



香港國際仲裁中心

Hong Kong International Arbitration Centre

.hk Domain Name Dispute Resolution

**ARBITRATION PANEL DECISION**

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<b>Case No.</b>	<b>:</b>	<b>DHK-0700015</b>
<b>Complainants</b>	<b>:</b>	<b>(1) ThreeSixty Sourcing Inc.</b> <b>(2) ThreeSixty Sourcing Ltd.</b> <b>(3) ThreeSixty Sourcing Limited</b>
<b>Respondent</b>	<b>:</b>	<b>Three Sixty Hong Kong Limited</b>

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**1. THE PARTIES AND CONTESTED DOMAIN NAME**

The Complainants are affiliates of each other. The 1st Complainant is ThreeSixty Sourcing Inc. of 19511 Pauling Foothill Ranch, California 92610, United States of America; the 2nd Complainant is ThreeSixty Sourcing Ltd., a company incorporated in British Virgin Islands, of c/o Craigmuir Chambers, P.O. Box 71, Road Town, Tortola, British Virgin Islands; the 3rd Complainant is ThreeSixty Sourcing Ltd., a company incorporated in Hong Kong, of 7-8/F Corporation Square, 8 Lam Lok Street, Kowloon Bay, Kowloon, Hong Kong. The authorised representative of the Complainants in this matter is Mr. Sebastian Hughes of Jones Day, 29/F, Edinburgh Tower, The Landmark, 15 Queen's Road Central, Hong Kong.

The Respondent is Three Sixty Hong Kong Limited (“360 香港有限公司” in Chinese), a company incorporated in Hong Kong, with registered address at Unit 503, 5/F, Silvercord Tower 2, 30 Canton Road, Tsimshatsui, Kowloon, Hong Kong. The authorised representative of the Respondent in this matter is Ms. GU Hui-xiao of Sam & Partners Law Firm, 516-517, Zhongguancun Building, 27 Zhongguancun Road, Haidian District, Beijing.

The domain names at issue (the “Disputed Domain Name”) is <threesixty.hk>, registered on 19 June 2006 by the Respondent. The administrative contact of the Disputed Domain Name is “Keven Wong”.

## **2. PROCEDURAL HISTORY**

A complaint in respect of <threesixty.hk> was filed with the Hong Kong International Arbitration Centre (“HKIAC”) in terms of the prescribed Form A on 1 June 2007 under the Hong Kong Domain Name Registration Company Limited (“HKDRN”) Domain Name Dispute Resolution Policy (“the HKDNRP”), the HKDRN Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and the HKIAC Supplemental Rules therefor (“the Supplemental Rules”).

On 7 June 2007, the HKIAC confirmed the receipt of payment for concerned fee in connection with the case.

On 8 June 2007, the HKIAC received confirmation on the registration details. On 9 June 2007, the Respondent was notified of the commencement of the proceeding,

requesting a response to be submitted within 15 business days. On 22 June 2007, the Respondent via its representative wrote to HKIAC in relation to extending time for the filing of the response in rebuttal and stating that, as the registration agreement was in Chinese, the language of the proceedings should also be in Chinese.

On 25 June 2007, the HKIAC wrote to the parties, in Chinese and English, stating that the time for submission of the response was extended to 9 July 2007 and the language of the proceedings would be determined by the Panel and both Chinese and English would be used in the meantime in the proceedings.

On 29 June 2007, the Respondent submitted a response in terms of the prescribed Form B under the HKDNRP in Chinese.

On 16 August 2007, the HKIAC wrote to the candidates for the sole panelist, asking for confirmation of availability, independence and impartiality in dealing with this matter. Upon such confirmation, Mr. Gary Soo was appointed as the Sole Panelist in this case on 16 August 2007 and the Panel was requested to render a decision on or before 6 September 2007.

### **3. FACTUAL BACKGROUND**

#### **For Complainants**

The Complainants are the registered owners of the “ThreeSixty SOURCING” and

“THREESIXTY SOURCING” series of trademarks, used worldwide since 28 September 2001 and registered in not less than 14 countries or places, including Hong Kong.

The Complainants operate a leading global sourcing business under the trademarks to meet the key product and supply chain needs of a wide range of businesses, with offices in North America, Hong Kong, Shanghai, Shenzhen, Guangzhou and Ningbo. The network of the Complainants encompasses over 1,500 suppliers and/or factories.

#### **For Respondent**

The Respondent registers the Disputed Domain Name on 19 June 2006. The Respondent was incorporated in Hong Kong on 12 September 2005.

#### **4. PARTIES' CONTENTIONS**

##### **For Complainants**

On the Complainants' rights, the Complainants states that they are the owners of the series of registered trademarks of “ThreeSixty SOURCING” and “THREESIXTY SOURCING” and provides certificates to show that the Complainants are the owners of trademark registration, nos. 880783 & 881414 of Australia, 1968528 & 1968524 of Mainland China, 023141444 & 023141445 of France, 30203203.7/35 & 30203204.5/35 of Germany, 545686 of India, 4709264 & 4709265 of Japan, 640537

& 656666 of New Zealand, 42004004743 of Philippines, T02/17159A & T01/136051 of Singapore, 00170570 & 00172678 of Taiwan, SM177729 of Thailand, 2287926 & 2287925 of United Kingdom, 76-543,304 of United States of America. The Complainants also provided a table summary as attachment 4 to the complaint that the trademark registrations in Hong Kong numbered 200648559 and 300648540, filed on 30 May 2006, are published, stating that the same had been accepted for registration in Hong Kong and that this was before the registration of the Disputed Domain Name by the Respondent on 19 June 2006.

The Complainants say that the main and most prominent features in these marks are the words “THREESIXTY” and the Complainants are well-known amongst the global sourcing industry and otherwise by reference to the name “THREE SIXTY” alone. Hence, as the Disputed Domain Name comprises the words “Three Sixty”, the Complainants are of the view that it is identical or confusingly similar to the Complainants’ trademarks.

The Complainants also provide documents showing the websites operated by the Complainants under the domain names of <threesixtysourcing.com>, <threesixtysourcing.com.cn>, <threesixtysourcing.cn>, <threesixtysourcing.net>, <360sourcing.com> and <360sourcing.net>.

The Complainants further assert that, by the trademark registration, there are prima facie evidence of validity of the trademarks and there creates a rebuttable presumption that the marks are inherently distinctive for the Respondent to refute. For this the Complainants cite the case of *EAuto LLC v. Triple S. Auto Parts d/b/a King Fu Yea Enterprises, Inc.* (WIPO, D2000-0047). The Complainants also say that, as

decided by the cases of *SeekAmerica Network Inc. v. Tariq Masood and Solo Signs* (WIPO, D2000-0131), *MatchNet plc v. MAC Trading* (WIPO, D2000-0205), *British Broadcasting Corp. v. Renteria* (WIPO, D2000-0050) and *Outblaze Limited v. Wah Cheung Leatherware Company Limited* (HKIAC, 0106-0001), it is not necessary for the relevant trademarks to be registered before a complainant can establish rights in a mark and the Complainants are also entitled to assert rights over those marks where applications have been submitted for registration but not yet registered.

Moreover, the Complainants are of the view that, with the Complainants' other websites in operation, persons visiting the Disputed Domain Name are likely to think that the Disputed Domain Name had a connection with the Complainants or is otherwise associated or affiliated with or authorized, sponsored or approved by the Complainants and, hence, there is a high risk of confusion.

As regards the Respondent's rights or legitimate interests in respect of the Disputed Domain Name, the Complainants assert that the Respondent does not have any right or legitimate interests in this regard since:-

- (a) the Respondent does not hold any registered trade mark rights in Hong Kong or Mainland China in relation to the Disputed Domain Name;
- (b) the Complainants' trademarks are already well-known in the Greater China region and North America, some 4 years prior to the Respondent's registration of the Disputed Domain Name and, hence, use of the same without consent from the Complainants are to be prohibited;
- (c) the products displayed in the Respondent's website are all products sourced by the Complainants under the trademarks and the Respondent must be well aware

of the said trademarks being protected by law;

- (d) the Complainants have not authorized, licensed or otherwise permitted the Respondent to register or use the Disputed Domain Name or the trademarks and had not in any way acquiesced to the Respondent's registration or use of the trademarks or other similar marks;
- (e) such use of the marks similar to the Complainants' trademark is infringing and cannot be considered bona fide use as per *G.D Searle & Co. v. Entertainment Hosting Services. Inc.*, (NAF, FA110783);
- (f) the trademarks of the Complainants are invented words of the Complainants;
- (g) the Disputed Domain Name is being used by the Respondent for commercial purposes.

Also, the Complainants are of the view that the Respondent registers the Disputed Domain Name in bad faith for the reasons set out below.

- (a) With the fame and repute of the trademarks in Greater China and worldwide, it can be inferred that the Respondent's registration of the Disputed Domain Name is with the intention to sell, rent or otherwise transfer to the Complainants or their competitors for valuable consideration in excess of the out-of-pocket costs directly related. Relying on *Barney's Inc. v. BNY Bulletin Board* (WIPO, D2000-0059), the registration of the Complainants' famous trademarks as a domain name is strong evidence of bad faith.
- (b) The Respondent has registered the Dispute Domain name in order to prevent the Complainants from reflecting the Complainants' names or marks in corresponding domain names, as evidenced by the Respondent's prior registration of the domain names <threesixty.cn> and <threesixty.com.cn> and

the Respondent's registration of the Disputed Domain Name after receiving a cease and desist letter from the Complainants' solicitors dated 2 June 2006 in relation to the said .cn domain names, which are now the subject of another complaint based on the China Internet Network Information Centre Domain Name Dispute Resolution Policy. The Respondent has failed to respond to the said cease and desist letter.

- (c) The Respondent is a competitor of the Complainants since the Complainants provide sourcing services for consumer and commercial hard goods, which include the goods offered for supply by the Respondent and the Disputed Domain Name is accessible to persons in Greater China and worldwide. Hence, the Respondent can disrupted the Complainants' business with the use of the Disputed Domain Name.
- (d) The Respondent intentionally attempted to attract, for commercial gain, internet users to its website by creating a likelihood of confusion with the Complainants' trademarks as to source, sponsorship, affiliation, or endorsement of the Respondent's website, product or service, citing in support the case of *EthnicGrocer.com, Inc. v. Unlimited Latin Flavors, Inc.* (NAF, FA94385).
- (e) The Respondent is incorporated in order to pass off the Respondent as and for the business of or a business sponsored, approved, endorsed, licensed or authorised by the Complainants. On 10 January 2007, the Complainants have issued passing off court proceedings against the Respondent in Hong Kong seeking, inter alia, orders requiring the Respondent to change its name to one not incorporating the words "THREE SIXTY" or similar wording. The deadline for filing the acknowledgement of service of the writ has passed and the Respondent has not responded to the writ.

In the circumstances, the Complainants ask for the transfer of the Disputed Domain Name to the 3rd Complainant.

### **For Respondent**

The Respondent is of the position that the Complainants do not have any legal rights over the Disputed Domain Name under the laws of Hong Kong.

Firstly, the Respondent says that, on or before the registration of the Disputed Domain Name, the Complainants have no trademark rights over “threesixty” under the laws of Hong Kong and that application for trademark registration in Hong Kong on 11 May 2007 for “threesixty sourcing” has not yet been issued with registration certificate and those trademark registration certificates in Mainland China are for Mainland China only, not Hong Kong. Secondly, the Respondent observes that no solid evidence on the famous reputation asserted by the Complainants have been submitted in support; the trademark registration certificates in other jurisdiction have not been properly notarized as true copies; and the printouts from the Complainants’ websites cannot be sufficient evidence to show that the “ThreeSixty SOURCING” marks have become well-known by use in Hong Kong. Thirdly, even if the Complainants enjoy trademark rights as asserted, the trademarks cannot be broken into “ThreeSixty” and “SOURCING” for separate use and, therefore, the Complainants do not have exclusive rights to use the “threesixty” name or mark. Finally, the Respondent notes that the Complainants’ websites are not with domain names without the “sourcing” part and there are many other registered domain names including “threesixty” as a part of it (e.g. <threesixtysl.com>, <threesixtysmile.com>, <threesixtystudios.com>, <threesixtysports.com>,

<threesixtyservice.com>, <threesixtysix.com>, etc.), illustrating that the “threesixty” mark is not a distinct mark to exclude use by others.

Also, the Respondent asserts that the Respondent has legitimate rights over the Disputed Domain Name, derived from its Chinese name and English name. The Respondent states that it has been validly incorporated under the laws of Hong Kong and should be allowed to use its name in trade even without any corresponding trademark registration.

The Respondent further denies bad faith on its part. It submits that there is no intention, nor evidence, on the part of the Respondent to sell, rent or otherwise transfer the Disputed Domain Name for improper gain; the Respondent does not register in order to prevent the Complainants from reflecting the mark in a corresponding Domain Name and has not engaged in a pattern of such conduct; there is no competition relationship between the Respondent and the Complainants from the evidence and the Respondent does not register the Domain Name primarily for the purpose of disrupting the business of the Complainants; by using its own name in the Disputed Domain Name for doing its own business, the Respondent have no intention nor attempt to attract, for commercial gain, internet users to its web site or other on-line location, by creating a likelihood of confusion with the Complainants’ marks as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

The Respondent further denies knowledge of the passing off litigation against it before the Hong Kong Court.

## 5. DISCUSSION AND FINDINGS

### *Language of the Arbitration Proceedings*

Pursuant to paragraph 11 of the Rules, unless otherwise agreed by the Parties, the language of the arbitration proceedings 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 proceedings. The complaint in this case is filed in English and the Respondent files a response in Chinese, saying that the registration agreement is in Chinese. The complaint contains a typical registration agreement in English. There is no request for any translation to be made, whether from English to Chinese or vice versa. From the response filed, the Respondent indicates its ability to fully appreciate the case against it and to respond to it. As the Panel is conversant in Chinese and English and for the efficiency of the proceedings, the Panel decides that the language of the proceedings is to be in English, save as to the filing of the response, and that no translation of documents are required.

### *Elements under HKDNRP*

Pursuant to paragraph 4(a) of the HKDNRP, a complainant has the burden of proving that:-

- (i) 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;

and

- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the respondent's domain name has been registered and is being used in bad faith.

***Whether Identical or Confusingly Similar to a Trademark or Service Mark in Hong Kong in which the Complainants have Rights***

From the various trademark certificates provided by the Complainants, the Complainants claim support for its rights over the marks, namely “ThreeSixty SOURCING” and “THREESIXTY SOURCING”. These include those numbered 880783 & 881414 of Australia, 1968528 & 1968524 of Mainland China, 023141444 & 023141445 of France, 30203203.7/35 & 30203204.5/35 of Germany, 545686 of India, 4709264 & 4709265 of Japan, 640537 & 656666 of New Zealand, 42004004743 of Philippines, T02/17159A & T01/136051 of Singapore, 00170570 & 00172678 of Taiwan, SM177729 of Thailand, 2287926 & 2287925 of United Kingdom, 76-543,304 of United States of America. The corresponding trademarks of “THREESIXTY SOURCING” and “THREESIXTY SOURCING & DESIGN” are shown to have been accepted for registration and are also published in Hong Kong.

In this regard, the Panel does not agree with the Respondent's challenge that the sufficiency of these supporting documents as evidence, saying that only copies are provided. Further, the websites of the Complainants, namely those with the domain

names <threesixtysourcing.com>, <threesixtysourcing.com.cn>, <threesixtysourcing.cn>, <threesixtysourcing.net>, <360sourcing.com> and <360sourcing.net>, are also shown to be in operation. And, indeed, the names of the Complainants also contain the words of “ThreeSixty Sourcing”. On this basis, the Panel accepts that the Complainants own the necessary rights under paragraph 4(a)(i) of the HKDNRP in respect of the marks of “THREESIXTY SOURCING” and “ThreeSixty SOURCING”.

The Complainants also claim that the main and most prominent features in these marks are the word “THREESIXTY” and the Complainants are well-known among the global sourcing industry and otherwise by reference to the name “THREE SIXTY” alone. This is challenged by the Respondent among other things. The Panel notices that, though the word “ThreeSixty” is more prominent in some of graphical marks of “ThreeSixty SOURCING”, in none of the concerned trademarks nor the domain names relied on by the Complainants are the words “THREESIXTY” used alone. Indeed, there is no trademarks or domain name registration of the Complainants using “THREESIXTY” alone. The Panel also sees no evidence, whether in the form of documents or detailed figures and breakdowns, from the Complainants regarding the promotion, advertisement, sales, turnovers, profits, number of clients, etc. to show that the Complainants are otherwise known by the mark of “THREESIXTY” alone in Hong Kong or elsewhere. Therefore, based on the current evidence, the Panel is unable to find that the Complainants have the necessary rights under the HKDNRP over the “THREESIXTY” mark and can only assess the complaint based on the Complainants’ concerned rights over the “THREESIXTY SOURCING” and “ThreeSixty SOURCING” marks.

In the Disputed Domain Name, the part “.hk” is the ccTLD for Hong Kong and the remaining part is “threesixty”. This forms the first part of the Complainants’ marks and is distinct from them primarily by not having the “SOURCING” part that follows. While the Panel accepts that there may be other domain names including the “threesixty” part as a prefix while not using the “sourcing” part, as suggested by the Respondent, the Panel has compared the visual impact of the Disputed Domain Name with the other domain names and trademarks of the Complainants and is of the view that, as a domain name, it can still fairly be said that the Disputed Domain Name is confusingly similar to the “THREESIXTY SOURCING” and “ThreeSixty SOURCING” marks of the Complainants. The Panel comes to this conclusion as the word “THREESIXTY” or “ThreeSIXTY” is still the more prominent part in these marks of the Complainants.

Therefore, the Panel finds that the Complainants have succeeded in discharging the burden on its part to establish this element under paragraph 4(a)(i) of the HKDNRP.

***Whether the Respondent has no Rights or Legitimate Interests in respect of the Domain Name***

The burden is on the Complainants to establish this from the evidence. Also, paragraph 4(c) of the HKDNRP provides that the Respondent may demonstrate its rights to and legitimate interests in the Disputed Domain Name by proving any one of the following circumstances:-

- (i) before any notice to the Respondent of the dispute, the Respondent’s use of, or demonstrable preparations to use, the Disputed Domain Name or a name

- corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services in Hong Kong; or
- (ii) the Respondent (as an individual, business, or other organisation) have been commonly known by the Disputed Domain Name, even if the respondent has acquired no trade mark or service mark rights in Hong Kong; or
  - (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

To the Panel, it is clear from the evidence that the Respondent does not hold any registered trademark rights in Hong Kong in relation to the Disputed Domain Name; that the Complainants have not authorized, licensed or otherwise permitted the Respondent to register or use the Disputed Domain Name or the trademarks and had not in any way acquiesced to the Respondent's registration or use of the trademarks or other similar marks; and that the Disputed Domain Name is being used by the Respondent for commercial purposes.

The Complainants say that, with the trademark rights of the Complainants that exist prior to the registration of the Disputed Domain Name, the Respondent must be well aware of such trademarks being protected by law and the use of the Disputed Domain Name, being an infringing act and not bona fide, is to be prohibited.

These are denied by the Respondent and the Respondent says that it does no more than having its name registered as a domain name.

The Panel sees from the documents that the Respondent has put to use the website linking the Disputed Domain Name and this clearly is done after the Respondent has received a cease and desist letter from the Complainants in relation to other domain names of the Respondent.

However, the evidence does show that the Respondent is a registered company incorporated in Hong Kong and the registered name of the Respondent is “Three Sixty Hong Kong Limited”. The date of incorporation of the Respondent is 12 September 2005. The 1st Complainant commences business since 28 September 2001 and the 2nd Complainant is a company incorporated in the British Virgin Islands. As to the 3rd Complainant, the business registration certificate from the Hong Kong authority, relied on by the Complainants, shows a date of commencement only on 23 February 2007.

The Panel is of the view that it is important to note that the Disputed Domain Name is <threesixty.hk>, not <threesixtysourcing.hk> or other domain names incorporated fully the Complainants’ trademarks and that, clearly, this is just to reflect the name of the Respondent. The Panel observes further that, though the Respondent denies having notice of the writ of the Complainants issued on 10 January 2007, it seems clear to the Panel that a passing off litigation before the Hong Kong Court has been commenced and that, based on the documents from the Complainants, no judgement has yet been obtained, one way or the other. Hence, the litigation has not yet been concluded and the outcome at the end is not yet known. Indeed, apart from the writ, the Panel is not shown to any other related court documents and has to proceed on the basis that there is none of them.

The Panel believes it sees the purpose of the HKDNRP proceedings to resolve domain name disputes in a speedy and efficient manner and, as such, the HKDNRP is not to resolve and is not capable of being used to resolve all disputes over domain names. A clear example for this is where the parties may have competing rights over the use of the domain name in issue. From the evidence presented from both sides so far, this, the Panel believes, is one of such cases where there are competing rights asserted by the parties that cannot be resolved by the HKDNRP proceedings.

Therefore, taking into consideration of the overall evidence at this stage, the Panel finds that the Complainants have not succeeded in establishing that the Respondent has no right or legitimate interests in respect of the Disputed Domain Name, as required under paragraph 4(a)(ii) of the HKDNRP.

***Whether the Respondent's Domain Name has been Registered and is being Used in Bad Faith.***

With the decision in relation to paragraph 4(a)(ii) of the HKDNRP, there should be no need for the Panel to discuss this element. The purpose of doing this here is just to set out the picture fuller.

Pursuant to paragraph 4(b) of the HKDNRP, for the purposes of Paragraph 4(a)(iii) of the HKDNRP, the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a Disputed Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or acquired the

- Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainants who are the owners of the trademark or service mark or to a competitor of the Complainants, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) the Respondent has registered the Disputed Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Disputed Domain Name, provided that you have engaged in a pattern of such conduct; or
  - (iii) the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
  - (iv) by using the Disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's web site 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 the Respondent's web site or location or of a product or service on the Respondent's web site or location.

The test for bad faith here is conjunctive and there must be evidence that the Disputed Domain Name has been registered in bad faith and is being used in bad faith.

The Complainants contend that the Respondent's registration and use of the Disputed Domain Name is both with bad faith. To this, the Respondent disagreed.

Since the Complainants have not succeeded in proving that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, the issue of bad faith asserted on the part of the Respondent has to be assessed from this perspective. With this approach, the Panel is unable to make any inference of bad faith, as invited by the Complainants, based solely on the fame or reputation of the Complainants' marks. The Respondent may perhaps be a competitor to the Complainants. The Respondent seems likely to have registered the Disputed Domain Name with knowledge of the Complainants' marks. To some users or customers, there may also appear to be some sort of confusions between the Complainants' marks and the Disputed Domain Name. However, the Panel does not see these as indicators of bad faith on the part of the Respondent when it cannot be established, in the first place, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Therefore, taking into consideration of the overall evidence and the parties' submissions, the Panel finds that the Complainants have not succeeded in establishing that the Respondent has registered and is using the Disputed Domain Name in bad faith, as per paragraph 4(a)(iii) of the HKDNRP.

## **6. ARBITRATION DECISION**

In view of the findings as set out above, the Panel finds that the Complainant has not succeeded in proving that all of the 3 elements of paragraph 4(a) of the HKDNRP are present. Therefore, this complaint does not succeed and this Panel accordingly

directs that the complaint shall be dismissed.

**Gary Soo**  
**Arbitration Panelist**

Date: 20 August 2007