



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

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Version
 Decision ID DE-0800152
 Case ID HK-0800183
 Disputed Domain Name www.likashing.org
 Case Administrator Dennis CAI
 Submitted By Yun Zhao
 Participated Panelist

Date of Decision 18-09-2008

Language Version : English

The Parties Information

Claimant (1) Li Ka Shing ; (2) Li Ka Shing Foundation
Respondent Chui Siu Cheung of Bookmarkking Info.

Procedural History

On 31 July 2008, the Complainants 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). On 16 August 2008, the ADNDRC sent to the complainants 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. All correspondence to and from the HKIAC described herein was in the English language. On 16 August 2008, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. The Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 4 September 2008, the ADNDRC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action. The Respondent filed a Response with the ADNDRC on 8 September 2008. The Respondent further delivered a hardcopy of the Response to the ADNDRC and the complainants on 9 September 2008.

Since the Respondent also elected to have the Complaint to be decided by one panelist, the ADNDRC informed the Complainants and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision in accordance with the Policy, the Rules and the ADNDRC Supplemental Rules.

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 Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 18 September 2008, the Panel received the file from the ADNDRC and should render the Decision within 14 days, i.e., on or before 2 October 2008.

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 Complainants in this case are LI Ka Shing and Li Ka Shing Foundation. The 1st Complainant is the Chairman of Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited. The 1st Complainant ranks 11th on Forbes Billionaires List 2008. The second Complainant was set up by the 1st Complainant, with a mission to enhance the impact of his philanthropy. The registered address of both Complainants is as follows: 7th Floor, Cheung Kong Center, 2 Queen' s Road Central, Hong Kong.

For Respondent

The Respondent, Chui Siu Cheung of Bookmarkking Info., is the current registrant of the disputed domain name <likashing.org> according to the Whois information.

Parties' Contentions

Claimant

1. The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainants have rights. The 1st Complainant, who was born in Chiu Chow, China in 1928, ranks 11th on Forbes Billionaires List 2008. The 1st Complainant is the Chairman of Cheung Kong (Holdings) Limited and Hutchison Whampoa Limited. Cheung Kong (Holdings) Limited is the flagship of the Cheung Kong group which has business operations in 57 countries around the world and employs about 260,000 staff. In Hong Kong along, the Group includes 8 listed companies with a combined market capitalization of approximately HK\$817 billion. Based in Hong Kong, the Cheung Kong Group' s businesses encompass diverse areas. The 1st Complainant is a strong believer in synergy—the power of combined efforts. The Times in the United Kingdom and Ernst & Young UK jointly named the 1st Complainant as the Entrepreneur of the Millennium at the turn of the century.

In recognition of the 1st Complainant' s philanthropic efforts and his contribution to society, he has received many Honorary Doctorates and honorary titles around the world.

To achieve the greatest good, the 1st Complainant began to make strategic contributions to education and medical care projects in Hong Kong and China. In 1980, the 1st Complainant set up the 2nd Complainant, deliberately choosing a name incorporating the personal name of the 1st Complainant, with a mission to enhance the impact of his philanthropy. To date, the 2nd Complainant has supported numerous charitable activities with nearly HK\$10 billion. The two complainants have undertaken many major donation projects in education, medical, culture, community welfare in Hong Kong and China. Apart from Hong Kong and China, the Complainants have also undertaken charitable projects in other countries.

Since 1980, the Complainants have been using “Li Ka Shing Foundation” extensively as a service mark/trade name for the activities and “Li Ka Shing” as a personal name. The 2nd Complainant is the registered proprietor of the service mark “Li Ka Shing Foundation” in Hong Kong and China.

The Complainants claim rights in the service mark/name “Li Ka Shing Foundation” and the personal name “Li Ka Shing” . As a result of the extensive and long period of use of the above names by the Complainants, the above names have been well-recognized by the public to be distinctive of and identified with the Complainants but none other. Substantial goodwill and reputation has subsisted in the above names. One can also find countless publications and reports on the Internet about the Complainants. As such, the Complainants undoubtedly have rights in the above names.

The major part of the Disputed Domain Name is identical to the service mark/trade name and personal name of the Complainant.

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

The Respondent is not in any way related to the Complainants, nor was the Respondent authorized by the Complainants to use the mark/name “likashing” . On or before the registration date of the Disputed Domain Name (5 August 2002), the 1st Complainant has been using the personal name for over 70 years; the 2nd Complainant was established with a name incorporating the service mark/trade name “Li Ka Shing Foundation” and has already registered the service mark “Li Ka Shing Foundation” in China; the 2nd Complainant has widely used the service mark/trade name “Li Ka Shing Foundation” and the personal name “Li Ka Shing” ; substantial good will and reputation subsisted in the above names, which have been identified by the public as the service mark/trade name of the 2nd Complainant and none other.

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

The 2nd Complainant has been established in Hong Kong for more than 20 years before the date of registration of the Disputed Domain Name and the 2nd Complainant has been using the service mark/trade name “Li Ka Shing Foundation” ever since. For the 1st Complainant, he has been using “Li Ka Shing” as his personal name for over 70 years. Substantial reputation and goodwill has already been subsisted in the above names. Undoubtedly, the Complainants have prior rights in the above names. As such, it could not be a coincidence fro the Respondent to register a domain name which is exactly identical to the Complainants' names, taking into account that the Respondent has never had any rights or legitimate interests in the said 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 Complainants. It is clear that the Respondent

had acted in bad faith when it made the application for registration of the Disputed Domain Name in 2002. Further, the Complainants noted that the Disputed Domain Name was not put into use by the Respondent. This indicates that the registration has no purpose other than to create confusion that such registration is endorsed by the Complainants.

In accordance with Paragraph 4(b)(i) of the Policy, the Complainants request the Panel to issue a decision to transfer the Disputed Domain Name to the 2nd Complainant.

Respondent

The Disputed Domain Name has been registered and is being used in good faith. The Respondent found a deleted domain name list on the Internet on July 2002. The list showed that the Disputed Domain Name was a domain name that was cancelled and was freely available to the public for registration. On 5 August 2002, the Respondent found that the Disputed Domain Name was still not registered, seemed that no one had interest in it and registered it. That did not involve any automatic domain name backorder, or registering in any tricky or bad faith manner. The Respondent planned to write a book about the 1st Complainant's thought as great as a dragon and use the Disputed Domain Name as a free online version of the book. The Disputed Domain Name was not used as the book project was cancelled. The Respondent refused third party's query about purchasing the Disputed Domain Name in the past six years, as he suspected that they might use it for improper use. In other sense, the Respondent protected the domain from use in bad faith. The Respondent never registered domain names with the keyword "likashing" or "lksf" other than the Disputed Domain Name. The Respondent has never violated any laws and is a HK citizen with good faith.

Nonetheless, the 1st Complainant is a respectful person in the society; the Disputed Domain Name is the one and only one name that relates the 1st Complainant with charity in nature, and is much easier to remember and superior to the domain name of the 2nd Complainant; the book project was cancelled and the Disputed Domain Name is no longer valuable to the Respondent; the respondent believes that transfer of the domain name has a much greater value to the public society. Accordingly, the Respondent does not contest the Complainants' request and agrees to transfer the Disputed Domain Name to the Complainants.

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:

- 1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- 3) the domain name has been registered and is being used in bad faith.

Identical / Confusingly Similar

The evidence submitted by the Complainants shows that the 2nd Complainant owns the service mark "Li Ka Shing Foundation" in China. "Li Ka Shing" is the distinctive part of this service mark. The panel thus finds that the Complainants hold legitimate trademark rights in "Li Ka Shing Foundation" and "Li Ka Shing". Furthermore, "Li Ka Shing", as a personal name of the 1st Complainant, has been extensively used in many charitable and/or commercial activities by the Complainants. The name "LI Ka Shing" has thus sufficient secondary association with the Complainants so that common law trademark rights exist.

As the suffix ".org" only indicates that the domain name is registered under this gTLD and is not distinctive, the Panel has no problem in finding that the disputed domain name <likashing.org> is identical with the Complainant's trademark "Li Ka Shing" and is confusingly similar to "Li Ka Shing Foundation".

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

Rights and Legitimate Interests

The Complainants contend that the Respondent does not have rights to or legitimate interests in the Disputed Domain Name. The Complainants' 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. The act of registering the Disputed Domain Name and the Respondent's like/dislike do not automatically endow any legal rights or interests with the Respondent.

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

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 website 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 website or location or of a product or service on your website or location.

Evidence has sufficiently shown that the 1st Complainant has been very well recognized in Hong Kong and other parts of the world and that the 2nd Complainant's service mark has achieved a strong reputation through extensive use. As such, the public has come to recognize and associate the Complainants' mark and personal name as originating from the Complainants and no other. This entitles the Panel to infer that the Respondent should be aware of the existence of the Complainants. This inference has been further substantiated by the Respondent in acknowledging in the Response that the 1st Complainant is a respectful person in the society. The above circumstance has further led to the assumption that the Respondent registered the disputed domain name to hinder the Complainant from registering it. The action of registering the disputed domain name per se has constituted bad faith.

The Respondent has made no active use of the disputed domain name so far. The Respondent's argument as to the book project is not convincing. The Respondent failed to submit any evidence showing the preparatory work having done so far for the use of the disputed domain name. Prior Panels have already discussed the passive holding of a domain name and found that this can constitute bad faith use (WIPO Case No. D2000-0003).

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

Status

www.likashing.org

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 <likashing.org> domain name should be TRANSFERRED from the Respondent to the 2nd Complainant.

ZHAO Yun

Sole Panelist

DATED: 18 September 2008