



## **WIPO Arbitration and Mediation Center**

### **ADMINISTRATIVE PANEL DECISION**

Fall Nummer: D2003-0939

Entscheidung vom 27. Februar 2004

#### **1. The Parties**

The Complainant is NHN Corporation, ..., ..., Republic of Korea ("the Complainant"), ....

The Respondent is NHN Corp., National Health Network, ..., United States of America ("the Respondent")....

#### **2. The Domain Name and Registrar**

The disputed domain name <nhn.com> ("the Domain Name") is registered with R&K Global Business Services, Inc. d/b/a 000Domains.com ("the Registrar").

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 26, 2003. On November 26, 2003, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 27, 2003, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details for the administrative, billing, and technical contact. In response to a notification by the Center that the Complaint was administratively deficient, the Complainant filed an amendment to the Complaint on December 1, 2003. The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced December 1, 2003. In accordance with the Rules, paragraph 5(a), the due date for Response December 21, 2003. The Response was filed with the Center December 22, 2003.

The Center appointed Tony Willoughby, Sang Jo Jong and Sally M. Abel as panelists in this matter on January 30, 2004. The Panel finds that it was properly constituted. Each member of the Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On January 30, 2004, the Complainant filed with the Center a further submission relating to the website to which the Domain Name is connected. The Panel took the view that post-complaint developments relating to the website were unlikely to add materially to the evidence before the Panel and declined to consider the submission.

On February 16, 2004, the Panel issued a Procedural Order in the following terms:-

"This request is made pursuant to Rule 12 which reads "In addition to the Complaint and the Response, the Panel may request, in its sole discretion, further statements or documents from either of the parties."

The members of the Panel have now read the papers in the case and would find it helpful to have the following further information:

From the Complainant

â?¢ English translations of the Korean language emails exhibited to the Complaint.

From the Respondent

â?¢ Such further information and contemporaneous documentation as the Respondent can provide in relation to (a) its plans to use the name National Health Network prior to acquisition of the Domain Name; and (b) the date on which it acquired the Domain Name and the price it paid for the Domain Name;

The Panel stresses that this is a request, not a direction, and in making this request of the Respondent, the Panel is, of course, aware that it is the Complainant which is required to prove its case on all three elements of paragraph 4(a) of the Policy. Nonetheless paragraph 4(c) of the Policy indicates how Respondents may demonstrate their rights to and legitimate interests in domain names. Assertions supported by documentation are always preferable to bare assertions, even when on oath.

â?¢ Such further information and contemporaneous documentation as the Respondent can provide as to the extent of Mr. William Nah's participation/proposed participation in the business of the Respondent.

The Panel invites responses to this Procedural Order by 5.00 p.m. Geneva time on Wednesday February 18, 2004."

The Complainant responded on February 17, 2004, providing the requested translations which are set out in the section headed "Factual Background" below.

On February 18, 2004, the Respondent provided a response verified by declarations from William Nah and Hyojun Kim which will be dealt with below.

#### **4. Factual Background**

The Complainant is NHN Corporation, a corporation incorporated in Korea with its principal office located in Seoul, Korea. It was originally established as Navercom in June 1999 as an Internet portal service provider. Following a series of acquisitions, the scope of its activities expanded to a substantial degree and it was re-established as NHN Corporation in 2001. The Complainant has filed sufficient evidence to demonstrate that by 2002 the Claimant's name was well known in Korea as a web portal.

The Complainant is the proprietor of a series of Korean trademark registrations, the essential element of which is the letter combination "NHN" in script form and in plain type. All these registrations pre-date the registration of the Domain Name.

On or about June 3, 2003, an American company, HBX, Inc. ("HBX") acquired the Domain Name from Buydomains.com, a domain name dealer, for a price of US\$20,000. The President of HBX is William Nah. HBX is also a dealer in domain names, trading as DomainShop.

On August 31, 2003, the Complainant first contacted HBX with a view to negotiating the transfer of the Domain Name. The ensuing correspondence which was conducted by the Complainant in Korean and by HBX in English was as follows:

**From:** Jin Kyu Park  
**To:** Domain Shop  
**Sent:** Sunday, August 31, 2003, 10:38 PM  
**Subject:** Domain-related Inquiry

Hello!  
I would like to inquire about your domain <nhn.com>.  
To the best of my knowledge, your domain on now sale....  
How much is the sales price?  
Is it negotiable? I look forward to hearing from you.  
Thank you.  
Jin Kyu Park

**Subject:** Domain name <nhn.com>  
**Date:** Sun, 31 Aug 2003 23:07:45 -0400  
**Sent:** "Domain Shop"  
**To:** Jin Kyu Park

Hello,  
Thank you for your inquiry regarding the domain name "http://nhn.com."  
DomainShop.com, Inc. is an industry leader in Top Level Domain collecting and sales.  
Also, for a successful business on the Internet, .com domain names are very important, because during a typical Internet search, the average person will habitually look for .com domains.  
Please make a reasonable offer, if it is reasonable, weâ??ll consider and let you know.  
We look forward to hearing from you.  
Best regards,  
DomainShop.com, Inc.

**From:** Jin Kyu Park  
**To:** Domain Shop  
**Sent:** Monday, September 01, 2003 8:14 AM  
**Subject:** [Re] Domain name nhn.com

Yes I duly received your e-mail.  
Then, how can I make a reasonable offer? Is there any particular offer format?  
If so, I will try to make an offer according to that format.  
Thank you.

**Subject:** Domain name nhn.com  
**Date:** Mon, 1 Sep 2003 09:16:56 -0400  
**Sent:** "Domain Shop"  
**To:** Jin Kyu Park

Hello,  
Thank you for your prompt response.  
It is very easy, you can simply give us the price for the domain transaction for <nhn.com>, or otherwise, please visit our website <http://domainshop.com> and click "Make an Offer" and fill out and submit, thatâ??s all you have to do.

If you have any other questions, please contact us.  
Best regards,  
William

[The Complainant then made an offer of \$50,000 for the Domain Name.]

**Sent:** "Domain Shop"  
**To :** <jukumi75....>  
**Date:** 2003-09-04 21:49  
**Subject :** Domain Transaction for <nhn.com>

Hello,  
Thank you for your offer regarding the domain name "http://nhn.com."  
DomainShop.com, Inc. is an industry leader in Top Level Domain collecting and sales.  
We've been in business since 1998.  
Also, for a successful business on the Internet, **.com** domain names are very important,  
because during a typical Internet search, the average person will habitually look for **.com**  
domains.  
We are very sorry to tell you because we are not satisfied your offer \$50,000 for this domain  
transaction.  
We believe the value of this domain which is much higher than your offer.  
So, we hope that if you are seriously interested, you'll make a reasonable offer.  
If you agree with our price, you can open a buyer account and initiate the domain transaction  
at "http://escrow.com."  
They accept credit cards and other payment methods.  
Please note that the Escrow Fees are paid by buyer.  
If you have any other questions, please contact us.  
Best regards,  
William Nah  
VP  
DomainShop.com, Inc.

**From:** Jin Kyu Park  
**To:** Domain Shop  
**Sent:** Sunday, September 07, 2003 10:56 AM  
**Subject:** RE: Domain Transaction for <nhn.com>

Hi!  
Thank you for your e-mail.  
I know how high would be the degree of demand for 3-digit domain names.  
I also guess that you would expect a reasonable price as a party who is doing a  
domain-related business.  
It seems that \$50,000 would meet your need.  
What would be the level of your expectation?  
If you let me know your expected level, I will contemplate if I can afford to pay it,  
and if it is a reasonable price.  
Does it make sense to you?  
I will appreciate if you give me some information on <nhn.com> as well.  
Have a nice day, today...^^

**Sent:** "Domain Shop"  
**To :** "" <jukumi75...>  
**Date:** 2003-09-08 23:46  
**Subject :** Domain Trasaction for <nhn.com>

Hello,  
Thank you for your response.  
Actually, we were offered many times for this domain from USA, UK, Japan and Korea, the highest offer which was over \$250,000, however we haven't sold because we weren't satisfied.  
If you are seriously interested in buying this domain name, we hope that you'll make a reasonable re-offer.  
We look forward to hearing from you.  
Best regards,  
William

**Sent :** "Domain Shop"  
**To :** <jukumi75...>  
**Date:** 2003-10-13 22:39  
**Subject :** Domain Trasaction for <nhn.com>

Hello,  
I haven't heard any news from you regarding the domain transaction of "http://nhn.com."  
I'd like to know you are still interested, if you are still interested, please make a reasonable offer.  
If your offer is reasonable, I and my partners, we'll consider.  
I look forward to hearing from you.  
Best regards,  
William Nah

**From:** Jin Kyu Park  
**To:** Domain Shop  
**Sent:** Tuesday, October 14, 2003 7:54 AM  
**Subject:** RE: Domain Transaction for <nhn.com>

Thank you for your e-mail.  
Though I am much interested in <nhn.com>, its value seems to be much higher than I think.  
I initially contemplated about \$1,000~20,000, but heightened the maximal betting level to \$50,000.  
However, \$250,000 is beyond the scope of my capability.  
I guess you would receive many offers from many countries.  
If you fail to find a new owner of <nhn.com> nevertheless, please contact me again.

Thank you.

**Sent:** "Domain Shop"  
**To:** <jukumi75...>  
**Date:** 2003-10-15 01:05

**Subject:** Domain Trasaction for <nhn.com>

Hello,

Thank you for your kind reply.

However, I'd like to know how much you would like to pay or maximum budget for the domain transaction of "http://nhn.com."

If it is reasonable, we'll consider.

Although, we won't sell \$50,000 for this domain.

And we have many information regarding nhn in korea too, so we'll wait or sell, we are considering.

I look forward to hearing from you.

Best regards,

William

**From:** Jin Kyu Park

**To:** Domain Shop

**Sent:** Thursday, October 16, 2003 2:23 AM

**Subject:** RE: Domain Transaction for <nhn.com>

Yes, I am well aware of the Domain Shop as well as of the domestic fame of <nhn.com>. Regretfully, however, I am unable to pay more than \$50,000 due to deficit of my budget.

Sorry, but we seem to have no affinity with each other.

If any further negotiation becomes available, please let me know.

Thank you.

**Sent:** "Domain Shop"

**To:** <jukumi75...>

**Date :** 2003-10-18 23:35

**Subject:** Domain Trasaction for <nhn.com>

Hello,

Thank you for your kind reply.

As you know, the past is the past, so we don't regret.

By the way, if you'll pay \$150,000, I'll discuss with my partners and consider.

If you are still interested, do not hesitate, please contact me.

Also, if you'll let me know your phone No., I can contact with you over the phone.

Best regards,

William Nah

**From:** Jin Kyu Park

**To:** Domain Shop

**Sent:** Monday, October 27, 2003 8:15 PM

**Subject:** Domain trasaction for <nhn.com>

My name is Jin Kyu Park, a domain administrator of NHN Corp. in Korea.

I would like to mention about the domain <nhn.com> owned by your company.

Your <nhn.com> domain coincides with our trade name "NHN Corp," which has been in use since September 2001. Your domain name also coincides with the trademarks and service marks registered in many countries including Korea.

Thus, we believe that we deserve a legal right under the Uniform Domain Name Dispute Resolution Policy (UDRP) with respect to your <nhn.com> domain name. With that belief, we are now considering to proceed with legal actions under the UDRP.

For mutually amicable and prompt settlement of this matter, we are willing to purchase your <nhn.com> domain at an amount of \$5,000 including an expected VAT added to the direct cost of \$1,500 to be incurred for the proceeding under the UDRP.

Please take the above into your consideration. We hope to see a "win-win" result.

Your earliest possible reply, preferably before the end of October, will be much appreciated.

Thank you.

**From:** Domain Shop  
**To:** Jin Kyu Park;  
**Date:** 2003.10.28 10:36  
**Subject:** Domain trasaction for nhn.com

Hello,

I am so sorry to hear that and weâ??ve been in the domain selling business since 1998. We do not know whether you have registered the trademark for nhn in your country or not. However, you have to know we havenâ??t made any conjunction or confusion for your business with this domain.

Also, you have to know that if you registered with nhn for the trademark in your country and if youâ??ll win WIPO of ICANN for the dispute case, We can go and appeal at my local court, which is in New York, USA.

Well, I personally am not happy to hear that too and weâ??ll never reply.

Although, if you are seriously interested in buying this domain, please contact us.

Best regards,

William Nah<> Marketing Manager  
DomainShop.com, (HBX Inc.).

**From:** Jin Kyu Park  
**To:** Domain Shop  
**Sent:** Wednesday, October 29, 2003 9:04 PM  
**Subject:** [Re] Domain trasaction for <nhn.com>

Hello! I am an administrator of "NHN" domain.

We duly received your e-mail, and we have discussed the matter with our related staff.

We wish to make a final offer to your company.

Our offer is \$10,000, and this is our final offer as mentioned above.

This is for mutually amicable settlement. No higher price has been excluded from our consideration.

If you do not agree to our proposal, we will proceed with legal remedies in accordance with UDRP.

We hope to see a "win-win" result.

Thank you.

**From:** Domain Shop  
**To:** Jin Kyu Park;  
**Date:** 2003.11.02 02:36  
**Subject:** Domain trasaction for <nhn.com>

Hello,  
I know who you are, and you offered \$50,000 with possible negotiations for this domain transaction several weeks ago.  
We purchased this domain at a much higher price than your offer from "http://buydomains.com" so we can't sell.  
I'm personally so sorry to tell you that we sold this domain recently and we're transferring the ownership now.  
As you know, the domain selling business is on a first come first serve basis, therefore we have just a couple days.  
If you are still seriously interested in buying this domain, please make a reasonable offer.  
If your offer is reasonable, we'll consider it.  
If you have any other questions, do not hesitate, please contact us.  
Best regards,  
William"

On November 7, 2003, the Respondent was incorporated in New Jersey. The President of the Respondent is Hyojun Kim. The certificate of incorporation does not specify the purpose for which the Respondent was incorporated.

On November 11, 2003, HBX transferred the Domain Name to the Respondent.

On November 19, 2003, following the transfer of the Domain Name to the Respondent, the Complainant (in the name of an employee) had a further exchange of emails with a view to acquiring the Domain Name. That exchange reads as follows:

"Dear NHN Corp,  
I become to know you are the owner of <nhn.com> domain name. I am trying to set an organization titled "Network of Human Network." Can you sell your domain name if I pay some money?  
Regards,  
Network of Human Network"

Hello Human Network,  
We have a project for the health field, that's why we paid big money and we purchased this domain couple weeks ago.  
However, if you'll pay more than we paid, we'll consider it.  
Best regards,  
National Health Network."

## **5. Parties' Contentions**

### **A. Complainant**

The Complainant contends that the Domain Name is identical or confusingly similar to its registered trademarks featuring the letters NHN.

The Complainant further contends that HBX has no rights or legitimate interests in respect of the Domain Name. The substance of the Complaint is that while the Complainant was prepared to pay a substantial sum of money for the Domain Name, as soon as HBX's demands became extortionate, the Complainant threatened proceedings under the Policy and HBX realizing that it was vulnerable to a Complaint under the Policy, perpetrated an act of "cyber flying." In other words, it transferred the Domain Name to an *alter ego*, set up for the purpose and designed to defeat any subsequent complaint under the Policy. The Complainant asserts that an act of cyber flight of this kind cannot form the basis of any genuine bona fide use claim of the kind described in paragraph 4(c) of the Policy.

While the Respondent's corporate name is the same as the Domain Name, there is no indication that the Respondent had any bona fide intentions in relation to the Domain Name. The setting up of the Respondent under a name identical to the Domain Name was a deliberate ploy to seek to justify registration of the Domain Name in the hands of the Respondent and thereby to defeat the threatened challenge under the Policy.

The Complainant contends that the Domain Name was acquired by the Respondent and is being used by the Respondent in bad faith. The Complainant relies upon the sequence of events leading up to the transfer of the Domain Name from HBX to the Respondent and relies also upon the manner in which the Domain Name has been used since the transfer. At the time of the Complaint, it resolved to a homepage located at "www.hbxmall.com," a site owned and operated by HBX, and, at the same time, continued to be offered for sale as a premium name at "www.domainshop.com," another HBX website. This continued for a further month after the transfer of the Domain Name to the Respondent. The Complainant notes that following the transfer the Respondent was still willing to accept offers for the Domain Name.

Finally, the Complainant contends that the Respondent registered the Domain Name in bad faith and is using it in bad faith. The Complainant refers to the matters set out above and contends that the Respondent acquired the Domain Name either for the purposes of selling the Domain Name to the Complainant for an extortionate sum of money or the Respondent acquired it to disrupt the business of the Complainant or the Respondent acquired the Domain Name with a view to attracting Internet users to its website for commercial gain by creating a likelihood of confusion with the Complainant's marks in the manner described in paragraph 4(b)(iv) of the Policy.

## **B. Respondent**

The Respondent does not dispute that the Domain Name is identical or confusingly similar to the Complainant's trademark.

The Respondent contends that it has rights and a legitimate interest in respect of the Domain Name. It claims to have acquired the Domain Name for the purpose of using it for the benefit of its planned business under the name of NHN Inc., which is its corporate name and an acronym for National Health Network, a health related online business planned by the Respondent.

The Respondent denies that it acquired the Domain Name in bad faith and is using it in bad faith. The Respondent points to the examples of bad faith registration and use set out in paragraph 4(b) of the Policy and observes that there is no evidence before the Panel to support any of the Complainant's allegations of bad faith in this regard.

The Respondent observes that HBX purchased the Domain Name lawfully for a substantial sum of money (\$20,000), a not unreasonable sum for a three letter domain name. The Complainant clearly appreciated that the three letter domain name was worthy of a substantial sum of money because the Complainant volunteered a substantial sum in its opening offer. The Respondent contends that if the Complainant really thought that HBX's acquisition of the Domain Name was a bad faith acquisition, it would never have made an offer to purchase at a price of \$50,000.

The Respondent appended to the Response sworn statements from Mr. Nah and Mr. Kim in which they admit that they have had a longstanding business acquaintanceship and that Mr. Nah has a shareholding in the

Respondent. However, Mr. Kim denies that the acquisition of the Domain Name or the naming of the Respondent had anything whatever to do with the Complainant or the Complainant's trademark. Both Mr. Kim and Mr. Nah deny that they were aware of the Complainant's trademark at the time of acquisition of the Domain Name by HBX and transfer of the Domain Name by HBX to the Respondent.

Accordingly, the Respondent contends that since it had no knowledge of the Complainant's trademark at the relevant time, its acquisition of the Domain Name could not have been a bad faith acquisition. The Respondent points out that the Complainant has no registered rights in the United States and that therefore there was no reason why the Respondent should have been aware of the Complainant's trademark rights when acquiring the Domain Name.

In response to the Procedural Order, the Respondent produces further declarations from Mr. Nah and Mr. Kim verifying that Messrs Nah and Kim have since 2001 had plans to develop an online health related business and to that end had acquired a large number of health related domain names. Mr. Nah says that he purchased the Domain Name "because it had the letters HN, which could stand for Health Network and thought that National Health Network was a great name for Mr. Kim and the business plan." He transferred the Domain Name to the Respondent in exchange for a 20% equity interest in the Respondent.

Mr. Nah says that he would have been prepared to sell the Domain Name to the Complainant if the Complainant had been willing to pay a substantial amount to cover HBX's investment in the Domain Name and to provide funding for the business as well as money to purchase a replacement domain name. The Complainant did not appear to be ready to do so, so he transferred the Domain Name to the Respondent for the purpose for which it had originally been acquired.

Mr. Kim's further declaration confirms much of what is said in Mr. Nah's declaration. The final paragraph of his declaration reads "I am a programmer and came up with the idea for the business. I have a 75% interest in NHN Corporation. Mr. Nah is responsible for supply of the products sold. Mr. Jongho Choi, a web designer, joined the partnership in June 2003 and has been designing the web since that date."

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove that

- (i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interest in respect of the Domain Name; and
- (iii) The Domain Name has been registered in bad faith and is being used in bad faith.

### **A. Identical or Confusingly Similar**

It is not in dispute that the Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights and the Panel so finds.

### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy indicates what respondents can do to demonstrate that they have rights or legitimate interests in respect of the domain name within the meaning of paragraph 4(a)(ii) of the Policy.

Paragraph 4(c) of the Policy reads as follows:

"c. How to Demonstrate Your Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint. When you receive a complaint, you should refer to Paragraph 5 of the Rules of Procedure in determining how your response should be prepared. Any of the

following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

On the Respondent's story it may well have rights or legitimate interests in respect of the Domain Name. The Respondent's story is as follows: In June 2003, prior to its formation, its prime mover, Mr. Kim, and his partners, Mr. Nah and the web designer, Jongho Choi, formed plans to develop an online health related business under the name NHN, NHN being an acronym for National Health Network which was to be the trading name of the business. At all material times they were unaware of the existence of the Complainant and its trademark. On November 7, 2003, in good faith, the Respondent was incorporated in New Jersey and on November 11, 2003, in good faith, the Respondent acquired the Domain Name, again unaware of the existence of the Complainant's trademark. That is the Respondent's story. On that story, and whether or not the Respondent's plans were sufficiently developed to give the Respondent rights or legitimate interests in respect of the Domain Name, clearly it was a good faith enterprise and the Complaint would have to fail.

Another way of looking at it, the Complainant's way of looking at it, is that there was no good faith in the Respondent's enterprise. Mr. Nah, the President of HBX, and Mr. Kim, the President of the Respondent, have known each other for a long time and work closely together. They are both of Korean origin, both understand the Korean language and certainly Mr. Nah and/or his business is the proprietor of Korean-specific domain names such as <slimkorea.com> and <germaniumkorea.com>. At one time the Domain Name was linked to Yahoo Korea. At the time HBX acquired the Domain Name (June 2003) the Complainant was a very well known organisation in Korea and known by its corporate name and trademark NHN. Having regard to the fame in Korea of the Complainant at that time, the strong Korean connections of Mr. Nah and Mr. Kim and their particular interest in Internet related business, it is inconceivable that at all material times the Respondent was not well aware of the Complainant and its trademark. Indeed, in his email message of October 15, 2003, Mr. Nah expressly admits to knowledge of the Complainant in Korea ("and we have many information regarding NHN in Korea too, so we'll wait or sell, we are considering.")

From the Complainant's perspective, the combination of:

- (i) the email exchanges;
- (ii) the circumstances of the setting up of the Respondent;
- (iii) the transfer of the Domain Name to the Respondent, particularly almost immediately after Complainant threatened to pursue a claim under the Policy;
- (iv) the Respondent's continued willingness to sell the Domain Name after acquisition; and
- (v) the linking of the Domain Name to a Korean site or sites.

is wholly inconsistent with any genuine plans to trade under the names NHN and National Health Network and supports the proposition that the Respondent's aim in conjunction with Mr. Nah was to extract a substantial

sum of money from the Complainant.

Faced with these two totally contrasting positions, the Panel was in two minds. It could have simply relied on the sworn statements of Mr. Nah and Mr. Kim in which they denied all knowledge of the Complainant and its trademark at all material times. After all, it is a serious matter to reject a sworn statement. However, the circumstances were, to say the least, suspicious. The statement from Mr. Kim, President of the Respondent, stating "we ... had no knowledge of complainant or its trademark when we registered it" seemed inherently unlikely. Mr. Kim's company acquired the Domain Name on November 11, 2003, from Mr. Nah's company, Mr. Nah being a close business associate of Mr. Kim and a substantial shareholder in the Respondent and Mr. Nah being well aware of the Complainant and further being well aware that the Complainant was prepared to pay a substantial sum of money for the Domain Name.

In the circumstances, the Panel was not prepared to accept the sworn statements of Mr. Nah and Mr. Kim at face value and issued the Procedural Order which is set out under the heading of "Procedural Background" above.

In that Procedural Order the Panel drew to the Respondent's attention the particular value of contemporaneous documentation to support its assertions and anticipated that in responding the Respondent would produce some such documentation in support of its story or at the very least explain why it was not possible to produce any such documentation. However, despite the Panel's specific request for such documentation, no such documentation was produced; nor was there any explanation for the Respondent's failure to produce it. The further declarations indicated that Mr. Nah's company had a large number of health related domain names, but that of itself was indicative of nothing. HBX is the owner of a very large number of other domain names which are not health related domain names. That is as one would expect given that HBX is a dealer in domain names.

Mr. Kim's declaration drew the Panel's attention to the fact that a web designer had been working on the Respondent's proposed website since June 2003, when the Domain Name was first acquired by HBX. In those circumstances, one would have thought that it would not be too difficult to produce something to demonstrate bona fide preparations to use the names National Health Network or its acronym, NHN. However, the Respondent has provided nothing of that kind.

While it is not for the Respondent to prove its innocence, it is incumbent upon the Respondent to come forward with some hard evidence in rebuttal, when the Complainant has established a prima facie case. Here, the Panel is of the view that the Complainant has made out a prima facie case. The Respondent has a case to answer, but the Respondent has provided no satisfactory answer; the Respondent's position is not credible.

On that basis, therefore, the Panel has no alternative but to conclude that the Complainant's contentions are correct and that the Respondent and its predecessor HBX were targeting the Complainant all along and with no genuine intention of trading under the names NHN and National Health Network.

The Panel finds therefore that the Respondent has no rights or legitimate interests in respect of the Domain Name.

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

By the same reasoning the Panel finds that the Respondent acquired the Domain Name in bad faith and is using it in bad faith.

The Panel believes it probable that the Respondent's purpose was to extract a much larger sum of money from the Complainant. The Panel is less impressed with the Complainant's contentions that the Respondent's objective was to disrupt the business of the Complainant or to deceive Internet users.

Accordingly, the Panel finds that the Respondent acquired the Domain Name in bad faith and is using it in bad faith within the meaning of paragraphs 4(a)(iii) and 4(b)(i) of the Policy.

#### **7. Decision**

In light of the foregoing findings, the Panel directs that the Domain Name <nhn.com> be transferred to the Complainant.

(Panelists)