



香港國際仲裁中心
Hong Kong International Arbitration Centre

**.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION**

Complainant: China Network Communications Group Corporation

Respondent: Zhou Ao

Case Number: DHK-0800030

Contested Domain Name: cnc.hk

1. Parties and Contested Domain Name

The Complainant is China Network Communications Group Corporation of 21 Jin Rong Street, West District, Beijing 100032, China acting through its Authorised Representative China Netcom (Hong Kong) Operations Limited. The Respondent is an individual named Zhou Ao who gave his/her country of origin as China, no physical correspondence address, but an email address of "domain@now.net.cn". The contested domain name is "cnc.hk" ("Disputed Domain").

2. Procedural History

A Complaint in this matter was filed with the Hong Kong International Arbitration Centre ("HKIAC") dated 20 March 2008 in the prescribed form, received by HKIAC on 26 March 2008.

The HKIAC notified the Registrar of the Disputed Domain of the proceedings by email on 28 March 2008. The Registrar responded to the HKIAC on 31 March 2008, providing such prescribed information as had been registered.

The Complaint was served upon the Respondent by the HKIAC by email on 15 May 2008 to the address (domain@now.net.cn) provided by the Respondent as its contact email (according to the Complainant's WHOIS search on 20 March 2008);

This constitutes valid service of these proceedings upon the Respondent.

No Response was filed with the HKIAC on or before the prescribed deadline (5 June 2008).

The Panel was appointed on 11 July 2008, with papers being delivered to the Panelists on 11 July 2008.

3. Factual Background

For the Complainant

CNC Group 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. CNC Group 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. CNC Group has wholly owned subsidiaries in the U.S.A., the United Kingdom, Japan and Hong Kong.

The Complainant is a state-owned enterprise established under the laws of the PRC 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 (Stock Code: 906) with American Depositary Shares listed on NYSE (Ticker Symbol: CN).

The Complainant registered the marks "CNC 中国网通 CNC 中國網通 " in Classes 9, 38, 41 and 42 in Hong Kong, as well as "CNC 中国网通" in Class 38 in Hong Kong in addition to various other marks incorporating "CNC".

For the Respondent

The Respondent registered the Disputed Domain (or possibly renewed a registration in respect of the Disputed Domain) on 1 September 2007.

4. Parties' Contentions

The Complainant

The Complainant claims that the Disputed Domain (cnc.hk) is manifestly identical or confusingly similar to its registered trade marks in Hong Kong.

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

- there is no genuine use of a website under the Disputed Domain name in connection with a bona fide offering of goods or services in Hong Kong. To the contrary, it is manifested in the webpage under the Disputed Domain that “此域名可出售！” (translated in English as "this domain name is for sale") with contact particulars;
- the Respondent's registration of the Disputed Domain appears to have been intended to exploit the Complainant's "CNC" 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;
- the Respondent (named 'ZHOU AO') could not be commonly known by the name "cnc.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.

Finally, the Complainant alleges that the Disputed Domain has been registered and is being used in bad faith. In support the Complainant states:

- the Complainant has not licensed or otherwise permitted the Respondent to register the Disputed Domain incorporating the trade name "CNC" and there is no affiliation between the Complainant and the Respondent. The Respondent is not an authorised agent or licensee of the Complainant's products or services in any way;
- the effect of the Respondent's registration is to prevent the Complainant from using its business name and trade mark rights, to be reflected in a corresponding domain name in Hong Kong;
- the Respondent would not (or rather "could not properly") have registered the Disputed Domain had the Respondent conducted a proper trade mark 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;
- the webpage to which the Disputed Domain resolves states, in respect of the Disputed Domain that “此域名可出售！” and "this domain name is for sale" with contact particulars of the Respondent. In mid-November 2007, a member of the Complainant's staff phoned the Respondent pursuant to the contact particulars stated in the webpage under www.cnc.hk. A man answered the call and said that he offered to sell the Disputed Domain for the sum of RMB80,000. This shows the Respondent has registered or acquired the Disputed Domain primarily for the purpose of selling, renting, or otherwise transferring it to the Complainant, or to a competitor of the Complaint, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain;
- in the webpage to which the Disputed Domain resolves, it is also stated that “本站出售大量精品域名，有意者请与本人联系！” (with English transliteration as "This website offers to sell massive quality domain names, interested persons please do contact me"). It is reasonable to draw proper inference that the Respondent has been registered the domain names of other companies for sale to third parties for profit instead of for self use.

The Complainant cites the UK pre-UDRP case of *British Telecommunications Plc and others –v- One in a Million Ltd* [1998] All ER 476 in support of its claim to the Disputed Domain.

The Respondent

The Respondent did not file a Response within the stipulated time.

5. Findings

A. Respondent in Default

The HKDNR Domain Name Dispute Resolution Policy Rules of Procedure ("Rules"), Paragraph 5(c) provide that: "If a Respondent does not submit a timely Response, in the absence of exceptional circumstances as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and evidence submitted therewith." The Panel finds no exceptional circumstances to exist, and will proceed to determine the dispute based upon the Complaint.

B. The Language of the Proceedings

Paragraph 11(a) of the Rules provides:

"Unless otherwise agreed by the Parties, the language of the arbitration proceeding shall be the language of the Registration Agreement, subject always to the authority of the Arbitration Panel to determine otherwise, having regard to all the circumstances of the arbitration proceeding."

In the present case, the Disputed Domain was registered using the Roman alphabet. The Registrar is resident in Hong Kong, which has English as one of its official languages, and the Registrar's registration agreement is in English. The Complaint was drafted in English and the Complainant and the Panelist are conversant in English. The registration information given by the Respondent was given in English. All correspondence amongst HKIAC, the Registrar, the parties and the Panel is in English.

The Panel has received no request from any interested party to deal with the matter in any language other than English. The Panel determines that the language of these arbitration proceedings shall be English. The Panel is able to understand those parts of the exhibits to the Complaint in Chinese without official translation.

C. Discussion and Findings

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith.

1) Identical/confusing similarity

But for the suffix ".hk", the Disputed Domain is identical to the Complainant's mark "CNC" which is registered in Hong Kong. Following *Croatia Airlines d.d. –v- Modern Empire Internet Ltd* WIPO D2003-0455) the ".hk" should be disregarded for the purposes of establishing confusing similarity.

The Panel finds the Complainant has satisfied the first condition under Paragraph 4 of the Policy.

2. Rights or Legitimate Interests of Respondent

The Complainant has alleged that the Respondent has no right or legitimate interest in respect of the Disputed Domain. Clearly the Complainant does have a legitimate interest in the mark "CNC" in Hong Kong, and the Panel can fathom no possible legitimate connection or interest between the Respondent and the Disputed Domain. The Respondent has not answered these allegations and the Panel has no reason to doubt the veracity of the Complaint.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4 of the Policy.

3. Bad faith

The Panel has itself accessed the Disputed Domain and seen the solicitation to purchase the Disputed Domain contained therein. The Panel accepts the Complainant's evidence that the Respondent demanded RMB80,000 - on any analysis an amount exceeding the Respondent's legitimate out of pocket expenses in registering the Disputed Domain. In circumstances where there is no evidence of other use having been made of the Disputed Domain, this constitutes bad faith by the Respondent as prescribed by clause 4(b)(i) of the HKDNR Domain Name Dispute Resolution Policy.

The Panel readily concludes that the Respondent registered the Disputed Domain in bad faith. It is not necessary to rely on the case against *One in a Million* to reach this finding.

6. Conclusions

Based on the above analysis, the Panel decides that: (1) the Disputed Domain is confusingly similar to a mark in which the Complainant has rights; (2) the Respondent has no right or legitimate interest in respect of the Disputed Domain; and (3) the Respondent has registered and has used the Disputed Domain in bad faith. Accordingly, pursuant to Paragraph 3 of the Policy, and at the Complainant's request, the Panel decides that the Disputed Domain **cnc.hk** should be transferred to the Complainant.

Dated 28 July 2008.
Hong Kong

Peter Bullock