1. Procedural History

The complainant in this case is MAXTOR CORPORATION, a company registered in Delaware, United States. Its address is 500 McCarthy Boulevard, Milpitas, California, CA 95035, USA. Its authorised representative in these proceedings is Messrs. Stephenson Harwood & Lo of Hong Kong.

The respondent is Shenyang Shixin Co. Ltd. and its address is at No.214 Room, Sunday Electron Market, Sanhao Street, Heping District, 110003, Shen Yang, People’s Republic of China. Its respondent has not appointed any representative in these proceedings.

The domain name in dispute is "maxtor.com.cn". The Registrar of the domain name is China Internet Network Information Center, the address of which is at No.4, Zhongguancun No.4 South Street, Haidian District, Beijing, People’s Republic of China.

On 24 April 2002, pursuant to the CNNIC Domain Name Dispute Resolution Policy (“the CNDRP”) of 30 September 2002 of China Internet Network Information Center
On 28 April 2003, Hong Kong International Arbitration Centre sent to the complainant by email an acknowledgement of the receipt of the complaint and reviewed format of the complaint for compliance with the CNNIC Domain Name Dispute Resolution Policy (“the Rules”) and Hong Kong International Arbitration Centre Supplemental Rules to China Internet Network Information Center Domain Name Dispute Resolution Policy (“the HKIAC Supplemental Rules”), the complainant submitted a complaint in Chinese to the Hong Kong International Arbitration Centre and elected this case to be dealt with by a one-person panel.

On 29 April 2003, Hong Kong International Arbitration Centre requested CNNIC by email for the provision of information at the WHOIS database in respect of the domain name. On 30.04.2003, CNNIC confirmed that the domain name in dispute was registered by CNNIC and the status was still valid. CNNIC also confirmed that the respondent was the domain name holder.

On 30 April 2003, Hong Kong International Arbitration Centre issued to the Registrar CNNIC the notice of commencement of proceedings and, as the administrative proceedings were in progress, demanded CNNIC to prohibit the transfer or change of the status of the registration of the domain name in issue. On 3 May 2003, CNNIC replied to Hong Kong International Arbitration Centre, stating that the cancellation, transfer, etc. of the domain name in dispute had been prohibited.

On 5 May 2003, Hong Kong International Arbitration Centre confirmed to the complainant by email that the format of the complaint received on 24 April 2003 was in order and that the same had been forwarded to the respondent. The formal commencement date of the proceedings was on 5 May 2003. On the same day, Hong Kong International Arbitration Centre sent and/or transmitted by registered mail and email to the respondent the notice of commencement of proceedings, together with the complaint and associated materials, demanding the respondent to file a response within the scheduled time.

Since the respondent did not file a response in accordance with the time specified in the Rules and the HKIAC Supplemental Rules, Hong Kong International Arbitration Centre informed the complainant and the respondent by email about the default, stating that, as the respondent did not file a response within time, Hong Kong International Arbitration Centre would appoint the panelist to proceed to render the decision, in the absence of the response by the respondent.
On 30 May 2003, Hong Kong International Arbitration Centre gave notice to the potential candidate for the panelist, Mr. Gary Soo, requesting him to confirm whether he would accept the appointment as a panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

On 30 May 2003, Mr. Gary Soo confirmed by email to Hong Kong International Arbitration Centre, his agreement to accept the appointment and declared his being able to maintain his impartiality and independence in dealing with this case. On the same day, Hong Kong International Arbitration Centre informed by email the complainant, the respondent and the sole panelist, Mr. Gary Soo, that the Panel of this case had been formed by Mr. Gary Soo as the sole panelist.

On 5 June 2003, Hong Kong International Arbitration Centre transferred the files of this case to the Panel. On 5 June 2003, CNNIC informed Hong Kong International Arbitration Centre by email that the registration of the domain name in dispute was cancelled due to non-payment of the annul fees and that a new party had registered the domain name in dispute on 2 June 2003. On 20 June 2003, Hong Kong International Arbitration Centre informed the Panel by email that CNNIC had restored the registration of the domain name in dispute, pending the rendering of the decision by the Panel. In view of these special circumstances, Hong Kong International Arbitration Centre requested the Panel to render a decision within 14 days from 23 June 2003, i.e. on or before 7 July 2003, pursuant to the relevant stipulations.

2. Factual Background

For the complainant

The complainant is a corporation formed in 1982 and is in the business of computer hard drives and accessory storage and electronic equipment. The complainant’s product was marketed worldwide. The complainant’s artistic trademark “MAXTOR” was registered on 7 November 1998 with the China’s Trademark Bureau and, the documents from the complainant indicated that the registration was numbered 1221213 regarding category no.9 of the goods. Through the domain name in dispute, it was not possible to visit any webpage or to link to other websites.

For the respondent

The respondent registered the domain name in dispute "maxtor.com.cn" on 11 January 2000.
3. Parties’ Contention

The complainant

The complainant asserts legitimate rights over the mark “MAXTOR”. Since its establishment in 1982, the complainant has been using the “MAXTOR” mark in the operation of its business. Now, the complainant owns 6 major product line and, in each product line, there are many different models of computer hard drives and accessory storage and electronic equipment.

The complainant indicates that it was one of the largest computer hard drive storage product and technology suppliers in the world. Its annual income is over 38 billions US dollars. Only in the years 1999, 2000 and 2001, the complainant has spent in marketing and administrative (including promotion and advertisement) respectively over USD90,000,000, USD99,000,000 and USD232,000,000. Also, the complainant points out that its product was sold worldwide and the complainant’s subsidiary companies around the world also adopt the “MAXTOR” mark in their trade names. These subsidiary companies situate at Europe, Asia and many other countries including Australia. They also include the Beijing representative office of the complainant, Maxtor Asia Pacific Limited, and the complainant’s China production factory, Maxtor Technology (Sushi) Co. Also, the complainant is the holder of the www.maxtor.com international generic domain name and many other international generic and national country code domain names. These include, for example, "www.maxtor.net", "www.max.info", "www.maxtor.biz", "www.maxtor.us", "www.maxtor.com.hk", "www.maxtor.co.jp", "www.maxtor.com.sg", "www.maxtor.com.kr", "www.邁拓.com", "www.邁拓.中國", and "www.邁拓.公司". Furthermore, the complainant has also registered over 100 domain names that include "maxtor" or "max" in relation to the product and service of the complainant. These include, for example, "www.maxtor-brand.com", "www.maxtor-drives.com", "www.maxtorsupport.com", "www.maxtortechsupport.org", "www.allaboutmaxtor.org", "www.ilovemaxtor.com", "www.maxattach4000.net", "www.maxtor1394.org", "www.maxtorasia.com", "www.maxtordirect.com", "www.maxtoreurope.org", "www.maxtorglobal.net", "www.maxtorsingapore.com" and "www.maxtorworldwide.net". Though these domain names, the complainant provides via the Internet information of its product and software download for operating its product, together with other Internet marketing and sale services.

The complainant also notes that it owns the “MAXTOR” trademark in United States, its trademark registration nos. being 73410784, 76394980, and 76449860. Moreover, though itself or its subsidiary companies worldwide, including those in more than 50 countries or
places countries such as Taiwan, Cambodia, European Union, Hong Kong Japan, Korea, Philippines, Singapore, Thailand, United Kingdom, the complainant has also registered or applied for the registration of the “MAXTOR” trademark. The complainant’s artistic trademark “MAXTOR” has been registered on 7 November 1998 with the China’s Trademark Bureau and, the documents from the complainant indicated that the registration was numbered 1221213 regarding category no.9 of the goods.

Accordingly, through its long term use by the complainant, the “MAXTOR” mark has become a famous mark worldwide.

The complainant is of the view that the key component of the disputed domain name is the same is the complainant’s “MAXTOR” mark and its registered trademark in China and is also confusingly similar with those “MAXTOR” trademarks that the complainant has registered or applied for registration in other countries and places. Apart from this, the complainant also considers that the disputed domain name is also the same as or is confusingly similar to the complainant’s registered generic domain name and others country code domain names.

As to the respondent’s rights towards the disputed domain name or its key component, the complainant points out that the respondent has not owned any registration of the “MAXTOR” mark or trademark in any language. Also, when searching for product or service in Mainland China using this “MAXTOR” mark though search engines on the Internet, only the complainant adopts the “MAXTOR” in its product and services. Therefore, the complainant considers that the respondent has not used the “MAXTOR” mark in its product and service or in its business or trade names. Furthermore, the complainant has not authorised the respondent in using this “MAXTOR” trade mark or name for its domain name or other purposes.

Accordingly, the complainant considers that the respondent does not have any legitimate rights over the domain name in dispute.

Moreover, the complainant also points out that the registration of the domain name by the respondent was in bad faith. This is based on the following reasons:-

First, the respondent was with knowledge of the complainant’s rights over the famous “MAXTOR” mark when registering the domain name in dispute with bad faith. The complainant’s Beijing representative office, Maxtor Asia Pacific Limited, and the China production factory, Maxtor Technology (Suzhou) Co. Ltd. both adopted “MAXOTR” in their names. The complainant also put in large sums of money for its product and service promotion in places including China. Only in the year 2000, the income of the complainant
generated from sales in the Asia Pacific region was over 7 billions US dollars. Therefore, when the respondent registered the domain name in dispute, it had to be aware that the “MAXTOR” mark was a fairly famous mark in China and other parts of the world and that the complainant was a corporation in the electronic businesses.

Second, the respondent also attaches in the complaint documents regarding the respondent being the holder of another domain name www.minolta.com.cn concerning the famous mark “Minolta”. The complainant notes that that mark belongs to a Japanese corporation, Minolta Co., Ltd., in the business of cameras and audio and video office systems.

Third, in the more than 3 years period after the respondent registered the domain name in dispute, the respondent has not taken any actions to use that domain name or link that domain name to anywhere. The complainant notes that such conduct of the respondent is with bad faith and refers to the relevant cases under the Uniform Domain Name Dispute Resolution Policy (“UDRP”) in support, including Mondich and American Vintage Wine Biscuits, Inc. v. Brown d/b/a Big Daddy’s Antiques (WIPO Case No. D2000-0004), Pharmacia & Upjohn AB v. Dario H. Romero (WIPO Case No. D2000-1273), Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Case No. D2000-0003) and Wal-Mart Stores Inc. v. Thomson Hayner d/b/a Wireless Revolution d/b/a Latin Technologies (WIPO Case No. DWS2002-0001).

Fourth, the respondent was well aware that the complainant’s mark was a famous mark and the domain name in dispute might result in confusion to the public. The respondent’s registration of the domain name in dispute under these circumstances further indicates the bad faith of the respondent was to sell or transfer the domain name in dispute to the complainant for profits. Likewise, the respondent’s registering the domain name in dispute and other domain name with other famous mark indicates that the respondent was keeping domain names with bad faith. The complainant relies on the relevant cases under UDRP in support, including Sankyo Limited v. Zhu Jiajun (WIPO Case No. D2000-1791) and The Dow Chemical Company, Inc. v. Iryu Keiei Kenkusho Ltd. (eResolution Case No. AF-0747).

Fifth, the complainant’s solicitors had tried to contacted that respondent using the telephone no. and fax no. as per the contact details provided in the registration but found out that there was no such user for the these nos. On 18 December 2002, the complainant’s solicitors had sent email, fax and registered post to the respondent, stating that the complainant was with rights over the domain name in dispute and demanding a response from the respondent. Yet, the respondent refused to respond. The complainant considered that the provision of incorrect registration information and the failure to respond properly by the respondent both indicate the bad faith of the respondent in obstructing the complainant in getting the domain name in dispute. The complainant relies on the relevant decisions under UDRP in support of this assertion and they include Changsha Cigarette Factory v. Name Norya Yu (eResolution Case No.AF0-908) and Telstra Corporation v. Nuclear Marshmallows (WIPO Case No.D2000-0003).

The respondent
The respondent did not file a response within the stipulated time.

4. Findings

Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

(i) the disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complaint has civil rights or interests;

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

(iii) the disputed domain name holder has registered or is being used the domain name in bad faith.

Article 7 of CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims. For this, Article 31 of the Rules stipulates that the Panel shall, in absence of exceptional circumstances, decide the dispute based upon the complaint. Further, Article 35 of the Rules provides that, if a party, in the absence of exceptional circumstances, does not comply with any provisions of the Rules, the Panel shall draw such inferences therefrom as it considers appropriate.

Based on the complaint and the attached documents submitted by the complainant, this Panel finds as follows:-

Identical or Confusing Similarity

The respondent registered the disputed domain name “maxtor.com.cn” on 11 January 2000. The complainant is however a corporation set up in 1982 at Delaware, United States. Since its setting up, the complainant has been using the “MAXTOR” mark in its business of various models of computer hard drives and other electronic storage and accessory equipment. The complainant owns in the United States the “MAXTOR” trademark and its trademark registration nos. are 73410784, 76394980 and 76449860. Furthermore, though itself or its subsidiary companies worldwide, including those in more than 50 countries or places countries such as Taiwan, Cambodia, European Union, Hong Kong, Japan, Korea, Philippines, Singapore, Thailand, United Kingdom, the complainant has also registered or applied for the registration of the “MAXTOR” trademark. The complainant is one of the largest computer hard drive storage product and technology suppliers in the world. Its
product is marketed worldwide and the subsidiary companies of the complainant around the world also include in the business names this “MAXTOR” mark. These subsidiary companies include the Beijing representative office of the complainant, Maxtor Asia Pacific Limited, and the complainant’s China production factory, Maxtor Technology (Suzhou) Co. Moreover, although the complainant has not submitted the relevant registration documents, from the copy of the print out of the chinatrademarkdatabase website provided by the complainant, the artistic trademark “MAXTOR” has been registered on 7 November 1998 with the China’s Trademark Bureau, regarding category no.9, numbered 1221213. In the email, fax and registered mail from the complainant’s solicitors sent to the respondent on 18 December 2002, the copies of the relevant trademark registration certificates in China had been attached. As the respondent does not submit a response objecting to them from the complainant as per 18 December 2002, the Panel considers that the complainant is in possession of the civil rights against the “MAXTOR” mark or name as required under the Article 8(i) of CNDRP.

In the disputed domain name, “maxtor.com.cn”, “.cn” is the country code domain name, “.com” is the secondary generic domain name. The remaining part, after taking our the “.cn” country code domain name and the “.com” secondary generic domain name, is identical to, or confusingly similar to, the “MACTOR” mark that the complainant has civil rights.

Accordingly, the Panel decides that the complainant has satisfied the first condition under Article 8 of CNDRP.

Rights or Legitimate Interests of the respondent

From the documents attached to the complaint, the respondent is a corporation named “沈阳实信电子有限公司 shenyang shixin co., ltd ” and its name has no connection with “MAXTOR” at all. At the same time, the respondent has not provided any evidence to show its business relationship, if any, with the complainant or the trademark owner, or put forward any reason to support its use of “MAXTOR”. Moreover, the complainant has indicated that it has never authorised the use of the “MAXTOR” mark or name as domain name or otherwise by the respondent and that, from searching the Internet, the complainant is the only one that adopts that “MAXTOR” mark in the supply of its product and services in the Mainland China region. To these assertions of the complainant, the respondent did not submit a response to deny them. Thus, the Panel decides that the respondent does not have rights or legitimate interests over the disputed domain name or the major part thereof.

Bad Faith
Article 9 of CNDRP provides that in any of following circumstances, the conduct of the holder of the domain name that is subject to the complaint amounts to registration or use of a domain name in bad faith:-

(i) the disputed domain name holder has registered or acquired the domain name for the purpose of selling, renting or otherwise transferring the domain name to obtain unjustified benefits;

(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;

(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;

(iv) other circumstances which may prove the bad faith.

The evidence from the complainant indicates that the complainant is one of the largest computer hard drive storage product and technology suppliers in the world. Its product are marketed worldwide including in China and the subsidiary companies of the complainant around the world all adopt business names including the “MAXTOR” mark. The complainant also holds at many countries and places the “MAXTOR” trademark registration. The Beijing representative office of the complainant is Maxtor Asia Pacific Limited and its China production factory is Maxtor Technology (Suzhou) Co. Ltd.. Also, through the international generic top level domain name “www.maxtor.com.cn” and many other domain international generic domain names and national domain names, the complainant provides at the Internet its product information and software download and proceeds with online sales and other services. In addition, the complainant has invested large sums of money in the product and service promotion worldwide including China. In the year of 2000 alone, the income from sales of the complainant generated in the Asia-Pacific region is already over 7 billions US dollars. The complainant also submits copies of the relevant Chinese newspapers, magazines and other promotion materials. The artistic trademark “MAXTOR” of the complainant has also been registered with the China’s Trademark Bureau on 7 November 1998. Accordingly, the complainant assert that, when registering the domain name in dispute, the respondent was aware of “MAXTOR” mark being a famous mark in the electronic industry in China and worldwide.

The Panel believes that, according to the use of the “MAXTOR” mark in the promotion and sales of its product and services by the complainant in China, the complainant’s “MAXTOR” mark was famous to a certain extent within the computer or electronic
industry in Mainland China when the respondent registered the disputed domain name. The respondent is situated in the Shen Yang City in Mainland China and its name indicates that it is also in the computer or electronic business. The address of the respondent is also located in the room 214 of an electronic market. Also, the word “maxtor” is not one used in the usual language. In the absence of contrary evidence, the Panel does not believe that the respondent was not aware of the complainant’s “MAXTOR” mark and chose on its own to register the disputed domain name, when the respondent registered the disputed domain name. As such, the Panel finds that the respondent was aware of the complainant’s “MAXTOR” mark when registering the disputed domain name.

In support of the finding of bad faith of the respondent, the complainant relies on some relevant cases decided under UDRP. The Panel notices that the requirements under paragraph 4(a)(iii) of UDRP regarding bad faith are different from those under CNDRP. In particular, paragraph 4(a)(iii) stipulates that both the registration and use of the disputed domain name are required to be with bad faith. Nonetheless, the Panel accepts that relevant decisions under UDRP are of reference value to cases to be decided under CNDRP. Moreover, certain guidance as to the evidence required can be found from such decisions concerning registration and use of domain name in bad faith.

In the frequently referred case of *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No.D2000-0003), the respondent’s non-action after registration was adequate to found bad faith in special circumstances. The Panel in that case, in deciding bad faith use and registration on the part of the respondent, took into account the fact that the respondent registered the domain name with knowledge of the complainant’s right and that the respondent had not used the domain name in any way at all after registration. Likewise, in *Wal-Mart Stores, Inc. v. Thomson Hayner d/b/a Wireless Revolution d/b/a Latin Technologies* (WIPO Case No.DAS2002-0001), the complainant’s mark was a well-known mark in the country where the respondent’ situated and the Panel in that case accordingly found that the respondent was with knowledge of the complainant’s mark when it registered the domain name. In *Mondich and American Vintage Wine Biscuits, Inc. v. Brown d/b/a Big Daddy’s Antiques* (WIPO Case No. D2000-0004), the conduct that respondent did not make use of the domain name in its business a long time after its registration and that the respondent did not provide contrary evidence in rebuttal to the complainant’s allegations was taken into consideration in deciding whether the respondent was with bad faith. In *Pharmacia & Upjohn AB v. Dario H. Romero* (WIPO Case No. D2000-1273), the complainant’s providing incorrect contact information at its website corresponding to the domain name was one of the supporting evidence for finding bad faith on the part of the respondent.

In this case, the respondent was aware of the complainant’s “MAXTOR” mark when it registered the domain name. In the 3-year period after its registration, the respondent did not put into use the disputed domain name for its business. Moreover, based on the fact
that the respondent did not have rights or legitimate interests over the disputed domain name or its major component, if the respondent uses the disputed domain name for its business, it will infringe the civil rights enjoyed by the complainant. In addition, the complainant cannot contact the respondent using the information provided during the registration of the disputed domain name. The respondent has further failed to provide contrary evidence in rebuttal to the concerned allegations by the complainant.

Furthermore, in *Sankyo Limited v. Zhu Jiajun* (WIPO Case No. D2000-1791) and *The Dow Chemical Company, Inc. v. Iryu Keiei Kenkyusho Ltd.* (eResolution Case No. AF-0747), the Panels also regarded the conduct of the respondents’ registering domain names including other well-known marks was supporting evidence for finding that the respondents were with bad faith. The complainant in this case also alleges that the conduct of the respondent has registered the disputed domain name and other domain name with another well-known mark indicates that the respondent was with bad faith in stocking domain names. To these allegations, the respondent did not submit any response in denial.

In the premises of the special circumstances, the Panel decides that the respondent in this case has registered and uses the disputed domain name in bad faith.

5. Decision

Based on the above analysis, the Panel decides that: (1) the disputed domain name, "maxtor.com.cn" is identical with or confusingly similar to the complainant's name or mark in which the complaint has civil rights or interests; (2) the respondent has no right or legitimate interest in respect of the disputed domain name or major part of that domain name; (3) the respondent has registered or is using the domain name in bad faith. Accordingly, the Panel decides that the disputed domain name, “maxtor.com.cn”, should be transferred to the complainant.

Sole Panelist: Gary Soo

4 July 2003 • Hong Kong