



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

#### **Hong Kong Trade Development Council v. Ting, Tiffany**

**Case No. D2001-0098**

#### **1. The Parties**

The Complainant is Hong Kong Trade Development Council, a statutory body incorporated in Hong Kong, having a registered office at 38/F, Office Tower, Convention Plaza, 1 Harbour Road, Wanchai, Hong Kong SAR of P. R. China.

The Respondent is a physical person Ting, Tiffany with the contacting address at 5/F., No. 7, Lane 235, Pao-Chaio Road, Shin-Tine, Taipei 231, Taiwan.

#### **2. The Domain Name and Registrar**

The domain name in dispute is [<貿發網.com> (BQ--3CGL65T4PWZA.COM)], which is registered with the registrar Network Solutions, Inc. of 505 Huntmar Park Drive, Herndon, VA 20170, USA.

#### **3. Procedural History**

On January 20, 2001, The WIPO Arbitration and Mediation Center (the "Center") received a communication from the Respondent.

The Center received the Complaint of the Complainant on February 5, 2001 by email and the amended Complaint by email on February 27, 2001 and in hard copy on March 2, 2001.

On February 27, 2001, the Center forwarded the communication from the Respondent to the Complainant.

The Center sent to the Registrar a request for verification of registration data on February 27, 2001. On March 6 and 8, 2001, the Registrar confirmed that the domain name in dispute is registered with Network Solutions, Inc. and the Respondent is the current registrant of the domain name. The disputed domain name registration status is "active".

The Center completed the formal Requirements Compliance Checklist on March 8, 2001.

On March 9, 2001, The Center received the supplemental Filing from the Complainant by email.

On March 13, 2001, the Center sent to the Respondent the Notification of Complaint and Commencement of the Administrative Proceeding. This notification was sent by the methods required under paragraph 2(a) of the Rules. The formal date of the commencement of this administrative proceeding is March 13, 2001.

On April 5, 2001, the Center sent to the Respondent Notification of Respondent's Default.

On April 20, 2001, after receiving a completed and signed Statement of Acceptance and Declaration of Impartiality and Independence, the Center notified the parties of the appointment of a single-member panel consisting of Mr. Li Yong and informed the parties that a decision would be issued by May 3, 2001 absent exceptional circumstances.

#### **4. Factual Background**

The Complainant is a statutory body incorporated in Hong Kong SAR China since 1966 under the Hong Kong Trade Development Council Ordinance (Annex 3 of the Complaint), and its main function is to promote, assist and develop Hong Kong's overseas trade, with particular reference to exports.

The Complainant owns trademark rights for “貿發網” in class 38 in Hong Kong SAR. The trademark registration in Hong Kong was made in December of 1999. The Complainant received a letter from a law firm of Hong Kong named Deacons on October 27, 2000 in which the Complainant was informed that the trademark “tdctrade.com” in Chinese characters “貿發網” had been accepted by the trademark Registrar and was going to be advertised for opposition purposes (Annex 3 of the Complaint).

The Complainant also owns trademark rights for “貿發網” in classes 35, 38 and 42 in Tai Wan. The trademark registration in Tai Wan was made in March of 2000.

All the trademark registrations and applications above-mentioned were made in the name of Hong Kong Trade Development Council.

The domain name [<貿發網.com> (BQ--3CGL65T4PWZA.COM)] was created on November 24, 2000, according to the search result made by the complainant shown in the Annex 1 of the Complaint.

#### **5. Parties' Contentions**

The Complainant contends that Hong Kong Trade Development Council (HKTDC) is a statutory body incorporated in Hong Kong since 1966 with its mission to create and facilitate opportunities in international trade for Hong Kong companies. Developed by HKTDC, <tdctrade.com> is a resourceful web site specialized in trade. This web site

provides HKTDC's comprehensive range of business information and services, which include market intelligence, trade contacts, product catalogues and trade fairs information. The disputed domain name is the official Chinese name for <tdctrade.com> and the name itself has been trademarked.

The Complainant believes that the domain name is a unique service and reflects the identity, functions and services offered by HKTDC. Other organization, which has registered the Chinese domain name of <tdctrade.com>, would project a wrong impression that they are the Council or represent the Council, both of which are not true.

As such, the Complainant contends that they have good reasons to believe that the current holder of the disputed domain name has no rights or legitimate interests in respect to the domain name.

The Complainant requests the Administrative Panel issue a decision that the contested domain name be transferred to the Complainant.

The Respondent failed to submit formal Response according to 5 (a) of the Rules for Uniform Domain Name Dispute Resolution Policy, but a Mr. Leslie Liu, calling himself the representative of the Respondent, sent an email letter to the Center on January 20, 2001. In the letter, Mr. Leslie Liu made the statements as follows:

The Respondent is one of the shareholders of the TradeFind.com company in Tai Wan, which is the online B2B marketplace for exchanging trade information and business buying and selling products. The company was formed in May 1999 and its headquartered in Tai Pei, Tai Wan. TradeFind.com's mission is to provide an Internet world of business value, opportunities, transaction and places where buyers and sellers click every day. After founding from May 1999, the English and Chinese version has been successfully operated and announced by the name of <tradefind.com> and <貿發網>, which is exactly the same Chinese characters as the disputed domain name.

## **6. Discussion and Findings**

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

### **Identical or Confusingly Similar**

The domain name at issue is [<貿發網.com> (BQ--3CGL65T4PWZA.COM)]. The Panel finds that the Chinese character of this domain name “貿發網” is completely identical with the registered trademarks held by the Complainant both in Hong Kong and Tai Wan. The Panel also finds that the Chinese character of the disputed domain name is identical to the Chinese name of <tdctrade.com> developed by the Complainant. The top level domain designator ".com" is only a necessary portion to form a business-related domain name and cannot function to distinguish that name from the Complainant's trademarks. Therefore, the Panel believes that the first element of the ICANN Policy, 4(a) is met.

## **Respondent's Rights or Legitimate Interests in the Domain Name**

The Respondent has not provided evidence of circumstances of the type specified in the ICANN Policy, 4(c). There exists no evidence that the Respondent, before receipt of any notice of the dispute, has used the domain name or a name corresponding to the domain name in connection with bona fide; or that the Respondent has been commonly known by the domain name; or that the Respondent is making a legitimate noncommercial or fair use of the domain name. Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. The Respondent did not present any evidence to show that the Respondent is one of the shareholders of the TradeFind.com company and he can represent this company, though Mr. Leslie Liu so stated in his email letter dated January 20, 2001 to the Center. As such, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name.

## **Domain Name Registered and Used in Bad Faith**

Paragraph 4(b) of the ICANN Policy specifies four types of circumstances that could be evidence of the registration and use of a domain name in bad faith. According to the ICANN Policy, circumstances of bad faith are not limited to the listed ones.

The Panel finds that the domain name was registered and used in bad faith according to the ICANN Policy 4 (b) (ii). The panel is of the view that the domain name at issue was registered in order to prevent the owner of the trademark “貿發網” from reflecting the mark in a corresponding domain name.

First, the Complainant states and the Respondent does not dispute that HKTDC, the Complainant, have developed a web site called <tdctrade.com> which is a resourceful web site specialized in trade and provides HKTDC's comprehensive range of business information and services including market intelligence, trade contacts, product catalogues and trade fairs information.

Second, the panel accepts the Complainant's contention that the disputed domain name is the official Chinese name for <tdctrade.com>, a web site which has been developed and used by the Complainant. The lawyer's letter of October 27, 2000 to the Complainant (Annex 3 of the Complaint) clearly indicates that the Complainant's trademark “貿發網” is <tdctrade.com> in Chinese characters”.

Third, the official Chinese name of the Complainant is “香港貿易發展局”. It is the panel's knowledge that because the name is rather long, as Chinese custom, the Complainant is often called “貿發局” in short in China. The disputed domain name <貿發網.com> strongly implicates that the web site using this name is the business internet site (網) of “貿發局”. In sense of Chinese, the disputed domain name hardly has other meaning. The domain name at issue is obviously connected with the Complainant and its services. The Panel can not see any justified reasons for the Respondent to choose the wording <貿發網.com> to make his domain name registration at the time after the Complainant's trademark “貿發網” was advertised for opposition.

Forth, the Complainant's trademark “貿發網” implicates the meaning of “the business web

site owned by “貿發局””. By common knowledge, using the Chinese wording “貿發網” as the second level of a domain name can be a very direct, exact and preferred way to reflect the Complainant’s identity, functions and services offered by the Complainant. The Respondent’s conduct of acquiring and holding the domain name [<貿發網.com> (BQ--3CGL65T4PWZA.COM)] has prevented the Complainant from reflecting its trademark in a corresponding Chinese domain name.

Finally, Mr. Leslie Liu states that the Respondent is one of the shareholder of the TradeFind.com company incorporated in Tai Wan. Because there is no evidence showing the connection between the Respondent and the company, the matter concerning the TradeFind.com company is not within the examining scope of the Panel.

Taking consideration of the combination of the reasons above-mentioned, the Panel finds that the Respondent’s registration and use of the domain name at issue is in bad faith.

## 7. Decision

The Panel concludes (a) that the domain name [<貿發網.com> (BQ--3CGL65T4PWZA.COM)] is identical to the trademark owned by the Complainant, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the Respondent has registered and used the domain name in bad faith. Therefore, the Panel orders that the domain name [<貿發網.com>(BQ--3CGL65T4PWZA.COM)] be transferred to the Complainant.

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Li Yong  
Sole Panelist

Dated: May 3, 2001