



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-0800173
<b>Complainant:</b>	Cheung Kong (Holdings) Limited
<b>Respondent :</b>	Netego Dot Com

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### 1. The Parties and Contested Domain Name

The Complainant is Cheung Kong (Holdings) Limited, of 7<sup>th</sup> Floor, Cheung Kong Center, 2 Queen's Road Central, Hong Kong.

The Respondent is Netego Dot Com, of Suite 115 17008 – 90th Avenue, Edmonton, Alberta T5T 1L6, CA.

The domain name at issue is <長江.com>, registered by Respondent with Dotster, Inc., of 8100 N E Parkway Drive, Suite 300, Vancouver, WA 98662.

### 2. Procedural History

On 30 July 2008, the Complainant submitted its Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 15 August 2008, the Centre confirmed the receipt of the Complaint. To confirm the registration information, the Centre forwarded a copy of the Complaint, on 15 August 2008 and 26 September 2008, respectively, to the Registrar, Dotster.com.

On 27 September 2008, the Centre received the Registrar's confirmation of registration information of the domain name in dispute.

On 2 October 2008, the Centre notified the Complainant that the Complaint had been confirmed and forwarded, and the Centre notified the Respondent, the Registrar and the ICANN of the commencement of the case proceeding.

On 21 October 2008, Respondent's Manager and Administrator of the Disputed Domain Name, Joe Lee (李駿生), requested the postponement of the proceedings for medical reasons. In accordance with Article 5(d) of the UDNDRP, by written stipulation of the

Respondent, the Centre notified the Respondent on 24 October 2008 that the deadline for submission of the Response would be extended until 24 November 2008.

On 22 November 2008, the Centre received the Response. The Respondent requested the appointment of a three-member panel. On 24 November 2008, the Centre notified the Complainant that a Response had been received timely from the Respondent.

On 6 December 2008, Respondent notified the Centre that the Complaint did not include provisions required by Article 3(b)(xiii) of the UDRP Rules and requested that the Complaint be amended. On 12 December 2008, the Centre requested that the Complainant submit a supplemental statement of Complainant's willingness to submit to any legal challenges to a future administrative decision to the courts of a specified jurisdiction, to bring the Complaint into compliance with the Rules.

On 15 December 2008, the Complainant submitted its Supplemental Statement.

On 15 January 2009, the Complainant submitted its Reply to the Response. Thereafter, on 18 January 2009, Respondent submitted its Objection to the Complainant's Reply, along with its Response to the Reply.

On 19 January 2009, the Centre informed the Complainant and the Respondent of the appointment of Mr. David Kreider, as the Presiding Panelist, and Mr. Neil Brown and Dr. Zhao Yun as Co-Panelists, and transferred the case file to the Panelists by email. In accordance with the Rules, the Centre instructed that a decision was required to be submitted by 9 February 2009.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panel has not received any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

The language of the proceeding shall be the English language, as this was the language of the Domain Name Registration and Service Agreement, pursuant to paragraph 11(a) of the Rules.

### **3. Factual background**

The Complainant in this case is Cheung Kong (Holdings) Limited, a corporation registered in Hong Kong. The Complainant is the owner of several trademarks including “长江”, “长江实业”, and “长江集团”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”.

The Respondent, Netego Dot Com, is an unregistered business name under which Joe Lee (李骏生), and his successor in interest, Netego Software Inc. carries on business. Joe Lee is the sole shareholder, officer, and director of Netego Software Inc., a corporation registered in the Province of Alberta, Canada. Joe Lee, d/b/a Netego Dot Com, first registered the domain name on November 10, 2000 and Netego Software Inc. assumed the registration of the domain name from Joe Lee, upon its incorporation on 18 October 2006.

### **4. Parties' Contentions**

A. Complainant

The Complainant's contentions may be summarised as follows:

**The Disputed Domain Name is identical or confusingly similar to trademarks or service marks to which the Complainant has rights**

- (a) The Complainant, Cheung Kong (Holdings) Limited (“长江实业(集团)有限公司”), formerly known as Cheung Kong Real Estate Company Limited / Cheung Kong Real Estate & Investment Company Limited (長江地產有限公司), is the flagship of the Cheung Kong Group (“长江集团”), the leading Hong Kong based multinational conglomerate.
- (b) The Complainant, was established on 8 June 1971 by Mr. Li Ka Shing, the tycoon who ranks 11th on Forbes Billionaires List 2008 and since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings”/“长江实业”. The Complainant is listed on the Hong Kong Stock Exchange and in Hong Kong alone, members of the Complainant's group of companies, which is known as the Cheung Kong Group (“长江集团”), include the Complainant (stock code: 0001), Hutchison Whampoa Limited (stock code: 0013), Cheung Kong Infrastructure Holdings Limited (stock code: 1038) and Hongkong Electric Holdings Limited (stock code: 0006), which are all constituent stocks of the Hang Seng Index; Hutchison Telecommunications International Limited (stock code: 2332), Hutchison Harbour Ring Limited (stock code: 0715) and TOM Group Limited (stock code: 2383), which are companies listed on the Main Board of the Hong Kong Stock Exchange; and CK Life Sciences Int'l., (Holdings) Inc. (stock code: 8222), a company listed on the Growth Enterprise Market. Based in Hong Kong, businesses of the Cheung Kong Group (“长江集团”) encompass such diverse areas as property development and investment, real estate agency; estate management; ports and related services; telecommunications; hotels; retail; energy; infrastructure; finance; e-commerce; building materials; multimedia and life science. The combined market capitalization of the Cheung Kong Group's Hong Kong listed companies amounted to HK\$817 billion as at 30 June 2008. The Cheung Kong Group operates in 57 countries and employs about 260,000 staff worldwide.
- (c) Founder of the Complainant and the Cheung Kong Group (“长江集团”) is a strong believer in synergy – the power of combined efforts. This belief is reflected in his naming the Complaint and a series of companies within the Cheung Kong Group (“长江集团”) after the Yangtze River (扬子江 or 长江) that flows through China, a great river that aggregates countless streams and tributaries. As a result, there is a large number of companies within the Cheung Kong Group incorporated with names beginning with the Chinese characters/words “长江”/“Cheung Kong”.
- (d) The Complainant is mainly a property development and strategic investment company and it is one of the largest developers in Hong Kong of residential, commercial and industrial properties. About one in seven private residences in Hong Kong were developed by the Complainant.

- (e) The Complainant has always aimed to maintain a strong presence in overseas property markets as a quality property developer of choice residential and commercial projects. For example, in China, the Complainant has invested in a lot of important real estate development projects including being the largest shareholder of the project “Oriental Plaza”, the most prestigious project in the middle of downtown Beijing with project value of HKD 7 billion and covering a total gross floor area of 920,000 meter square. In addition, the Complainant has in 1994 purchased “Lido Place” in Beijing, a commercial/residential complex that accommodates a large number of Beijing's expatriate community and multinational companies. Pursuant to the enormous effort put by the Complainant in its businesses and excellent quality of the Complainant's real estate development and services in Hong Kong and China, the Complainant has obtained the following awards: -

### **Hong Kong**

<b><u>Awards</u></b>	<b><u>Organizer</u></b>	<b><u>Nature</u></b>
1998-99 REVIEW 200: Asia's Leading Companies Award – ranked No.3 of “Top 10 Hong Kong Companies doing Business in Asia”	Far Eastern Economic Review	Organizer invited subscribers to choose the leading companies from 525 Asia and International companies.
1999 World Most Recommended Real Estate Development Company	PricewaterhouseCoopers	Organizer conducted survey on 754 CEO from state-owned enterprise, large-scale incorporations, self-owned companies and listed companies of 715 countries to elect the world most recommended enterprises in different sectors.

### **China**

<b><u>Awards</u></b>	<b><u>Organizer</u></b>	<b><u>Nature</u></b>
1998 Asia's Best Managed Companies Award (Mainland & Hong Kong)	Asiamoney	Organizer invited 250 fund managers from 150 institutional investors worldwide to nominate the best-managed companies.
2001 China Best Quality Services and Brands: the Best Real Estate Developer	Capital	Organizer aimed to praise companies which were rapidly expanding the China market and which have contributed a lot to the economy of Mainland China.

- (f) “长江” is not only the service marks/trade names adopted by many companies within the Cheung Kong Group (“长江集团”) of which the Complainant forms part, it is also the most distinctive part of the service mark/trade name of the Complainant. The Complainant claims rights in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”.
- (g) Based on the above, the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” have been well-recognized by the public and trade to be distinctive of and identified with the Complainant and the Cheung Kong Group but none other. Substantial goodwill and reputation has subsisted in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. One can also find countless publications and reports on the Internet about the Complainant and Cheung Kong Group by reference to the service marks/trade names “长江实业”, “长江集团” and “长江”. As such, the Complainant undoubtedly has rights in these service marks/trade names and their corresponding marks/names in English.
- (h) Further, as early as 13 December 1995, the Complainant has already registered the domain name “cheungkong.com”. On 1 February 2000, the Complainant further registered the domain name “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.
- (i) The major part of the Disputed Domain Name “长江” is:-
- i. identical to the major portion of the service marks/trade names of the Complainant and its group of companies;
  - ii. the Chinese translation of the major part of “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong”; and
  - iii. the Chinese translation of the major portion of the Complainant domain names “cheungkong.com” “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

**The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name**

- (a) The Respondent is not in any way related to the Complainant, nor was the Respondent authorised by the Complainant to use the mark/name “长江”.

(b) On or before the registration date of the Disputed Domain Name i.e. 10 November 2000:

- iv. The Complainant and the Cheung Kong Group have widely used “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” as service marks/trade names;
- v. Substantial goodwill and reputation subsisted in the service marks “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English”;
- vi. The service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English have been identified by the public as the service marks/trade names of the Complainant and the Cheung Kong Group and none other; and
- vii. The Complainant has registered the domain names “cheungkong.com”, “cheungkongholdings.com”, “cheungkongholdings.net” and “cheungkongholdings.org”.

(c) As such, the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

**The Disputed Domain Name has been registered and is being used in bad faith**

(a) Service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English namely, “Cheung Kong Holdings”, “Cheung Kong Group” and “Cheung Kong” have been used by the Complainant and the Cheung Kong Group in Hong Kong and China respectively for almost 30 and 10 years before the registration date of the Disputed Domain Name. All these service marks/trade names have very strong reputation in Hong Kong and China. Undoubtedly, the Complainant and the Cheung Kong Group have prior rights in the service marks/trade names “长江实业”, “长江集团” and “长江”, and their corresponding marks/names in English. As such, it could not be a coincidence for the Respondent to register a domain name which is identical to the most distinctive portion of the service marks/trade names and/or which is a Chinese translation of the most distinctive portion of the English service marks/trade names of the Complainant and the Cheung Kong Group taking into account that the Respondent has never had any rights or legitimate interests in the said marks/names. It is believed that the Respondent registered the Disputed Domain Name in order to confuse the public that the Respondent’s act in registering the Disputed Domain Name authorized by the Complainant. It is clear that the Respondent had acted in bad faith when it made the application for the registration of the Disputed Domain Name in 2000.

(b) The Complainant noted that the Disputed Domain Name is not put into active use but is merely linked to a webpage providing information search services. This indicates that the registration of the Disputed Domain Name has no purpose other than to create confusion that such registration is endorsed by the Complainant or that the webpage is in any way connected with the Complainant.

B. Respondent

The Respondent's contentions may be summarized as follows:

**The Disputed Domain Name**

- (a) Respondent's rights in the Disputed Domain Name, <長江.com>, go back to November 10, 2000. Respondent, Netego Dot Com, is an unregistered business name under which Joe, Lee, and his successor in interest, Netego Software Inc. carries on business. Netego Software Inc. is a corporation incorporated pursuant to the laws of the Province of Alberta, Canada. It was incorporated on October 18, 2006.
- (b) Joe Lee, is a Canadian citizen who has lived in Canada for the past 23 years and has never in fact lived in China or Hong Kong. He is the sole shareholder, officer, and director of Netego Software Inc. Joe Lee, carrying on business as Netego Dot Com, first registered the domain name on November 10, 2000 and Netego Software Inc. assumed the registration of the domain name from Joe Lee, together with all rights, title, and interest, upon its incorporation.
- (c) The first notice of a dispute regarding the domain name was the Complaint that is the subject of this proceeding. The Complaint comes eight (8) years after Respondent's initial registration of the domain name.
- (d) The Disputed Domain Name primarily consists of two Chinese characters, 長江, written in the traditional style. The term "traditional" is used to contrast traditional characters with another standardized set - simplified Chinese characters, standardized by the government of the People's Republic of China since the 1950s. Traditional characters are used officially in Taiwan, Hong Kong and Macau. Traditional characters are most commonly used among overseas Chinese communities. In contrast, simplified Chinese characters are used in the mainland of China, Singapore and Malaysia in official publications.
- (e) The two traditional Chinese characters that the domain name comprises, 長江, is the popular name in traditional Chinese, of the longest river in China (and third longest in the world after the Nile and the Amazon), otherwise known as the Yangtze River. "長" is "long", and "江" is "river". In English, it is transliterated to "Chang Jiang". Since nearly all Chinese persons in China use simplified Chinese rather than traditional Chinese, 長江 would mean the Chang Jiang, i.e. the Yangtze River, rather than Cheung Kong, which is the transliteration into English from Traditional Chinese.
- (f) In any event, whether someone uses traditional or simplified Chinese, the fact is that 長江 means the Long River, i.e. the Yangtze River. This is specifically and expressly admitted to by Complainant in its Complaint on Page 4, Paragraph (c):

This belief is reflected in [the Founder of Complainant's] naming Complainant...after the Yangtze River that flows through China, a great river that aggregates countless streams and tributaries.

- (g) The fact that 長江 means Long River, i.e. the Yangtze, was the reason that Respondent registered the domain name in 2000. In fact, in 2003, Respondent registered the Chinese

character equivalent of YangtzeRiver.com (扬子江.com), and in 2006, registered the Chinese character equivalent of ChangJiangThreeGorges.com (长江三峡.com) and ChangJiangThreeGorgesCruise.com (长江三峡游.com).

- (h) To-date, and well prior to the Complaint, Respondent used YangtzeRiver.com (扬子江.com) and ChangJiangThreeGorgesCruise.com (长江三峡游.com) in connection with a web site related to scenic tours of the Yangtze River. Three of Respondent's Yangtze River related domain names are listed on the front page of the site.
- (i) Respondent however, has not as of yet used 長江.com (ChangJiang.com) or 长江三峡.com (ChangJiangThreeGorges.com) in association with his operational Yangtze River cruise-related web site. Most web browsers in the world have only very recently been able to recognize and use Chinese-character or multilingual domain names. A notice regarding this appears on Respondent's web site. In fact, Internationalized Domain Names (IDN's) are not expected to be fully operational until 2009. Accordingly, the traffic that these Chinese-character domain names and related web sites were receiving was extremely minimal. As such, Respondent did not feel any urgency to attach the domain name to his operational web site, and merely set it up as a general directory search page for the time being, where the very few users who happen to type-in 長江.com and are looking for material related to the Yangtze River, can search and find such information. Certainly he never believed for a moment that any party would complain regarding his registration or delayed usage of the domain name.
- (j) Nevertheless, Respondent always intended to eventually use the domain name in association with its operational Yangtze River cruise web site and in conjunction with his other Yangtze River related domain names, and will do so once there are sufficient numbers of people within Chinese communities outside of China who begin to use multilingual web browsers. In any event, the registration of the other river cruise related domain names, as aforesaid, together with the operation of a river cruise related web site, demonstrates Respondent's preparations to use the domain name in association with the other river cruise related domains and web sites.
- (k) Of particular note is the fact that Complainant does not enjoy a monopoly over the term Yangtze River, Chang Jiang, or even Cheung Kong. These are all terms that describe a most famous geographic location, and are also employed by numerous companies throughout the Chinese speaking world as part of their corporate names. For example, in Singapore, a company (Chang Jiang Confectionary) that is wholly unrelated to Complainant owns a registered trademark for 長江 (Chang Jiang). In Hong Kong, a company wholly unrelated to Complainant, owns a trademark registration for Chang Jiang (長江) and another company (Long River Label Factory Limited) owns a registered trademark for 長江(Long River), and in China itself, numerous companies of all sorts and kinds have registered trademarks for 長江 and Chang Jiang which have nothing to do with Complainant whatsoever.
- (l) Also of particular importance, is the fact that nowhere in the Complaint does Complainant make reference to having registered trademarks, let alone ones which predate the registration of the Disputed Domain Name. In fact, searches for registered trademarks held by Complainant reveal that it appears that Complainant has no trademarks which were registered prior to the registration of the Disputed Domain Name,



just ones that were applied for after. Furthermore, in every case it appears that Complainant only applied or was granted trademark rights for Cheung Kong (Holdings) Limited, or a similar lengthy mark, but not for 長江 (Long River) or Cheung Kong standing alone. Accordingly, it appears that Complainant has no registered trademark rights whatsoever on which to base this Complaint and that is why it failed to mention this relevant fact in its Complaint.

- (m) Although Complainant has led some evidence of its substantial business success and reputation primarily in Hong Kong, Complainant has nonetheless failed to introduce evidence sufficient to demonstrate that it has acquired common law trademark rights in 長江 alone, i.e. without its full name of 长江集团, which comprises an additional two characters. Complainant has also failed to introduce evidence that 長江 alone, has acquired a secondary meaning displacing its original meaning of Long River.

**The Disputed Domain Name is not identical or confusingly similar to trademarks or service marks to which the Complainant has rights**

- (a) Paragraph 4(a)(i) requires a Complainant to prove that: your domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights. Pursuant to *ZZounds Music, LLC. v. Zounds c/o Mark LaForge*, NAF Claim Number: FA0610000817093:

In order for Complainant to satisfy the requirements of Policy ¶ 4(a)(i), the Panel must find trademark rights that pre-date the registration of the disputed domain name.

- (b) Complainant in this case has not even referred to any registered trademarks. Respondent's registration of the subject domain name therefore must be assumed to clearly pre-dates any rights which Complainant may have acquired as a result of its trademark registrations. Accordingly, it is submitted that in the absence of any evidence of Complainant's registered trademark rights which pre-date Respondent's rights, the Complaint must be dismissed, as in *Jensen Research Corporation v. Future Media Architects, Inc.*, CPR File No. 00 0310.
- (c) Although a complainant in a proceeding such as this may establish common law rights which pre-date the disputed domain name, Complainant in this case has failed to do so. The Complainant in this case has only led evidence as to the reputation and success of Cheung Kong (Holdings) Limited and the Cheung Kong Group of Companies, but has not led any particular evidence that could demonstrate that the term 長江 alone is identified with Complainant. Complainant has failed to introduce any evidence from consumers or businesses which show that 長江 has acquired a secondary meaning such that people identify this term with Complainant and not the Long River.
- (d) Respondent acknowledges that it may very well be that Complainant holds trademark rights, registered or otherwise, in 长江集团, but this does not equate to having any rights in the term, 長江, alone. See, *Molecular Nutrition, Inc. v. Network News & Publ'ns.*, FA 156715 (Nat. Arb. Forum June 24, 2003), (finding that Complainant failed to establish common law rights in its mark because mere assertions of such rights are insufficient without accompanying evidence to demonstrate that the public identifies Complainant's mark exclusively or primarily with Complainant's products); see also, *Yao Ming v.*

*Evergreen Sports, Inc.*, FA 154140 (Nat. Arb. Forum May 29, 2003), (“Bald assertions of consumer knowledge are not an adequate form of evidence to establish secondary meaning in a name.”)

- (e) A one or two word difference between marks, or possibly nothing more than a variant of the term, may be sufficient to distinguish between a domain name and a trademark so as to avoid confusion. As noted in *America Online, Inc. v. Megaweb.com, Inc.*, NAF Case File No. A0504000463099:

In the Internet context, consumers are aware that domain names for different Web sites are quite often similar, because of the need for language economy, and that very small differences matter. *Entrepreneur Media, Inc. v. Smith*, 279 F.3d 1135, 1147 (9th Cir. 2002).

- (f) A primary difference between domain names and trademarks is that only one entity is able to use a single domain name, whereas many different entities are capable of using the same trademark, albeit for different goods or services. Given the scarcity of useful and recognizable domain names, the Panel may choose to consider whether a possible confusing similarity between a domain name and mark may be trumped by the competing need to allow for diversified registrants and uses of such domain names.
- (g) Accordingly, there are such significant differences between Complainant’s four-character name (and its transliteration from simplified Chinese), and the disputed domain name, that the domain name is not confusingly similar.
- (h) In the case of *Sallie.com*, Complainant held the trademark for SALLIE MAE, but not for SALLIE, alone. Accordingly, the Panel found that the Complaint should be dismissed, because although there was similarity, there was no confusing similarity between the domain name and Complainant’s trademark (See, *Sallie Mae, Inc. v. Michele Dinoia*, WIPO Case No. D2004-0648). It is therefore respectfully submitted that in this case, the Panel should find that the domain name, although arguably similar in some respects to Complainant’s corporate name (noting the absence of proof of common law rights) is not confusingly similar.

### **The Respondent has rights or legitimate interests in respect of the Disputed Domain Name**

- (a) In order to succeed under Paragraph 4(a)(i)(ii) of the UDRP, Complainant must prove that Respondent has no rights or legitimate interests in respect of the domain name. In *Borges, S.A., Tanio, S.A.U. v. James English*, (WIPO Case No. D2007-0477), it was confirmed that:

Respondent need only show that he has “a” legitimate right or interest – which is what he has done. Respondent does not need to show that his rights or legitimate interests are better (however measured) than those of Complainant. [Quotation emphasis in original]

Accordingly, Respondent’s inherent legitimate interest in what is a clearly descriptive and common term denoting one of the world’s most famous rivers, is perhaps Respondent’s strongest argument. Any denial of Respondent’s inherent legitimate

interest in a domain name that means one of the world's most famous rivers would be far beyond credulity.

- (b) Paragraph 4(c) of the UDRP provides that a registrant will have demonstrated its legitimate interest in a domain name, "if before any notice to the registrant of the dispute, the registrant's use of, or demonstrable preparation to use the domain name or a name corresponding to the domain name in connection with the *bona fide* offering of goods or services" is shown.
- (c) As previously set out herein, Respondent in fact registered the domain name in conjunction with three other Yangtze River related domain names, and used two of them for a web site related to Yangtze River tours. Accordingly, Respondent has demonstrated that it prepared to use the domain name in connection with a *bona fide* offering of goods. The fact that Respondent never hooked up the domain name to a operational web site is irrelevant, as actual use is not required; mere preparations to use constitute a legitimate interest pursuant to the UDRP.
- (d) It is absolutely clear that, even aside from Respondent's demonstrable preparations to use the Disputed Domain Name, he has an inherent legitimate interest in it as a result of its descriptiveness. It has been long held that where a domain name is generic, the first person to register it in good faith is entitled to the domain name. This is considered a "legitimate interest". See, *CRS Technology Corporation v. CondeNet (Concierge.com)*, NAF, Case No: FA#0002000093547, Judgment: 28 March 2000:

... [E]ven though the trademark and the name are all but identical, the Panel has determined that the first person or entity to register the domain name should prevail in circumstances such as these where the domain name is a generic word, here indicating a provider of services, and where that word is widely used as a trade or service mark, although almost always in connection with modifiers or qualifiers.

- (e) The use of a geographic indication in a domain name is analogous to the use of a generic descriptive term in a domain name (See, *Junta de Andalucía Consejería de Turismo, Comercio y Deporte, Turismo Andaluz, S.A. v. Andalucía.Com Limited*, WIPO Case No. D2006-0749). The WIPO Overview of WIPO Panel Views on Selected UDRP Questions ("WIPO Overview") sets out the consensus views of WIPO panelists on selected issues. Section 2.2 of the WIPO Overview specifically addresses the question, "Does a respondent automatically have a legitimate interest in a domain name comprised of a generic (dictionary) word(s)?" While the general rule is not necessarily, there is an exception, that is stated thusly: "However: If a respondent is using a generic word to describe his product/business or to profit from the generic value of the word without intending to take advantage of complainant's rights in that word, then it has a legitimate interest."
- (f) In *Porto Chico Stores, Inc. v. Otavio Zambon*, WIPO Case No. D2000-1270, the Panel stated:

Ownership of [a descriptive generic] mark as a means of identifying the source or particular goods and services does not entitle the owner of the mark to prevent use of those words by

others in commerce accurately and descriptively in accordance with their primary meaning in the English language.

- (g) Accordingly, Respondent has an inherent legitimate interest in the Disputed Domain Name because it is descriptive of the famous river. There was no intention at all to take advantage of Complainant.

### **No bad faith registration and use**

- (a) Pursuant to the UDRP, the Complaint must prove bad faith registration and bad faith use. Complainant however, has introduced no actual evidence of bad faith registration or use. Complainant makes very broad and sweeping allegations of bad faith, but this amounts to mere hopeful speculation without any foundation whatsoever.
- (b) It is hardly likely that Respondent registered the disputed domain name to target Complainant's purported trademark rights, when Respondent registered other Yangtze River domain names, as aforesaid. Furthermore, Respondent had a legitimate interest in the descriptive domain name as a result of being the first to register the popular term. See, for example, *Hydrologic Services, Inc. v. Name Delegation c/o Steven Sacks*, NAF Claim Number: FA0605000707617 (absent direct evidence that Respondent specifically targeted Complainant, bad faith will not be found to exist). Furthermore, in *Canned Foods, Inc. v. Ult. Search Inc.*, FA 96320 (NAF Feb. 13, 2001) the Panel explained:

Where the domain name is a generic term, it is difficult to conclude that there is a deliberate attempt to confuse. It is precisely because generic words are incapable of distinguishing one provider from another that trademark protection is denied them. There are dozens of other enterprises that use the term "Grocery Outlet," therefore one cannot conclude that Complainant must necessarily be the special target.

- (c) Similarly, there are numerous companies that use the term Yangtze River, Long River, or their equivalent, aside from the millions, if not over a full billion, that use the term to describe the famous river. There is absolutely no evidence that Respondent targeted Complainant in any way. We must not lose sight of the fact that it is the Complainant that selected its name as a result of the fame of the river, and not the river that selected its name as a result of the fame of the Complainant; the river is far more famous and everyone is entitled to call it by its name.
- (d) As far as Complainant's allegation that Respondent has only used the domain name in connection with a general search directory, it has already been acknowledged by Respondent that it had only commenced *bona fide* preparations with the intention to use the domain name, but had not actually used it for the Yangtze River related tourist site yet, due to the restrictions on the capabilities and use of Internationalized Domain Names.
- (e) In any event, there is absolutely no prohibition on using a generic or descriptive term for a general search directory provided that there is no intention of targeting or taking advantage of a particular person's trademark rights. Even in the case of pay-per-click advertising, which is far more commercial than a simple search bar, the unanimous three-member panel in *McMullen Argus Publishing Inc. v. Moniker Privacy Services/Jay Bean, MDNH, Inc.*, (WIPO Case No. D2007-0676 – July 2007) ruled that:

Complainant must do more than just show pay-per-click use to establish bad faith. Contrary to Complainant's assertions, pay-per-click websites are not in and of themselves unlawful or illegitimate, e.g., *Terana, S.A. v. RareNames, WebReg*, WIPO Case No. D2007-0489; *Fratelli Carli S.p.A. v. Linda Norcross*, WIPO Case No. D2006-0988. Complainant has provided little evidence (as opposed to allegations of counsel) that Respondent selected the disputed domain name for a free ride upon Complainant's mark. Complainant has made no showing that consumers and Internet users have been or are likely to be confused or to associate Respondent's services with Complainant's, and the Panel's examination of the parties' respective websites bears out this observation. There is no obvious imitation of Complainant or its services. Complainant has made no showing of a "pattern" of cybersquatting that might bring the case under paragraph 4(b)(ii) of the Policy.

- (f) Respondent in no way whatsoever used the domain name to trade off of Complainant's purported trademark rights. Accordingly, there is absolutely no evidence that Respondent registered or used the domain name in bad faith.
- (g) Finally, Respondent never offered to sell the domain name to Complainant or in any way attempted to interfere with its business. It was only after eight (8) years of continued and undisturbed registration of the domain name by Respondent that the Complainant suddenly popped up, unprovoked, and wrongfully claimed that Respondent's property really belonged to it.

## **5. Findings**

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

1. the domain name registered by the Respondent must be identical or confusingly similar to a trademark or service mark in which Complainant has rights;
2. and the Respondent has no rights or legitimate interests in respect of the domain name;
3. and the domain name has been registered and is being used in bad faith.

Paragraph 12 of the Rules, entitled "Further Statements", provides that "the Panel may request, in its sole discretion, further statements or documents from either of the Parties".

As has been recited above, on 15 January 2009, the Complainant submitted a purported "Reply to the Response". Thereafter, on 18 January 2009, Respondent submitted its "Objection to the Complainant's Reply and Response to the Reply".

Having made no request for further statements or documents from the Parties, the Panel has elected to exclude these further statements from its consideration and to decide this matter on the merits of the Complaint, the Response, and the accompanying exhibits.

#### **A) Identical / Confusingly Similar**

The Response recites:

The two traditional Chinese characters that the domain name comprises, 長江, is the popular name in traditional Chinese, of the longest river in China (and third longest in the world after the Nile and the Amazon), otherwise known as the Yangtze River. "長" is "long", and "江" is "river". *In English, it [the Chinese characters “長江”] is transliterated to “Chang Jiang”.* [Emphasis supplied].

The Respondent then builds upon this factual base, to reach the conclusion:

*Since nearly all Chinese persons in China use simplified Chinese rather than traditional Chinese, 長江 would mean the Chang Jiang, i.e. the Yangtze River, rather than Cheung Kong, which is the transliteration into English from Traditional Chinese.* [Emphasis supplied].

Both the Respondent’s conclusion, and the factual predicate on which it is based, are incorrect or are, at best, only partially true.

Firstly, regardless whether the Chinese characters “長江” are written in the traditional form (長江), or in the simplified form (长江), they are the very same Chinese characters and convey the very same meaning.

Respondent’s assertion that, because the Chinese characters “長江” appear in the Disputed Domain Name in the traditional, rather than the simplified form, this results, *ipso facto*, in their meaning “Chang Jiang”, and not “Cheung Kong”, is erroneous.

At bottom, “simplified” Chinese characters are nothing more or less than Chinese characters written (pursuant to an officially mandated system or standard within the People’s Republic of China), with fewer strokes of the pen or brush (ostensibly making the Characters easier to learn and to write). It somewhat akin to using an Ariel font for printed English, as opposed to a more elaborate Edwardian script. Regardless whether the font that is used is simple or elaborate, the meaning of the printed English word does not change when a different print font or writing style is utilised.

In fact, whether the Chinese characters, 長江, are transliterated correctly into English as “Chang Jiang”, or as “Cheung Kong”, turns upon whether the Chinese characters are transliterated in accordance with the pronunciation of the characters in the Mandarin (Putonghua) dialect of spoken Chinese (the “common” dialect spoken in the mainland of China), or in accordance with the pronunciation of the characters in the Cantonese dialect (the dialect that is generally spoken in Hong Kong and in Guangdong Province in Southern China, as well as in some overseas Chinese communities).

Significantly, a variation of this same argument was urged by the Respondent, the Registrant of the identical domain name (albeit written in simplified Chinese characters), “长江.com”, in administrative proceeding HK-0800172 brought by the same Complainant as in the instant proceeding.

On this same point, the Panel decision in case #HK-0800172 recites:

Respondent further argues that the two Chinese characters in simplified form, “长江”, are recognized by the government of The People’s Republic of China and by the United Nations as referring to the “Changjiang River” (which is also sometimes known as the “Yangtze River”), and not by the English words “Cheung Kong”. The Respondent observes that these same two Chinese characters are written in English, in accordance with China’s Han Yu Pin Yin system (a standard system by which Chinese characters are alphabetised), as “Chang Jiang”, and not “Cheung Kong”, the English name by which the Complainant’s group of companies is known.

Respondent’s observations, while substantially accurate, appear to this Panelist to be misplaced. As but one example to illustrate the point, adopting Respondent’s analysis, the two Chinese characters that comprise the immediately recognisable city name “Hong Kong” – “香” (meaning “fragrant”) and “港” (meaning “harbour”) – would be alphabetized in accordance with China’s Han Yu Pin Yin system as “Xiang Gang”.

While speakers of the Mandarin dialect of Chinese (Putonghua) the world over would immediately recognise the spoken word “Xiang Gang” as referring to Hong Kong, the same spoken word would be meaningless to an English speaker, unskilled in Mandarin Chinese, if pronounced in this way.

The Panelist in case #HK-0800172 thereupon observed:

The Panel considers that *the closeness between the pronunciation/alphabetisation of “长江” as “Cheung Kong” (like the pronunciation/alphabetisation of “香港” as “Hong Kong”), may be more readily apparent when those words are pronounced in the Cantonese dialect of the Chinese language (the dialect of Chinese principally spoken in the Hong Kong Special Administrative Region and in Guangdong (Canton) Province, China), rather than in Mandarin Chinese, as is used by China’s Han Yu Pin Yin system.* [Emphasis supplied].

In yet another administrative proceeding involving the same Complainant as in the instant case, #HK-0800174, where the identical domain name, “长江.net” (again, with Chinese characters appearing in their simplified form), was in issue, the Panelist found:

The domain name in dispute is <长江.net>. Apart from the gTLD suffix ".net" that has no relevant distinguishing function, the domain name registered by the Respondent is “长江”.

The Complainant claims that “长江” is the distinctive part of both its trade name and service mark. Since a dispute between a trade name and a domain name is not within the scope of proceeding of the Policy, the Panel does not consider the Complainant’s claim concerning the trade name.

With respect to the claim on common law right in the service mark, the Panel finds that the Complainant is able to prove that “长江” has been and is being extensively and consistently used by the Complainant in the businesses and publicities. Although “长江”, per se, is not a registered service mark of the Complainant, it has become a mark that is connected to the Complainant’s businesses through use. Hong Kong Special Administrative Region of the People’s Republic of China is a common law jurisdiction. Common law rights in a trade/service mark are recognized and protected. Therefore, the Complainant has successfully proved that it has right in the mark “长江”.

Given that the disputed domain name “长江.net” is identical to the mark in which the Complainant has the common law right, the Panel finds that the paragraph 4(a)(i) of the Policy is proven by the Complaint.

This Panel is not obliged to follow the administrative decisions in HK-0800172 and HK-0800174 as controlling precedent, however, given that those decisions involved the same Complainant and the materially identical Disputed Domain Name, this Panel finds the reasoning of those decisions to be helpful and persuasive and considers that achieving some consistency among these decisions is desirable.

While it is clear from the record in this proceeding that the Complainant does not hold any registered trademark in the Chinese characters, “长江”, it does appear that the Complainant has been using the two characters as the main and distinctive portion of its many business names for a considerable time. The Complainant has used these business names extensively in Mainland China and in Hong Kong.

Accordingly, the Panel finds that the Complainant has rights in its business name and enjoys protection under Paris Convention, and holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

## **B) Rights and Legitimate Interests**

The Response purports to show that the Respondent has undertaken preparations to use the domain name in connection with a *bona fide* offering of goods or services, prior to receiving notice of the dispute.

On this issue, the Response recites as follows:



To-date, and well prior to the Complaint, Respondent used YangtzeRiver.com ( 扬 子 江 .com) and ChangJiangThreeGorgesCruise.com ( 长 江 三 峡 游 .com) in connection with a web site related to scenic tours of the Yangtze River. Three of Respondent's Yangtze River related domain names are listed on the front page of the site.

Respondent however, has not as of yet used 長 江 .com (ChangJiang.com) or 长 江 三 峡 .com (ChangJiangThreeGorges.com) in association with his operational Yangtze River cruise-related web site. Most web browsers in the world have only very recently been able to recognize and use Chinese-character or multilingual domain names. A notice regarding this appears on Respondent's web site. In fact, Internationalized Domain Names (IDN's) are not expected to be fully operational until 2009. Accordingly, the traffic that these Chinese-character domain names and related web sites were receiving was extremely minimal. As such, *Respondent did not feel any urgency to attach the domain name to his operational web site, and merely set it up as a general directory search page for the time being, where the very few users who happen to type-in 長 江 .com and are looking for material related to the Yangtze River, can search and find such information.* Certainly he never believed for a moment that any party would complain regarding his registration or delayed usage of the domain name.

The names of both the Registrant, Netego Dot Com, a fictitious name under which Joe Lee conducts business, and its successor in interest, Netego Software, Inc., appear to the Panel as suggestive of businesses engaged in Internet or IT businesses, rather than the travel industry. Moreover, the Response is devoid of any allegation that the Respondent has taken any concrete steps in preparation, such as contracting to lease or purchase cruise vessels; contracting to employ tour guides or crew; or that the Respondent has taken any preparatory steps whatsoever beyond affixing several photos of river boats to its "Yangtze River Cruise" website in preparation for the launch of its Three Gorges River Cruises business, which, Respondent's website represents, will begin accepting bookings from North American tourists in the year 2009.

Additionally, it is unclear to this Panel why the Respondent "did not feel any urgency to attach the domain name to his operational web site, and merely set it up as a general directory search page for the time being", when it appears that the Respondent had been using another Chinese character domain name, "扬子江.com". The use of *any* Chinese character domain name in connection with its "river cruise" website appears to the Panel to be inconsistent with the Respondent's explanation for its own delay, that "most web browsers in the world have only very recently been able to recognize and use Chinese-character or multilingual domain names".

The Response further alleges in this regard:

Nevertheless, Respondent always intended to eventually use the domain name in association with its operational Yangtze River cruise web site and in conjunction with his other Yangtze River related domain names, and will do so once there are sufficient numbers of people within Chinese communities outside of China who begin to use multilingual web browsers.

As appears from a photocopy of the Respondent's website annexed to the Response as Exhibit "D", visitors to the website are instructed "for the time being" to "click here", to search for "more tour packages of your choice from other providers". Doing so, delivers the website visitor to a standard, Chinese language, Internet search engine, which identifies twenty "most sought after search categories", including such items as mobile telephone handsets, beauty aids, adult goods, job recruitment advertisements, jewelry, cosmetics, and self-study aids, in addition to "Three Gorges" information.

The Panel finds the Respondent's submission as to its preparations for the proposed future use of the Disputed Domain Name for a tourism business unconvincing and considers any speculation as to Respondent's possible future use of the Disputed Domain Name to be unjustified.

The Respondent does not hold any trademark or business name rights on the two characters and no authorization whatsoever has been made by the Complainant concerning the characters.

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy.

### **C) Bad Faith**

Subsequent to the registration of the Disputed Domain Name, as well as other domain names incorporating variations of the generic name of the famous Chang Jiang River in China, the Respondent has not put the same into active use but has merely referenced the name on a webpage providing information search services along with several paragraphs of text and photos of river boats, promising a future offering of cruise tours on the Yangtze River.

On balance, however, the Panel finds that the Complainant has failed to prove that the Respondent registered and used the generic Disputed Domain Name in "bad faith".

Accordingly, the Panel finds that the Complaint does not satisfy the condition provided in Paragraph 4 (a) (iii) of the Policy.

## **6. Decision**

The Complainant has failed to establish each of the three requirements set forth in the Policy paragraph 4(a). In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Complaint is therefore DISMISSED.

Mr. David Kreider, *Presiding Panelist*

The Honourable Neil Anthony Brown QC, *Co-Panelist*

Dr. Zhao, Yun, *Co-Panelist*

Dated: 3 February 2009

Neil Brown, dissenting:

**As the majority has found that the Respondent did not register and use the disputed domain name in bad faith within the meaning of paragraph 4(a)(iii) of the Policy, a conclusion with which I agree, the result will be that the Complaint will be dismissed, for the Complainant has not made out a case under all three heads in paragraph 4 (a) of the Policy as it is required to do.**

However, there is one aspect of the majority decision where, with respect, I differ and which I believe should be stated and another that I believe should be expanded.

Right or legitimate interest

**In my opinion, the Respondent has shown a right or legitimate interest in the disputed domain name.**

It is true that the Respondent has not made out a strong case that it has made 'demonstrable preparations' to use the domain name for a *bona fide* offering of goods and services. As such, the Respondent will not be able to bring itself within paragraph 4(c) (i) of the Policy.

But the criteria in paragraph 4(c) are not exclusive and the Respondent has raised another and more significant ground for showing that it has a right or legitimate interest in the domain name.

**The Respondent has submitted that it has an inherent legitimate interest in the domain name because it is descriptive of the famous Yangtze River. That conclusion will follow from the registration of a domain name that is a geographic indicator, provided that there is no evidence of bad faith, illegitimate conduct of some sort or conduct tending to show that the Respondent intended to trade off the good name of the Complainant or otherwise confuse or mislead consumers. There are many UDRP decisions to this effect.**

In my opinion, the Respondent has registered a domain name that is, at the very least, descriptive of the Yangtze River. Indeed, the Complainant alleges that it is more than descriptive of the Yangtze River. The Complainant's case is that its name and the common law service mark it relies on were named '*after the Yangtze River*' and it then provides 'the Chinese characters/words' for that geographical feature. It then proceeds to allege that the Respondent has used an '*identical*' domain name, i.e. that the Respondent has also invoked the name of the Yangtze River and that it has done so by using the Chinese characters it has adopted for the domain name.

As it says in the Complaint (Page 8, paragraph (n)), '...it could not be a co-incidence for the Respondent to register a domain name which is identical to the most distinctive portion of the English service marks/trade names of the Complainant...' (emphasis added).

The fact that the registration of a domain name that is a geographic indicator, such as a country or a region, gives rise to an inherent right or legitimate interest in a domain name, as does a generic expression, is now well established and has been followed in many UDRP decisions. In my opinion, that principle is applicable in the present case

I had occasion to consider the issue and express some views on it in *Costas Spiliadis v. Nicholas Androulidakis*: National Arbitration Forum Case No. FA0708001072907, where the Respondent had registered the domain name < *milos.com* >, after the Greek island.

As I believe they are relevant to the present case, I will set out an abbreviated extract from those views. I said in that decision :

**“ Respondent seeks to rebut this *prima facie* case and demonstrate its rights or legitimate interests in the disputed domain name by showing, first, that it has simply registered a domain name consisting of a geographic place and that such a registration by itself gives rise to a right or legitimate interest.**

**Here, the starting point must be the issue that Respondent has registered a domain name which is a geographic identifier, the name of a place, in this case the name of the well-known island of Milos in Greece, which, *prima facie*, Respondent has as much right to do as anyone else.**

The Panel therefore accepts the submission of Respondent that “Furthermore, utilizing a geographic domain name for a website constitutes a legitimate interest under the policy.” That conclusion is supported by a well-established principle in many UDRP decisions such as the recent decision in *Junta de Andalucia Consejeria de Turismo, Comercio y Deporte, Turismo Andaluz, S.a. v. Andalucia.Com Ltd.*, D2006-0749 (WIPO Oct. 13, 2006) and the cases cited by the Respondent, namely *Port of Helsinki v. Paragon Int'l Projects Ltd*, D2001-0002 (WIPO Feb. 12, 2001) and *Neuswiedler Aktiengesellschaft v. Vinayak Kulkarni*, 2000-1769 (WIPO Feb. 5, 2001).

As the panel noted in the last case mentioned:

The Panel finds that the word “Neusiedler” is a geographic term. The identical trademark and company name of Complainant does not have an exclusive effect with regard to the use of the geographic term as such in domain names

or otherwise by third parties. Thus, Complainant's trademark or company name does not exclude the rights in the Domain Name of Respondent.

That principle was again stated very clearly in the more recent decision of *Consejo de Promoción Turística de México, S.A. de C.V. v. Latin America Telecom Inc.*, *supra*, ...

Likewise, in *Excmo. Cabildo Insular de Tenerife and Promocion Exterior de Tenerife, S.A. v. Jupiter Web Services Ltd.*, D2003-0525 (WIPO Sept. 9, 2003) a ruling was made to the same effect on facts similar to those in the present case and where the respondent had registered <tenerife.net>. The panel said:

Respondent carries on an active Internet-based business that provides information regarding Tenerife as a tourist destination with commercial portals to various service providers (e.g., hotels, air transport, automobiles). It is using the term "TENERIFE" in web addresses, [www.tenerife-apartments.co.uk](http://www.tenerife-apartments.co.uk) and "www.tenerife-apartments.com," that identify an active commercial website. The Respondent on its existing website, addressed by domain names incorporating the term "TENERIFE," is using the term "TENERIFE" in a geographically descriptive sense.

...Respondent has not yet used the disputed domain name in connection with an active website... *Based on Respondent's existing business activities, there is no reason to reject its assertion that... it will use it for a purpose comparable to present use of its other "TENERIFE"-formative domain names. This sole panelist has in several contexts determined that the establishment of rights or legitimate interests in a domain name is not precluded by the absence of active use, when such absence is justified by the circumstances* (emphasis added).

Respondent's planned use of the disputed domain name constitutes a fair use of Complainant's geographically descriptive service mark.

That is enough to dispose of these proceedings by itself, for as Respondent has made out a claim for a right or legitimate interest in the domain name by virtue of the fact that the domain name merely reflects the geographic place, Complainant has failed to show that Respondent does not have rights or legitimate interests in the domain name."

I should add that, as in the *Milos Case*, so in the present case, there was no evidence that the Respondent intended to engage in any improper or misleading conduct that might negate the operation of this principle.

Having regard to the application of this principle in UDRP proceedings and the evidence in the present case, I find that it cannot be said on the balance or probabilities that the Respondent does not have a right or legitimate interest in the domain name. Accordingly, in my opinion, the Complainant has not shown that the Respondent does not have a right or legitimate interest in the disputed domain name and the Complaint should be dismissed for that reason, amongst others.

### **Bad faith registration and use**

The majority has found that the Complainant has not made out a case that the domain name was registered and used in bad faith. That is true enough, but it should also specifically be said in my opinion that there is no evidence that the Respondent was in breach of any of the criteria set out in paragraph 4(b) of the Policy or that it was guilty of any other form of bad faith. Indeed, the evidence is to the contrary. The situation is very similar to that described by the panel in the *Sting Case, Gordon Sumner, p/k/a Sting v Michael Urvan*, WIPO Case No. D2000-0596 on analogous facts, when the panellist said:

‘...it is far from inconceivable that there is a plausible legitimate use to which the Respondent could put the domain name. The Respondent has asserted a legitimate use to which he has put, and intends to put, the domain name. Whilst the evidence provided in support of this assertion is not particularly strong, it is at least consistent with that assertion, and with his overall contention that he did not register and has not been using the domain name in bad faith. The Complainant has thus failed to satisfy the burden of proof on this point.’

In the present case, the Respondent registered the disputed domain name in the context in which it registered other domain names, namely the context of the Yangtze River and the Three Gorges as famous geographic features of China and as a tourist region.

That is clear, not only from the Respondent’s evidence, but also from the allegation of the Complainant that the domain name is ‘identical’ to the Complainant’s service mark and that the service mark and the Complainant itself were named ‘after the Yangtze River.’ Moreover, there is no evidence from which it can be inferred that the Respondent targeted the Complainant or sought to confuse or mislead consumers in any way.

That being so, the Complainant has not made out this criterion under paragraph 4 (a) (iii) of the Policy.