1. The Parties

The Complainant in these Administrative Proceedings is:

Accor, Société Anonyme (France)
Headquartered at:
2, rue de la Mare Neuve
91000 EVRY
France

The Complainant is represented by:

Nathalie Dreyfus
Cabinet ORES
36, rue de St Pétersbourg
75008 Paris
France

The Respondent is:

Hangzhou Yage Electronic Corporation
Hangzhou City
Zhejiang Province
China

The Respondent made no representations in these proceedings.

2. The Domain Name and the Registrar

The domain name at issue is “accor.com.cn”.

The Registrar was identified as:

China Channel 厦门精通科技实业有限公司（中国频道）
3. Procedural History

Complainant filed a Complaint with the Hong Kong International Arbitration Centre (hereinafter “the Centre”) dated December 3, 2003, under the Dispute Resolution Policy of the China Internet Network Information Centre (“CNNIC”) (hereinafter “the Policy”).

On December 8, 2003, the required hard copies of the Complaint were received by the Centre.

Payment in the amount required for a single-member panel was received on December 16, 2003. On the same day the Centre notified the Registrar by email and forwarded the Complaint to Respondent by double registered post.

On December 22, 2003, the Centre served a Notification of the Commencement of the Proceedings on Respondent.

On January 20, 2004, the Centre requested that the parties rank three candidates for Panelist in their order of preference.

On January 22, 2004, the Centre received from Complainant a ranking of the three candidates.

On February 4, 2004, the presumptive Registrar confirmed that it is indeed the Registrar of the domain name in issue, <accor.com.cn>, together with the details of the registration.

On February 6, 2004, having received his declaration of impartiality and independence, the Centre appointed, as the highest mutually ranked candidate, Professor Fabien Gelinas to serve as Sole Panelist and notified the parties of the Panel’s appointment. On the same day the complete file was forwarded to the Sole Panelist by post.

The file was received by the Sole Panelist on February 20, 2003.

4. Factual Background

Complainant is one of the world’s largest groups in the hotel, travel and tourism industry. It owns several “Accor” international trademarks protected in China related notably to its hotels; it holds numerous international registration certificates in related classes (Annex 7 to the Complaint).

Complainant alleges the following facts:

In July of 2003, Complainant discovered that the domain name <accor.com.cn> had been registered by Respondent;
On July 25, 2003, Complainant sent a warning letter to Respondent, asking for an amicable transfer of the domain name registration (Annex 5 to the Complaint);

On August 6 and September 8, 2003, Complainant sent reminders to Respondent (Annex 5 to the Complaint);

On November 28, 2003, Complainant sent a final, formal notice to Respondent demanding the immediate transfer of the domain name registration (Annex 6 to the Complaint);

None of these letters received an answer from Respondent;

Accor is a mark known throughout the world; in all, Complainant owns some 4000 hotels. In the Asia Pacific region, Accor operates some 175 hotels in 15 countries; 17 of these hotels are in China;

Respondent has no business relationship and no agency relation whatsoever with Complainant;

When Respondent registered the domain name on July 23, 2003, Accor had already been in existence and in business for many years;

Respondent or their business activities are not known under the name Accor or <accor.com.cn>;

The domain name at issue does not direct users to an active Internet site and there is no genuine use being made of the domain name.

Respondent did not submit a Response.
5. Discussion

A. Language of the Proceedings

According to Article 8 of the Rules for CNNIC Domain Name Dispute Resolution Policy (hereinafter the Rules), “Unless otherwise agreed by the parties, or determined in exceptional circumstances by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese”.

Complainant drafted the Complaint in English. In the letter accompanying the Complaint and its annexes, Complainant requested that the proceedings be held in English. This choice of language is presumably related to the combined fact that the English language is the language most widely used in international relations and is one of the working languages of the Centre. The Respondent, about whom nothing is known beyond the name and seemingly incomplete contact details provided to the Registrar, made no representations. The issue of language in the context of the Policy gave some pause to the Administrative Panel.

In deciding on the language of the proceedings under Article 8 of the Rules, the Administrative Panel should consider the overall “circumstances” of the case. The “circumstances” of the case refer to such considerations as the location of the parties, the burden that the use of one language over another would impose on each of the parties, the overarching objectives of the policy in terms of efficiency and economy and the impact of language on fairness generally.

In this case, Complainant is located in France and has no knowledge of Chinese. In order to proceed in Chinese, Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Chinese in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings. It should be recalled in this respect that the procedure under this Policy was designed particularly in the interest of speed and low cost. The true location and identity of Respondent is uncertain, as the contact details provided to the Registrar appear to be incomplete and there is no correspondence from Respondent on the record. What is clear is that the inactive website to which the domain name in issue leads to is dominated by the English language. It is a rough logo sketch using the string of letters “Accor” first horizontally, and then in a vertical curve to initiate the following words: “Activated,” “Creative,” “Credible,” “Orgaine” (sic.), and “Repseful”. Incidentally, the very same sketch can be found on the web page to which the domain name <accor.cn> leads. The registration of that domain name was found in HKIAC Case No DCN 0300004 to have been in bad faith.

The particular circumstances of this case are such that the Panel is receptive to the arguments of Complainant.

But the overriding concern of an Administrative Panel deciding entirely or partially in favour of a language other than Chinese should be procedural fairness. International arbitration is
the context in which the notion of a “language of the proceedings” decided by the tribunal was evolved and the context from which the notion was borrowed for the purposes of domain name dispute resolution procedures. But even in the context of international commercial arbitration, it is a fairly common practice to have more than one language used in the proceedings. It is also helpful to recall that the issue of language in the context of domain name dispute resolution procedures does not have the same texture or configuration as it would in arbitral proceedings where successive exchanges of arguments and documents are expected and physical meetings or hearings normally take place. The proceedings under the Policy are normally documents based and involve a single round of submissions. The Administrative Panel is expected to decide the case on the basis of this one round of submissions. In many cases, including this case, this consists merely in the complaint, because the respondent fails to submit an answer. In terms of procedural fairness, therefore, the essential question is whether Respondent was duly notified of the proceedings and afforded an opportunity to answer and make its case in the language one would expect would be used under the terms of the Policy, namely, Chinese.

It is the view of the Administrative Panel that the procedure followed by the Centre in this case was such that, all things considered, an appropriate level of procedural fairness has, up to this point, been safeguarded. This is because the existence and details of the proceedings were notified to Respondent in Chinese. Even though the full text of the Complaint was in English, Respondent was given the opportunity to respond, to participate in the constitution of the Administrative Panel and to object to the proceedings taking place in a language other than Chinese. The Centre, writing in Chinese, afforded Respondent the opportunity to do all of the above in Chinese.

Since Respondent submitted no Answer and did not object to the proceedings taking place in the language proposed by Complainant (and used in the Complaint), an Administrative Panel which could read the Complaint was constituted. This Panel did not have proficiency in Chinese, a language in which no submissions had been made. This was the result of the Centre’s apparent practice of appointing “the highest mutually ranked candidate” in a situation where no Answer has been received, a practice apparently based on an interpretation of Article 26 of the Rules which is not entirely clear to the Panel.

To summarize the situation, we can say that imposing Chinese as the sole language of these proceedings would impose a significant burden on Complainant; that as far as language is concerned, procedural fairness has been safeguarded up to now; and that the Panel, which has no proficiency in Chinese, now has little choice but to draft this decision in English.

Would the drafting of the decision in English have any bearing on the fairness of the proceedings? It is clear to the Panel that the proceedings, and the requirements of procedural fairness that attach to them, extend, beyond the parties submissions, to the decision and its notification. The decision will, one way or an other, affect the legal rights and obligations of the parties. The parties will necessarily rely on this decision to determine their future course of action. As a result, having regard to all the circumstances of this case and the relevant provisions of the Policy and Rules, the Administrative Panel is of the
opinion that although the decision will be handed down in English, it should be notified and published accompanied by a Chinese translation provided and certified by the Centre.

B. Merits

Article 31 of the Rules provides that the Administrative Panel shall decide on the basis of the statements and documents submitted as well as any rules or principles of law it deems applicable. According to the Policy, the Complainant must cumulatively establish:

i) that the domain name at issue is identical or confusingly similar to a mark in which said Complainant has rights;

ii) That the domain name holder has no right or legitimate interest in respect of the domain name (or major part thereof);

iii) That the domain name was registered or is being used in bad faith by the domain name holder.

These three conditions will be analysed in turn.

i) Identity or Confusing Similarity

The Administrative Panel finds that the domain name at issue is identical to the mark Accor. It is clear that the addition of the domain name extension “.com.cn” is immaterial in the determination of this issue. It was also shown to the satisfaction of the Administrative Panel that Complainant has rights in that mark.

ii) Rights or Legitimate Interests

Several elements may be considered in the determination of the question whether Respondent has a right or legitimate interest in the domain name or mark.

The Administrative Panel is satisfied that Respondent is not authorized or licensed by Complainant to use the mark, that Respondent is not known by or under the name Accor and that the domain name at issue in this case is not being used by Respondent in connection with a bona fide purpose.

Respondent has not submitted any evidence relating to any right or legitimate interest they might have in respect of the domain name. In the absence of submissions by a respondent, the Administrative Panel decides on the basis of the entire file following a critical analysis of the submissions and allegations of Complainant. In the instant case, the Administrative Panel finds that Respondent has no right or legitimate interest in the mark.
iii) Registration or Use in Bad Faith

Complainant succeeded in establishing that Accor is a well-known mark the world over and that there are some 4000 Accor hotels, 175 of which are in the Asia Pacific region and 17 in China. It is very unlikely that Respondent was unaware of the Accor mark when the domain name was registered in 2003. What is more, the fact that Accor is not a word and has no meaning in and of itself strongly suggests that the intent in selecting this domain name for registration was to create an association with the mark of Complainant, either for commercial gain or for the purpose of selling the registration to the mark owner for a consideration in excess of out-of-pocket expenses. It would be difficult indeed to think of another use for Respondent. In the Panel’s view, the balance of probabilities leans on the side of Complainant.

This is corroborated at least indirectly by the fact that the domain name in issue leads to the same inactive page, a rough logo sketch using the string of letters “accor”, as did (and does at the time of writing this decision) the <accor.cn> domain name, which was at issue in HKIAC Case No DCN 0300004 and was found to have been registered in bad faith.

Although this is a borderline case in which more careful and elaborate submissions would have been appreciated, the Administrative Panel, based on a sovereign assessment of all the facts of this case, finds that Respondent proceeded to the registration of the domain name at issue in bad faith.

6. Operative Conclusions

For the above reasons, the Panel finds:

a) that the domain name <accor.com.cn> is identical to the trademark of the Complainant;
b) that the Respondent has no right or legitimate interest in the domain name <accor.com.cn>;
c) that this domain name was registered in bad faith.

It is therefore ordered that the domain name <accor.com.cn> be transferred to the Complainant. As indicated in Part A of this decision, a translation into Chinese should be provided and certified by the Centre and should accompany the notification and publication of this decision.

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Fabien Gélinas
Sole Panelist
Date: March 6, 2004