



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Decision ID	DE-0700090
Case ID	HK-0600106
Disputed Domain Name	www.爱立信.net
Case Administrator	Dennis CAI
Submitted By	Lulin Gao
Participated Panelist	

Date of Decision	06-02-2007
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### The Parties Information

<b>Claimant</b>	Telefonaktiebolaget L M Ericsson
<b>Respondent</b>	Ye Xiu Fan

### Procedural History

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy ( “UDRP” ) implemented by the Internet Corporation for Assigned Names and Numbers ( “ICANN” ) on October 24, 1999, and under ICANN Rules for UDRP and Asia Domain Name Dispute Resolution Center ( “ADNDRC” ) Supplemental Rules for UDRP, was received by ADNDRC Hong Kong Office on 11 November 2006. The ADNDRC Hong Kong Office confirmed receipt of the Complaint on 16 November 2006 and the registration information was confirmed by the Registrar on 21 November 2006.

Having verified that the Complaint satisfied the formal requirements of UDRP, the ADNDRC Hong Kong Office issued to the Respondent on 21 November 2006, a Notification of the Commencement of the Proceedings (NCP) to email address of the Respondent, advising the Respondent to submit a Response to the Complaint within the required period of time.

On 15 December 2006, the ADNDRC Hong Kong Office notified the Complainant that the Respondent had failed to submit a Response.

On 24 January 2007, the ADNDRC Hong Kong Office notified the parties that the Panel in this case had been selected, with Dr Lulin Gao acting as the sole panelist.

On 29 January 2006, the Panel received the file from the ADNDRC Hong Kong Office.

### Factual Background

#### For Claimant

The Complainant is the proprietor of the trademarks and trade names “ERICSSON” and “爱立信” (ERICSSON in Chinese). The Complainant was incorporated in Sweden in year 1876 and has provided telecommunication equipments and the related communication services worldwide for over 130 years. From manufacturing telephone exchanges in the early periods, the Complainant has now developed into the world leading provider of telecommunication equipments and end-to-end solutions for all major mobile communication standards. Over 1,000 networks in 140 countries utilize the Complainant’s network equipment and 40 percent of all mobile calls are made through their systems. The Complainant is the major manufacturer of all major 2-G and 3-G mobile communication equipments in the world.

The Complainant, as a world famous provider of telecommunication equipments and related services, has a large number of registrations and applications around the world for the mark “ERICSSON” and other trademarks containing

“ERICSSON”, of which “爱立信” is the corresponding Chinese characters in simplified Chinese style.

China has always been one of the major markets of the Complainant. The Complainant’s contacts with China dated back to 1892 when 2000 Ericsson telephones were imported into Shanghai and started the business of the Complainant in China. In the 1980s, the Complainant is one of the earliest batches of foreign enterprises developing their businesses and having long-term commitments in China. In 1985, the Complainant set up the first branch in Beijing of China, and in 1994, the Complainant established the Ericsson (China) Co., Ltd. with its headquarter in Beijing. Now, the Complainant owns 5 wholly-owned subsidiaries, 11 joint-ventures and 26 representative offices, providing telecommunication solutions and services to users in China.

The Complainant used “爱立信” as the only Chinese trademark in its business in China. “爱立信” is the Chinese trademark of the world famous Telefonaktiebolaget L M Ericsson and it has been widely used in different business operations, investments, advertising promotions, community services, etc. by the Complainant and the organizations it established in China and therefore it enjoys good reputation and is well recognized by the consumers in China.

The Complainant has always regarded China as an important market and continued to work according to its strategy of “Focus in China”. China is now one of the three main centers of research and development of the Complainant in the world. After 20 years of hard work, its “爱立信” products have become very well-known in China.

Annex C are photographs of the Complainant’s participation in the international telecommunication exhibition in Da Lian in 1997, World Telecommunication Exhibition in 1999, 2000 and the International Communication Equipments and Technology Exhibitions in China.

Since 1990, the Complainant has donated more than RMB 140 million in the community of China for different aspects including environment conservations, development of science and technology, education, disaster relief and social developments, etc.

Annex D is a photograph of the Complainant’s participation in the Plantation Festival in 2000.

Annex E is a photograph of the completion ceremony of the Nam Ying Primary School, the construction of which was financially assisted by the Complainant.

Annex F is a copy of the media schedule of the Complainant from March to December 2004 provided by the advertising company Mediaedge.

The schedule shows that the Complainant advertised in different newspapers including “People Post and Newspapers”, “Communications Industry Newspapers”, “Communication World”, “China Electronics Newspapers”, “Computer World”, “Internet World”, “China Computer Newspapers”, “China Mobile Newsletters”, “China Telecommunication Constructions”, “China Radio Communications”, “Communications World”, “Telecommunication and Technology”, “World Telecommunications”, “Modern Telecommunication Technology”, “Business Operations”, etc, as well as magazines such as “China Mobile”, “Information Network”, “Telecommunication Network and Technology”, “HuBei Electronics and Technology”, “Internet World”, “Value-Added Information”, etc.

The above evidences prove that the advertisements and promotions of the Complainant covered all the major newspapers and media amongst the public and the industry, the Complainant’s trademark is therefore well-known amongst the public.

In 2002, the subsidiary of the Complainant Ericsson (China) Co., Ltd. was awarded one of the Most Respected Companies of China in the activity “The Most Respected Companies of China Awards”

On 15 December 2005, Ericsson (China) Co., Ltd. was also awarded the “Outstanding Enterprise of China Information Industry in 20 years” in the twentieth anniversary celebration ceremony of the China Information World in Beijing. This shows that the Complainant has extremely good reputation in the Information Industry of China.

Annex G are copy extracts of the newsletter showing the Complainant being awarded one of the Most Respected Companies of China in 2002.

Annex H are copies of the newspaper reports in relation to the Complainant being awarded the “Most Outstanding Enterprise in the China Information Industry in 20 years”.

Annex I are copies of articles and advertisements of the Complainant and its products in China through the media. The media includes www.tom.com, “Reference News”, “Tianji Network”, “Ren Min You Dian”, “China Electronics Newspapers”, “China Communication” and “Communication World” (2005 Issue No. 14, 17 and 19),

etc.

On 20 July 2006, the Swedish King Carl XVI Gustaf and other Swedish officials attended the inauguration ceremony of the new Ericsson Tower, the new corporate headquarters of Ericsson China in Beijing during their state visit to China in order to show the support of the Swedish government to the development of the Complainant in China.

Annex J is a copy of the press release published in the website of the Complainant at [www.ericsson.com/cn](http://www.ericsson.com/cn) in relation to the above visit of the Swedish king.

All the above evidences prove that the Complainant is the leading provider of mobile communication equipments and services in China. The Complainant has promoted the “爱立信” trademark by all means for a long period of time, and “爱立信” has become a well-known brand of telecommunication equipments amongst the people in China.

The Respondent pre-emptively registered the domain name of “爱立信.net” causing confusion amongst the public between the Complainant and the user of the domain name, and seriously violates the legitimate interests of the Complainant.

### For Respondent

Respondent has failed to file a response in this matter.

### Parties' Contentions

#### Claimant

1. The domain names are identical or confusingly similar to the trademarks in which the Complainant has rights, namely “ERICSSON” and “爱立信” (Policy, para. 4(a)(i); Rules, paras. 3(b)(viii), (b)(ix)(1))

(a) The Complainant is the proprietor of the trademarks and trade names “ERICSSON” and “爱立信” (ERICSSON in Chinese) under which the Complainant provides telecommunication equipments and the related communication services worldwide for over 130 years.

(b) The Complainant has a large number of registrations and applications around the world for the mark “ERICSSON” and other trademarks containing “ERICSSON”, of which “爱立信” is the corresponding Chinese characters.

(c) The Complainant has also obtained registration of “爱立信” as a trademark in Classes 9, 16, 35, 36, 37, 38, 41 and 42 in China, the earliest date of registration being 28 April 1997. Copies of the Registration Certificates are submitted as Annex B. The particulars of the registrations are as follows:-

Mark	Registration Number	Registration Date	Class	Goods/Services
爱立信	1048305	7-7-1997	9	electronic equipments

and instruments; i.e.  
 telephone systems,  
 telephone apparatus and  
 instruments, computer  
 programs, batteries,  
 integrated circuits,  
 communication apparatus  
 and instruments,  
 couplers, data media,  
 modems, semiconductor  
 component, access points  
 and mobile terminals  
 (telephone), electronic  
 anti-interference  
 system, radar equipments  
 and electricity supply  
 system, teaching  
 instruments, voice and  
 image transmitting and  
 playing apparatus and  
 instruments, data  
 transferor (magnetic),

sound recording discs,  
data processing  
equipments and computer  
life-saving equipments  
and instruments,  
intercoms, electrostatic  
photocopiers, magnetic  
tapes recorders and  
magnetic telephone  
exchange systems  
(individual and public),  
telephone equipments,  
telephone components,  
electricity transmitting  
apparatus, tele-  
equipments, tele-  
exchange, etc.

1008346 21-5-1997 16 printed matters

1019685 28-5-1997 35 business management  
consultancy,  
advertising, business  
management assistance,  
secretarial service,  
auditing

1007430 14-5-1997 36 insurance, financial  
services, currency  
exchanges, immovable  
properties matters

1013774 21-5-1997 37 data communication  
equipments, installation  
and repairing services  
for telecommunication  
equipments, properties  
and constructions

995722 28-4-1997 38 Feng Wo Shi Dian Hua  
Tong Xun, communications  
by computer terminals,  
communications by  
telegrams,  
communications by  
telephone, computer-  
aided transmission of  
messages and images,  
mail (Electronic) ,  
facsimile transmission,  
telecommunication-  
related message  
services, message  
sending services, radio  
or paging services,  
sending of telegrams,  
telegram services,  
telephone services,  
telex services

1007906 14-5-1997 41 education, training

1019597 28-5-1997 42 legal services, computer  
programming

(d) The Complainant has also received favorable decisions in the complaints against the domain names of “爱立信.中國” (“爱立信.cn”) and “ericsson.net.cn”. Copies of the decisions of the administrative proceedings dated 8 September 2006 are attached hereto as Annex K.

(e) The disputed domain name of the Respondent is identical and/or confusingly similar to the Complainant’s trade names and trademarks “ERICSSON” and “爱立信” and the domain names mentioned in (d) above.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, para. 4(a)(ii); Rules, para. 3(b)(ix)(2))

(a) The Respondent, Ye Xiu Fan, has no connection with “爱立信” or any relationship with the Complainant and the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to use the Complainant’s trade names/trademarks “ERICSSON” and “爱立信” and/or word confusingly similar thereto whatsoever.

(b) The Complainant has prior rights in the “爱立信” trademark which precede the Respondent’s registration of the disputed domain name. The words “爱立信” are the corresponding Chinese characters of the Complainant’s trade name/trademark “ERICSSON”, which is the surname of the Complainant’s founder, Lars Magnus Ericsson, and is not of common usage. The Complainant is well-known on a worldwide basis under the trademark and trade name of “ERICSSON” for high quality telecommunication equipments, and has registered the domain names of “ericsson.cn” and “ericsson.com” to promote the Complainant and its products and telecommunication services to internet users around the world. It is highly likely that the Respondent was aware of the Complainant’s trademark “爱立信” at the time of registering the disputed domain name.

(c) Accordingly, the Respondent does not have any basis upon which he can assert his rights or legitimate interest in the disputed domain name and there cannot be any possible legitimate connection or interest between the Respondent and the disputed domain name.

3. The domain name was registered and is being used in bad faith (Policy, paras. 4(a)(iii), 4(b); Rules, para. 3(b)(ix)(3))

(a) Registration of the disputed domain name by the Respondent is in bad faith as the Respondent has deliberately chosen domain names which wholly adopt the well-known trade name/trademark of the Complainant. The Respondent is a resident in Zhejiang Province, China. The Complainant has 2 representative offices in Ningbo and Hangzhou, Zhejiang Province, China and one joint venture in Hangzhou, Zhejiang Province, China. Given the Complainant’s reputation and numerous registrations in many countries including China, it is not possible to conceive of a plausible circumstance in which the Respondent would not have been aware of this fact at the time of registration.

(b) The Respondent has registered the disputed domain name “爱立信.net” which consists of the Complainant’s trade name/trademark “爱立信” only, thereby preventing the Complainant from reflecting its trade name/trademark in such corresponding domain names.

(c) There is no positive action being undertaken by the Respondent in relation to the domain name. The domain name “爱立信.net” does not resolve to a web site or other on-line presence. There is also no evidence that a web site or other on-line presence is in the process of being established which will use the domain name. There is also no evidence of advertising, promotion or display to the public of the domain name. Annex L is a printout of the web page showing nothing on display at the domain name 爱立信.net.

### Respondent

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

### Findings

According to Paragraph 4a of the Policy which is applicable hereto, the Complainant has the burden of proving that:

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

### Identical / Confusingly Similar

According to the evidence provided by the Complainant, the Panel finds that the Complainant is the proprietor of the trademarks and trade names “ERICSSON” and “爱立信” (ERICSSON in Chinese). The Complainant obtained registration of “爱立信” as a trademark in Classes 9, 16, 35, 36, 37, 38, 41 and 42 in China, and the earliest date of registration was 28 April 1997, which was prior to the registration date ( 29 November 2004 ) of the Disputed Domain Name. Thus, the Panel is of the view that the Complainant enjoys the prior trademark right to “爱立信” .

The Disputed Domain Name is “爱立信.net” . “爱立信” ,as the identifying part of the Disputed Domain Name, is exactly the same as the Chinese Characters “爱立信” , to which the Complainant owns prior trademark right in China.

Since the Complainant has rights in trademark “爱立信” , in combination with its reputation and goodwill, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’ s trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

### Rights and Legitimate Interests

The Complainant has alleged that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name. Based on the submission and evidence, the Complainant does have a legitimate interest in the mark “爱立信” . In light of the fact that the Complainant has not authorized, licensed, endorsed or otherwise permitted the Respondent to use its name or trademark, and “爱立信” appears to be a coined word, which the Respondent would not legitimately choose unless seeking to create an impression of an association with the Complainant, the Panel can fathom no possible legitimate connection or interest between the Respondent and the Disputed Domain Name.

Furthermore, the Respondent has not filed any response and failed to demonstrate he has any rights or legitimate interests in respect of the Disputed Domain Name. Based on the default and the evidence in the Complaint, it is presumed that Respondent has no rights or legitimate interests in the Disputed Domain Name.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

### Bad Faith

In accordance with Paragraph 4 (b) of UDRP, it sets out four non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith:

- (i) the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trade mark or service mark or to a competitor of that complainant for valuable consideration in excess of the respondent’ s documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its web site or other on-line location, by creating a likelihood of confusion with the complainant’ s mark as to the source, sponsorship, affiliation, or endorsement of its web site or location or of a product or service on its web site or location.

First of all, given the inherent distinctiveness and fame of the Complainant’ s mark “爱立信” , the Complainant’ s long-standing use of the mark and the existence of Complainant’ s representative offices in Zhejiang Province where the Respondent is resided in, the Panel finds it difficult to accept that the Respondent registered the domain name without knowledge of the Complainant’ s rights in “爱立信” . Moreover, It cannot be a mere co-incident that the Respondent has chosen the Disputed Domain Name, which is identical to and is an imitation of the Complainant’ s mark, as his domain name. These findings, together with the finding above that the Respondent has no rights or interests in the domain name, lead the Panel to conclude that the Disputed Domain Name has been registered by the Respondent in bad faith.

Secondly, as demonstrated above, the Respondent should be aware of the Complainant and the Complainant’ s marks, while the Respondent has registered the disputed domain name “爱立信.net” which consists of the Complainant’ s mark “爱立信” only, thereby inevitably preventing the Complainant from reflecting its trade name/trademark in such corresponding domain names. Accordingly, the stipulations of paragraph 4 (b) (ii) are satisfied here.

Thirdly, the Complainant has mentioned that there is no positive action being undertaken by the Respondent in relation to the domain name, which is in itself an evidence of bad faith. According to Annex L the Complainant provides, the panel finds that the web page shows nothing on display at the domain name 爱立信.net. Also, The Panel notes that bad faith conditions may not be limited to the above four conditions according to UDRP. It is possible, in certain circumstances, for passive holding by the Respondent to amount to the domain name being used in bad faith. This point

is acknowledged in the Panel Decision in Telstra Corporation Limited v. Nuclear Marshmallows (WIPO Center Case No. D2000-0003).

Based on the above analysis, the Complainant's mark “爱立信” has a high reputation and is widely known, as evidenced by its substantial use and promotion in China. Meanwhile, the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name. Taking into account these particular circumstances, the panel may infer that the Respondent has no real intension of active use of the Disputed Domain Name, and such acts of the Respondent have constituted the passive holding of the Disputed Domain Name, which amounts to the domain name being used in bad faith.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

#### Status

www.爱立信.net

Domain Name Transfer

#### Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of UDRP. Accordingly, the Panel directs that the Disputed Domain Name be transferred to the Complainant.

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