



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HKcc-1000016</b>
<b>Complainant:</b>	<b>英延立(ying yanli)</b>
<b>Respondent :</b>	<b>jack dominic</b>
<b>Disputed Domain Name:</b>	<b>qq.cc</b>

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### 1. THE PARTIES

The Complainant is 英延立(ying yanli), a citizen of China, who's address is meijingli 29 hao 305 jiangmen, Guangdong, China. In this case, the Complainant has no agent.

The Respondent is jack dominic, a citizen of the United States, who's address is City University of New York, the United States of America. In this case, the Respondent empowered Miss Zhu Hong, a Chinese citizen as agent.

### 2. THE DOMAIN NAME AND REGISTRAR

The disputed domain name <qq.cc> (the "Domain Name") is registered with Domainmonster.com (the "Registrar").

### 3. PROCEDURAL HISTORY

The Complaint was filed with the Asian Domain Name Dispute Resolution Center (the "Center") on 29 August 2010, where the Respondent was listed as MESH DIGITAL LIMITED. On 6 September 2010, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Two days later, the Registrar transmitted by email to the Center its verification response confirming that real registrant is not MESH DIGITAL LIMITED, but jack dominic. As the required payment had not been confirmed, on Nov. 2, 2010, the Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

As the Complainant had submitted a bank receipt of payment to the Center, in accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on September 16, 2010. In accordance with the Rules, paragraph 5(a), the due date for Response was October 6, 2010. On October 7, 2010, the Respondent, via his agent, submit the response to the Center in Chinese.

The both the Complainant and the Respondent had not made any election as to the members of the Panel, on October 26, 2010, the Center decided to organize a one-member Panel and sent email to candidates. According to the confirmations received, the Center appointed Tang Guangliang as the sole panelist on November 12, 2010. In accordance with the Rules, if there be no exceptional circumstances, a decision for the captioned domain name dispute will be rendered by the Panelist on or before November 26, 2010.

#### **4. FACTUAL BACKGROUND**

The Complainant is 英延立(ying yanli), a citizen of China, who's address is meijingli 29 hao 305 jiangmen, Guangdong, China. According to the Complaint, the Complainant has owned the domain name QQ.CC since August 01, 2009. Before August 06, 2009, the complainant managed the domain name in MONIKER.COM. In August 06, 2009, without the complainant's permission, the defendant transferred the domain name QQ.CC to other registrars.

The Respondent is jack dominic, a citizen of the United States, who's address is City University of NewYork, the United States of America. In this case, the Respondent empowered Miss Zhu Hong, a Chinese citizen as agent. According to the Response, the Respondent acquired the disputed domain name in about September 2009, and now is using the domain name normally for a search engine.

#### **5. PARTIES' CONTENTIONS**

##### **A. Complainant**

The Complainant's contentions are copied as follows:

1: The complainant is the legal owner of the domain name QQ.CC; the domain name of defendant and the domain name of complainant is a same domain name (QQ.CC)

The domain name owned by Complainant is QQ.CC. In MONIKER.COM (Account Number: 149525), reasonable owned and managed the domain name QQ.CC. The complainant sent an application to MONIKER.COM which requested transfer the QQ.CC to eName.cn in china to manage, then waited for the transfer password to be sent to the complainant by e-mail. complainant knows, it's impossible to make the

transfer in eName.cn without the transfer password, so the complainant did not send the domain name transfer application to eName.cn. A few days later, the complainant didn't receive the transfer password which should be sent from MONIKER.COM, so the complainant checked the registration information of QQ.CC. August 06, 2009, Complainant found the QQ.CC had been transferred to other Registrar illegally, and repeatedly transferred to other Registrar.

Arbitration Center can take evidence inquiry in MONIKER.COM.

15th In this Documentation(Other Relevant Details:) Contain the screenshots of moniker domain name management.

2: The defendant does not have the legitimate rights for the domain name QQ.CC.

The complainant managed the domain name QQ.CC in MONIKER.COM, and never sold to anyone. After the domain has been transferred illegally, the registrant is supposed to display the complainant's name. However, the defendant modified the owner information of the domain name QQ.CC privately. The defendant stole the domain name QQ.CC, so the defendant does not have the legitimate rights for domain name QQ.CC.

When the defendant does not provide enough evidences show the defendant bought the domain name from the complainant, and defendant owns the domain name, the defendant behavior is illegal possession of the domain name. In other words, the defendant does not have the legitimate rights for the domain name.

3: The defendant used the domain name QQ.CC maliciously.

From the information provided by the complainant shows the complainant has owned the domain name QQ.CC since August 01, 2009. Before August 06, 2009, the complainant managed the domain name in MONIKER.COM. In August 06, 2009, without the complainant's permission, the defendant transferred the domain name QQ.CC to other registrars illegally and owned the domain name maliciously and set up a website using the QQ.CC. the defendant knows does not have legitimate rights for QQ.CC, but also Illegal possession, is serious malicious behavior. defendant obtain the domain name primarily for the purpose directions include the complainant, including all third person to sell, lease or transfer the domain to obtain the direct costs associated with the domain name registration in addition to income. The complainant's behavior has been a serious malicious behavior.

In conclusion, the complainant is the only legal owner of the domain name QQ.CC, so appeal for the arbitration shall rule judge and rule according to law that the domain name QQ.CC should be transferred back to complainant.

## **B. Respondent**

The Respondent replied in Chinese, which may be summarized as follows—

1. The Respondent is the legitimate holder of the domain name, the reason of which is that the Respondent acquired the domain name via a famous Chinese domain name transaction intermediary, zj.admin5.com, and transferred the registration service from domaindiscount24.net to current registrar normally.

2. The Respondent owns all the benefits in respect of the domain name. The Respondent does not agree to the Complainant that the domain name was illegally transferred by the Respondent. The Respondent has normally used the domain name for a simple search engine without any bad-faith.

3. The Complainant based his application only on a screen print of so-called domain name ownership. If such an application is supported, the domain name transaction market will become disordered.

As conclusion, the Respondent ask the Panel to deny the claims of the Complainant.

## 6. DISCUSSION AND FINDINGS

Under paragraph 4(a) of the Policy, the burden of proof lies with the Complainant to show each of the following three elements:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which the 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 by the Respondent in bad faith.

### (i) *Identical or Confusingly Similar*

The Panel, through the Complaint and the Response, found that the Complainant had ever held the domain name for just 5 days in its more-than-13-year history, and did not put it into normal use during the days. The Complainant had not provided any other evidence to prove that she had ever registered “qq” as trademark, or used such a sign in business in the past. For this reason, the Panel could not find any legitimate right or protectable benefit that the Complainant may enjoy in this case. As the result, the similarity between the captioned domain name and the trademark or service mark of the Complainant could be constructed in any sense.

The Panel accordingly finds that the prerequisite 4(a)(i) of the Policy is not satisfied.

### (ii) *Rights or Legitimate Interests*

As the first prerequisite of the Policy is not satisfied, the Panel accordingly finds that it is unnecessary to consider the second element.

**(iii) *Registered and Used in Bad Faith***

As the Complainant had not proved his right in any sense, if there is bad faith or not is nothing important to this case.

**7. DECISION**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel rules that the claim of the Complainant is denied



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The Sole Panelist: Tang Guangliang

Date: November 26, 2010