ADMINISTRATIVE PANEL DECISION  
Case No. DCN-1700785

Complainant: Swissquote Group Holding S.A.  
Respondent: 唐之渡  
Domain Name: <swissquotebank.cn>  
Registrar: 厦门易名科技股份有限公司 (eName)

1. Procedural History

The Complainant filed the Complaint with the Hong Kong International Arbitration Centre (the “Centre”) and chose to have a sole panelist handle the dispute on November 24, 2017, in accordance with the CNNIC Domain Name Dispute Resolution Policy ("CNDRP") issued by the China Internet Network Information Center ("CNNIC") and effective as of November 21, 2014, the Rules for CNNIC Domain Name Dispute Resolution Policy ("Rules of CNDRP") issued by the CNNIC and effective as of November 21, 2014, and the HKIAC Supplemental Rules for CNDRP and Rules of CNDRP ("Supplemental Rules"), issued by the Hong Kong International Arbitration Centre and effective as of November 21, 2014.

On November 28, 2017, the Centre transmitted by email to 厦门易名科技股份有限公司 (eName) (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. On the same day, the Centre confirmed receipt of the said Complaint and requested the filing fee be paid on or prior to December 4, 2017. On November 28, 2017, the said Registrar made the said verification to the Centre.

On December 5, 2017, the Centre sent the Complainant the Notification of Deficiencies of the Complainant, and notified the Complainant that the language of the domain name dispute resolution proceedings shall be Chinese. The Complainant was requested to rectify the said deficiencies on or before December 11, 2017. On the same day, the Complainant requested that English be the language of the proceedings. On December 5, 2017, the Centre noted the Complainant’s request of adopting English as the language of the proceedings with reasons, and confirmed that the Complaint was in compliance with the Policy. On December 5, 2017, the Centre confirmed the receipt of the filing fee.

On December 5, 2017, the Centre sent the Notification of Commencement of Proceedings to the Respondent and requested the Respondent to reply within 20 days (on or prior to December 25, 2017), and forwarded the Complaint and its Attachments as well as the language request to the Respondent, in accordance with the Rules of CNDRP and the Supplemental Rules. The Respondent was also requested to submit a reply to the Complainant’s request of adopting English as the language of the proceedings within 5 calendar days (i.e. on or before to December 11, 2017). The procedure for handling this
case formally commenced on December 5, 2017. On the same day, the Centre received a reply from the Respondent regarding how they could reply to the Complaint. The Centre replied to those questions on December 7, 2017. On December 27, 2017, the Centre issued a Default Notice and confirmed that the Respondent had failed to file a formal reply with the Centre within the required time limit.

On January 5, 2018, the Centre nominated Mr. Matthew Murphy as the sole panelist for arbitrating this case. The Panel considered its constitution to be proper, and subsequently submitted an acceptance notice as well as a statement of impartiality and independence. The Centre formally appointed Mr. Matthew Murphy as the sole panelist and transferred the case to the Panelist on January 8, 2018. The Panelist agreed to deliver his decision with respect to the Disputed Domain Name on or prior to January 22, 2018.

2. Factual background

For the Complainant

The Complainant, Swissquote Group Holding S.A., claims that it is Switzerland's leading provider of online financial and trading services, and has been listed on the Swiss Market Exchange (SIX Swiss Exchange, symbol: SQN) since May 29, 2000. The Complainant also claims that it has its headquarters in Gland (VD) and offices in Zürich, Bern, Dubai, Malta, London and Hong Kong, with 507 staff currently.

The Complainant claims that it is the owner of several trademark registrations with the term SWISSQUOTE, registered via WIPO and in the EU. The Complainant further claims that it owns and communicates through the Internet via various websites worldwide, involving the trademark SWISSQUOTE® in their domain names, such as <swissquote.com> since 1997-02-14, as well as promoting its activity in China with the use of the URL address “cn.swissquote.com”.

For the Respondent

The Respondent, 唐之渡, is an individual with an email contact of 762453865@qq.com. The Respondent registered the Disputed Domain Name on September 17, 2017. The Respondent did not file any Reply nor any other materials with the Centre within the required time limit.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant contends that the Disputed Domain Name is confusingly similar to the prior registered SWISSQUOTE trademark, since it contains the
Complainant’s trademark without the addition of any distinguishing letter or word and the addition of word “bank” makes clear reference to the Complainant’s activity. The Complainant further contends that the addition of the CCTLD “.cn” does not change the overall impression of the designation as being connected to the trademark of the Complainant.

ii. The Respondent has no rights or legitimate interests in respect of the domain name

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, on the grounds that they are not related in any way to the Complainant. The Complainant claims that it does not carry out any activity for, nor has any business with the Respondent, nor grants any license or authorization to the Respondent to make any use of the trademark, or apply for registration of the Disputed Domain Name. The Complainant further contends that the Respondent was not commonly known by the Disputed Domain Name, or in connection with bona fide offer products or services related thereto.

iii. The domain name was registered and is being used in bad faith

The Complainant contends that the way the Disputed Domain Name is composed confirms that the Respondent was aware of the Complainant and its trademark, when they registered the Disputed Domain Name. The Complainant further contends that using an identical domain name which does not resolve to an active website is not a bona fide offering of goods or services or legitimate non-commercial or fair use. The Complainant considers that the Respondent has registered the Disputed Domain Name in order to prevent owners of the names or trademarks from reflecting the names or the trademarks in corresponding domain names, according to Article 9 (II) of the CNDRP.

B. Respondent

The Respondent did not submit any Reply.

4. Findings

Language of the Proceedings

The Complainant filed the Complaint with the Centre in English, and later requested English be the language of the proceedings based on the following reasons: 1) the English language is the language most widely used in international relations and is one of the working languages of the Centre; 2) the Disputed Domain Name is constituted by the English terms “Swiss” for “Switzerland” and “Quote” for “Quotation”; 3) the word “swissquote” in the Disputed Domain Name is formed by words in Roman characters (ASCII); and 4) the use of Chinese in this case would impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings.
Following the line of reasoning in previous cases, when deciding “whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, and to require the Complainant in an appropriate case to translate the Complaint into the language of that agreement, the Panel must have regard to all ‘the relevant circumstances’”. And such circumstances include “whether the Respondent is able to understand and effectively communicate in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the parties” - See WIPO Case SWX Swiss Exchange v. SWX Financial LTD, D2008-0400.

Accordingly, the Panel notes the following circumstances in this case that may affect the determination of the language of the proceedings:

1. The Disputed Domain Name is constituted by two English terms/words,
2. The Disputed Domain Name is constituted by Roman characters,
3. The Respondent had been notified of the Complaint against them and was invited to provide comments as to the Complainant’s language request through email communications written in both Chinese and English by the Centre,
4. In the correspondence from the Centre to the Respondent regarding how to reply to the Complaint on December 7, 2017, the Centre answered the said questions raised by the Respondent in Chinese in clear and accurate detail, and the Centre explicitly reminded the Respondent that they could comment as to the Complainant’s language request within the given time limit,
5. The Respondent did not raise any objection with respect to the Complainant’s language request, nor make any comments, and
6. The Complainant, as a foreign entity, is not able to understand Chinese at all, and all of the materials presented thereby are in English, such that it would take significant time and cost for these to be translated into Chinese, and therefore, a delay in the proceedings would be inevitable.

Based on the above, as well as CNDRP precedents that conducted case proceedings in English (e.g. Case No. DCN-1500624), the Panel considers that: it is reasonable to infer that the Respondent may have an ability to understand English to some extent, and therefore, should be able to understand the English used in the proceedings. However, even if the Respondent is not able to understand English, since all of the email communications were written in both Chinese and English, the Respondent must have been fully aware of the language request raised by the Complainant, and should have understood what would happen if the proceedings were determined to be conducted in English – despite this, the Respondent did not make any comment or file any reply whatsoever.

Thus, upon weighing the relevant circumstances on both sides of this issue, the Panel considers it would be appropriate to exercise its discretion and conduct the proceedings in English.

Case Consideration

As to the case, 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 Complainant 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 has been using the domain name in bad faith.

Article 7 of CNDRP states that a complainant and respondent shall bear the burden of proof for their own claims. With reference to the Complaint and the attached documents, the Panel of this case considers that:

**Identical or Confusing Similarity**

The Complainant has established its rights to the “SWISSQUOTE” trademark by submitting trademark registration certificate records from various jurisdictions. There is no doubt that the Disputed Domain Name < swissquotebank.cn > completely incorporates the Complainant’s “SWISSQUOTE” trademark. The first and immediately striking element in the Domain Name is the Complainant's name, which is also its trademark. Adoption of the Complainant’s name/trademark in the Disputed Domain Name is inherently likely to lead people to believe that the Complainant is connected with it - See WIPO Case Dixons Group Plc v. Mr. Abu Abdullaah, D2000-0146. Since the Complainant is a provider of financial services, the addition of “bank” in the Disputed Domain Name does not contribute anything towards distinguishing the Disputed Domain Name from the Complainant’s trademark, but merely describes the nature of the Complainant’s core business/brand. As to the “.cn” in the Disputed Domain Name, it should be ignored when it comes to considering confusing similarity in these matters - See WIPO Case Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd., D2006-0762. Thus, the Disputed Domain Name and the Complainant’s “SWISSQUOTE” trademark are clearly so similar, that the Panel is able to infer likely confusion – in other words they are confusingly similar.

Accordingly, the Panel concludes that the Disputed Domain Name is confusingly similar to Complainant's trademark and the Complainant has satisfied Article 8.1 of the CNDRP.

**Rights or Legitimate Interests of the Respondent**

When it comes to determine whether the Respondent has any legal rights and/or interests in the Disputed Domain Name, the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests thereof; otherwise, “all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration” - See WIPO Case Adobe Systems Incorporated v. Domain OZ, D2000-0057. In the current case, the Panel notes that the Respondent failed to prove (and there is no evidence indicating that) they have used the Disputed Domain Name
or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services, nor has the Respondent been commonly known by the Disputed Domain Name, nor have they made a legitimate noncommercial or fair use thereof, as provided in Article 10 of the CNDRP.

In conclusion, the Panel considers that the Complainant has satisfied Article 8.2 of the CNDRP.

**Bad Faith**

Based on the following circumstances, it is inferred that the Respondent may well have been aware of the Complainant’s “SWISSQUOTE” trademark and its value, when they registered the Disputed Domain Name, and therefore, such registration constitutes bad faith registration:

1) high similarity between the Disputed Domain Name and the Complainant’s trademark;
2) high similarity between the Disputed Domain Name and domain names (cn. swissquote.com etc.) owned by the Complainant;
3) there is no legal nor factual relationship or connection between the Respondent and the Disputed Domain Name and/or the SWISSQUOTE trademark, nor any other justification for the registration of the Disputed Domain Name by the Respondent;

Furthermore, the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept - See WIPO Case Telstra Corporation Limited v Nuclear Marshmallows, D2000-0003. Accordingly, given the circumstances of the case herein:
1) the fame of the Complainant and its trademark; 2) the similarity between the Disputed Domain Name and the Complainant’s trademark; 3) the lack of justification for the Respondent registering the Disputed Domain Name, and 4) the lack of evidence of any actual or contemplated good faith use of the Disputed Domain Name thereby; it is inferred that the passive holding of the Disputed Domain Name by the Respondent, falls into one of the circumstances set out in Article 9.4 of the CNDRP, that proves bad faith registration or use. Thus, the Panel concludes that the registration and holding of the Disputed Domain Name by the Respondent meets the condition that the Respondent “has been using the domain name in bad faith”.

In conclusion, the Panel considers that the Complainant has satisfied Article 8.3 of the CNDRP.
5. **Decision**

Pursuant to Article 40 of the CNDRP Rules, this Panel orders that the domain name <swissquotebank.cn> be transferred to the Complainant.

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Panelist: Matthew Murphy

Date: January 17, 2018