



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

[English](#)
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Version	
Decision ID	DE-0800186
Case ID	HK-0800177
Disputed Domain Name	www.长江基建集团.com
Case Administrator	Dennis CAI
Submitted By	David Kreider
Participated Panelist	

Date of Decision 30-12-2008

Language Version : English

#### The Parties Information

<b>Claimant</b>	Cheung Kong Infrastructure Holdings Limited
<b>Respondent</b>	Tian Jiahai

#### Procedural History

On 31 July 2008, the Complainant submitted a Complaint in the English language to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

Based on a Whois Record search conducted on 31 July 2008, the Complaint had identified the Registrant as Tian Jiahai, whose address is Room 3-401, No. 35, Hanggangbeiyuan, Hangzhou, China; whose phone number is +86 130 6774 6889; and whose email address is intyuming@mainone.cn.

On 16 August 2008, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. Except as otherwise specified, all correspondence to and from the HKIAC described herein was in the English language.

On 15 August 2008, the ADNDRC transmitted by email to the Registrar, Web Commerce Communications Limited, doing business as Webnic.cc., a request for registrar verification in connection with the Disputed Domain Name. On 18 August 2008, the Registrar transmitted by email to the ADNDRC its verification response, identifying Tian Jiahai, whose address is Room 3-401, No. 35, Hanggangbeiyuan, Hangzhou, China; whose phone number is +86 130 6774 6889; and whose email address is intyuming@mainone.cn, as the registered holder of the subject domain.

On 25 September 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action, by email directed to intyuming@mainone.cn. The Respondent failed to submit a Response within the specified period of time. Accordingly, on 23 October 2008, the ADNDRC notified the Respondent's default to the Complainant by email, with a copy addressed to Respondent at intyuming@mainone.cn.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, on 23 October 2008, the ADNDRC informed the Complainant and Respondent by email that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Thereafter, on 18 December 2008, the Complainant submitted a Supplemental Complaint.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been selected, with Mr. David KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Chapter 5 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 19 December 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 5 January 2009.

Pursuant to Paragraph 11 (a) of the Rules, 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 proceeding. The language of the current Disputed Domain Name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## Factual Background

### For Claimant

The Complainant in this case is Cheung Kong Infrastructure Holdings Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including “长江基建集团有限公司”, “长江基建集团”, and “长江基建”.

### For Respondent

The Respondent, Tian Jiahai, is the current registrant of the Disputed Domain Name <长江基建集团.com> according to the Whois information. The registered address of the Respondent is Room 3-401, No. 35, Hanggangbeiyuan, Hangzhou, China.

## Parties' Contentions

### Claimant

#### A. Complainant

The Complainant's contentions may be summarized as follows:

I. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights

(a) The Complainant is a limited company incorporated in Bermuda in 1996. On 24 June 1996, the Complainant was registered with the Companies Registry of Hong Kong as an overseas company. The Complainant, together with Cheung Kong (Holdings) Limited, Hutchison Whampoa Limited and Hongkong Electric Holdings Limited, which are constituent stocks of the Hang Seng Index; Hutchison Telecommunications International Limited, Hutchison Harbour Ring Limited and TOM Group Limited, which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int'l (Holdings) Inc., a company listed on the Growth Enterprise, are the major members of the Cheung Kong Group.

(b) In 1996, Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited decided to re-organize their infrastructure and related businesses in China, Hong Kong and other Asian countries. As a result, the Complainant was incorporated for the purpose of taking over the infrastructure and related business from both Cheung Kong (Holdings) Limited, Hutchison Whampoa Limited. As the Complainant is a member of the Cheung Kong Group and focuses on infrastructure and related business, the Complainant adopted “长江基建集团有限公司” as its Chinese company name from 24 June 1996. The Complainant has continuously used “长江基建集团有限公司”, “长江基建集团” and “长江基建” as its service marks/trade names since then.

(c) Shares of the Complainant were listed on the Stock Exchange of Hong Kong in July 1996 and the Complainant is now the largest publicly listed infrastructure company in Hong Kong with diversified investments in Energy Infrastructure, Transportation Infrastructure and Infrastructure Related Business. Operating in Hong Kong, China, Australia, the United Kingdom, Canada and the Philippines, the Complainant is a leading player in the global infrastructure arena. As of December 31, 2007, the Complainant's market capitalisation was approximately HK\$65 billion.

(d) Since its incorporation in 1996, major projects/investments of the Complainant in China, Hong Kong and overseas countries over the years include the following:-

1996

- together with Hopewell Holdings Limited, the Complainant signed a supplementary agreement with Guangzhou Freeway Company regarding the construction, management and operation of the East-South section of the East-South-West Ring Road in Guangzhou
- financing for Zhuhai Power Station

1997

- to invest RMB 650 in Fushun power and water plants
- signed two contracts with Guangdong International Trust and Investment Corporation to further expand its portfolio of cement and concrete businesses in China
- invested RMB 663 in Hebei roads
- signed contracts to invest in Zhumadian Sections of National Highway 107
- brought its investments in China to over HK\$10 billion with the signing of a batch of power contracts in the north-eastern province of Jilin
- signed contracts to invest in the Wujialing and the Wuyilu bridges at Changsha city in Hunan Province
- received licensing approval from Hong Kong's Environmental Protection Department to utilise an environmentally friendly method to fuel its cement kilns

1998

- formed a consortium to bid for the franchise operation of 88 bus routes in Hong Kong
- signed RMB 150 million contracts for Yueyang

1999

- acquiring interest in Eastern Harbour Crossing Rail Tunnel
- entered into a subscription agreement to purchase a 19.97% interest in Envestra Limited, the largest natural gas distribution company in Australia

2000

- planned to invest in a RMB 1.2 billion infrastructure development plan in association with the city of Panyu in Guangdong Province
- formed a joint venture with Hong Kong Electric Holdings Limited and successfully acquired Powercor Australia, an Australian company engaged in electricity
- invested Canadian Dollars \$16.3 million (approximately HK\$86 million) and acquired an 18% stake in Canadian hydrogen fuelling company, Stuart Energy Systems Corporation

2001

- reached a preliminary agreement with the Government of the State of South Australia regarding the Complainant's investment of Australia Dollars \$26.5 million in an Australian rail project which connects Darwin in the north and Alice Springs in central Australia

2002

- the Complainant's led consortium was awarded Cross City Tunnel project in Sydney by the New South Wales
- won tender to become Melbourne Electricity Supplier

2003

- jointly host a symposium with Hong Kong Polytechnic University on Hydrogen Infrastructure Technology for Energy and Fuel Applications

2004

- acquired 100% of Cambridge Water in South Cambridgeshire, UK
- merger of its concrete and quarry operations in Hong Kong between its subsidiary, Anderson Asia (Holdings) Limited and the Hong Kong arm of Hanson PLC, one of the leading building materials suppliers across the globe

2005

- signed RMB 6 Billion contract for Zhuhai Power Plant Extension

News and information of the above projects/investments have always been made available on the Complainant's official website for public viewing. The service marks/trade names including “长江基建集团有限公司” and “长江基建” have always been used by the Complainant.

(e) The Complainant claims rights in the service marks/names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。As a result of the extensive and long period of use of the said service marks/names, such service marks/names have been well recognised by the public to be distinctive of and identified with the Complainant but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。One can also find countless publications and reports on the internet about the Complainant by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”。As such, the Complainant undoubtedly has rights in the service marks/trade names by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集

团” and “长江基建” .

(f) The major part of the Disputed Domain Name is identical to the service marks/trade names of the Complainant.

II. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name

(a) The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the mark/name by reference to the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” .

(b) On or before the registration date of the Disputed Domain Name, i.e. 27 June 2006:-

i. The Complainant has been trading under the name “长江基建集团有限公司” ;

ii. The Complainant has been widely using the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” in the course of its business activities;

iii. substantial goodwill and reputation subsisted in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” ; and

iv. The service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” have been identified by the public as the service marks/trade names of the Complainant and none other.

(c) As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

III. The Disputed Domain Name has been registered and is being used in bad faith

(a) The Complainant has been established in Hong Kong and is continuously using the services marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” for almost 10 years before the date of registration of the Disputed Domain Name. Substantial reputation and goodwill has already subsisted in the Complainant’ s service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”，particularly in Hong Kong and China. Undoubtedly, the Complainant has prior rights in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” . As such, it could not be a coincidence for the Respondent to register a domain name which is exactly identical to the Complainant’ s service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”，taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’ s act is authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for registration of the Disputed Domain Name in 2006.

(b) Further, the Complainant noted that the Disputed Domain Name is linked to a webpage providing information search services. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant and thereby attracting Internet users to visit the Respondent’ s website thinking that it is related to the Complainant.

(c) As is recited in Complainant’ s Supplemental Complaint, prior to the date of the filing of the Complaint, the Respondent did not use the Disputed Domain Name, nor had the Respondent made demonstrable preparations to use the Disputed Domain Name in connection with any bona fide offering of goods or services. As the Respondent is not related to the Complainant in any way and the Respondent has never been authorized by the Complainant to use the mark/name “长江基建集团”，these elements show that the Respondent does not have any legitimate interests or rights in the Disputed Domain Name.

(d) Such passive holding of the Disputed Domain Name amounted to bad faith use. The intention of the Respondent is clearly to ride on the reputation of the Complainant and to create confusion that the Respondent’ s act is authorised by the Complainant, or that the Respondent is connected with the Complainant, or the Disputed Domain Name is sponsored or affiliated with the Complainant.

## Respondent

The Respondent failed to submit a Response to the Complaint within the specified time period.

## Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: “A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.” Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

i. the domain name registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which

Complainant has rights; and  
 ii. the Respondent has no rights or legitimate interests in respect of the domain name; and  
 iii. the domain name has been registered and is being used in bad faith.

### Identical / Confusingly Similar

The evidence submitted by the Complainant shows that the Complainant owns the trademarks “长江基建集团有限公司”，“长江基建集团”，and “长江基建”。As the suffix “.com” only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel finds that the Disputed Domain Name <长江基建集团.com> is identical with the Complainant’s trademark “长江基建集团”。The major part of the Disputed Domain Name, “长江基建集团” is identical to the Complainant’s service marks/trade names.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

### Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainant’s assertion is sufficient to establish a prima facie case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests. The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name, or indeed, to make any showing or present any evidence whatsoever.

The Panel therefore finds that the Complaint fulfills the conditions provided in Paragraph 4(a)(ii) of the Policy.

### Bad Faith

The Complainant had been established in Hong Kong and was continuously using the services marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建” for almost 10 years before the date of registration of the Disputed Domain Name on or about 27 June 2006. Substantial reputation and goodwill has already subsisted in the Complainant’s service marks/trade names, particularly in Hong Kong and China. The Complainant has prior rights in the service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”.

Paragraph 12 of the Registration Agreement conspicuously cautions:

Registrant is strongly encouraged to, prior to applying for registration of the domain name, perform a trademark search with respect to the words and/or phrases comprising the Domain Name. Registrant will be solely liable in the event Registrant’s use of a Domain Name constitutes an infringement or other violation of a third party’s rights.

Had it been acting in good faith, Respondent could have taken this simple step to avoid encroaching upon Complainant’s legal rights.

This Panel finds that it was not by mere coincidence that the Respondent registered a domain name which is identical to the Complainant’s service marks/trade names “长江基建集团有限公司”，“长江基建集团” and “长江基建”，taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names.

The Respondent made no demonstrable preparations to use the Disputed Domain Name in connection with any bona fide offering of goods or services. The Respondent is not related to the Complainant in any way and the Respondent has never been authorized by the Complainant to use the mark/name “长江基建集团”.

The above elements show that the Respondent does not have any legitimate interests or rights in the Disputed Domain Name. Moreover, Respondent’s passive holding of the Disputed Domain Name amounted to bad faith use. This Panel finds that Respondent’s intention was to ride on the reputation of the Complainant and to create confusion that the Respondent’s use of the Disputed Domain Name was authorised by the Complainant, or that the Respondent was connected with the Complainant, or the Disputed Domain Name was sponsored or affiliated with the Complainant, or in relation to all of these aspects.

The Panel finds that the Respondent has registered and used the domain name in bad faith and that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

### Status

www.长江基建集团.com

Domain Name Transfer

### Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted.

Accordingly, it is ordered that the <长江基建集团.com> domain name should be TRANSFERRED from the Respondent to the Complainant.

David KREIDER  
Sole Panelist

Dated:24 December 2008