



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Decision ID	DE-0300012
Case ID	HK-0300023
Disputed Domain Name	www.qchem.com
Case Administrator	Iris Wong
Submitted By	Matthew Laight
Participated Panelist	Matthew Laight

Date of Decision	08-08-2003
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The Parties Information

Claimant	Qatar Chemical Company Ltd
Respondent	Yun Jae Kim

Procedural History

On 9 March 2003, the Complainant submitted the Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC" or the "Centre"), 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"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

This Complaint is related to Complaint HK0300019 also filed by the Complainant with the Hong Kong Office of the Centre against the same Respondent on 9 January 2003. Some time between 9 January and 9 March, the Respondent re-registered the domain the subject of the Complaint with a new Registrar, namely Today and Tomorrow Co. Ltd ("the Registrar"). The original registrar, Hangang Systems, Inc appears to be at fault and the Centre has reported the position to ICANN. On 7 March 2003 the Centre advised the Complainant that the Complaint must be re-submitted with information relating to the current registrar.

The Complainant sought a single person panel.

On 10 March 2003, the Centre confirmed to the Complainant receipt of the Complaint and forwarded a copy of the Complaint to the Respondent by post on 13 March 2003 and by on-line notification (without the Complaint attached) on 17 March 2003. Following information from the Registrar that the postal address shown on the whois database is not accurate, the Centre forwarded a copy of the Complaint by email to the Respondent on 20 March 2003. The 20 day deadline for the Respondent to respond calculated from 17 March expired on 6 April 2003. The Respondent did not file a Response with the Centre.

Having received on 17 April, a Declaration of Impartiality and Independence and a Statement of Acceptance from Matthew Laight., the Centre informed the Complainant and the Respondent that Matthew Laight was appointed as the sole Panelist in this matter. Also on 17 April, the Centre transferred the case file to the Panelist by post.

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

Having reviewed the papers submitted, on 2 May 2003 the Panelist, through the Centre, requested the Complainant and Respondent to file further information in the following terms:

1. The Claimant needs to give further information and supporting evidence in relation to the three elements that must be established in accordance with Paragraph 4 (a) of the UDNDRC Policy. Guidance on the type of evidence is set out in

paragraph 4 (b) of the Policy and is further discussed in paragraphs 3 (b) (viii) and (ix) of the UDNDRP Rules. Specifically, does the claimant have trade mark registrations? Does the claimant use "qchem" as a trade mark. Why does the Claimant suspect that the Respondent does not have rights or legitimate interests in the domain. Why does the Claimant suspect bad faith?

2. I need to be satisfied that the correct language for these proceedings is English. The Respondent has not filed a response. However it has sent an email dated 15 January 2003 in relation to HK-0300019 stating that the documents must be submitted in Korean. A second email was sent in, presumably, Korean on 16 January 2003. What is the language of the Registration Agreement? Is English specified as the language of proceedings in the Registration Agreement? Have the parties agreed English?

3. Since the Claimant is being given the opportunity to submit further evidence, the Respondent must be given sufficient opportunity to establish its right. The Respondent's attention should be drawn to paragraph 4 (c) of the Policy and paragraph 5 of the Rules.

The following deadlines were set by the panelist:

20 days from 2 May for the Complainant to respond (i.e. 22 May 2003)
20 days thereafter for the Respondent to respond (i.e. 11 June 2003)

On 3 May the Complainant responded by email and on 21 May supplemented the response by hard copy letter. The letter of 21 May enclosed a sample business card, price lists, company publicity material and magazine clipping ("Qchem business materials").

On 20 May the Panelist asked the Centre to obtain a copy of the Domain Name Registration Agreement to determine the correct language for the dispute. This was provided in Korean to the panelist on 21 May.

On 12 May 2003, no further response having been filed by the Respondent, the Panelist requested the Centre to contact the Complainant in the following terms:

Paragraph 11 (a) of the Rules states that 'unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings'. The Registration Agreement in question is in Korean (see copy attached). Please provide evidence that either the parties have agreed that the administrative proceeding can be conducted in English or that the Registration Agreement provides for English. Alternatively, please provide a copy of the Complaint and supporting evidence in Korean so that it may be transmitted to the Respondent.

A deadline of 7 days to respond was set. On 2 June 2003 the Complainant sought a 7 day extension of time to respond and on 23 June 2003 responded enclosing a copy of the Complaint apparently translated into Korean. This was transmitted to the Respondent on 23 June 2003 with a request to respond within 7 days. No response has been received by the Centre.

The Panelist has not received any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

Factual Background

For Claimant

The following facts are asserted by the Complainant in the Complaint and have not been disputed. The Panel finds that these facts are proved.

The Complainant is a registered legal entity of the State of Qatar having been created in 1998 by Emiri decree. It is a joint venture between Qatar Petroleum (the state owned oil and oil products company) and Chevron Phillips Chemical Company. The Complainant produces chemical products for sale worldwide with its primary markets being Europe, Africa, Asia and the Middle-East regions.

The Complainant has submitted evidence in the form of the Qchem business materials to show that it uses "QChem". These materials show that the trade mark "QChem" in a device is used as a trade mark. No evidence of trade mark registrations or applications for "QChem" has been submitted.

The Complainant asserts that it is in no way related to or connected with the Respondent.

In addition, on inspection by the Panel on 7 July 2003 the disputed domain name was found to resolve to a single page of Korean characters with the message in English: “Under Construction. We are not open” .

For Respondent

The Respondent did not respond to the Complaint or participate in these proceedings save for one email in English dated 22 March 2003 in the following terms:

Dear Sir

I do not take part in process that is not proceeded in Korean.
Also, prohibition application of present qchem.com is accepted ago domain in the South Korea.
It's going to reprint in the South Korea regardless of your justice result.(adndrc.org)
This domain is registered to ttpia.com in the present South Korea.
Also, it is going to reprint in the South Korea by domain dispute law.
This may take more than 2 years to final decree with mysony.com's case.
Expect example in the South Korea.
Thanks.

Yun Jae Kim

This email was sent directly to the Claimant and, apparently, was not sent to the Centre. It was forwarded to the Panelist via the Centre by the Complainant.

The Respondent did respond in English to complaint HK0300019 by email on 15 January 2003 in the following terms:

Dear Sir

We received documents for qchem.com.
But this documents writed english, so we don't know detail.
You must write in korean. This is WIPO rule.
This domain name registered doregi.com in korea.
o, all progress must Korean.

We want good negotiation.
It will costs \$1,500 applying WIPO for mediation and lawyer fee will be \$1,000.
Also because you must reprint in Korean, \$1,000 is spent.
If you pay \$3,000 for it, I will transfer it to you asap.
Let's make a deal without taking time out for anything.
We have experience that win the case in wipo.

If you want repetition, you must spend on more charge than Domain Price and Furthermore you must face the trial in which I live.
It takes time about ordinary 2 years.
Let's make a deal without taking time out for anything.
We do not want dispute.
Thank you.

Regards
Mun

The Respondent also responded to the Centre in, apparently, Korean to complaint HK0300019 on 16 January 2003, but this has not been translated.

Parties' Contentions

Claimant

The Complainant asserts that the Respondent does not have any material or legal interest in the assets or business activities of Qatar Chemical Company (Q-Chem). The Complainant further asserts that the offer to sell the disputed domain name in the email of 15 January 2003 and the contempt shown for these proceedings in the email of 22 March 2003 demonstrates bad faith on the part of the Respondent.

Respondent

Save as outlined above, the Respondent did not participate in this proceeding.

Findings**Identical / Confusingly Similar**

The language of the Domain Name Registration and Service Agreement is Korean. The complaint has been submitted in English and Korean, but all evidence has been submitted in English only. The panel is English speaking only. The Respondent has demonstrated an ability to understand English, namely through the use of English on the website that the domain resolves to and the emails of the 15 January 2003 and 22 March 2003. The Respondent has not responded in English or Korean to the Korean version of the Complaint. In light of this, pursuant to the Panelist's powers under paragraph 11(a) of the Rules, the Panel determines that the language of these proceedings is English. The Policy requires a complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

Identical / Confusingly Similar

The Complainant relies on its use of the trade mark "Q-Chem" and asserts by implication in the Complaint that the disputed domain name is identical or confusingly similar to its mark.

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) on the basis of the factual finding that the Complainant uses "Q-Chem" as a trade mark. Whilst no evidence of trade mark registration or application for "Q-Chem" has been submitted, the Panel holds that registration is not a requirement of paragraph 4(a) (i). A trade mark within the meaning of paragraph 4(a) (i) can be an unregistered trade mark.

Rights and Legitimate Interests

The Complainant asserts that the Respondent does not have any material or legal interest in the assets or business activities of the Complainant and, by implication, asserts that the Respondent has no rights or legitimate interests in the disputed domain. The dormant state of the website in spite of the institution of these proceedings is further indication that the Complainant has no legitimate interest in the disputed domain.

Whilst the Respondent is not obliged to take part in these proceedings, its failure to do so and to respond to the assertion that it has no right or legitimate interest in the disputed domain leads to the inference that no such rights to legitimate interests exist.

The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(ii).

Bad Faith

The dormant state of the disputed domain and the offer to sell the domain name to the Complainant in the Respondent's email of 15 January 2003 upon receipt of complaint HK0300019 is an indication of bad faith on the part of the Respondent. The Respondent has done nothing to dispel the inference of bad faith that can be drawn from these facts. Further the deliberate re-registration of the disputed domain upon receipt of complaint HK0300019 is an indication of bad faith on the part of the Respondent.

The Administrative Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(iii) in showing bad faith registration and use of the disputed domain.

Status

www.qchem.com

Domain Name Transfer

Decision

Based on the information provided to it and on its findings of fact, the Panel concludes that the Complainant has established its case.

The Complainant asks that the subject domain name be transferred to it. The Panel orders that the disputed domain be transferred to the Complainant.

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