



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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|---------------------------------|-------------------------------|
| <b>Case No.</b>                 | HK-18010193                   |
| <b>Complainant:</b>             | CK Hutchison Holdings Limited |
| <b>Respondent:</b>              | Oliver Hoger                  |
| <b>Disputed Domain Name(s):</b> | <ckh.com>                     |

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

The Complainant is CK Hutchison Holdings Limited, of 22/F, Hutchison House, 10 Harcourt Road, Hong Kong.

The Respondent is Oliver Hoger, of Suite 4, 4 Giros Passage, Gibraltar, GI, GX11 1AA.

The domain name at issue is ckh.com, registered by Respondent with ENOM.INC, of 5808 Lake Washington Blvd. NE, Suite 201, Kirkland, WA, 98033, U.S.A.

**2. Procedural History**

On 16 November 2018, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On the same day, the ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On the same day, the ADNDRC-HK notified ENOM.INC (“Registrar”) of the Disputed Domain Name of the proceedings by email.

On 17 November 2018, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that Oliver Hoger is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is English as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 1 December 2018, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS

database). The Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 21 December 2018).

Following receipt of the Notification, on 11 December 2018, Respondent requested a 60 day extension. On 13 December 2018, ADNDRC-HK denied the 60 day extension request and informed Respondent that,

“according to Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") 5(b), the Respondent may expressly request an additional four (4) calendar days in which to respond to the complaint, and the Provider shall automatically grant the extension and notify the Parties thereof. This extension does not preclude any additional extensions that may be given further to 5(d) of the Rules.”

The Respondent submitted its response on 24 December 2018. On 8 January 2019, ADNDRC-HK informed Respondent that it must submit its response in Form R by 10 January 2019. On 8 January 2019, Respondent submitted its Response in Form R.

On the issue of the time extension, Complainant submits the following:

The Respondent's submission is out-of-time and urges the ADNDRC to reject the same. In particular, the Complainant argues that:

1. The Respondent has failed to formally request for an extension of time to file its response with the ADNDRC in accordance to the Rules. It refers to the ADNDRC's email dated 13 December 2018 whereby the ADNDRC expressly (i) declined the Respondent's request for 60 day time extension and (ii) replied that a 4 calendar day's extension is permitted under Rule 5(b). However, the Complainant has not been informed by the ADNDRC or the Respondent of any such time extension request being made.
2. Further to point 1 above, the ADNDRC has in fact emailed the parties on 23 December 2018 that as it has not received a response from the Respondent, the case administrator shall proceed to appoint panellist for this matter.
3. The Respondent is under no exceptional circumstances warranting the ADNDRC to accept its late submission.
4. In addition, the Respondent has failed to include the Complainant in all correspondence contrary to Rule 2(h)(iii).

On the issue of the time extension, Respondent submits the following:

Respondent requested a 60 day extension and were instead provided a 4 day extension. Respondent filed its response within said 4 day period of time, the day before Christmas.

Even if the 4 day extension was not extended to Respondent due to a misunderstanding between Respondent's council and ADNDRC, in general late responses are accepted where they are not filed substantially late and before commencement of the decision-making process; where failure to take the response

into account would have led to a miscarriage of justice; and where the response is late by only a couple of days and did not prejudice the complainant.

Complainant's final suggestion that Respondent has not cc'ed Complainant, is just not true except for when submitting financial information to ADNDRC which is expected and allowed.

In reviewing the relevant correspondence and considering all relevant circumstances, the Panel affirms ADNDRC-HK's acceptance of the Response.

The Panel comprising Dr. Shahla F. Ali (Presiding Panelist), Mr. David Kreider (Co-Panelist), and Mr. David Sorkin (Co-Panelist) as a three-member panel was appointed by the ADNDRC-HK on 3 May 2019. The papers pertaining to the case were delivered to the Panel by email on the same day.

### 3. Factual background

According to the documents submitted by the Complainant, the Complainant, Cheung Kong (Holdings) Limited (“長江企業控股有限公司”), the Complainant's predecessor, was established on 8 June 1971 by Mr. Li Ka Shing, and since 1972, the Complainant has been trading and providing services under the service mark/trade name “Cheung Kong Holdings”, and “CKH” represents the acronym of this service mark/trade name. In June 2015, Complainant's group of companies completed a reorganisation and combination of their businesses to create CK Hutchison Holdings Limited (i.e. the Complainant Company), which now holds the non-property businesses of both groups, and Cheung Kong Property Holdings Limited (which was later renamed as CK Asset Holdings Limited), which now holds the property businesses (together with other associated companies, collectively referred to as “the Complainant's Group”). The objectives of the reorganisation and spin-off were to create shareholder value as well as increasing transparency and business coherence. The Complainant is among the largest companies listed on the main board of The Hong Kong Stock Exchange and employs over 300,000 people in over 50 countries across the world. The Complainant has five core businesses - ports and related services, retail, infrastructure, energy and telecommunications.

The financial performance of the Complainant for the past 5 years is as follows:

| Year | Revenue (HK\$ million) | Profit attributable to equity holders of the Company (HK\$ million) |
|------|------------------------|---|
| 2013 | 21,480                 | 35,260  |
| 2014 | 26,384                 | 53,869  |
| 2015 | 176,094                | 118,570   |
| 2016 | 259,842                | 33,008  |
| 2017 | 248,515                | 35,100  |

The disputed domain name was registered on 29 September 1999. According to information provided by the Respondent, the Respondent, Oliver Hoger of Gibraltar purchased the disputed domain name on 19 September 2018.


#### 4. Parties' Contentions

##### A. Complainant

The Complainant's contentions may be summarized as follows:

i) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:


The Complainant notes that "CKH", which is the acronym of the Complainant's predecessor company name "Cheung Kong Holding", was adopted as the Complainant's Group's trade name and main trademark since their establishment. In

Hong Kong, the Complainant's Group has registered the mark "" in a wide range of goods and services in Classes 19, 35, 36, 37, 38, 39, 41, 42, 43



(Registration No. 301130543) in 2008; registered the mark "" in Class 5



(Registration No. 303799441) in 2016; and registered the mark " CK HUTCHISON," in Classes 35, 38, 39 (Registration No. 303575999) in 2015. The Complainant Group's trademarks containing the word "CKH" all have an application or registration dates which are significantly earlier than the date when the Disputed Domain Name was obtained by the registrant immediately preceding the current registrant, Chen Wen Qiang (the "Immediately Preceding Registrant") (i.e. 31 October 2017) and such registrations are still valid at that time. Recently, the Complainant has been informed of the current registrant, Oliver Hoger, whose information was last updated and provided to the Complainant by the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 19 November 2018. In view of the above, the current registrant must therefore have obtained the Disputed Domain Name on a date later than 31 October 2017.



The Complainant further notes that its Group's property business involves property development and strategic investment and is one of the largest developers in Hong Kong of residential, commercial and industrial properties.

The Complainant notes that its Group has always aimed to maintain a strong presence in overseas property markets as a quality property developer of choice residential and commercial projects. For example, in China, the Complainant has invested in important real estate development projects including being the largest shareholder of the project "Oriental Plaza", a project in the middle of downtown Beijing with project value of HKD7,000 million and covering a total gross floor area of 920,000 meter square. In addition, the Complainant Group has in 1994 purchased "Lido Place" in Beijing, a commercial/residential complex that accommodates a large number of Beijing's expatriate community and multinational companies.

According to the information submitted by the Complainant, it and its predecessors have adopted various means to promote and advertise its goods and services, including the establishment of various websites including in particular <http://www.ckh.com.hk>. Prior to the date when the Disputed Domain Name was obtained by the Immediately Preceding Registrant, the Complainant's Group registered and/or used various domain names incorporating the trademark/name "CKH". In Hong Kong, the Complainant's official website is <http://www.ckh.com.hk> which is operated by the Complainant contains abundant information on the Complainant's goods and related services. The "ckh.com.hk" domain name was registered by the Complainant's Group on 5 December 1995, which is substantially earlier than the date when the Disputed Domain Name is obtained by the Immediately Preceding Registrant.

The Complainant therefore argues that it and its predecessors thus owns exclusive rights in the trademark/name "CKH". As a result of the extensive and continuous long-term use of "CKH" by the Complainant and its predecessors for several decades worldwide including in Hong Kong, "CKH" has been well-recognized by the public to be distinctive of and identified with the Complainant and its predecessors and / or the Complainant's Group and its goods but none other. Substantial goodwill and reputation has subsisted in "CKH", and it has become so well-known that when one uses "CKH" as search keyword on Google Hong Kong and Yahoo! Hong Kong, all search results on the first page concern the Complainant and/or its products. As such, the Complainant argues that it and its predecessors undoubtedly has rights in the "CKH" trademark/name, which has become well-known in Hong Kong.

The Complainant argues that the distinctive part of the Disputed Domain Name "ckh.com" is identical to the Complainant's trademark/name. Therefore, the Complainant contends that the Disputed Domain Name as a whole is confusingly similar to the trademark/name "CKH" in which the Complainant has rights.

ii) The Respondent has no rights or legitimate interests in respect of the domain name(s):

The Complainant argues that the rights in the trademark/name "CKH" vest in the Complainant and the Complainant's Group, and no others. The Respondent is not in any way related to the Complainant, nor was the Respondent authorized by the Complainant to use the trademark/name "CKH".

The word "CKH" is neither a dictionary word, nor is the Respondent commonly known by the Disputed Domain Name. The name of the Respondent does not contain "CKH".

Accordingly, as put forward by the Complainant, on or before the date when the Disputed Domain Name is obtained by the Immediately Preceding Registrant, i.e. 31 October 2017:

(a) The Complainant and its predecessors already established a company with a name incorporating the trademark/name "CKH" and continuously used the trademark/name worldwide including in Hong Kong;

- (b) The Complainant and its predecessors already registered “CKH” as trademarks in various countries and regions worldwide, including in Hong Kong;
- (c) The Complainant and its predecessors extensively used “CKH” as its trademark/name worldwide including in Hong Kong;
- (d) Substantial goodwill and reputation subsisted in the Complainant’s trademark/name “CKH”; and
- (e) The trademark/name “CKH” has been identified by the public as the trademark/name of the Complainant and its predecessors and none other.

Accordingly, the Complainant argues that the Respondent has never owned any right or legitimate interest over the trademark/name “CKH”. As “CKH” is the distinctive part of the Disputed Domain Name, the Respondent has no right or legitimate interest in respect of the Disputed Domain Name.

iii) The disputed domain name(s) has/have been registered and is/are being used in bad faith:

The Complainant contends that the Complainant and its predecessors have prior rights in the trademark/name “CKH” and the Respondent has never had any rights or legitimate interests in the said trademark/name as mentioned above.

The Complainant further argues that the actual use of the Disputed Domain Name by the Respondent demonstrates that it was registered and is being used in bad faith. Currently, the webpage contains clear message on the top of the page stating “DOMAIN FOR SALE” which invites visitors to make offers for purchase of the Disputed Domain Name. This clearly demonstrates that the Respondent has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name to the Complainant who is the owner of the “CKH” mark or to a competitor thereof, for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to the Disputed Domain Name. In addition, by registering the Disputed Domain Name, the Respondent has hindered the Complainant from reflecting its “CKH” mark in a corresponding domain name.

## B. Respondent

The Respondent’s contentions may be summarized as follows:

### a. Introduction

The Respondent submits that the dispute presents a case of Reverse Domain Name Hijacking. The Respondent argues that the Complainant has abused the administrative proceeding in an attempt to rob the Respondent of an entirely descriptive three-letter gTLD (the “Disputed Domain”) which Respondent recently purchased for US \$22,000.

### b. Three-Letter Domain Names Are Generic.

1. The Respondent argues that since the year 2000, every three-letter .com domain name combination has been registered. As of 2013, all four letter .com domain names were all registered. Three-letter domain names have grown to be extremely valuable, no matter what their extension, often selling for more than \$200,000, and it is the intrinsic value of the three-letter domain name underlying this case as a generic abbreviation which motivated the Respondent to acquire it, not any goodwill of the Complainant. “A number of UDRP cases relating to three-letter domain names reflect the fact that such terms are generally in widespread use as acronyms or otherwise and it is entirely conceivable that a respondent registered such a domain name for bona fide purposes.” (e.g., *ETH Zürich (Eidgenössische Technische Hochschule Zürich) v. Andre Luiz Silva Rocha, Construtora Norberto Odebrecht S/A*, WIPO Case No. D2016- 0444).

2. The Respondent further argues that both WIPO and the National Arbitration Forum (NAF) have taken a dim view of complainants seeking transfer of three-letter domain names under the Policy (*Franklin Mint Fed. Credit Union v. GNO, Inc.*, FA 860527 (Nat. Arb. Forum Mar. 9, 2007) (concluding that the respondent had rights or legitimate interests in the domain name because it was a generic domain name reseller who owned numerous four-letter domain names); *Fifty Plus Media Corp. v. Digital Income, Inc.*, FA 94924 (Nat. Arb. Forum July 17, 2000) (finding that the complainant failed to prove that the respondent had no rights in the domain name and had registered and used the domain name in bad faith where the respondent is an Internet business which deals in selling or leasing descriptive/generic domain names).

3. Respondent claims that even where the Respondent has actively attempted to sell the three-letter domain name to a trademark holder, no bad faith has been found. For instance, in *SK Lubricants Americas v. Andrea Sabatini, Webservice Limited*, D2015-1566 (WIPO November 23, 2015), involving a three-letter domain name, the Panel noted in its findings, “the statement that an offer to sell a domain name which corresponds to a trademark is itself evidence of bad faith is simply wrong. Carrying on business in registering descriptive or generic domain names is not of itself objectionable.”

4. The Respondent further argues that a review of marks incorporating the expression “CKH” filed with the U.S. Patent and Trademark Office (USPTO) shows that the third mark is that of Complainant and the other two are owned by a group called the Flippen Group which provides Educational services. Although Complainant is claiming an exclusive right to CKH it has never attempted to cancel the Flippen group’s marks, because as Respondent argues, Complainant does not have exclusive right the world over to the letters CKH. An international search shows over thirty (30) other parties besides the Complainant who have attempted to register marks for CKH, exclusive of other terms, including C&A AG, Lang Ka YI International PTE LTD, CKH Garment, Antonie Maria Peppler, The Flippen Group, Hutchinson 3G Italy Investments, COFRA Holding Ag, and many others.

5. The Respondent submits that a search of the Acronyms website shows that there are four separate organizations that claim CKH to be an abbreviation/acronym for each of them, including Cheung Kong Holdings, Seacor Smit, Inc., Central Kansas Hatchery and Chokurdakh, Russia.

6. Further, a Dunn & Bradstreet search shows that there are 171 companies in the US that use CKH as their name.

c. Complainant's Lack of Exclusive Rights in CKH

1. The Respondent argues that the Complainant, Cheung Kong (Holdings) purports to be a large company from Hong Kong with numerous international trademarks. In its Complaint, the Complainant lists a selection of its trademarks which the Complainant owns and which the Complainant alleges are identical to the Disputed Domain. A review of these trademarks shows that all of Complainant's trademarks are stylized marks. Therefore, Complainant only has rights to its stylized logo or word marks. These stylized versions of CKH are not identical to the Disputed Domain. Every one of the marks we reviewed has the following Description of the Mark: "Color is not claimed as a feature of the mark. The mark consists of a highly-stylized "CKH" design to the left of the wording 'CK HUTCHISON'." Under no circumstances are these stylized marks identical to the letters CKH.

2. The Respondent further submits that the Complainant's evidence must establish both that the Respondent in this case was "clearly aware of the [C]omplainant's" product, and that the "clear aim" of the Respondent's registration "was to take advantage of the confusion between the [Disputed Domain] and the Complainant's rights." The Respondent argues that the Complainant has made no such showing.

3. The Respondent is a German citizen residing in Gibraltar, does not read or understand Chinese and is not, nor has ever been aware of the Complainant, CK Hutchison Holdings Limited, a Hong Kong company.

4. The Respondent argues that it did not register the Disputed Domain primarily for the purpose of preventing "the owner of the trademark or service mark from reflecting the mark in a corresponding domain name," because Respondent had no knowledge of CK Hutchison Holdings Limited, a Hong Kong company. Additionally, Respondent did not intend to create a likelihood of confusion or disrupt Complainant's business. UDRP ¶ 4(b). In short, the Respondent is a good-faith registrant of the Disputed Domain.

5. Further, Respondent argues that even a registered trademark provides no rights under the Policy, if it is deemed to be descriptive or generic by a panel. *Rollerblade, Inc. v. CBNO*, D2000-0427 (WIPO Aug. 24, 2000) (citing *Windsurfing International, Inc. v. AMF, Inc.*, 613 F. Supp 933 (S.D.N.Y. 1985), *aff'd* in part and reversed in part 782 F.2d 995 (Fed. Cir. 1986). ("Indeed, genericness, if established, will defeat a claim of trademark rights, even in a mark which is the subject of an incontestable registration."); see also *Goldberg & Osborne v. The Advisory Board Forum, Inc.*, Case No. D2001-0711 (WIPO Oct. 4, 2001) ("Serious question as to whether the [registered] mark [the personal injury lawyers] is enforceable" under the Policy because it "appears to be descriptive, if not generic."). Here, the USPTO trademark examiner expressly concluded that "GRAD SCHOOLS is descriptive in that it describes the subject of applicant's services, namely . . . a computer directory of graduate schools," and that Complainant's mark "merely combines the descriptive terms GRAD SCHOOLS with [the] standard Internet top-level domain COM." (emphasis added).



6. Further, Respondent argues that the use of a common word domain name related to the descriptive meaning of the domain name, such as the letters “C,” “K,” and “H” constitutes use in connection with a bona fide offering of goods or services, pursuant to ¶ 4(c)(i) of the UDRP. *Sweeps Vacuum & Repair Center, Inc. v. Nett Corp.*, No. D2001-0031 (WIPO Apr. 13, 2001) (pointing *sweeps.com* to *Overture.com* (then known as *Goto.com*) links related to sweepstakes established legitimate interest); see also *Williams, Babbitt & Weisman, Inc. v. Ultimate Search*, No. 98813 (NAF Oct. 8, 2001) (Respondent registered numerous generic and descriptive terms to generate advertising revenue. In finding a legitimate interest, the panel noted that “[n]either the current UDRP nor current ICANN registrar contracts preclude this type of domain name use.”); see also *Dial-a-Mattress Operating Corp. v. Ultimate Search*, No. D2001-0764 (WIPO Sept. 26, 2001); *Etam, plc v. Alberta Hot Rods*, D2000-1654 (WIPO Jan. 31, 2001); *GLB Servicios Interactivos S.A. v. Ultimate Search*, No. D2002-0189 (WIPO May 29, 2002).

7. Respondent claims that the standards for determining whether a mark is protectible are well-established. A mark is only protected in the USA by the Lanham Act and many other countries if it is: ‘distinctive.’ ... A mark may fall into one of four categories: arbitrary or fanciful, suggestive, descriptive, and generic. . . . If the mark is arbitrary or suggestive, it is considered inherently distinctive and automatically protectible .... If the mark is descriptive, it is only protected if it has acquired secondary meaning. . . . A generic mark is not protected ....” *Financial Sys. Software, Ltd. v. Financial Software Sys., Inc.*, 85 F. Supp. 2d 482, 486-87 (E.D. Pa. 1999) (citations omitted).

8. Respondent submits that the claimed CKH mark of the Complainant is an acronym conceivably of use to many entities. “[E]ven a registered mark can be found to be generic.” *FM 103.1, Inc. v. Universal Broadcasting of N.Y, Inc.*, 929 F. Supp. 187, 194 (D.N.J. 1996). Language is available for all to use. “To grant a trademark to a generic name would be tantamount to granting the owner of the mark a monopoly” since it would prevent competitors from an accurate description of their products. *E. T Browne Drug. Co., Inc. v. Cococare Products, Inc.*, 2006 U.S. Dist. LEXIS 6615 \*10 (Dist. N.J. 2006).

9. Respondent argues that the fact that the Disputed Domain is generic and usable for any variety of generic purposes further establishes the Respondent’s legitimate interest in the Disputed Domain. *Energy Source Inc. v. Your Energy Source*, Case No. 96364 (NAF Feb. 19, 2001) (*YOURENERGYSOURCE.COM*) (finding that Respondent has rights and legitimate interests in the domain name where “[r]espondent has persuasively shown that the domain name is comprised of generic and/or descriptive terms, and, in any event, is not exclusively associated with Complainant’s business”); see also *Cream Holdings Limited v. National Internet Source, Inc.*, D-2001-0964 (WIPO Sept. 28, 2001). In ruling in favor of Respondent, the registrant of the domain name, the Panel explained that: “Cream” is merely a common generic word in which the Complainant cannot have exclusive rights. Thus the Respondent has rights and a legitimate interest in the disputed domain by virtue of having been the first to register it.

10. Further, as several ICANN panels have observed: Where the domain name and trademark in question are generic—and in particular where they comprise no more than a single, short, common term—the rights/interests inquiry is more likely to

favor the domain name owner. The ICANN Policy is very narrow in scope; it covers only clear cases of “cybersquatting” and “cyberpiracy,” not every dispute that might arise over a domain name. [Second Staff Report on Implementation Documents for the Uniform Dispute Resolution Policy (Oct. 24, 1999); see also *Ultrafem, Inc. v. Royal*, 97682 (NAF Aug. 2, 2001).]

11. Finally Respondent submits that “A generic mark is not protected because the mark is the common descriptive name of a product class.” *Financial Sys.*, 85 F. Supp. 2d at 487 (internal quotations omitted).

d. Laches.

1. The Respondent argues that the Disputed Domain was registered on September 9, 1999 (See *ckh.com* Whois record at Annex E), nearly nineteen years before the Complainant commenced the present action. Complainant admits that it registered its main domain name in 1995 so it was aware of the availability of the domain name in 1995 and could have registered it at that time. Complainant did not raise a dispute when the domain was registered in 1999, but rather waited nineteen years after it was registered to file a complaint.

2. Respondent submits that contrary to early decisions under the UDRP, laches now provides a bar to a complainant’s UDRP claims after a sufficient period of time has passed and is a factor even before the expiration of that period. The Complainant in this case has waited nearly nineteen years to bring its UDRP complaint after the Disputed Domain was registered. In the recent three-member panel case of *Laminex, Inc. v. Yan Smith*, Case No. 70990 (NAF Jan. 7, 2013) a UDRP claim was barred entirely under the doctrine of laches after the complainant waited almost fifteen years to bring its UDRP claim.

3. Further, Respondent notes, in another recent case, a UDRP claim was denied where the complainant waited almost nine years to bring its UDRP case. In *Phase Eight Limited v. OCC Domain Admin*, D2012-2502 (WIPO Feb. 25, 2013) (finding laches is something that should be weighed heavily by UDRP panels), the panel held: The Domain Name has been registered for almost 9 years. “The longer the time a disputed domain name has been registered, the more difficult it is for a complainant to prove bad faith registration” (see *AVN Media Network, Inc. v. Hossam Shaltout*, WIPO Case No. D2007-1011). There was no explanation for Complainant’s delay in filing the Complaint. Although the Panel’s decision in this case that Complainant has failed to establish bad faith registration does not rest simply on the passage of time between registration of the Domain Name and Complainant’s assertion of its rights, it is a fact that the Panel cannot ignore. 12. This current UDRP Complaint is a desperate attempt to try and strip the Disputed Domain from the Respondent simply because the Complainant wants it, without regard to the descriptive nature of the Disputed Domain or the Respondent’s rights to it based on his payment of US \$22,000 to 4.CN, a large Chinese domain reseller. Notably, upon information and belief, Complainant could have bought the domain from 4.CN which was available for years but did not want to pay the US \$22,000 fee.

e. Unsubstantiated Allegations and Unmet Burden of Proof

1. Respondent argues that to the extent that the Complainant has made a prima facie case sufficient to shift the burden of proof to the Respondent in this matter, the Respondent has rebutted the assertions. The Complainant has only made general statements that registration was in bad faith, but has not submitted sufficient evidence to establish bad faith by Respondent. *Graman USA Inc. v. Shenzhen Graman Indus. Co.*, FA 133676 (Nat. Arb. Forum January 16, 2003) (finding that general allegations of bad faith without supporting facts or specific examples do not supply a sufficient basis upon which the Panel may conclude that Respondent acted in bad faith); see also *Nike, Inc. v. Crystal International*, D2002-0352 (WIPO August 2, 2002) (“Assertions that any use of the Domain Name by another party would likely mislead or deceive the Complainant’s customers, without evidence, is not of much use.”).

#### f. Reverse Domain Name Hijacking

1. Finally, Respondent argues that the Complainant had no bona fide basis for commencing this proceeding under the UDRP, and is culpable for reverse domain name hijacking under ¶ 15I of the UDRP. This is an attempt by Complaint to seize a domain name with no right to do so. *Lockheed Martin Corporation v. The Skunkworx Custom Cycle*, D2004-0824 (WIPO January 18, 2005).

2. Respondent submits that reverse domain name hijacking occurs where, as here, a complainant knows there is no plausible basis for a complaint. *Prom Software, Inc. v. Reflex Publishing, Inc.*, Case No. D2001-1154 (NAF Mar. 4, 2002) (“Complainant’s knowingly flimsy claim not only wholly fails to meet the threshold showing for transfer of the domain name at issue, but also constitutes reverse domain name hijacking.”); *Maine Bait Company v. Robin Brooks*, No.98246 (NAF Aug. 28, 2001) (“it [is] troubling when a Complainant attempts to use this forum to take away a domain name where any reasonable review of the ICANN Policies and Rules would show that the Complainant’s case is extremely weak.”); *Supremo n.v./s.a. v. Rao Tella*, No.D2001-1357 (WIPO Feb. 15, 2002) (“The name was a generic one used in many trademarks and websites that it should have been apparent to the Complainant that it could not prove all the elements required by the Policy.”).

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy 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 is 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.

### A) Identical / Confusingly Similar

The Complainant has established its right to “CKH” in stylized form by submitting trademark registration certificates and records in a number of jurisdictions. The letters CKH are the textual component of the stylized mark. The disputed domain name <ckh.com> contains two elements: “CKH” and the top-level domain “.com”. Numerous

UDRP precedents have established that the top-level domain does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion.

The only distinctive part of the disputed domain should be "CKH", which is identical to the Complainant's "CKH" stylized mark and trade name.

The Disputed Domain Name < ckh.com > incorporates the Complainant's "CKH" mark which is the distinctive part of the Disputed Domain Name in its entirety, and such incorporation makes the Disputed Domain Name confusingly similar with the Complainant's trademark.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(i).

## **B) Rights and Legitimate Interests**

As the owner and/or proprietor of the "CKH" marks, the Complainant has confirmed that it has no prior connection with the Respondent in any way, nor has it authorized the Respondent to use its marks in the Disputed Domain Name.

In determining whether the Respondent has any legal right and interest 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: Adobe Systems Incorporated v. Domain OZ, WIPO Case No.: D2000-0057).

Where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent (See Section 2.1 of the WIPO UDRP Overview and cases cited therein). In the present case, the Respondent failed to provide evidence indicating that it has been commonly known by the Disputed Domain Name, nor has been making a legitimate noncommercial or fair use thereof. Further, Respondent failed to offer an explanation of its reasons for acquiring the disputed domain name. On the contrary, the Complainant has pointed out with screenshots of the Disputed Domain Name website that the Disputed Domain Name resolves to a website that indicates it is up for sale.

There is scant support for an argument that in terms of paragraph 4(c)(i) of the Policy, the Respondent had used or made preparations to use the domain name in connection with a bona fide offering of goods or services.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(ii).

## **C) Bad Faith**

In determining whether the Respondent has registered or used the Disputed Domain Name in bad faith, paragraph 4(b) of the Policy sets down four (4) factors which the Panel will need to examine. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if

found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

As noted above, the Policy requires Complainant to prove bad faith registration and use. There does not appear to be any evidence that Respondent's acquisition of the disputed domain name was targeted at Complainant or its mark. The Respondent alleges that it was not aware of Complainant's "CKH" mark when it purchased the Disputed Domain Name and the Complainant has adduced no evidence to rebut this assertion. Especially given that the Domain Name is composed solely of a common three-letter combination, absent proof that the Domain Name was registered exclusively for the purpose of profiting from Complainant's trademark rights, there can be no finding of bad faith registration and use. (See, e.g., *Ultrafem, Inc. v. Warren Royal*, supra).

Given the above findings, the Panel decides that the Complainant has not satisfied Paragraph 4(a)(iii) of the Policy.

#### **D) Laches**

While Respondent is correct that a long delay in asserting rights under the Policy can make it difficult to show bad faith registration, Respondent purchased the domain name only recently, in September 2018. Even if laches were a valid defense under the policy, Respondent has neither claimed nor demonstrated any prejudice resulting from delay, so the Panel is of the view that laches is inapplicable in this case.

### **6. Decision**

Having not established all three elements required under the ICANN Policy, the Panel concludes that relief shall be DENIED.

Accordingly, it is Ordered that the <ckh.com> domain name REMAIN WITH Respondent.

/s/ Shahla F. Ali

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Dr. Shahla F. Ali  
Presiding Panelist

/s/ David L. Kreider

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David L. Kreider  
Co-Panelist

/s/ David E. Sorkin

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David E. Sorkin  
Co- Panelist

Date: May 10, 2019