



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400640
<b>Complainant:</b>	<b>CHARLES SCHWAB &amp; CO., INC.</b>
<b>Respondents:</b>	<b>Yang Long and 123</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;jiaxinlicaihy.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is CHARLES SCHWAB & CO., INC., of 211 Main Street, SF211MN-06-133, San Francisco, CA 94105, USA (the “Complainant”).

The Respondents are, Yang Long and 123 of China, Zhejianghangzhou.

The domain name at issue is jiaxinlicaihy.com, registered by Respondents with GODADDY.COM, LLC, of Scottsdale, Arizona, USA (the “Registrar”).

**2. Procedural History**

The Complaint was submitted by Charles Schwab & Co., Inc pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999 to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC”) on 25 August 2014.

On 26 August 2014, ADNDRC transmitted by email a request for verification to the Registrar and its reply was received on 27 August 2014.

ADNDRC formally notified the Respondents of the Complaint, and in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy effective from 1 March 2010 (the “Rules”), the formal date of the commencement of the administrative proceeding is 5 September 2014. In accordance with Article 5(a) of the Rules, the due date for filing of a Response by the Respondents was 25 September 2014. The Respondents did not submit any response by the deadline date. Accordingly, ADNDRC notified the Complainant of the Respondents’ default on 26 September 2014.

### 3. Factual background

#### Complainant

The Complainant was established on 1 April 1971, and has developed into a world famous company specialized in providing multiple financial services. Headquartered in San Francisco, the Complainant maintains offices in Austin, Cleveland, Denver, Indianapolis, Jersey City, Phoenix and Orlando. The Complainant also operates more than 325 branches in 45 U.S. states plus one branch in Puerto Rico and one branch in London. The Complainant owns a subsidiary in Hong Kong to serve the clients from Hong Kong and Mainland China.


The Complainant has been a leader in financial services for nearly four decades with 9.3 million client brokerage accounts, 1.4 million retirement plan participants, 956,000 banking accounts, and \$2.38 million in client assets (as of 13 July 2014). In 2013, the Complainant reported annual net revenues of \$5.4 billion.

As a publicly listed company, the stock of the Complainant has been included in Standard & Poor's 500 index since 2005. The Complainant ranked 453 in The World's 500 Most Influential Brands of 2010, published by WORLD EXECUTIVE and The Wall Street Journal; ranked 626 in the 2011 list of the World's 2000 Largest Companies, published by Forbes; ranked 83 in the 2011 list of America's 100 Largest Companies, published by Forbes; ranked 465 and 491, respectively, for the 2010 and 2011 list of America's 500 Largest Companies, published by Fortune, and received top ranking in its Securities industry category in Fortune Magazine's 2011 list of the World's Most Admired Companies, and was recognized across industries, landing at fifth for innovation.

In Hong Kong, the Complainant has the affiliation Charles Schwab, Hong Kong, Ltd. 嘉信理財香港有限公司 to serve Hong Kong clients. Charles Schwab, Hong Kong, Ltd. was incorporated on 16 December 1996. Currently, Charles Schwab, Hong Kong, Ltd's office is located at Suites 1607-1611, ICBC Tower, No. 3 Garden Road, Central, Hong Kong.

The Complainant has registered the following trade marks in China and Hong Kong:

#### **China**

Mark	Reg. No.	App. Date	Class	Validation Date
	1377264	1998-9-29	36	2000-3-21 to 2020-3-20
嘉信理財	1377263	2000-3-21	36	2010-3-19 to 2020-3-20
嘉信	3545044	2005-8-14	36	2005-8-14 to 2015-8-13
嘉信	3545041	2005-5-14	42	2005-5-14 to 2015-5-13

嘉信理財 CHARLES SCHWAB	6068601	2010-8-21	41	2010-8-21 to 2020-8-20
嘉信	3545043	2005-3-7	38	2005-3-7 to 2015-3-6

### Hong Kong

Mark	Reg. No.	App. Date	Class	Expiry Date
嘉信理財	200013761	1998-9-14	36	2015-9-14
嘉信理財 charles SCHWAB	300423846	2005-5-20	9, 16, 36, 38, 41, 42	2015-5-19
嘉信理財	301268389	2009-1-7	9, 16, 38, 41, 42	2019-1-6
嘉信 私人專業理財	300697500	2006-8-8	35, 36, 41	2016-8-7
嘉信	301783882	2010-12-08	9, 16, 35, 36, 38, 41, 42	2020-12-7

In addition, in China, the Complainant uses 嘉信(jiaxin in Chinese pinyin) or 嘉信理財(jiaxinlicai in Chinese pinyin) to refer to itself and the consumers has associated such names with the Complainant exclusively.

### Respondents

The Respondents did not file any Response to the Complaint or make available any evidence or information to the panel.

## 4. Parties' Contentions

### A. Complainant

The Complainant's contentions may be summarized as follows:

#### **The Disputed Domain Name is confusingly similar to the trade names and trademarks of the Complainant**

- a) The registration date of the disputed domain name is later than the registration date of the trade names and trade marks of the Complainant;
- b) The main part of the Disputed Domain Name is "jiaxinlicai" which is the Chinese pinyin of "嘉信理財", the Chinese trade mark and trade name of the Complainant. "hy" is an abbreviation for "huiyuan", the Chinese pinyin for the term 會員, which means "membership". The Disputed Domain Name jiaxinlicaihy.com was used to build a website

[www.jiaxinlicaihy.com](http://www.jiaxinlicaihy.com) which works as a membership only website for [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com). "jiaxinlicai" has no English meaning other than being the Chinese pinyin of "嘉信理財". Therefore, according to the Chinese reading habit, "jiaxinlicaihy" is easily understood by the Chinese consumers as "嘉信理財會員", which means a member of Charles Schwab.

- c) The extension ".com" of the disputed domain name is launched by ICANN and should not be included in the identification process of whether the disputed domain name is identical with the Complainant's registered trade marks and trade name. (Pomellato S.p.A. v. Richard Tonetti, WIPO Case No. D2000-0493; where the Panel held that the extension ".com" is irrelevant to the identification of sameness or confusing similarity).

### **Respondents have no rights upon "嘉信理財" and its equivalent Chinese Pinyin**

- a) There is no evidence to prove that the Respondents have any prior rights relating to "嘉信理財" or similar marks, nor did the Respondents claim any civil rights to them or obtain authorization from the Complainant to register the disputed domain name. The Respondents are not affiliated in any way with the Complainant.
- b) The burden of proof shifts to the Respondents once the Complainant establishes a prima facie case showing that the Respondents lack legitimate rights or interests. (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769)

### **Respondents register and use the Disputed Domain Name in bad faith**

- a) To determine whether the Respondents have registered or used the Disputed Domain Name in bad faith, various situations should be considered under the principal of a preponderance of evidence, which provided that the existing evidence indicates the possibility that the Respondents have acted in bad faith outweighed the possibility that they have not. (Telstra Corporation Limited v. Nuclear Marshmallows WIPO Case No.D2000-0003);
- b) The Complainant enjoys high fame in the trade mark and trade name "嘉信理財" in Mainland China and Hong Kong, and this is further substantiated by a court decision handed down by the Chinese Shanghai City Pudong New District People's Court which acknowledged the fame of the Complainant's trade mark.

"嘉信理財" is a coined mark, when it obtains fame in advance, there is no doubt that the Disputed Domain Name is registered with prior knowledge of "嘉信理財".

- c) The Disputed Domain Name is an affiliation of the website [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com), which is a phishing website pretending to be the Complainant's authorized website; and all the contents of this website are about the Complainant. The contact information of Charles Schwab, Hong Kong, Ltd. 嘉信理財香港有限公司, such as its address, telephone number and fax number were displayed on the website. When clicking on the "member center" in [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com), it directs the user to the website of [www.jiaxinlicaihy.com](http://www.jiaxinlicaihy.com) where visitors are required to fill in their consumer's bank information, such as name, account number, etc..

The only purpose of this website is phishing--when real clients of the Complainant mistaken this website as authorized by the Complainant, it tricks them to enroll as members, and require them to input their account numbers and passwords. It is suspected that this website collects such data and makes use of them for illegal purposes.

#### B. Respondents

The Respondents have not asserted any claims, defenses or contentions.

### 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be established in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

#### **Identical / Confusingly Similar Trade Mark**

The evidence submitted shows that the Complainant is the owner of various trademarks bearing the Chinese characters "嘉信理財" (Jia Xin Li Cai in Chinese characters).

Following the decision of *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493: where the Panel held that the extension ".com" is irrelevant to the identification of sameness or confusing similarity, the Panel will therefore compare the remaining part of the Disputed Domain Name, namely, "jiaxinlicaihy" with the trade marks of the Complainant.

The website of [www.jiaxinlicaihy.com](http://www.jiaxinlicaihy.com) works as a membership only website for [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com). Furthermore, there is no evidence to show that "jiaxinlicaihy" or "jiaxinlicai" has any meaning in the English or other languages. The Panel therefore accepts the Complainant's contention that "jiaxinlicai" is the Chinese pinyin of "嘉信理財", the Chinese trade mark of the Complainant and "hy" is an abbreviation for

“huiyuan”, the Chinese pinyin for the term 會員, which means “membership” and according to the Chinese reading habit, “jiaxinlicaihy” is likely to be understood by the Chinese consumers as “嘉信理財會員”, which means a member of Charles Schwab.

The prominent part of the Disputed Domain Name is “jiaxinlicai”, the addition of “hy” at the end of the pinyin of the Complainant's trade mark does not make the Disputed Domain Name more distinguishable from the Complainant’s trade mark.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant’s trade mark “嘉信理財”.

### **No Rights or Legitimate Interests**

The Complainant is the legitimate owner of the “嘉信理財” trade mark and there is no evidence to show that the Respondents have any prior rights in respect of the trade marks “jiaxinlicaihy”, “jiaxinlicai” or “嘉信理財”. The Respondents have neither obtained any authorization from the Complainant to register the Disputed Domain Name, nor are they affiliated with the Complainant in any way. The burden of proof shifts to the Respondents once the Complainant establishes a prima facie case showing that the Respondents lack rights or legitimate interests in the name or mark. (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769).

In the absence of any evidence to support the Respondents’ rights or legitimate interests in the Disputed Domain Name, the Panel finds that the Respondents have no rights or legitimate interests in relation to the Disputed Domain Name.

### **Registered and Used in Bad Faith**

Evidence submitted by the Complainant shows that the use and registration of its trade mark “嘉信理財” predate the date of registration of the Disputed Domain Name and in view of the well-knownness of the Complainant's trade mark “嘉信理財”, the Panel is of the view that the Respondents should know or should have been aware of the existence of the Complainant and its trade mark when registering the Disputed Domain Name.

The Panel thus finds that the Disputed Domain Name has been registered in bad faith.

In addition, evidence submitted by the Complainant shows that the Disputed Domain Name is an affiliation of the website [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com), which is a phishing website pretending to be the Complainant’s authorized website where all the contents of the website are about the Complainant. The contact information of Charles Schwab, Hong Kong, Ltd. 嘉信理財香港有限公司, such as its address, telephone number and fax number were also displayed on the website. When a user clicks on the “member center” in [www.jiaxinlicaihk.com](http://www.jiaxinlicaihk.com), the user is directed to the [www.jiaxinlicaihy.com](http://www.jiaxinlicaihy.com) where visitors are required to fill in their bank information, such as name, account number, etc.. It is believed that the only purpose of this website is phishing--where real clients of the Complainant mistaken this website as authorized by the Complainant and tricking them to enroll as members and thereby obtaining their account numbers and passwords.

The Panel thus finds that the Disputed Domain Name has been used in bad faith.

**6. Decision**

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name <jiaxinlicaihy.com> be transferred to the Complainant.

A handwritten signature in black ink, appearing to be 'Peggy Po Yee Cheung', written over a horizontal line.

Peggy Po Yee CHEUNG  
Panelist

Dated: 21 October 2014