

SINGAPORE DOMAIN NAME DISPUTE RESOLUTION SERVICE

Administrative Panel Decision

Case No. SDRP –2005/0004(L)

Teck Leong Metals Pte Ltd v Ban Soon Cheong Pte Ltd

1. The Parties

- 1.1 The Complainant, Teck Leong Metals Pte Ltd (“TLM”), is a limited exempt private company incorporated in the Republic of Singapore, whose registered address is at 28 Kelantan Road, #01-127, Singapore 200028. The Complainant was represented by Dr. Stanley Lai and Mr. Nicholas Lum of M/s Allen & Gledhill.
- 1.2 The Respondent, Ban Soon Cheong Pte Ltd (“BSC”), is a company with its registered address at 217 Ubi Avenue 4, Intrepid Warehouse Complex, Singapore 408810. The Respondent was represented by Mr. Gilbert Leong and Ms Alana Soo of M/s Rodyk & Davidson.
- 1.3 In this decision, the Complainant and Respondent will be referred to collectively as the “Parties”.

2. The Domain Name and Registrar

- 2.1 The domain names in issue are “teckleong.sg” and “teckleongmetals.sg”.
- 2.2 The Registrar for the domain names is Webvisions Pte Ltd.

3. Procedural History

- 3.1 The Complainant submitted its complaint (the “Complaint”) pursuant to the Singapore Domain Name Dispute Resolution Policy (the “Policy”) and the Rules for the Singapore Domain Name Dispute Resolution Policy (the “Rules”).
- 3.2 The Secretariat for the Singapore Domain Name Dispute Resolution Policy (the “Secretariat”) received the Complaint in hard copy on 22 September 2005. After checking the Complaint for administrative compliance with the Policy and the Rules, the Secretariat forwarded the Complaint, together with a covering minute and the prescribed Complaint Notification Instructions, to the Respondent on 7 September 2005.
- 3.3 The Respondent submitted its Response on 14 October 2005.
- 3.4 Both Parties agreed to have the dispute decided by a single member Administrative Panel.
- 3.5 Both Parties do not agree to have the dispute mediated by the Administrative Panel before the Administrative Panel is called upon to decide the dispute. Both Parties do not consent to having the terms of any settlement that may be reached between the Parties,

whether as a result of mediation by the Administrative Panel or otherwise, reflected in a decision of the Administrative Panel.

- 3.6 The Secretariat arranged for Mr. Jim Lim, to be the Panel to decide the above dispute. The Panel will forward its decision on the complaint to the Secretariat on 8 November 2005.
- 3.7 The Complainant had originally proceeded to file a Complaint against both BSC and Teck Leong Industries Pte Ltd (“TLI”) pursuant to the Singapore Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Singapore Network Information Centre (SGNIC) Private Limited (“SGNIC”) as the registration authority for the Singapore country code top level domain on 8 September 2005.
- 3.8 The Secretariat of the Singapore Domain Name Dispute Resolution Service (“the Secretariat”) checked the Complaint for administrative compliance with its Rules and Supplemental Rules. The Secretariat subsequently found certain parts of the Complaint to be administratively deficient.
- 3.9 By an email dated 15 September 2005, the Secretariat requested for the Complaint to be resubmitted, with the necessary clarifications, within 5 working days after the date of notification.
- 3.10 The administrative deficiencies are as follows:-
 - (a) That the contact particulars of TLI as set out in the SGNIC WHOIS database has been omitted from the Complaint;
 - (b) That there is no evidence to show that the Respondent has agreed to accept service of the Complaint through its solicitors;
 - (c) That the Complainant has joined two (2) separate entities in these proceedings.
- 3.11 The Complainant has since made the necessary clarifications, and has now resubmitted this present Complaint which is directed against only one Respondent, Ban Soon Cheong Pte Ltd.

4. Factual Background

- 4.1 The Complainant states as follows:
 - 4.1.1 The Complainant is in the business of providing retail services pertaining to hardware and engineering materials. The Complainant is well-known in Singapore and is a leading supplier of hardware and engineering materials.
 - 4.1.2 The Complainant is also the registrant and owner of the domain names, *inter alia*, “teckleongmetals.com” and “teckleongmetals.com.sg” and “teckleong.com”.
 - 4.1.3 The Complainant owns the goodwill in and is the rightful proprietor of the following trade marks in Singapore (“the Teck Leong marks”)

- (a) T00123776E “TECK LEONG” in Class 35 for “the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase goods in a retail store specialising in the sale of hardware and engineering materials.
- (b) T00112777C “德隆” in Class 35 for “the bringing together, for the benefit of others, of a variety of goods, enabling customers to conveniently view and purchase goods in a retail store specialising in the sale of hardware and engineering materials.”

4.1.4 The Complainant wishes to add that these registered trade marks have not been challenged by the Respondent nor any other parties since the registered date of 21 July 2000.

4.1.5 The Complainant is well-known in Singapore and has used the Teck Leong Marks continuously and extensively on its goods and services since 1999.

4.1.6 Sample advertising and marketing expenses incurred in promoting and advertising the Teck Leong marks by the Complainant in Singapore, are approximately as set out below:

Year	Total Amount
1999	S\$3,073.51
2000	S\$7,185.28
2001	S\$11,522.04
2002	S\$10,584.66
2003	S\$15,868.56
2004	S\$15,465.00
2005 (as of date of complaint)	S\$11,012.14

4.2 The Complainant further states:

4.2.1 The Complainant was first registered in Singapore as a partnership under the name Teck Leong Metals Trading on 26 March 1999. This was subsequently converted into a limited exempt private company Teck Leong Metals Pte Ltd on 19 May 2000.

4.2.2 In or around June 2005, the Complainant learnt from one of its Directors that the Domain Names were not available for registration, the same having been registered by the Respondent and TLI.

4.2.3 The report indicated that the said Domain Names were registered by the Respondent.

4.2.4 On 25 July 2005, the Complainant’s solicitors, Allen & Gledhill, conducted a check on the Domain Names. They were accordingly directed to a web-site

allowing for the request for quotations for the sale of hardware and engineering materials offered by TLI.

4.2.5 By way of a letter dated 15 July 2005, the Complainant's solicitors sent a letter to the Respondent and TLI to demand the transfer of the Domain Names to the Complainant.

4.3 The Respondent states as follows:

4.3.1 Respondent is in the business of providing retail services pertaining to hardware and engineering materials, including metals like copper & copper alloys, brass & brass alloys, bronze & bronze alloys, aluminium, stainless steel, lead, steel and graphite. The Respondent is well-known in Singapore, Malaysia, Indonesia and is a leading supplier of hardware and engineering materials.

4.3.2 The Respondent was incorporated on 17 March 2004 and is owned by members of one family (the "Kuah family"), namely Kuah Lian Heng, Kuah Beng Huat (Ke Mingfa), Kuah Beng Suan, Kuah Beng Hui and Kuah Beng Har.

4.3.3 Members of the Kuah family also own Teck Leong Industries Pte Ltd ("TLI"). TLI was incorporated on 9 April 1999. TLI owns the domain name "teckleong.com.sg". This domain name has been registered since 11 April 2000.

4.3.4 The "Teck Leong" mark was invented and first used by Mr. Kuah Chong Boon ("柯重本"), the great grand father of the Mr. Kuah Beng Huat, Ms. Kuah Beng Suan, Ms. Kuah Beng Hui and Ms. Kuah Beng Har, who are shareholders of the Respondent. The Chinese equivalent for "Teck Leong" is "德隆". The word "Chop" was commonly used in those days to refer to a company/business and is therefore a generic element in the name. The partnership is hereinafter referred to as "TL". As there were very few businesses retailing hardware and engineering materials in the 1930s, TL soon became very well-known in the trade and acquired substantial goodwill. Many years later, Mr. Kuah Chong Boon invited Mr Lee Boon Ser's father to become a partner of TL. Mr Lee Boon Ser is a shareholder of the Complainant and is fully aware that it was Mr Kuah Chong Boon who had invented and built up the business under the name Teck Leong. In 1956, Mr. Kuah Chong Boon passed away and his son, Mr Kuah Ko Hock, inherited Mr. Kuah Chong Boon's share of the business in TL and continued to participate in the management of TL.

4.3.5 In 1974, Teck Leong Hardware Pte Ltd ("TLH") was incorporated to take over the business of TL as well its assets, liabilities and goodwill. TLH was fully owned by members of the Kuah family and members of Mr Lee Boon Ser's family ("Lee family"). Shareholder Low Chon Moi is the wife of Mr Kuah Lian Heng or mother of Mr Kuah Beng Huat and shareholder Law Piak Kian is the wife of Mr Lee Boon Ser. TLH conducted business / trade at the premises located at Block 28, Kelantan Road, Unit 01-127 and Unit 01-129. This area is well-known for the retail of metals and engineering materials and TLH was recognised as the leading supplier of hardware and engineering materials.

4.3.6 On 16 March 1999, the shareholders of TLH resolved that as a consequence of the differences between the Lee and Kuah families, TLH should cease business operations with effect from 31 March 1999. Both families agreed to voluntarily

liquidate TLH. The shareholders of TLH agreed to divide all assets of TLH equally between the Kuah and Lee families. It was also agreed that the Kuah and Lee families may each continue to operate in the same or similar business as that of TLH's. To that end, it was resolved in that same meeting that:

- (i) With effect from 1 April 1999, the directors of TLH may engage themselves in any businesses elsewhere within and without Singapore including business activities similar to those of TLH; and
- (ii) TLH approves the sale of its existing trading premises in the following manner:
 - i sale of Block 28, Kelantan Road, Unit 01-127 to Lee Boon Ser for S\$620,000; and
 - ii sale of Block 28, Kelantan Road, Unit 01-129 to Kuah Lian Heng for S\$620,000.

The resolution (ii) above essentially splits the existing trading premises of TLH into two.

- 4.3.7 All other assets of TLH were divided equally between the Kuah and Lee family. This is evidenced by the letter dated 19 February 2001 addressed to the Liquidator of TLH and signed by representatives of the Lee family, namely, Lee Boon Ser, Law Piak Kian and Lee Boon Tiong, acknowledging that the assets of TLH have been distributed in the manner set out in letter. The Respondent would highlight that Ban Soon Cheong Hardware Trading is named as the entity purchasing the trading stocks and some motor vehicles belonging to TLH. It is evident from this letter that the Lee family is well aware that Ban Soon Cheong Hardware Trading is owned by the Kuah family and that TLH's trading stocks and motor vehicles were sold to Ban Soon Cheong Hardware Trading to enable the Kuah family to continue trading in hardware and engineering materials using the premises sold to Mr Kuah Lian Heng.
- 4.3.8 On 16 March 1999, the same day that it was resolved the TLH should cease operations, Mr. Kuah Lian Heng registered the sole proprietorship of Ban Soon Cheong Hardware Trading ("BSCH") and caused BSCH to lodge Form TM 14 with the Registry of Companies & Business to apply for the approval and reservation of the company name "Teck Leong Industries Pte Ltd". This application also shows that BSCH and Teck Leong Industries Pte. Ltd. are in fact related to each other.
- 4.3.9 Teck Leong Industries Pte Ltd ("TLI") was incorporated on 9 April 1999. There was a lapse of time between the approval of the name and the incorporation of TLI because the Kuah family believed that TLI must be incorporated on an auspicious date and 9 April 1999 was the earliest auspicious date available. In addition, time was also needed to decide which member of the Kuah family should become shareholders and/or officers of TLI. Mr Kuah Ko Hock was already quite old at that time and he did not wish to be involved in the business any more. The goodwill in the unregistered trademark "Teck Leong" was verbally assigned to Mr Kuah Beng Huat, the only grandson in the family.

- 4.3.10 Notwithstanding that TLI was only incorporated on 9 April 1999, the Kuah family had continued to trade and service the old customers of TLH from 1 April 1999 through BSCH doing business at Block 28, Kelantan Road, Unit 01-129, the premises purchased by Mr. Kuah Lian Heng, from TLH. Upon the incorporation of TLI, TLI also conducted its business alongside BSCH's at Block 28, Kelantan Road, Unit 01-129 ("TLI's Kelantan Shop") and to this date continues to trade in these premises. Photos show that the Complainant's premises are immediately adjacent to TLI's Kelantan Shop.
- 4.3.11 The Complainant has conveniently omitted to mention this in the Complaint as they seek to create the false impression that the Complainant has no knowledge that TLI has been trading using the "Teck Leong" mark. BSCH's signboard is placed next to TLI's signboard. The Complainant has been trading next to TLI's Kelantan Shop since 1999. It is inconceivable and clearly mischievous for the Complainant to claim that the Respondent is in no way related to TLI or have no connection to the "Teck Leong" mark.
- 4.3.12 It is evident from the foregoing that the Kuah family and the businesses it controls (in particular, TLI) are the persons / entities in Singapore that are commonly and well-known simply by the name "Teck Leong". The Respondent's customers have simply addressed the Respondent as "Teck Leong". The signboard displayed in TLI's Kelantan Shop continues to be an assurance and promise to TLI's and BSCH's customers that the Kuah family, Mr Kuah Chong Boon's descendants, will continue to uphold the integrity and quality of the business that Mr Kuah Chong Boon has passed down.
- 4.3.13 Although TLI and BSCH are separate legal entities, they are owned and managed by the same members of the Kuah family. TLI's primary focus was to continue dealing with customers of TLH, who are familiar with the name "Teck Leong". BSCH serves both with old TLH customers as well as new customers in the plastic moulding and precision engineering sector. BSCH's business grew rapidly and in the year 2004, the Respondent was incorporated to assist and eventually take over BSCH's role.
- 4.3.14 The Kuah family owns and manages all four business entities ("Kuah Group") as one, always with the overall aim of improving the efficiency, productivity and profitability of the Kuah Group as a whole.
- 4.3.15 The business of the Kuah Group grew substantially over the years. Approximate sales figures of the Kuah Group for the financial years ending 2000 till 2005 are set out below:-

Financial Year Ending	Sales figures (S\$)
2000	1,964,459
2001	2,514,607
2002	3,069,518
2003	4,644,215
2004	4,286,626

2005	5,983,909
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The Kuah Group's physical trading premises also expanded. The Kuah Group now also conducts their business at Ubi Avenue 4. The Kuah Group also bought 2 commercial warehouse properties located at No. 217 & 219, Ubi Avenue 4. The Respondent continues to trade in the same premises as TLI.

- 4.3.16 From 1999 to date, the Kuah Group has invested substantial amounts of money to promote the "Teck Leong" and "Ban Soon Cheong" marks. Approximate advertising and marketing expenses incurred by the Kuah Group in promoting and advertising the "Teck Leong" and "Ban Soon Cheong" marks are set out below:

Year	Advertising Expenditure (S\$)
1999	8,495
2000	11,700
2001	11,091
2002	12,015
2003	15,944
2004	19,320
2005 (9 months period)	19,435

- 4.3.17 As above stated, the Kuah Group is operated as a single group. To this end, advertisements made by the Kuah Group typically show both the "Teck Leong" and Ban Soon Cheong marks. It is well-known within the trade that Ban Soon Cheong and Teck Leong are managed by the Kuah family and are part of the Kuah family's business activities. It is evident from the advertising figures that the Kuah Group has invested a lot more money in promoting the mark "Teck Leong". The Respondent contends that when customers in the hardware and engineering retail trade refer to "Teck Leong", they mean TLI and not the Complainant. The goodwill in the Teck Leong mark rests with the Kuah Group, in particular TLI, and not the Complainant.
- 4.3.18 The Kuah Group consists of four separate legal entities, they are owned and effectively operated as one entity. The four entities within the Kuah Group share the same principal place of business, same telephone and fax lines and are run by the same management staff and workers. Common costs such as advertising, marketing, entertainment, staff welfare and transportation are also shared. To benefit from economies of scale and for administrative convenience, one entity within the Kuah Group will usually negotiate and enter into agreements with third parties for the provision of goods and services to the all entities within the Kuah Group. In the usual course of business, suppliers will only invoice that entity within the Kuah Group which conducted the negotiations. All costs and expenses incurred by the Kuah Group of Companies will then be allocated amongst all companies or relevant entities within the Kuah Group. This is a common accounting practice adopted worldwide by groups of related companies

and the Kuah Group has been constantly adopting this accounting method of allocation for costs and expenses incurred by one entity for another within the Kuah Group.

- 4.3.19 On 11 April 2000, the Kuah Group registered its first domain name, “teckleong.com.sg” (the subject of another complaint lodged by the Complainant against TLI). This domain name was registered under the name of TLI but was used by both TLI and BSCH. The Respondent highlights that as at 11 April 2000, the Complainant had yet to file any trademark applications nor secured the registration of any domain names bearing the words “Teck Leong”. The Complainant is fully aware that the Kuah family owns the goodwill in the Teck Leong mark and has used / is using the domain name “teckleong.com.sg” in promoting the Kuah Group’s business.
- 4.3.20 The Kuah Group had decided to register “teckleongmetal.com” and “teckleongmetals.sg” when it realised that there are many companies carrying on businesses in Singapore outside of the metal trading industry.
- 4.3.21 As the Respondent was the entity dealing with Creative Eworld Pte Ltd (“Creative”), a professional IT company in 2005, the Respondent was named as the registrant for all the “.sg” domain names registered by Creative on behalf of the Kuah Group. This includes all the 11 “.sg” domain names registered except “teckleong.com.sg” which was registered by TLI before the Kuah Group had consulted Creative. This was done for administrative convenience and is not unlike the common practice of a group of companies using only one entity to hold all its intellectual property rights. Internet users accessing these domain names would not be confused as domain names bearing “teckleong” would be correctly routed to TLI’s websites whilst domain names bearing “bansooncheong” would be routed to Ban Soon Cheong’s website. Domain names bearing product names would be directed to either Ban Soon Cheong’s or TLI’s website.
- 4.3.22 The Kuah Group has invested substantially in online advertising. Creative also posted the Kuah Group’s websites to major search engines such as Yahoo, Lycos and Google. The 16 domain names were registered and used by the Kuah Group *bona fide* to ensure that users looking for entities within the Kuah Group or looking for goods offered by the Kuah Group will be directed to the correct websites. The domain names surrounding this dispute, namely “teckleong.sg” and “teckleongmetals.sg” (“Domain Names”) are derived from the mark “Teck Leong” and the goods sold by the Kuah Group under the Teck Leong mark, namely metal.

5. Parties’ Contentions

5.1 The Complainant contends as follows:

- (a) The Respondent’s Domain Names are identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- (b) The Respondent has no rights or legitimate interests in respect of the Domain Names: and

- (c) The Domain Names have been registered or are being used in bad faith by the Respondent.

5.2 The Respondent contends as follows:

- (a) The Respondent has legitimate rights and interests in respect of the Domain Names
- (b) The Domain Names are registered and are being used by the Respondent and/or the Kuah Group in good faith
- (c) The Complainant has no rights to the “Teck Leong” mark and has brought this Complaint in bad faith to attempt to deprive the Respondent of the Domain Names

6. Discussion and Findings

6.1 Under paragraph 4a of the Policy, the Complainant must establish the following three conditions to be entitled to the remedy under paragraph 4i of the Policy of a transfer of a domain name:

- 6.1.1 the registrant’s domain name is identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights;
- 6.1.2 the registrant has no rights or legitimate interests in respect of the domain name; and
- 6.1.3 the registrant’s domain name has been registered or is being used in bad faith.

6.2 Identical to Name/Mark in Which Complainant Has Rights

6.2.1 With respect to the first condition to be met under paragraph 4a(i) of the Policy, the Complainant has registered the name or mark “Teck Leong” in Singapore as stated at paragraphs 4.1.3 (a).

6.2.2 The Panel finds that:

- (1) the Complainant has rights in the name or mark “Teck Leong”; and
- (2) the Domain Names complained off is identical to the name or mark “Teck Leong” in the case of the domain name “teckleong.sg” and has a component identical to the name or mark “Teck Leong” in the case of the domain name “teckleongmetals.sg”.

6.2.3 The Panel is therefore of the view that the Complainant has satisfied the requirements of paragraph 4a(i) of the Policy that the Domain Names are identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights.

6.3 Rights or Legitimate Interests of the Registrant

6.3.1 On the second condition under paragraph 4a(ii) of the Policy, the Complainant is required to prove that the Respondent has no rights or legitimate interests in respect of the Domain Names. Pursuant to paragraph 4c of the Policy, the following in particular but without limitation, which if proved, shall demonstrate the Respondent's rights to or legitimate interests in the Domain Names for purposes of this second condition:

- (1) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services;
- (2) the Respondent has been commonly known by the Domain Names, even if it has acquired no trade mark or service mark rights; or
- (3) the Respondent is making a legitimate non-commercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

6.4 Bona Fide Offering of Goods and Services

6.4.1 The Respondent uses the two Domain Names complained off to point users to the "teckleong.com.sg" website which the Respondent has demonstrated legitimate interest in. The "teckleong.com.sg" website offers goods which Teck Leong Industries Pte Ltd trade in. The Respondent and the Teck Leong Industries Pte Ltd are part of the commercial endeavours of the Kuah family which owns both the Respondent and Teck Leong Industries Pte Ltd.

6.4.2 The Panel finds that the Respondent is using the Domain names in connection with a *bona fide* offering of goods or services.

6.5 Commonly Known by Domain Name

6.5.1 The Respondent's name is Ban Soon Cheong Pte Ltd which bears no resemblance to the Domain Names.

6.5.2 The Respondent has however, asserted and exhibited evidence in support that:

- (a) the "Teck Leong" name is owned by members of the Kuah family;
- (b) Teck Leong Industries Pte Ltd is owned by members of the Kuah family;
- (c) the Kuah family has at least an equal or concurrent, and antecedent, claim to the "Teck Leong" name; and
- (d) the Complainant is aware, or ought to be aware, of the Respondent and the Respondent's connections with the "Teck Leong" name and Teck Leong Industries Pte Ltd.

6.5.3 In the absence of evidence to rebut the Respondent's evidence, the Panel finds that the Respondent is part of a family business that is commonly known by the Domain Names.

6.6 *Fair Use of Domain Names*

6.6.1 The Complainant's claim of their rights to the "Teck Leong" name is based on their evidence that date from:

- (a) 21 July 2000 when their trade mark registrations were deemed registered; or
- (b) 26 March 1999 when they first registered the business, Teck Leong Metals Trading; and
- (c) use and promotion presumably sometime on or after (b) above.

6.6.2 The Respondent's claim of their rights to the "Teck Leong" name is based on their evidence that date from:

- (a) 17 December 1914, the date of the Overseas Chinese Registration Certificate issued to Ke Chong Ben (Hanyu Pinyin spelling of Kuah Chong Boon) indicating that he traded under the name "德隆" as recorded on the Certificate which Chinese characters are identical to the trade mark under the Complainant's T00112777C, being one of the Teck Leong marks. Kuah Chong Boon is the great grandfather of the current members of the Kuah family, and who are shareholders of the Respondent; or
- (b) 9 April 1999 when the Kuah family first registered the company, Teck Leong Industries Pte Ltd.

6.6.3 Based on the above, the candid disclosure of the Respondent in paragraph 4.3.4 above that the patriarch Kuah Chong Boon had invited Lee Boon Ser's father to be a partner in TL and the evidence surrounding the dissolutions of TLH as set out in paragraphs 4.3.6 and 4.3.7 above, the Panel finds that the use of the "Teck Leong" name by TL partnership and by TLH over a period from the 1930s to 31 March 1999, gives both the Lee and the Kuah families claim to the "Teck Leong" name.

6.6.4 The Panel is therefore of the view that the Respondent's use of the Domain is fair and legitimate.

6.7 *Registration/Use of Domain Names in Bad Faith*

6.7.1 The third and final condition to be met under paragraph 4a(iii) of the Policy requires the Complainant to prove that the Domain Names has been registered or is being used in bad faith. The Policy clarifies at paragraph 4b that the following circumstances in particular but without limitation, if found to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (1) circumstances indicating that the registrant has registered or acquired the domain names primarily for the purpose of selling, renting, or otherwise transferring the domain names registration to the complainant, who bears the name or is the owner of the trade mark or service mark, or to a competitor of that complainant, for valuable consideration in excess of the registrant's out-of-pocket costs directly related to the domain names;
- (2) the registrant has registered the domain names in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the registrant has engaged in a pattern of such conduct;
- (3) the registrant has registered the domain names primarily for the purpose of disrupting the business of a competitor; or
- (4) by using the domain names, the registrant has intentionally attempted to attract, for commercial gain, internet users to the registrant's website or other on-line location, by creating a likelihood of confusion with the complainant's name or mark as to source, sponsorship, affiliation, or endorsement of the registrant's website or location or of a product or service on the registrant's website or location.

6.7.2 The Panel repeats the observation of paragraphs 6.5.1 to 6.5.2 and 6.6.1 to 6.6.3 above and finds that:

- (a) the Complainant has failed to make a case that the Respondent had registered or is using the Domain Names in bad faith.
- (b) no evidence has been adduced to show that any of the circumstances under paragraph 4b of the Policy is present in the present Complaint.

6.7.3 Accordingly, the Panel finds that the Domain Names have not been registered or are being used in bad faith by the Respondent and that the condition under paragraph 4a(iii) of the Policy has therefore not been satisfied.

6.8 *Reverse Domain Name Hijacking*

6.8.1 Paragraph 1 of the Rules defines "Reverse Domain Name Hijacking" as "using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name". Paragraph 15(e) of the Rules provides that if a Panel "finds that the complaint was brought in bad faith, for example, in an attempt at Reverse Domain Name Hijacking, or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding".

6.8.2 The Panel finds that the Complainant had legitimate basis for proceeding with the Complaint, and does not find that the Complaint was brought in bad faith.

7. **Conclusion**

The Panel finds that the Complainant has only succeeded in establishing that the Respondent's Domain Names are identical or confusingly similar to a name, trade mark or service mark in which the Complainant has rights but has failed to establish that the

Respondent has no rights or legitimate interests in respect of the Domain Names; and that the Respondent's Domain Names have been registered or is being used in bad faith. Accordingly, the remedy sought for the Domain Names to be transferred to the Complainant is denied by the Panel.

Jim Lim
Sole Panellist

8 November 2005