COMPLAINANT
To Cheung
Udomain Web Hosting Company, Limited
14/F, 80 Gloucester Road
Wanchai, Hong Kong
Telephone: 852-2554-7545
Fax: 852-2554-7215
E-mail: general@udomain.com.hk
File Number: CPR 011
Date of Commencement: October 6, 2000
Domain Names: udomain.com, udomain.org
Registrar: OpenSRS

vs.

RESPONDENT
Newsbook Limited
Address: Room 1512 Hollywood Plaza
610 Nathan Road, Hong Kong
Telephone: 852-2782-0197
Fax: 852-2396-7073
E-mail: Richard@newsbook.net

Before DAVID SANDBORG, Presiding Panelist

PROCEDURAL HISTORY

The Complaint was filed with CPR on October 4, 2000 and, after review for administrative compliance, served on the respondent on October 6, 2000. The Respondent filed a Response on October 16, 2000. On October 25, I was appointed Presiding Panelist pursuant to the Uniform Domain Name Dispute Resolution Policy (UDRP”) and Rules promulgated by the Internet Corporation for Assigned Names and Numbers (ICANN). CPR advised it had received a paper document submitted by Complainant, purporting to respond to the Response made by Respondent. On November 15, Complainant, through To Cheung, sent an e-mail to CPR stating that it had not submitted the document in question. The document was forwarded to me by CPR. Upon examination it appeared to be a document submitted by Moon Chan, Manager of an entity called “uDomain.com”, which is, according to the “Whois” information supplied to CPR by the OpenSRS, the registrant (as of October 10, 2000) of the domain names “udomain.com” and “udomain.org”. Other than attempting to determine the source of the document submitted by “uDomain.com”, I did not consider it further inasmuch as it had not been submitted by either party to these proceedings. Because of delay in the transmittal of documents between New York City and Hong Kong, the time for the decision was extended to November 22, 2000. Upon the written record submitted to me, including the Complaint and Response together with their exhibits, and miscellaneous correspondence between CPR and the parties, I find as follows..

FACTUAL BACKGROUND

The factual background set out by the parties is somewhat complicated and confusing. The domain name
“udomain.com” was registered on 7 June 1998 by “a US individual” (Complaint, p 2). This is not disputed by the Respondent Newsbook Limited (“Newsbook”) who denies ever having any interest in the domain names “udomain.com” or “undomain.org”. According to the report of OpenSRS to CPR dated October 10, 2000, the Registrant of “udomain.com” and udomain.org” was an entity called “udomain.com” in Wilmington, Delaware, USA, and the administrative, technical, and billing contacts were listed as Moon Chan, also of Wilmington, Delaware.

Complainant, Udomain Web Hosting Company Limited (“Udomaine Co”), was incorporated in Hong Kong on 18 November 1998. It is in the business of web hosting, among other things. Complainant registered the name “Udomain.com.hk” on 4 December 1998 and in February 1999, it registered the domain name “Udomain.net”, because the domain name “udomain.com” was already registered. (Complaint, p.1). Complainant further alleges that it made attempts to acquire the “udomain.com” name on two (2) occasions. Neither attempt was successful. On the first occasion (no date is given), Complainant states that the “udomain.com” name was “owned” by an individual (the name is not given). No other details regarding Complainant’s first attempt to acquire the domain name are given. Complainant goes on to state that since the person with whom it was negotiating was “not in direct competition with Udomain Co., we were not particularly worried about the situation in the past”. (Complaint, p.2).

Between 18 September 2000 and 22 September 2000, complainant alleges that it had some discussions with “Mr. Lei(Mr. Ao)” apparently of Newsbook, for the purpose of acquiring the domain name “udomain.com”. Complainant states that Mr. To Cheung, of Udomain Co., “believed” that Newsbook was the owner of the domain name; Respondent states that it was not the owner of the domain name but that it was acting on behalf of one of its clients who was the owner of the domain name. These discussions in September 2000 were not successful and the domain name “Udomain.com” was not acquired by Complainant.

There is no evidence in the record that Respondent Newsbook was ever the registered holder of the domain names “Udomain.com” or “Udomain.org”.

Complainant contends that Respondent is the “ultimate owner” of the domain name “udomain.com”. Although the basis for this contention is not entirely clear, it seems to be based in part on the fact that the administrative contact for “udomain.com” as of 25 September 2000 was listed as one “Lei Soi Iong” and the listed contacts for the Respondent’s domain names “newsbooks.net” and “newsbooks.com” were the similar but not identical name “Au Soi Long”. Complainant also alleges that for a short period of time, the “udomain.com” name resolved to the Respondent’s homepage. The Complaint further states that on 11 September 2000 the administrative contact “(in substance, the owner)” was changed from a US company to Lei Soi Long”. (It appears that Complainant may have misread the name Lei Soi long as “Long” on their document marked “Evidence 1a”, since Lei Soi long appears consistently on this and other documents. In addition to Lei Soi long as the administrative contact, “Evidence 1a” shows the registrant of the domain name udomain.com as “All Best Centre” with an address in Milwaukee, Wisconsin, USA. Complainant’s exhibit “Evidence 1b” shows the registrant of “udomaine.org” as Lei Soi long.

In response, Respondent Newsbook states that it has never been the registered holder of the domain name “udomain.com” or “udomain.org”. There is no evidence in the record that it has been so registered. Respondent states that the actual “owner” is one of its clients, Lei Soi Long. Respondent is in the business
of web hosting. Among the material submitted by Respondent is a copy of a receipt from Newsbook Ltd to: “Client name: Lei Soi Iong” as “Payment for: Parking-unomain.com (one year) (1 September 2000-31 August 2001)”

Although the factual background and the records submitted are somewhat confusing and bits and pieces of information might have created suspicions on the part of Complainant that Respondent indirectly controlled or influenced the use of the domain names at issue in these proceedings, the fact remains that there is insufficient evidence that the Respondent ever registered or used these domain names.

Upon the written record submitted to me, I find as follows:

FINDINGS

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

i. Respondent’s domain name must be identical or confusingly similar to a trademark 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.

1. IDENTITY/CONFUSING SIMILARITY:

On the basis of the evidence submitted, I find that the Respondent never registered, held, or used the domain names in question. In short, it appears that Respondent is not the proper party in this dispute. Although complainant points to some similarities in the names of the listed contacts for domain names held by Newsbook Limited and the domain names in question during a brief period of time, this evidence is insufficient to establish Complainant’s contention that Respondent was the “ultimate owner” of the domain names in question.

Therefore my finding must be against the Complainant and in favor of the Respondent on this issue.

2. RIGHTS AND LEGITIMATE INTERESTS:

Respondent has not and does not claim any rights or legitimate interest in respect of the domain names in question, but rather asserts that the names are held by another party which is not a party to these proceedings. Complainant has failed to establish that the domain names at issue were ever registered or used by Respondent Newbook Limited.

Therefore my finding is against the Complainant and in favor of the Respondent on this issue.

3. BAD FAITH:

As indicated above, I find that Respondent never registered or used the domain names in question. Accordingly, there is no issue, insofar as Respondent is concerned, of registration and use in bad faith of
the domain names in question.
Therefore my finding is against the Complainant and in favor of the Respondent on this issue.

CONCLUSION

In light of my findings above, I find in favor of the RESPONDENT because Complainant has failed to establish any of the grounds for relief as set forth in Paragraph 4(a) of the UDRP.

REMEDY

Complainant’s request to transfer the domain names “udomain.com” and “udomain.org” is hereby DENIED.

David Sandborg
Presiding Panelist

__________________________________  ______________________
Signature of Presiding Panelist    Date