , nor has it ever authorized the Respondent to use it.

The Panel finds that the Complainant has already fulfilled the burden of proof required by the second condition under Paragraph 4(a) of the Policy, thus the burden of proof regarding the “rights or legitimate interests” is generally on the party making the defense in the dispute resolution of a domain name, the Respondent.

However, the Respondent failed to submit any Response within the time limit and thus failed to prove its rights or legitimate interests regarding the disputed domain name accordingly. Given this, the Panel presumes that the Respondent has no rights or legitimate interests in the disputed domain name.

In view of the foregoing, the Panel comes to the conclusion that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Accordingly, the Complainant meets the second condition under Paragraph 4(a) of 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) 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.

First of all, the evidence submitted by the Complainant proved that the Complainant's mark “银联” has been recognized as well-known mark by the Trademark Office (TMO) under the State Administration for Industry and Commerce (SAIC) in June 2005 and various other evidence also show that the Complainant's trademark “银联” has achieved a high reputation in China through wide use and promotion. As such, a close relationship between “银联” and the Complainant has been established and the public has come to recognize and associate the Complainant's trademark “银联” as originating from the Complainant and no others. Considering the high reputation of the Complainant and its trademark, the Panel infers that the Respondent knew, or should have known of the Complainant and its trademark. Under such circumstance, the fact that the Respondent registered the Disputed Domain Name with the identifying part exactly the same as the Complainant's trademark, combined with the fact that the Respondent has no rights or legitimate interests in the term of “银联”, entitles the Panel to the conclusion that the Respondent registered the disputed domain name in bad faith.

In addition, the evidence submitted by the Complainant shows that the homepage under disputed domain name is a search engine with “银联.com” placed on the prominent part of the webpage, which may cause confusion with the Complainant's trademark and website. Obviously, this is intentionally made by the Respondent to induce the relevant public to believe this website is the website of the Complainant and to attract relevant public to visit the Respondent's website via the Disputed Domain Name and profit commercially from the visit. Also, the registration of the disputed domain name will inevitably prevent the Complainant from reflecting its trademark in such corresponding domain name. These findings lead the Panel come to the conclusion that the Respondent registered and used the Disputed Domain Name in bad faith.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

## Status

[www.银联.com](http://www.adndrc.org/icann2/iPubdecision2.nsf/f047c3e4e8d7221c48256ab000287ab0/363...)

Domain Name Transfer

## Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel directs that the Disputed Domain Name be transferred to the Complainant.