

Domain Name Law and Practice

14 February 2005	China	Part IX: Case Law
Type of update: Alternative Dispute Resolution Procedure		
<p data-bbox="512 398 1110 465">(1) Décision de la Commission administrative Affaire No. DCN-0300004 - “accor.cn”</p> <p data-bbox="512 504 1398 667">The case concerned a dispute over the domain name “accor.cn”. The case was brought before the Hong Kong International Arbitration Centre (HKIAC). The complainant is the well-known French hotel chain Accor, SA with a principle place of business in Evry, France. The respondent was Aymen Fassi, an individual, resident in France.</p> <p data-bbox="512 705 1353 801">Accor brought forward evidence that the disputed domain name was identical to, or confusingly similar to, its own trade marks and showed evidence of 1300 Accor hotels in France and 16 Accor hotels in China.</p> <p data-bbox="512 840 1094 869">The respondent did not respond to the complaint.</p> <p data-bbox="512 907 1394 1104">The Panellist ruled in favour of the complainant and ordered the transfer of the disputed domain name. The Panellist agreed with the arguments put forward by the complainant that the respondent, being located in France, must have known of the trademark ACCOR and that the domain name was registered by the respondent for the purpose of selling it or to obtain unjustified benefits.</p> <p data-bbox="512 1142 1391 1630">Regarding the language of the proceeding, the Panellist was not prepared to consider that there was an agreement between the parties, within the meaning of Article 8 of the Rules, in favour of proceeding in a language other than Chinese. However, the panellist said that the circumstances of this case were sufficiently exceptional to warrant a conclusion that the French language would be more appropriate for the proceedings. Both complainant and respondent are located in France. All the communications that occurred between them before the commencement of these proceedings took place in the French language. The domain name at issue was registered by the respondent with a Registrar located in Monaco, a francophone territory. The registration agreement for the domain name at issue, between the Registrar and the respondent, was in French. It therefore found that that language of the proceeding should be French.</p> <p data-bbox="512 1668 1206 1697">The full text of the decision is available in English here.</p> <p data-bbox="512 1736 1350 1803">(2) Administrative decision Case No. DCN-0300008 - boss.com.cn” and boss.cn”</p> <p data-bbox="512 1841 1353 1966">In this case, the complainant was the German fashion company HUGO BOSS with a principal place of business in Metzingen, Germany. The respondent was Wenzhou Lucheng District Shangshu Subird Departement Store and Zhao Ke Jian, located in the PRC.</p> <p data-bbox="512 2004 1394 2067">HUGO BOSS brought forward evidence that the disputed domain name was identical to, or confusingly similar to, its own trademarks and showed</p>		

evidence of its numerous trademark registrations for “BOSS” in the PRC. The complainant had first sent a warning letter to the respondent before filing the complaint. The respondent thereafter linked the domain name to a webpage “www.boss.cn/zhaopin”, titled “Wenzhou Employment Agency Net”. Before the dispute the domain name was not linked to any webpage.

In the procedure, the respondent claimed that his intention was to start a job employment agency under the generic name ‘boss’, which he later on for some reason dropped in the light of an already existing web site of Wenzhou City, the respondent’s home town, for job employment. He also claimed that the complainant’s trademark “BOSS” were only known to a small part of the Chinese population and that he had not knowledge of the trade mark ‘Boss’ and had not tried to sell or transfer the domain name or registered other famous brands. He also pointed out that a similar complaint of HUGO BOSS filed with the Taiwan Network Information Centre (HUGO BOASS v. Taiwan Asia Color Manufacture Holding Ltd., Case No. STLC001-02) was rejected.

The three member Panel ruled in favour of the complainant. The panel did not agree with the respondent’s contention that he had no knowledge of the complainant’s trademark when registering the domain name. It acknowledged that the complainant’s trademarks were well-known in China and noted that even though the term ‘boss’ can also be regarded as a generic term, the respondent could not sufficiently explain why it registered two domain names comprising of the term “BOSS”, one after the other.

The decision contained several other interesting aspects. As regards the procedural aspects, the complaint was accepted even though some uncertainties remained whether the complainant had correctly named the respondent. Regarding bad faith, the Panel acknowledged that the behaviour of the respondent after the registration of the domain name can be taken into account when assessing whether the registration of the domain name also amounted to bad faith.

In its reasoning the Panel referred to various WIPO-UDRP decisions and applied their principles.

The full text of the decision is available in English [here](#).

(3) Other cases

There are numerous other disputes before the Hong Kong International Arbitration Centre which have been decided in 2004, for example

DCN-0400021	21 October 2004	chopard.com.cn	Switzerland	Mainland of China	Domain Name Transfer
DCN-0400020	21 October 2004	chopard.cn	Switzerland	Mainland of China	Domain Name Transfer
DCN-0400019	25 August 2004	沃尔玛.cn/沃爾瑪.cn; 沃尔玛.中国/沃爾瑪.中國	USA	Mainland of China	Case on Hold
DCN-0400018	21 July 2004	sanofiaventis.cn	France	Korea	Domain Name Transfer
DCN-	15 July	hongkongjockeyclub.com.cn	Hong Kong	Hong Kong	Domain

0400017	2004				Name Transfer
DCN-0400016	15 July 2004	hongkongjockeyclub.cn	Hong Kong	Hong Kong	Domain Name Transfer
DCN-0400015	27 May 2004	Patekphilippe.com.cn patekphilippe.cn	Switzerland	Mainland of China	Domain Name Transfer

The full list of cases decided is available at

http://dn.hkiac.org/cn/cns_statistics.html

Cases filed before the Chinese Dispute Resolution Procedure are available

at <http://dndrc.cietac.org/static/english/engfrmain.html>