

SINGAPORE DOMAIN NAME DISPUTE RESOLUTION SERVICE

Administrative Panel Decision

Case No. SDRP-2008/0001(F)

**(1) Sony Ericsson Mobile Communications AB;
(2) Telefonaktiebolaget LM Ericsson; and (3) Sony Corporation
v Zheng Zhongxing**

1. The Parties

1.1 There are 3 Complainants in this case, namely:

1.1.1 Sony Ericsson Mobile Communications AB, a company incorporated in Sweden with its registered office address at Nya Vattentorget, S 221 88 Lund, Sweden ("**Sony Ericsson**");

1.1.2 Telefonaktiebolaget LM Ericsson, a company incorporated in Sweden with its registered office address at Torshamnsgatan 23, SE – 16483 Stockholm, Sweden ("**Ericsson**"); and

1.1.3 Sony Corporation, a company incorporated in Japan with its registered office address at 6-7-35 Kitashinagawa, Shinagawa-ku, Tokyo, 141-0001 Japan ("**Sony**").

1.2 The Respondent is Mr Zheng Zhongxing, an individual apparently based in China.

2. The Domain Name and Registrar

2.1 The domain name in issue is "sonyericsson.com.sg" ("**the Domain Name**").

2.2 The Registrar of the Domain Name is Web Commerce Communications (Singapore) Pte. Ltd., a company incorporated in Singapore of 67, Tanjong Pagar Road, Singapore 088488, an accredited registrar authorised by Singapore Network Information Centre (SGNIC) Pte Ltd ("**SGNIC**") of 8 Temasek Boulevard, #14-00 Suntec Tower Three, Singapore 038988.

3. Procedural History and Observations

3.1 The Complainants submitted their complaint dated 18th April 2008 ("**the Complaint**") pursuant to the Singapore Domain Name Dispute Resolution Policy ("**the Policy**"), the Rules of the Singapore Domain Name Dispute Resolution Policy ("**the Rules**") and the Supplemental Rules of the Singapore Domain Name Dispute Resolution Policy ("**the Supplemental Rules**").

3.2 Receipt of Complaint

The Secretariat for the Singapore Domain Name Dispute Resolution Service ("**the Provider**") received:

3.2.1 the Complaint by email and by facsimile transmission on 21 April 2008, followed by the hard copy of the Complaint on 29 April 2008; and

3.2.2 the prescribed fees paid by the Complainants on 24 April 2008 in connection with this administrative proceeding.

3.3 Notification of Complaint

3.3.1 On 5 May 2008, the Provider:

(1) issued a formal letter dated 5 May 2008 ("**Cover Letter**") addressed to the Respondent at the China postal address of the Respondent indicated in SGNIC's Online WHOIS database ("**Respondent's Registered Address**") but withheld immediately sending it out as the Respondent's Registered Address was determined not to be genuine nor complete such as to enable mail to be sent to and received at such address;

(2) requested from SGNIC the other available contact particulars of the Respondent registered with SGNIC; and

(3) notified the Respondent of and provided him with a copy of the Complaint, by email sent in 3 separate messages due to the large file size of the Annexes to the Complaint ("**First Lot Email**") to his email address at buyname@msn.com, as indicated in SGNIC's Online WHOIS database and as provided by SGNIC ("**Respondent's Email Address**").

3.3.2 Pursuant to the other contact particulars provided by SGNIC, the Provider also:

(1) forwarded to the Respondent on 6 May 2008, a copy of the Complaint, together with the prescribed Complaint Notification Instructions, by facsimile transmission to the China fax number of the Respondent provided by SGNIC, albeit under a copy of the Cover Letter issued the day before;

(2) thereafter called the Respondent on the same day, 6 May 2008, over the telephone at the China telephone number provided by SGNIC, during which the person who answered the call and spoke with representatives of the Provider –

(a) identified himself as the Respondent;

- (b) confirmed receipt of a copy of the Complaint;
 - (c) indicated that he would not reply nor respond to the Complaint; and
 - (d) provided the postal address to which documents were to be sent to him ("**Respondent's Postal Address**"); and
- (3) sent to the Respondent on 7 May 2008, a copy of the Complaint, together with the prescribed Complaint Notification Instructions, under the Cover Letter by courier service to the Respondent's Postal Address; and

3.3.3 additionally forwarded to the Respondent on 7 May 2008, a copy of the Complaint, together with the Annexes to the Complaint by email again to the Respondent's Email Address with reference to and by way of further precaution and follow up to the First Lot Email (referred to at paragraph 3.3.1(3) above).

3.4 Compliance

- 3.4.1 Under Paragraph 4(a) of the Rules, the Provider is obliged to forward the Complaint to the Respondent, in accordance with Paragraph 2(a) of the Rules, within 3 working days of its receipt of the Complaint or the fees payable by the Complainants, whichever is later. However, based on the sequence of the events described at paragraphs 3.2 and 3.3 above, it would appear that such time line may not have been technically complied with by the Provider.
- 3.4.2 Taking into account the circumstances as described at paragraph 3.3 above, and in particular, the extra time and effort required for and expended by the Provider to determine other contact particulars of the Respondent on account of the Respondent's Registered Address not being genuine nor complete as stated above, the Panel:
- (1) pursuant to Paragraph 10(c) of the Rules, allows the slight extension of time under Paragraph 4(a) of the Rules within which the Complaint was notified to the Respondent; and
 - (2) finds that –
 - (a) the Provider had in accordance with Paragraph 2(a) of the Rules, employed reasonably available means calculated to achieve actual notice of the Complaint to the Respondent, being on 6 May 2008 when the Provider completed its responsibilities under Paragraph 2(a) of the Rules; and

- (b) accordingly, as provided under Paragraph 4(c) of the Rules, such date of 6 May 2008 is the commencement date of this administrative proceeding in relation to the dispute on the Domain Name ("**Commencement Date**").

3.5 Response

The Respondent has failed to-date, to file any response to the Complaint, which under Paragraph 5(a) of the Rules, the Respondent was required to do within 15 working days after the Commencement Date.

3.6 Panel

3.6.1 By way of a letter dated 29 May 2008 sent to the Complainants and the Respondent (collectively "**the Parties**") sent by email, the Provider notified the Parties of the appointment of Ms Joyce A. Tan as the sole panellist on the Administrative Panel ("**the Panel**") to decide the dispute between the Parties over the Domain Name, after the said Ms Joyce A. Tan had signed the Statement of Acceptance and Declaration of Impartiality and Independence.

3.6.2 The Panel received a hard copy of the Complaint from the Provider on 29 May 2008.

4. **Factual Background**

4.1 The Complainants state in the Complaint that:

4.1.1 Sony is the sole and exclusive owner of the trade mark "SONY" registered with the Office for Harmonization in the Internal Market in relation to apparatus and instruments for data communication, evidence of which is provided in the Complaint;

4.1.2 Ericsson is the sole and exclusive owner of the trade mark "ERICSSON" registered with the Office for Harmonization in the Internal Market in relation to apparatus and instruments for data communication, evidence of which is provided in the Complaint; and

4.1.3 Sony Ericsson is a joint venture company equally owned by Sony and Ericsson, which joint venture company -

- (1) is a licensee of both Sony and Ericsson with respect to the use of the combination of the trade marks "SONY" and "ERICSSON", both as a company name, as well as a trade mark for its products;
- (2) has been duly registered since October 2001 with the combined name "SONY ERICSSON" as part of its corporate name, evidence of which is provided in the Complaint;

- (3) is the owner and operator of the website at www.sonyericsson.com where it provides Internet users with information about its products (especially mobile phones) and related topics; and
- (4) has become in the short time since its formation, a major player in the field of mobile telephones so that the combined name "SONY ERICSSON" is globally well-known in the telecommunication industry and among consumers.

4.2 The Complainants further state in their Complaint that:

- 4.2.1 without authorisation of the Complainants, the Respondent registered the Domain Name, as evidenced by a copy of the printout extracted from the SGNIC Online WHOIS database on 18 April 2008 annexed to the Complaint, which shows *inter alia* that the Respondent as the registrant of the Domain Name from 7 December 2007; and
- 4.2.2 the Complainants sent several letters to the Respondent requesting for the Respondent's transfer of the Domain Name, as in part evidenced by a copy of the email correspondence exchanged during the period 10 to 15 April 2008 between the Complainants' lawyer and the Respondent annexed to the Complaint which shows that -
 - (1) the Respondent initially offered to transfer the Domain Name in exchange for payment of 4,000 Euros; and
 - (2) when told that the Complainants would only pay a maximum of 400 Euros as compensation for any transfer and registration costs, the Respondent made a final offer to transfer the Domain Name for no less than the amount of 3,600 Euros.

5. The Parties' Contentions

5.1 The Complainant

The Complainants contend as follows:

- 5.1.1 the Domain Name is identical or confusingly similar to the marks "SONY", "ERICSSON" and "SONY ERICSSON" in which the Complainants have rights as set out at paragraph 4.1 above;
- 5.1.2 the Respondent has no rights or legitimate interests in respect of the Domain Name as the Respondent -
 - (1) has not been authorised by the Complainants to use any of their marks in any way;

- (2) cannot demonstrate that he has made use of, or demonstrable preparation to use, the Domain Name or name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services;
- (3) has not been commonly known by or affiliated with the Domain Name; and
- (4) has not made any legitimate non-commercial or fair use of the Domain Name;

5.1.3 the Domain Name has been registered and/or is being used by the Respondent in bad faith for the following reasons -

- (1) the Respondent's deliberate use of somebody else's trade mark cannot be regarded as fair use;
- (2) the Respondent's use of the Domain Name is unfair to the Complainants as it places the Complainants' reputation and goodwill in the hands of the Respondent and out of the control of the Complainants; and
- (3) the Respondent has indicated his willingness to transfer the Domain Name for a price in excess of the costs of compensation for transfer and registration of the Domain Name in the circumstances as set out at paragraph 4.2.2 above.

5.2 The Respondent

The Respondent did not file or submit any response within the period established by the Rules as stated in paragraph 3.5 above and, on the contrary, had indicated to the Provider that he would not be doing so, as stated in paragraph 3.3.2(2)(c) above.

6. Discussion and Findings

6.1 Proceeding With Lack of Response

6.1.1 In deciding the present dispute, it is notable that the Respondent has failed to file any response to the Complaint as stated at paragraph 3.5 above. In the premises and in the absence of exceptional circumstances, pursuant to Paragraph 5(f) of the Rules, the Panel is entitled and proceeds to decide on the dispute based upon the Complaint.

6.1.2 In so relying on the Complaint, the Panel is guided by and applies the following as stated in *Samsung Electronics Co., Ltd v Funexpresss.com.sg Pte Ltd* (SDRP Case No. 2002-0004(F) ("**Samsung Case**")), relying on several WIPO cases:

- (1) "as the Respondent has not submitted a Response, and there having been no exceptional circumstances brought to the attention of the Panel, ... this Panel is entitled to ... accept as true the factual averments of the Complaint for purposes of these proceedings";
- (2) the "Respondent's default, however, does not lead to an automatic ruling in favour of the Complainant. The burden remains on the Complainant to establish, on a balance of probabilities, that it is entitled to a transfer of the domain name".

6.1.3 However, contrary to the observation of the panel in the Samsung Case that in cases of default, a Complainant's papers may be held to "an exacting standard", this Panel prefers the position taken by the panel in *Mars, Incorporated v Vanilla, Ltd* (WIPO Case No. D2000-0586) disagreeing "with the view that a lack of response calls for greater scrutiny of the evidence or increases the level of proof to be required from the Complainant. A registrant should not be rewarded for its failure to submit to proceedings. Likewise, a complainant should not be disadvantaged when the registrant defaults."

6.2 Requirements

Under Paragraph 4a of the Policy, the Complainants must establish the following three conditions to be entitled to the remedy under Paragraph 4i of the Policy of a transfer of the Domain Name:

- 6.2.1 the Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainants have rights;
- 6.2.2 the Respondent as registrant of the Domain Name has no rights or legitimate interests in respect of the Domain Name; and
- 6.2.3 the Domain Name has been registered or is being used in bad faith.

6.3 Identical/Similar to Name/Mark in Which Complainants Have Rights

- 6.3.1 With respect to the first condition to be met under Paragraph 4a(i) of the Policy, the Complainants must establish both of the following, namely, that:
 - (1) the Complainants have rights in the name or mark "SONY ERICSSON"; and
 - (2) the Domain Name is identical or confusingly similar to the name or mark "SONY ERICSSON".

6.3.2 *Complainants' Rights*

The Panel is satisfied that collectively, the Complainants have rights in the name or mark "SONY ERICSSON", taking into account:

- (1) the matters as set out at paragraph 4.1 above and the existence of trade mark registrations in Singapore for the mark "SONY" owned by Sony and the mark "ERICSSON" owned by Ericsson, as additionally determined by the Panel from the publicly accessible online trade mark registration records of the Intellectual Property Office of Singapore ("**Singapore TM Registrations**");
- (2) the fact that such rights pre-date the registration of the Domain Name in 2007, including -
 - (a) trade mark registrations for the mark "SONY", applications for which were filed by Sony since at least 1968 as evident from the Singapore TM Registrations and trade mark registrations for the mark "ERICSSON", applications for which were filed by Ericsson since at least 1996, as evident from the information provided in the Complaint;
 - (b) the licensed use of the combined name "SONY ERICSSON" by Sony Ericsson as part of its corporate name and as a trade mark in relation to its products as well as its registration and use of the domain name www.sonyericsson.com in connection with its business, all since 2001; and
- (3) the extensive worldwide recognition of and reputation and goodwill attached to the products of Sony Ericsson under the "SONY ERICSSON" name that have grown in the short time since the formation of Sony Ericsson.

6.3.3 *Identical or Confusingly Similar*

- (1) Turning now to whether the Domain Name is identical or confusingly similar to the name or mark "SONY ERICSSON" over which the Complainants have rights as aforesaid, the Panel:
 - (a) does not place significance on the difference in representing the said name or mark in upper or lower case letters nor in whether there is a space between the word "SONY" and the word "ERICSSON"; and
 - (b) notes that it is generally accepted that the addition of the portion ".com" is to be ignored and the comparison is to be with the characterising part of the domain name (see for example,

VAT Holding AG v VAT.com (WIPO Case No. D2000-0607)
and *Croatia Airlines d.d. v Modern Empire Internet Ltd.*
(WIPO Case No. D2003-0455)).

- (2) Accordingly, when the ".com.sg" portion of the Domain Name is discounted, the Panel finds that the Domain Name is identical with the combined name or mark "SONY ERICSSON" over which the Complainants have rights as stated at paragraph 6.3.2 above.

6.3.4 This Panel is therefore of the view that the Complainant has satisfied the requirements of Paragraph 4a(i) of the Policy that the Domain Name is identical or confusingly similar to a name, trade mark or service mark in which the Complainants have rights.

6.4 Rights or Legitimate Interests of Respondent

6.4.1 The second condition under Paragraph 4a(ii) of the Policy requires the establishment of the Respondent's lack of rights or legitimate interests in respect of the Domain Name, which the Complainants have asserted without rebuttal from the Respondent, given the absence of a response altogether. 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 Name 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 Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services;
- (2) the Respondent has been commonly known by the Domain Name, 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 Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

6.4.2 Bona Fide Offering of Goods and Services

- (1) In view of the Complainants' bare assertion that the Respondent cannot demonstrate that he has made use of, or demonstrable preparation to use, the Domain Name or name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services, and in the absence of the Respondent's response to the Complaint, the Panel has found it helpful to visit the Respondent's website at the address of the Domain Name ("**Respondent's Website**") in determining whether the Respondent is using the Domain Name in connection with a *bona fide*

offering of goods or services. Based on such visit, the Panel makes the following observations:

- (a) despite the lack of authorisation to the Respondent from the Complainants as stated in the Complaint, the welcome note in the upper right-hand corner of the Respondent's Website states that it is "your gateway to sites on the Internet for sony ericsson phones"; and
 - (b) the Respondent's Website features several other products obviously competitive to the Complainants' products as well as the addresses of other websites apparently providing further information on such competitive products.
- (2) Given the absence of any evidence to support any claim of rights or legitimate interests in the Domain Name by the Respondent, the Panel finds that the above use of the Domain Name by the Respondent:
- (a) is clearly calculated to mislead Internet users into believing that the Respondent's Website is that of or somewhere associated with the Complainants when it is not, so that having misled users to the Respondent's Website on the strength of the trade marks comprised in the Domain Name, enables the plying of products which compete directly with the products under the said trade marks; and
 - (b) is similar to the "bait and switch" selling method frowned upon by the panel in the case of *Robert Bosch GmbH v Asia Ventures, Inc.* (WIPO Case No. D2005-0946), and which held that the use of the complainant's trade mark to offer for sale or to direct customers to the products of the complainant's competitors is "objectionable, and therefore not *bona fide*, as a misleading use of a trade mark, as a form of unfair competition, and also for reasons of consumer protection"; and
 - (c) cannot in the circumstances be considered, and the Panel therefore finds is not, use in connection with a *bona fide* offering of goods or services by the Respondent.

6.4.3 *Commonly Known by Domain Name*

The Respondent's name is Zheng Zhongxing, which bears no resemblance whatsoever to the Domain Name, in part or otherwise, and there is no information nor evidence of the Respondent being known by any other name resembling or similar to the Domain Name or otherwise.

6.4.4 *Legitimate Non-Commercial or Fair Use*

- (1) In view of the observations at paragraph 6.4.2 above, the Panel cannot find that the Respondent is 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.
- (2) On the contrary, the evidence points to the Domain Name being used for commercial purposes in an illegitimate and unfair way.

6.4.5 The Panel accordingly finds that the condition under paragraph 4a(ii) of the Policy is also satisfied as the Respondent does not have any legitimate right or interest in the Domain Name, on account of the matters stated above in this paragraph 6.4.

6.5 *Registration/Use of Domain Name in Bad Faith*

6.5.1 The third and final condition to be met under Paragraph 4a(iii) of the Policy requires the Complainants to prove that the Domain Name 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 name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 name;
- (2) the registrant has registered the domain name 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 name primarily for the purpose of disrupting the business of a competitor; or
- (4) by using the domain name, 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.

6.5.2 *Transfer of Domain Name*

- (1) The Panel notes that the Respondent has indicated that he would be prepared to transfer the Domain Name for an amount of no less than 3,600 Euros (which the Complainants have said is in excess of the out-of-pocket costs arising from the registration and transfer of the Domain Name). Evidence of the Respondent's said position has been provided by the Complainants by way of the email correspondence exchanged between the Complainants' lawyer and the Respondent as referred to at paragraph 4.2.2 above.
- (2) The availability of such evidence contrasts positively with the previous failure of the Complainants observed by the panel in *Sony Ericsson Mobile Communications AB, Telefonaktiebolaget LM Ericsson and Sony Corporation v Aylin Dzhelilova*, (WIPO Case No. D2006-1568) to bring "any evidence showing that the Respondent would have offered the Disputed Domain Name for sale to any of the Complainants". Nevertheless, given the actual (albeit misleading) *use* of the Domain Name made by the Respondent, this Panel is not prepared to rely on such evidence to necessarily conclude that the Respondent in this case *registered* the Domain Name "*primarily*" for the purpose of selling it to the Complainants or their competitors, culling from the language of Paragraph 4b of the Policy (see paragraph 6.5.1(1) above).
- (3) The Panel therefore does not make, and finds no need to make, any finding of bad faith based purely on the Respondent's apparent willingness to transfer the Domain Name to the Complainants when approached by the Complainants, for a price that the Parties could not agree on.

6.5.3 *Well-Known Mark*

- (1) In registering the Domain Name, the Respondent as registrant would have been and is bound by the terms of the Domain Name Registration Agreement (version 22 October 2007) ("*DNRA*") of SGNIC which provides at paragraph 8.1 thereof, that the registrant represents, warrants and undertakes that the Domain Name "... (b) *is not identical to or confusingly similar with either a registered trade mark, company or business name in Singapore ...*"
- (2) Hence, the Respondent's choice and registration of the Domain Name, bearing and being identical or confusingly similar to the "SONY" and "ERICSSON" marks of the Complainants, which are also registered in Singapore as shown by the Singapore TM Registrations mentioned at paragraph 6.3.2(1) above, was not only in breach of the Respondent's

above representation and warranty under the DNRA, thereby pointing to the Respondent's bad faith on this count but was also a choice made:

- (a) of a name which was so obviously connected with "two well-known multinationals that its very use by someone with no connection with either Complainant reeks of opportunistic bad faith", to quote the panel in the case of *Konica Corporation, Minolta Kabushiki Kaisha aka Minolta Co., Ltd. v IC* (WIPO Case No. D2003-0112);
- (b) at a time when the Complainants had built up the name "SONY ERICSSON" to a globally recognised name as stated at paragraphs 4.1.3(4) and 6.3.2(3) above, so that there is reason to believe that the Respondent –
 - (i) was aware of the Complainants' "SONY ERICSSON" trade mark being well-known when he registered the Domain Name; and
 - (ii) would in all likelihood not have registered the Domain Name in particular, were it not for the Complainant's "SONY ERICSSON" trade mark having been well-known,

being further indications of bad faith on the Respondent's part, as was similarly found in the case of *Veuve Clicquot Ponsardin, Maison Fondée en 1172 v The Polygenix Group Co.* (WIPO Case No. D2000-0163) in relation to a domain name "so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith"; and

- (c) when, according to WHOIS domain name searches conducted by the Panel, Sony Ericsson had already registered (since 16 May 2002) the domain name "sonyericsson.com.cn" in China where the Respondent apparently resides, making it difficult to resist conjecturing that (or at least wondering whether) such China domain name registration might have been what caused the Respondent to seek registration of the then still 'available' Domain Name in Singapore, even though the finding of bad faith in this decision is not dependent on such conjecture.

(4)

Having made such choice in bad faith as aforesaid, the Respondent's bad faith is further borne out by the use to which he applied the Domain Name as described at paragraph 6.4.2 above, which in the Panel's view, falls squarely within the bad faith scenario described in Paragraph 4b of the Policy (see paragraph 6.5.1(4) above), and in

particular, that "by using the domain name, 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".

6.5.4 *Inferences from Lack of Response*

- (1) Although the Panel is satisfied with the finding of bad faith based on the considerations under paragraph 6.5.3 above, in determining the bad faith element, the Panel finds it noteworthy that not only has the Respondent failed, in fact, to file any response in this proceeding but has also indicated to the Provider that he had no intention of doing so, as stated at paragraph 3.3.2(2)(c) above.
- (2) Quite apart from the observations at paragraph 6.1 above on the significance of the Complaint in the face of an absent response, Paragraph 14(b) of the Rules also provides that in the absence of exceptional circumstances, if a party "does not comply with any provision of, or requirement under, these Rules ... the Panel shall draw such inferences therefrom as it considers appropriate".
- (3) Taking into account the circumstances set out in paragraph 6.5.3 above, the Respondent's total disregard for this proceeding despite his obligation under the Rules to file a response, and his knowledge of and direct communication with the Provider on the same, the Panel is minded to and does further infer that the evidence failed to be filed by the Respondent would not have been favourable to the Respondent, so that his conduct in default of the Rules is additional illustration of bad faith on his part. Such an approach finds support in the Samsung Case (see paragraph 6.1.2 above), *Brown Thomas & Company Limited v Domain Reservations* (WIPO Case No. D2001-0592) and *Adilna Ilac Sanayi Ve Ticaret A.S. v Serhat Karadag* (WIPO Case No. D2007-1146).

6.5.5 For the reasons stated above at this paragraph 6.5, the Panel finds that the Domain Name has been registered or is being used in bad faith by the Respondent and that accordingly the condition under paragraph 4a(iii) of the Policy has also been satisfied.

7. **Conclusion**

With the three elements under paragraph 4a of the Policy having been established, the Panel finds that the Complainants are entitled to the remedy of a transfer of the Domain Name as provided under paragraph 4i of the Policy and accordingly directs

that the Domain Name be transferred to the first-named of the Complainants, Sony Ericsson, as requested in the Complaint.



Joyce A. Tan
Sole Panellist
12th June 2008