

DOMAIN NAMES DISPUTES IN CHINA

CURRENT DOMAIN NAME REGISTRATION SYSTEM

In China, domain name registrations are based on the “first come first serve” principle. The China Internet Network Information Center (“CNNIC”) would not withhold any application for registration to verify the bona fides or background of the applicant who is registering the domain name. The only requirement for registering Chinese domain name is that the applicant must be a Chinese entity (excluding the companies in Hong Kong, Taiwan and Macau).

Cybersquatting is a serious threat in China. Where a company tries to register their names or trademarks in China, they often find that their names or marks have been registered by others. The cybersquatters register domain names for the sake of reselling them at a much higher price to the companies owning the tradenames or the trademarks. If the companies refuse to buy the domain names, the cybersquatters will then offer the domain names to their competitors.

HOW TO SOLVE THE PROBLEM? ARBITRATION VS. PRIVATE SETTLEMENT

If you encounter the above situation, we do not recommend you to settle with the cybersquatters for three reasons. First, inviting settlement negotiation tacitly acknowledges that the cybersquatters have legitimate

rights to the domain name. Second, private settlements often cost much more than solving the dispute by arbitration. Third, most of the cybersquatters do not appear in arbitration proceedings. Even if they do, they are usually ill-prepared for the arbitration proceedings. This explains why the claimants are often able to obtain a favorable result in domain name arbitrations proceedings.

ARBITRATION VS. LITIGATION

In China, China International Economic and Trade Arbitration Commission (CIETAC) oversees all of China’s domain name disputes. Arbitration has three advantages over litigation.

First, arbitration is a faster way to solve domain name disputes. An arbitration panel is obliged to adjudicate a case within 14 days from the date of establishment of the panel. The People’s Court takes at least 6 months to conclude a case.

Second, arbitration is a cheaper way to solve domain name disputes because the arbitral tribunal allows the admissibility of evidence from overseas. But for commencing legal proceedings in China, such evidence from overseas must be notarized and sent to the Chinese embassy in the plaintiff’s country for authentication. This is costly and time consuming.

Third, the arbitration panel is more receptive than the judges in the People’s Court. Usually, the arbitration panel



is comprised of people having expertise in that field. The arbitrators are open-minded and often hold sympathetic views towards the arguments and evidence towards the trademark owners.

defendant has registered trademark that is similar to the disputing domain name, the chance of success of claimant will decline significantly.

PRE-REQUISITE OF DOMAIN NAME DISPUTES

There are two pre-conditions of disputing a domain name. The claimant or the plaintiff of a domain name dispute must enjoy legal rights over the identifying part of the domain name. Having a registered trademark that is identical or confusingly similar to the disputing domain names will be sufficient.

In addition, the defendant does not enjoy any legal rights over the identifying part of the domain name. If the

	Litigation	Arbitration
Cost of proceedings	Cost more	Cost less
Length of proceedings	6 to 12 months	2 months from case acceptance
Chance of success for claimant	Lower (conservative judges)	Higher (open-minded panel members)
Statute of limitations	Two years from knowledge of infringement.	Two years from the date of the domain name registration.

© Vivien Chan & Co., November 2011

Please note that the information and opinions contained in this newsletter are intended to provide a general overview only, and should not be treated as a substitute for proper legal advice concerning an individual situation. We disclaim all liability to any person in respect of the consequences of anything done or omitted to be done wholly or partly in reliance upon the contents of this newsletter. Readers should make their own enquiries and seek appropriate legal advice on the particular facts and circumstances at issue.

Hong Kong Office

38/F, Cosco Tower,
183 Queen's Road Central,
Hong Kong
T : (852) 2522 9183
F : (852) 2845 9205
E : vivchan@vcclawservices.com

Beijing Office

Suite 508, Changan Tower,
10 East Changan Street,
Beijing 100006, China
T : (8610) 6522 7072
F : (8610) 6522 6967
E : beijing@vcclawservices.com

Shanghai Office

Suite 1002, 10/F, The Headquarters Building,
168 Central Tibet Road,
Shanghai 200001, China
T : (8621) 6387 9222
F : (8621) 6387 9111
E : shanghai@vcclawservices.com