



香港國際仲裁中心

Hong Kong International Arbitration Centre

ADMINISTRATIVE PANEL DECISION

Case No. DHK-0800029

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| Complainant: | China Network Communications Group Corporation |
| Respondent: | Liang Feng |
| Disputed Domain name: | www.chinanetcom.hk |
| Registrar: | Hong Kong Domain Name Registration Company Limited |

1. Procedural History

On March 26, 2008, Hong Kong International Arbitration Center (HKIAC) received a Complaint filed by the Complainant in accordance with the HKDNR Domain Name Dispute Resolution Policy (Policy).

On March 28, 2008, HKIAC sent to the Complainant an e-mail for the acknowledgement of receipt of the Complaint and sent to the Registrar a request for verification of relevant information.

On March 31, 2008, the Registrar confirmed that the domain name holder is the Respondent and is an individual in China. The Registrar also provided the HKIAC with the contact details of the Respondent.

On May 15, 2008, HKIAC informed the Respondent that a Complaint had been filed with HKIAC against him and the Respondent should submit a Response to the Complaint

within fifteen (15) business days.

On June 5, 2008, HKIAC received the Response from the Respondent.

On June 20, 2008, HKIAC sent the Notification of Commencement of Proceedings to the parties to the case.

On July 12, 2008, HKIAC informed the parties to the case that Mr. Li Yong had been appointed as the Panelist and a decision for the dispute would be rendered by the Panel by August 1, 2008.

2. Factual background

The Complainant is a state-owned enterprise established under the laws of the People's Republic of China and the ultimate controlling shareholder of China Netcom Group Corporation (Hong Kong) Limited, a company listed on the Main Board of the Hong Kong Stock Exchange with American Depositary Shares listed on NYSE. The Complainant registered a trademark "China Netcom" in Hong Kong under Trade Mark No.300461394 with date of registration on 20 July 2005. CNC HK registered a trademark containing the words "China Netcom" in Hong Kong under Trade Mark No.300461420 with date of registration on 20 July 2005.

The Respondent is an individual in China and registered the disputed domain name on January 1, 2007 according to the Registrar's verification and the information of Whois. The evidence submitted by the Complainant proves that there is only a dummy web page with no substance in connection with the domain name.

3. Parties' Contentions

The Complainant's contents

The Complainant is a leading broadband communications and fixed-line telecommunications operator in China. Its service region in China consists of Beijing Municipality, Tianjin Municipality, Hebei Province, Henan Province, Shandong Province, Liaoning Province, Heilongjiang Province, Jilin Province, Neimenggu Autonomous Region and Shanxi Province. The Complainant owns and operates extensive local networks in these service regions, and is a dominant provider of fixed-line telephone services, broadband and other Internet-related services, as well as business and data communications services. The Complainant has wholly owned subsidiaries in the U.S.A., the United Kingdom, Japan and Hong Kong.

The Complainant asserts that:

- a) The Disputed Domain Name is identical or confusingly similar to a series of trade marks in Hong Kong in which the Complainant has rights;
- b) The Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- c) The disputed domain name has been registered and is being used in bad faith.

As set out in Schedule B, the Complainant asserts that the Disputed Domain Name is identical or confusingly similar to several trademarks in Hong Kong in which the Complainant has rights. The Complainant's trademark has a strong reputation and is widely known in Mainland China and Hong Kong.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name because:

- a) There is no genuine use of a website under the Disputed Domain Name other than a dummy web page without substance.
- b) The Respondent's registration of the Disputed Domain Name appears to have been intended to exploit the Complainant's "CHINA NETCOM" trade marks / trade name,

rather than using it in a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain.

- c) The Respondent (named ‘Liang Feng’) could not be commonly known by the name “chinanetcom.hk” in view of the fact that it is not affiliated to the Complainant in any way and has not been permitted by the Complainant to register the Disputed Domain.

Further, the Complainant alleges that the Disputed Domain Name has been registered and used in bad faith. In support the Complainant relies on the fact that:

- a) The Complainant has not licensed or otherwise permitted the Respondent to register the Disputed Domain Name incorporating the trade name “CHINA NETCOM” and there is no affiliation between the Complainant and the Respondent. The Respondent is not an authorized agent or licensee of the Complainant’s products or services in any way.
- b) The effect of the Respondent’s registration is to prevent the Complainant from using its business name and trademark rights, to be reflected in a corresponding domain name in Hong Kong.
- c) The Respondent would not (or rather “could not properly”) have registered the Disputed Domain Name had the Respondent conducted a proper trademark search before registering it; and/or the popularity of the Complainant’s mark permits the conclusion that the Respondent knew or should have known of the Complainant’s well-known mark prior to registering the Disputed Domain Name.
- d) The domain name was registered on 29 January 2007. One year lapsed since registration but there is only 1 dummy web page with no substance. The Respondent has not yet genuinely used the domain name. It is doubtful if the Respondent really intends to use the domain name. Given the registration data of the Respondent from the WHOIS function, it seems that he is either a Chinese Citizen and/or is currently residing in China. CNC Group is one of the 4 telecommunication operators in China. The mark “CHINA NETCOM” has been widely and massively used throughout China. The reputation and popularity of the Complainant’s mark permits the conclusion that the Respondent knew or should

have known of the Complainant's well-known mark prior to registering the Disputed Domain Name.

The Complainant seeks to transfer the disputed domain name to the Complainant.

The Respondent contends that:

Applying this domain name is part of my web site development study, through developing this personal web site, I want to equip myself with necessary knowledge and skills and discuss topics about the development of China network and the trend of communication technology with the friends surfing on the web, especially those from Hong Kong. I do not know the complaint is famous in Hong Kong. I have every right of the domain name for I registered it through required process and I keep paying the fee of the domain. The domain name has been used for my personal web site. I never put it on sell or rent. The personal web site is just for my own interest and I do not think it will disrupt the business of any party. It is very rude that the complainant stated my web page is a dummy page. I have my plan to develop it in the future when I improve my knowledge and get enough money for renting servers.

4. Findings

In accordance with the Policy, the Complainant asking for transfer of the domain name must prove the following three elements: 1) the Respondent's domain name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; 2) the Respondent has no rights or legitimate interests in respect of the domain name; and 3) the Respondent's domain name has been registered and is being used in bad faith. (Policy, 4 (a))

- Identical / Confusingly Similar

The Complainant has proved that the Complainant is the owner of the trademark “China Netcom” in Hong Kong under Trade Mark No.300461394 with date of registration on 20 July 2005. The disputed domain name is “chinanetcom.hk”. By making comparison between the domain name and the Complainant’s trademark, it is clear that the trademark letters “China Netcom” are directly and wholly incorporated into the domain name at issue. The only difference between the domain name and the trademark is “.hk”. However, the top level domain designator “.hk” is only a necessary portion to form a particular type of domain name in Hong Kong and cannot function to distinguish that name from the Complainant’s mark. Therefore, the Panel holds that the first element of Policy, 4 (a) is met.

- Rights and Legitimate Interests

Policy, 4 (c) provides that “Any of the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be proven based on its evaluation of all evidence presented to it, shall demonstrate your rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(ii): (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services in Hong Kong; or (ii) you (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trade mark or service mark rights in Hong Kong; or (iii) you are making a legitimate non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.”

The Respondent has not provided evidence of circumstances of the type specified in Policy, 4(c). Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. Registering the domain name through required process and paying the fee are not enough to establish the rights and legitimated interests defined by the Policy. Accordingly, the Panel believes that the Respondent has no rights or legitimate interests

with respect to the disputed domain name.

- **Bad Faith**

The Panel is of the opinion that the domain name at issue has been registered and used in bad faith. In supporting this conclusion, it should be noted that the Complainant is a leading broadband communications and fixed-line telecommunications operator in China, which operates extensive local networks in many regions in China, and is a dominant provider of fixed-line telephone services, broadband and other Internet-related services, as well as business and data communications services in China. The Complainant is one of the four telecommunication operators in China. The trademark “CHINA NETCOM” has been widely and massively used throughout China. Considering the high business reputation of the Complainant in China and the fact that the Respondent is an individual in China, it could be established that the Respondent knew the Complainant’s valuable trademark at the time he registered the domain name at issue. It should also be noted that after the registration of the domain name, the Respondent only set up a dummy web page with no substance in connection with the domain name and had shown no intention of genuinely using it. Taking into consideration all the above circumstances, it is reasonably inferred by the Panel that the purpose of the Respondent’s registering the domain name is to prevent the Complainant from reflecting its famous trademark in a corresponding domain name, and to take advantage of the high value of the Respondent’s trademark to for unjust interests so long as certain conditions are met in the future.

Accordingly, for the reasons discussed above, the Panel finds that the domain name at issue has been registered and is being used by the Respondent in bad faith.

5. Arbitration Decision

The Panel concludes (a) that the domain name “chinanetcom.hk” is identical to the trademark owned by the Complainant, (b) that the Respondent has no rights or

legitimate interest in the domain name and (c) that the domain name at issue has been registered and used in bad faith. Therefore, the Panel orders that the domain name at issue be transferred to the Complainant.

Li Yong

Presiding panelist

Dated: August 1, 2008