



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-18010123</b>
<b>Complainant:</b>	<b>China Citic Bank International Limited</b>
<b>Respondent:</b>	<b>ktechlimited Mike/ktechlimited</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;cncbinternational.org&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is China Citic Bank International Limited, of 61-65 Des Voeux Road Central, Hong Kong.

The Respondent is ktechlimited Mike/ktechlimited, of 401 North Carson St., Nevada, NV 89701, US.

The domain name at issue is <cncbinternational.org>, registered by Respondent with PDR Ltd. d/b/a PublicDomainRegistry.com, of Unit No 501, 5th floor and Unit IT Building No 3, NESCO IT Park, Western Express Highway, Goregaon (East), Mumbai Maharashtra 400063, India.

**2. Procedural History**

The Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) on June 14, 2018; the ADNDRC received payment on June 19, 2018.

On June 14, 2018, PublicDomainRegistry.com confirmed by email to the ADNDRC that the <cncbinternational.org> domain name is registered with PublicDomainRegistry.com and that the Respondent is the current registrant of the name. PublicDomainRegistry.com has verified that the Respondent is bound by the PublicDomainRegistry.com registration agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On June 29, 2018, the ADNDRC sent an email to the Respondent formally notifying him of the Complaint and the deadline of filing a Response.

On July 19, 2018, a Response was due. The Respondent did not file a Response.

The ADNDRC appointed Jonathan Agmon as the sole panelist in this matter on August 20, 2018.

### **3. Factual background**

The Complainant is a Hong Kong-based full-service commercial bank that offers a broad spectrum of financial services spanning wealth management, personal banking, wholesale banking as well as global markets and treasury solutions. The Complainant has 34 branches in Hong Kong, as well as overseas branches in New York, Los Angeles, Macau and Singapore. Complainant also provides banking services in Beijing, Shanghai and Shenzhen through a wholly-owned subsidiary.

The Respondent appears to be an individual residing in the United States.

The disputed domain name <cncbinternational.org> was registered on November 24, 2017.

The disputed domain name presently does not resolve to any active website.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Complainant argues it has common law trademark rights in the "China CITIC Bank International" and "CNCBI" trademarks and that the disputed domain name is confusingly similar to the Complainant's CNCBI trademark due to the Respondent's incorporation of "CNCBI" in its entirety and addition of the generic, descriptive term, "(i)nternational". The Complainant also contends that the Respondent is aware of the Complainant's CNCBI trademark as the Respondent created a phishing website on the disputed domain name to impersonate the Complainant and carry out fraudulent activities.
- ii. The Complainant also argues that the Respondent is not known under the disputed domain name and is not authorized by the Complainant to use the disputed domain name. The Complainant contends that the Respondent's inclusion of the Complainant's trademarks in the disputed domain name was a direct effort to take advantage of the Complainant's fame and goodwill and imitate the Complainant by displaying the Complainant's trademarks on the disputed domain name website. Further, the Respondent registered the disputed domain name on November 24, 2017, which is significantly after the Complainant's first use in commerce of its trademark in 2012, and the Complainant's registration of its primary domain name <cncbinternational.com> on April 11, 2012. On this basis, the Respondent has no rights or legitimate interests in the disputed domain name.
- iii. The Complainant further argues that the disputed domain name has been registered and is being used in bad faith as the Respondent used it to resolve to a fraudulent website for phishing purposes.

B. Respondent

The Respondent failed to submit a Response in this proceeding.

**5. Findings**

For the reasons set forth below, the Panel finds the Complainant is entitled to the requested remedy of transfer of the disputed domain name.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

**A) Identical / Confusingly Similar**

The Panel must first determine whether the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights.

The Complainant did not register the trademarks "China CITIC Bank International" and "CNCBI". The Complainant has sought to rely on unregistered trademarks (also known as common law trademarks) for the marks "China CITIC Bank International" and "CNCBI", which the Complainant states is the latter's acronym.

It is instructive to first ascertain whether the Complainant has unregistered trademark rights in respect of these marks before embarking on the findings of the three elements under Paragraph 4(a) of the Policy. The establishment of trademark rights (unregistered or registered) is a threshold the Complainant must pass prior to obtaining standing under the Policy. See *Fairview Commercial Lending, Inc. v. Aleksandra Pesalj*, WIPO Case No. D2007-0123.

To establish unregistered trademark rights, the Complainant must show that its mark has become a distinctive identifier which consumers associate with the complainant's goods and/or services. (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.3.) In this regard, the onus is on the Complainant to provide relevant evidence demonstrating such acquired distinctiveness. The totality of evidence provided must be weighed such that in combination it meets the standard of proof required under the Policy and is sufficiently persuasive such that a fair assessment can be made showing that the Complainant's marks have acquired distinctiveness, which is sometimes also referred to as secondary meaning. The acquired distinctiveness may be shown to relate to a particular geographical area irrespective of the type of legal system controlling such a jurisdiction. (*S.N.C. Jesta Fontainebleau v. Po Ser*, WIPO Case No. D2009-1394) In view of the nature of domain names, evidence showing the extent of use of the marks online would be helpful to determine if the marks have been used in a such a way that Internet users would recognize the mark as a distinctive indicator

of origin, though other “brick and mortar” evidence would also be instrumental in making a complainant’s case.

Prior UDRP Panels have held that the following non-exhaustive factors may be taken into consideration when weighing the evidence brought to show unregistered trademark rights: length, duration and nature of use (*Philip Morris USA Inc. v. Doug Nedwin/SRSPlus Private Registration*, WIPO Case No. D2014-0339) [25 years of continued use incorporating the mark into the complainant’s various websites sufficient to show unregistered trademark rights]; amount of sales under the mark (WIPO Overview 3.0, 1.3); nature and extent of use exclusively in the field of operation (*Sant’Andrea S.p.A. v. Andy Picken*, WIPO Case No. D2009-0517); the degree of recognition (for example through history and accolades displaying fame and prestige) (*Antonio de Felipe v. Registerfly.com*, WIPO Case No. D2005-0969); consumer surveys; and the degree of distinctiveness (*ABBT Netherlands B.V. v. Oliver Miessler, Miessler Automotive GmbH & Co KG*, WIPO Case No. D2015-2378 [the less distinctive a mark is the more conclusive evidence must be brought forward to support a finding of unregistered trademark rights]; *Prom Night Events v. YourFormal Pty Ltd / Your Formal Australia Pty Ltd, Samir Kapoor*, WIPO Case No. D2001-1707).

In addition, the fact that a respondent is shown to have been targeting the complainant’s mark (e.g., based on the manner in which the related website is used) may support the complainant’s assertion that its mark has achieved significance as a source identifier. (WIPO Overview 3.0, 1.3)

Finally, some Panels have also stated that a complainant wishing to establish unregistered trademark rights should do so in relation to a particular jurisdiction where it claims such rights exists (See *Antonio de Felipe v. Registerfly.com*, WIPO Case No. D2005-0969; *Robin Food B.V. v. Bogdan Mykhaylets*, WIPO Case No. D2016-0264). It appears that, at least for the moment, this approach is not being uniformly applied in a majority of the cases dealing with unregistered trademark rights under the Policy. Perhaps it is the fact that most complainants would not specifically argue in which jurisdiction they have established common law trademark rights that leads to this element being absent or ignored from a good number of relevant UDRP decisions. The application of national law may also lead to unexpected results and a non-uniform application of the Policy. As one Panel stated “it is entirely possible that a complainant that is physically located in a particular civil law jurisdiction could nonetheless establish common law trademark rights outside that jurisdiction by virtue of its international (including on-line) operations.” (*S.N.C. Jesta Fontainebleau v. Po Ser*, WIPO Case No. D2009-1394) This Panel agrees with the *S.N.C. Jesta* general approach that panels should interpret the Policy as uniformly as possible. As such requiring a showing or application of a (or any) national law as a threshold requirement does not appear to be desirable nor mandated by the Policy. This Panel believes that given the above factors, if sufficient evidence is brought forth to show acquired distinctiveness such that the mark has become a distinctive badge of origin, the Complainant has met his burden to show unregistered trademark rights sufficient for standing under the Policy.

In this case, to establish common law rights in the unregistered trademarks, the Complainant has provided, among other things, the following evidence:

- National and regional awards accorded to the Complainant from 2004 to 2017 such as “Hong Kong Leaders’ Choice 2017 – Excellent Brand of Private Banking Service” and

“Hong Kong Leaders’ Choice 2017 – Excellent Brand of Mobile Banking” from Metro Finance;

- A Reuters’ write-up of the Complainant and several other banks in Hong Kong;
- Web traffic statistics of the Complainant’s primary website <cncbinternational.com> showing a total visit of 2.31 million between October 2017 to March 2018 with a website popularity rank of 649 in Hong Kong and 35,033 globally; and
- The Complainant’s Annual Reports from 2012 to 2017 showing substantial annual income in 2012 and 2017.

The Complainant brought evidence to show that the unregistered trademark “CNCBI” is a distinctive combination of letters and serves as an acronym for “China CITIC Bank International” which is also the registered corporate name of the Complainant. The Panel notes that both terms are inherently distinctive and would therefore place less onus on the Complainant to present extensive evidence.

Regardless of the distinctive nature of the marks, the Panel considers the evidence provided by the Complainant in this case sufficient to establish unregistered trademark rights. The Complainant brought evidence to show it was established in the early 20<sup>th</sup> century and has begun trading under the “China CITIC Bank International” in the 1980s. By 1985, the Complainant had 26 branches, including in New York and Los Angeles. The Complainant brought evidence showing it has won numerous awards every year since the early 2000s. The evidence also included press releases and articles published before the disputed domain name was taken showing the use of the Complainant’s “CNCBI” mark, also on such financial platforms such as Reuters. The Complaint brought evidence to show substantial sales in the last 5 years. The evidence shows that the mark “China CITIC Bank International” and its acronym “CNCBI” has been in continuous use by the Complainant and used as its unregistered trademarks many years before the disputed domain was registered. The amount of evidence produced weighs in favor of finding that the Complainant has unregistered trademark rights in the “China CITIC Bank International” and “CNCBI” marks.

In the particular circumstances of this case, the Complainant also brought evidence to show that the Respondent has taken the disputed domain name to operate a phishing or fraudulent website and thus the long standing trade by the Complainant under the unregistered trademarks would further weigh in favor of finding unregistered trademark rights in this case. (see e.g. *Arnold Bernhard & Co., Inc. v. PrivacyProtect.Org / Kevin Dale Press*, WIPO Case No. D2010-1511; *Synthite Limited v. Synthite Chemicals*, WIPO Case No. D2013-1518.

In addition, the Panel has undertaken an independent Google search and has come to the conclusion that Internet users searching for the unregistered trademarks would, in the specific field of business of the Complainant, reach results which would only lead to the Complainant, and that nearly all the results in at least the first few pages of search refer Internet users to the Complainant. Such results also weigh in favor finding that the Complainant has unregistered trademark rights.

Finally, the Respondent failed to challenge the Complainant’s evidence or its claim to unregistered trademark rights and such failure also weighs in favor of finding that the Complainant has unregistered trademark rights.

Having considered the above, the Panel finds that the Complainant has shown that the unregistered trademarks serve a distinctive identifier which consumers associate with the Complainant's goods and/or services and that under the particular circumstances of this case, the Complainant has established common law rights in the trademarks.

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

In the present case, the disputed domain name <cncbinternational.org> contains the Complainant's CNCBI trademark in its entirety and is identical to the Complainant's primary domain name save for the generic Top-Level Domain ("gTLD").

The disputed domain name and the Complainant's trademarks differ in the addition of the gTLD ".org" to the disputed domain name. This addition does not avoid confusing similarity (*Sanofi, Genzyme Corporation v. ZhangPeng*, WIPO Case No. D2018-0100; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; and *Volkswagen AG v. Hui Min Wang, Wang Hui Min*, WIPO Case No. D2017-0860). The gTLD ".org" is without significance in the present case since the use of a gTLD is technically required to operate a domain name.

In the particular circumstances of the present case, the Panel is of the view that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

## **B) Rights and Legitimate Interests**

Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to come forward with evidence to demonstrate its rights or legitimate interests in respect to the disputed domain name (WIPO Overview 3.0, section 2.1.).

The Complainant provided evidence showing that it did not license, authorize or permit the Respondent to register a domain name incorporating the Complainant's trademark (*Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. D2014-1875). The Complainant also provided evidence that the Respondent is also not commonly known by the disputed domain name as the WHOIS record shows that the registrant for the disputed domain name is "ktechlimited Mike/ktechlimited" which does not resemble the disputed domain name <cncbinternational.org> in any manner. On this basis, the Respondent cannot be regarded as having acquired rights or legitimate interests in the disputed domain name (*World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, WIPO Case No. D2008-0642; *Moncler S.p.A. v. Bestinfo*, WIPO Case No. D2004-1049).

The Complainant also provided evidence that even though the disputed domain name currently resolves to an inactive site, it was previously used for phishing purposes to deceive unsuspecting Internet users into divulging their personal information to the Respondent. Further, on December 18, 2017, the Hong Kong Monetary Authority ("HKMA") had issued a press release identifying the disputed domain name as a fraudulent website alleging itself to be the Complainant. The Complainant provided evidence of screenshots of the present and previous disputed domain name's website and of the

HKMA's press release on fraudulent websites. The Respondent is therefore making use of the disputed domain name to take advantage of the Complainant's trademark's fame and goodwill to illegitimately increase traffic to the Respondent's website for personal gain and phishing purposes – should there be a larger scheme by the Respondent to obtain visitors' personal information to acquire sensitive financial information. The evidence shows that the Respondent also imitated the Complainant by displaying the Complainant's trademarks on its website and issued a fake notice regarding the "Usage of Magnetic-stripe and Obsolete Chip-enabled" CNCBI credit card which provided a "Credit Card Customer Service hotline" for customers to call. Such use of the disputed domain name for illegal activities cannot confer rights or legitimate interests on a respondent (WIPO Overview 3.0, section 2.13.1).

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and as such, the burden of production shifts to the Respondent to prove otherwise. As abovementioned, the Respondent has failed to file a Response in the present case.

The Panel is persuaded that the Respondent was using the disputed domain name for *mala fide* purposes. The disputed domain name was only registered on November 24, 2017 whereas the fake notice on the previous website of the disputed domain name was dated February 29, 2016. Further, the screenshot of the said website requesting for a verification code in Chinese is dated December 14, 2017 which is several days before the HKMA issued the press release warning of the disputed domain name on December 18, 2017. It therefore appears that the website displaying the fake notice was taken down shortly after the HKMA's announcement was issued. The timeline of events is indicative that the Respondent was aware of the Complainant's trademarks and reputation and intended to make use of the Complainant's trademarks and goodwill to mislead Internet users and carry out illegal phishing activities. Such use of the disputed domain name does not confer rights or legitimate interests to the Respondent.

Moreover, once the burden has shifted, for a respondent to have rights or legitimate interests in a domain name comprising an acronym, the respondent has to provide evidence showing that its registration (and any use) of the domain name should indicate a credible and legitimate intent which does not capitalize on the reputation and goodwill inherent in the complainant's mark (WIPO Overview 3.0, section 2.10.2). The Panel notes that the Complainant did not advance this argument and in any event, the Respondent has failed to file a Response and did not address this issue.

Having considered the particular circumstances of the present case, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

### **C) Bad Faith**

The Complainant must also show that the Respondent registered and is using the disputed domain names in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy. In the present case, the Complainant relies on several grounds to establish bad faith on the part of the Respondent.

As noted above, the Complainant brought evidence to show that the Respondent was executing a phishing scheme on the previous website under the disputed domain name. The Complainant provided screenshots of the said website, public announcements on the HKMA's website and Google search results of the disputed domain name. From the evidence filed, the Panel infers that the Respondent was aware of the Complainant, its trademarks and its business; and was engaging in activities that were not *bona fide* and had therefore registered and used the disputed domain name in bad faith.

The Complainant also argues that the registration of the disputed domain name could not have been in good faith and could only be taken as intending to cause confusion among Internet users as to the source of the disputed domain name. The Panel agrees given the reputation and goodwill the Complainant has in its trademarks, and as the disputed domain name incorporates the Complainant's CNCBI trademark and copies the Complainant's domain name <cncbinternational.com>, there can be no plausible good-faith reason or logic for the Respondent's registration and "...the only feasible explanation for Respondent's registration of the disputed domain name is that Respondent intends to cause confusion, mistake and deception by means of the disputed domain name. Accordingly, any use of the disputed domain name for an actual website could only be in bad faith." (*Vevo LLC v. Ming Tuff*, FA 1440981 (NAF May 29, 2012)) Having considered the evidence filed by the Complainant, the Panel finds that under the particular circumstances of this case, any use of the disputed domain name would plausibly be in bad faith (*Indymac Bank v. Ebeyer*, FA 0175292 (NAF Sept. 19, 2003)). This finding is made in view of the substantial evidence filed showing the reputation and good will which is associated with the Complainant's trademarks and the fact that the Respondent was operating a phishing scheme or fraudulent website.

In the present case, the Complainant has also submitted evidence that the Respondent registered the disputed domain name on November 24, 2017 which is significantly after the Complainant's first use in commerce of its trademark in 2012, and the Complainant's registration of its primary domain name <cncbinternational.com> on April 11, 2012. (*Sanofi-Aventis v. Abigail Wallace*, WIPO Case No. D2009-0735). The Respondent also posted a fake notice regarding the usage of magnetic-stripe and obsolete chip-enabled CNCBI credit card which suggests that the it is "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the disputed domain name was registered (*Telstra Corp. Ltd. v. Nuclear Marshmallows*, WIPO Case No. D2000-0003). As such, and since the Respondent likely registered the disputed domain name incorporating the Complainant's trademark as it was aware of the Complainant and its trademark.

As abovementioned, past UDRP Panels have found that the use of a domain name for *per se* illegitimate activity such as phishing is manifestly considered evidence of bad faith registration and use.

Further, the Respondent failed to provide a response explaining his registration and use of the Complainant's trademark. The Panel considers this failure, under the particular circumstances of this case, to be additional evidence of bad faith registration and use of the disputed domain name.

Based on the evidence presented to the Panel, including confusing similarity between the Complainant's mark and the disputed domain name, the fake notice on the previous

website of the disputed domain name which was suggestive of illegal phishing activity, the registration of the disputed domain name long after the Complainant's unregistered trademarks have become widespread, the Panel concludes that the disputed domain name was registered and is being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under paragraph 4(a)(iii) of the Policy.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, <cncbinternational.org>, be transferred to the Complainant.

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Jonathan Agmon  
Panelist

Dated: September 3, 2018