1、 **Procedural History**

On 17 September 2007, the Complainant submitted a Complaint in the English language to the Hong Kong International Arbitration Center (the HKIAC) and elected this case to be dealt with by a single-member panel. On 19 September 2007, the HKIAC sent to the complainant by email an acknowledgement of the receipt of the complaint. All correspondence to and from the HKIAC described herein was in the English language.

On 20 September 2007, the HKIAC transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the HKIAC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. On 3 November 2007, the HKIAC transmitted the Complaint to the Respondent and notified the Respondent of the commencement of the action.

The Respondent failed to submit a Response within the required period of time. On 19 February 2008, the HKIAC notified the Respondent’s default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the HKIAC notified the parties on 7 March 2008 that the Panel in this case had been selected, with Dr ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with the CNNIC Domain Name Dispute Resolution Policy, its Rules and the HKIAC Supplemental Rules.

On 8 March 2008, the Panel received the file from the HKIAC and should render the Decision within 14 days, i.e., on or before 24 March 2008.

According to Article 6 of the CNNIC Policy, the language of the domain name dispute resolution policy shall be Chinese, unless otherwise agreed by the parties or determined by the Panel. The Complainant submitted the Complaint in English, while the language of the Registration Agreement is in Chinese. The Respondent, however, did not oppose to the language used by the Complainant. The evidence submitted by the Complainant shows that previous email
correspondence from the Respondent was in English. The Respondent, whose English may not be perfect, has no problem communicating and understanding English. The Panel, in consideration of the circumstances of this administrative proceedings and having regard to the fact that there is no express opposition submitted by the parties, determines English as the language of the proceedings.

2. Factual Background

For the Complainant

CONFEZIONI TADON S.N.C, DI DONATO TAGLIENTE & C. is the owner of the trademark “Tadon” in many countries and regions, including China. The Complainant is a company registered in Italy.

For the Respondent

The Respondent, 上海金越网络科技有限公司, is the current registrant of the disputed domain names <tadon.cn/tadon.com.cn> according to the Whois information.

3. Parties’ Contentions

Complainant

Identical/Confusing Similarity

The complainant has legitimate rights over the “Tadon” mark because it has registered in Italy its company name “TADON” on 31st May 1974 with the company registration number 60896. Furthermore, the Complainant has registered its trademark “Tadon” in Italy on 1 June 1994 and has extended on 19 April 2000 the protection of the trademark also in the People’s Republic of China, under the Madrid Agreement and Protocol, according to the international registration number 740500. Furthermore, the Complainant is also the owner of the following domain names: www.tadon.com, www.tadon.it, www.tadon.net, www.tadon.eu.

The disputed domain names are identical to the Complainant’s registered trademark and to the enterprise name in which the Complainant has rights. The illegality of the Respondent consists in the appropriation and use of domain names that are identical to the enterprise name and trademark belonging to the Complainant.

No Rights or Legitimate Interests in Respect of the Domain Names

The name of the Respondent is not related to the “Tadon” mark and the Complainant has not authorized the Respondent to use the “Tadon” mark. Accordingly, the Complainant considers that the Respondent does not have any rights or legitimate interests in respect of the domain names or major part of the domain names in issue. The Complainant is the only company that has the legal right to use in P.R. China the domain name related to the “Tadon” trademark.

Article 5 of the Law of the People’s Republic of China against Unfair Competition prohibits business operators from “faking the registered trademarks of others”. Furthermore, the legislation of the People’s Republic of China on the registration of domain names provides that a
domain name may not use “an enterprise name or a trademark already registered in China by others”. In fact, Internet domain name registration in China is subject to the Provisional Administrative Measures on Registration of China Internet Domain Names (1997) that provide restrictions of certain domains.

Domain Name Registered and Used in Bad Faith

The registration of the domain names by the Respondent is with bad faith. In fact, the Complainant has received, on 17, 18 and 23 April 2007, to the e-mail address tadon@tadon.it, several emails, sent by Edward Zhang (employee of the Respondent) for the purpose of selling, renting or otherwise transferring the disputed domain names to the Complainant who is the owner of the name and trademark “Tadon”.

The Respondent has for a number of times registered the names or marks in which other persons or companies have legitimate rights and interests as his own domain names for the purpose of selling the domain names related to the names or marks in which other persons have legitimate rights and interests.

It is also important to know that recently the China Internet Network Information Center (CNNIC) has published the name of two Internet domain name registrars who have been accused of illegal activities, one of which being the Respondent. The reason of this blacklist is that the two registrars have allegedly sent intimidating emails to terrify Internet users to try to have them change their domain registrars. CNNIC says it will verify the complaint reports and transfer them to the relevant criminal authorities. It is easy to find, in some Internet-forum, the message of companies complaining for the emails from the Respondent for the purpose of selling the domain names related to their names or trademarks.

Reading the communications from the Respondent to the Complainant and the other complaints that are in the Internet, it is evident that the Respondent has registered the disputed domain names in bad faith for the purpose of selling, renting or otherwise transferring the disputed domain names to the Complainant in order to obtain unjustified benefits. It is quite clear that the Respondent knows very well that the Complainant is the only company that has legitimate rights over the disputed domain names and the Respondent registered the disputed domain names not because the Respondent received an application from another company (that does not exist) but for the purpose of selling, renting or otherwise transferring the disputed domain names to the Complainant.

Furthermore, it is evident that the Respondent does not have intention to put the disputed domain names into practical use but the Respondent wants only to sell or rent or otherwise transfer the domain names to the Complainant in order to obtain unjustified benefits.

In accordance with the CNNIC Policy and on the basis of the reasons stated above, the panel is requested to render a decision transferring the disputed domain names to the Complainant.

Respondent

The Respondent failed to submit a Response within the required period of time.

4. Findings
In accordance with Article 8 of the CNNIC Policy, in order to succeed in the administrative proceeding and obtain an order that a domain name should be cancelled or transferred, the Complainant should prove each of the following three elements:

1) the disputed domain name is identical with or confusingly similar to the Complainant’s name or mark in which the Complainant has civil rights or interests; and
2) the disputed domain name holder has no rights or legitimate interests in respect of the domain name or major part of the domain name; and
3) the disputed domain name holder has registered or is using the domain name in bad faith.

Identical/Confusingly Similar

The Complainant’s enterprise name is CONFEZIONI TADON S.N.C, DI DONATO TAGLIENTE & C., which has been registered in Italy since 1974. The evidence submitted by the Complainant shows that the Complainant owns the trademarks “Tadon”. The Complainant registered the trademark “Tadon” in Italy as early as in 1994 and has extended the trademark protection under the Madrid Agreement and Protocol to China in 2000. The international registration number is 740500. Accordingly, “Tadon” enjoys trademark protection in China since 2000, much earlier than the registration date of the disputed domain names on 17 April 2007.

As the suffix “.cn/.com.cn” only indicates that the domain name is registered under this ccTLD and is not distinctive, the Panel has no problem in finding that the disputed domain names <tadon.cn/tadon.com.cn > are identical with the Complainant’s trademark “Tadon”.

The Panel therefore holds that the Complaint fulfills the first condition provided in Article 8 of the CNNIC Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain names. The Complainant also submits that the Respondent has not been authorized to use the trademark “Tadon”. The Complainant’s assertion is sufficient to establish a prima facie case, thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent, who did not file a Response, did not dispute the above contention and has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain names. In view of the evidence submitted, the Panel cannot but hold that the Respondent does not have rights or legitimate interests in the disputed domain names.

The Panel therefore finds that the Complaint fulfills the second condition provided in Article 8 of the CNNIC Policy.

Bad Faith

Under Article 9 of the CNNIC Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:
(i) the purpose of registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits; or
(ii) the disputed domain name holder registered the domain name in order to prevent the owners
of the name or mark from reflecting the name or the mark in a corresponding domain name, provided that the domain name holder has been engaged in a pattern of such conduct; or (iii) the disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant’s reputation, disrupting the Complainant’s normal business or creating confusion with the Complainant’s name or mark so as to mislead the public; or (iv) other circumstances which may prove the bad faith.

Evidence submitted by the Complainant clearly shows that the Respondent is aware of the existence of the Complainant and its trademark. The term “tadon” is not a generic word and the Respondent does not have rights or legitimate interests in the term “tadon”. The action of knowingly registering the disputed domain names per se has constituted bad faith.

The email correspondence from the Respondent shows that the Respondent was soliciting to sell the disputed domain names in exchange for the so-called “Single registration fee”, which is higher than the registration fee defined by the China Internet Network Information Center (CNNIC). This is exactly the first typical examples of bad faith as defined in the CNNIC Policy: to sell or transfer the domain name to the Complainant who is the owner of the name or mark and to obtain unjustified benefits. Furthermore, it should be mentioned that the Respondent has not made any use of the disputed domain names since the registration in April 2007. Passive holding of domain names may be also evidence to show the Respondent’s bad faith in registering the disputed domain names.

In conclusion, the Panel finds that the Respondent has registered and used the disputed domain names in bad faith. Accordingly, the Panel finds that the Complaint satisfies the third condition provided in Article 8 of the CNNIC Policy.

5. Decision

Having established all three elements required under the CNNIC Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain names <tadon.cn/tadon.com.cn> should be TRANSFERRED from the Respondent to the Complainant.

ZHAO Yun
Sole Panelist

DATED: 19 March 2008