

行政专家组裁决
案件编号：DCN-1500638

投诉人： Boehringer Ingelheim International GmbH
被投诉人： 晏松
争议域名： SYNJARDY.CN
注册服务机构： 杭州爱名网络有限公司

1. 案件程序

2015年7月22日，投诉人根据中国互联网络信息中心（CNNIC）2014年11月21日发布实施的《中国互联网络信息中心国家顶级域名争议解决办法》（《解决办法》），CNNIC 2014年11月21日发布实施的《中国互联网络信息中心国家顶级域名争议解决程序规则》（《程序规则》）以及香港国际仲裁中心2014年11月21日生效实施的《香港国际仲裁中心关于〈中国互联网络信息中心国家顶级域名争议解决办法〉补充规则》（《补充规则》）向香港国际仲裁中心提交了英文投诉书，并选择由一人专家组审理本案。

2015年7月23日，香港国际仲裁中心以中文和英文用电子邮件向投诉人传送投诉书接收确认。

2015年7月23日香港时间上午10点38分，香港国际仲裁中心通知争议域名注册服务机构，并请求提供其WHOIS数据库中有关本案争议域名的信息。该邮件抄送给注册管理机构中国互联网络信息中心（CNNIC），并请求CNNIC对以上争议域名进行锁定，直至争议解决程序结束。

同日上午11点05分，争议域名注册服务机构以电邮回复香港国际仲裁中心，确认本案争议域名是由其提供注册服务并提供了WHOIS信息，但是指出申请书中提到的被投诉人“段佐春”并非争议域名的注册人或持有人。

同日上午11点31分，“晏松”（更改后的投诉书中的被投诉人）发电子邮件给香港国际仲裁中心，声称他看不懂英文，并要求文件用中文提交。

参考争议域名注册服务机构的回复、投诉人提交的资料和香港国际仲裁中心于2015年7月23日早上10时29分于CNNIC官网获得的WHOIS资料，香港国际仲裁中心发现本案争议域名的注册者在中心于2015年7月23日早上10时38分发出注册信息确认后的半小时内发生了变更，注册者由“段佐春”变成了“晏松”，并请求争议域名注册服务机构就此作出解释并提供有关资料。

2015年7月23日下午2点17分，争议域名注册服务机构回复称其早上收到邮件之后，在查询 whois 信息时，上面的域名所有人信息已经是晏松的信息了的。目前域名已经是锁定状态。同日，香港国际仲裁中心要求 CNNIC 提供相关信息，并为收到回复。

2015年8月4日，香港国际仲裁中心向申请人发出投诉修改形式缺陷通知，并要求投诉人：
（1）根据争议域名注册服务机构提供的资料修改本案投诉书。如投诉人认为“段佐春”才是本案争议域名的真正注册/持有人，提供有关的原因；（2）向中心提供投诉书中文译本。如要求以“英文”作为行政程序所使用的语言，则需提交要求使用英文作为程序语言的相关理由。

2015年8月11日和2015年8月12日，投诉人提交了修改后的英文投诉书，把投诉人改为“晏松”。投诉人同时要求英文作为行政程序所使用的语言，并提供了相关理由。

2015年8月19日，香港国际仲裁中心确认在规定期限内收到了投诉人提交的更改后的英文投诉书，注意到投诉人坚持以英文为本案程序语言，而且而双方当事人此时未就本案程序语言达成共识。根据《规则》第八条的规定，程序语言可由专家组决定。香港国际仲裁中心通知投诉人在专家组成立之前，中心将以中、英文双语进行程序，包括发送《程序开始通知》（“《通知》”）。有关《通知》将另函以中英文双语的形式发送。同日，香港国际仲裁中心以中、英文双语向被投诉人发送了《通知》，并要求被投诉人在20天之内提交以英文或中文填写的答辩书。

2015年8月19日，被投诉人用中文回复香港国际仲裁中心，重申他反对英文作为程序语言，并要求投诉人用中文提交所有材料。

2015年8月28日，香港国际仲裁中心回复被投诉人，抄送投诉人，根据《规则》第八条的规定，程序语言可由专家组决定，而且专家组有权要求当事人提交非以中文制成的文件提交中文翻译；而争议解决机构并没有赋予有关的权力。因此，中心决定用中英文推进本案程序直至成立专家组。

被投诉人未在规定时间内（2015年9月8日）内提交答辩书。

2015年9月9日，香港国际仲裁中心询问樊堃教授是否有时间接受指定出任本案专家组，并是否能在双方当事人之间独立及公正地审理本案。同日，樊堃教授作出确认回复。

2015年9月9日，香港国际仲裁中心向双方当事人及樊堃教授传送专家确定通知，指定樊堃教授为本案独任专家，成立独任专家组，审理本案。同日，专家组收到案卷。

2. 事实背景

本程序中的投诉人是：Boehringer Ingelheim International GmbH；地址是Postfach 200 D-55216 INGELHEIM, Germany。投诉人指定Nameshield 的Laurent Becker为其授权代理人，其联络地址是rue des arènes 49100 Angers France。

被投诉人是晏松，地址是广东珠海市新香洲心华路42号富康花园13-2-404。

其于2013年5月6日向北京万网志成科技有限公司申请注册了本案争议域名westernhouse.net.cn。

本程序的争议域名是<synjardy.cn>，于2015年6月6日注册。

注册服务机构是杭州爱名网络有限公司，地址是1F, Building No.2, the Digital Entertainment Industry Park No.75 West Wenyi Road, West Lake District Hangzhou Zhejiang 310 012, China.

3. 当事人主张

A. 投诉人

投诉人的主张可概括如下：

首先，投诉人持有若干含有 SYNJARDY 字样的商标，已在多个国家注册。在中国的商标注册信息如下：

商标	国家	注册号	注册日期
SYNJARDY	International	1199259	2014.02.17

(详见附件五).

投诉人也是多个包含 SYNJARDY 商标字样的域名的持有人 (详见附件六).

争议域名 <synjardy.cn> 于 2015 年 6 月 6 日注册。

投诉人主张争议域名<synjardy.cn>与投诉人在先享有民事权益的商标 SYNJARDY 完全相同，或者具有足以导致混淆的近似性。就此，投诉人指出“争议域名包含投诉人商标的全部字符尔没有加入任何其他字符或单词。”

其次，投诉人主张被投诉的域名持有人对域名或者其主要部分不享有合法权益，因为（1）投诉人与被投诉人此前并没有任何商务联系，被投诉人也没有得到任何授权允许其在争议域名中使用投诉人的商标；（2）争议域名被放入“停放域名”并提供关于域名售卖的信息，同时争议域名通过 Sedo 平台出售，可见被投诉人对争议域名不享有合法权益（投诉书附件六）；（3）在投诉人发出警告状后被投诉人也没有提出其对争议域名享有合法权益的主张（投诉书附件七）。

最后，投诉人提出以下主张证明被投诉人注册和使用争议域名具有恶意：

- 争议域名 (于 2015 年 6 月 6 日注册) 同投诉人在先注册的商标 SYNJARDY (于 2014 年 2 月 17 日注册) 和投诉人拥有的若干域名的主要识别部分完全相同

- 争议域名被放入“停放域名”，构成域名的“被动使用”，可以证明“恶意”
- 争议域名在 Sedo 出售, 可见其注册是为了获取商业利益；
- 被投诉人通过争议域名，故意使公众混淆其于投诉人之间的区别，从而吸引公众访问其网站，以获取商业利益，足以证明注册和使用的恶意。

B. 被投诉人

被投诉人没有在规定期限内提交答辩。

4. 专家组意见

A. 先决问题

a. 程序语言

根据《程序规则》第八条和《解决办法》第六条的规定，除非当事人另有约定或者专家组在特殊情况下另有决定，域名争议解决程序所适用的语言应为中文。

投诉人已提交了英文投诉表格并坚持坚持以英文为本案程序语言，而被投诉人声称看不懂英文要求投诉人提交中文材料，双方当事人此时未就本案程序语言达成共识。

在2015年8月11日和12日发出的邮件中（英文），投诉人要求以英文作为行政程序语言，并提出立下列理由：

1. 首先，本案中争议域名是用罗马数字注册的。
2. 其次，英文是国际关系中最广泛使用的语言，也是香港国际仲裁中心的工作语言。
3. 被投诉人熟悉英文。投诉人提供了被投诉人在收到投诉人于 2015 年 6 月 29 日发出的警告状之后用英文回复的邮件作为证据。
4. 根据《程序规则》第八条的规定，专家组应当考虑案件的整个“情形”。本案中投诉人位于法国[sic]，并不认识中文。如程序以中文进行，投诉人需聘用专业翻译服务，费用极有可能较本程序的整体费用更高。在本程序中使用中文因此会对投诉人产生负担，在本程序所涉较低费用的背景下，该等费用应算为重大支出。
5. 虽然投诉书用英文起草，但是香港国际仲裁中心用中文通知了被投诉人，并给被投诉人用中文回复的机会。

在2015年7月23日和8月19日的邮件中，被投诉人用中文回复，拒绝使用英文作为程序语言。被投诉人声称其看不懂英文，并要求投诉人用中文提交所有文件。

(i) 专家组的自由裁量权

在根据《程序规则》第八条就程序语言做出决定时，专家组应考虑案件的整体“情况”，包括双方当事人对于某一语言的理解和使用能力、时间、费用。专家组的自由裁量权的行使需要考虑《程序规则》第三十一条的规定，包括平等地对待双方当事人，给予当事人双方平等的陈述事实、说明理由及提供证据的机会，以及确保争议解决程序快速进行。

专家组也要考虑到《解决办法》为域名之一提供快速的解决方案的宗旨，和翻译文件造成的巨大费用可能对程序造成的危害。（参见，*Beiersdorf AG v. Good Deal Communications*, WIPO Case No. D2000-1759），以及语言对程序争议可能造成的影响（参见 *Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010）《程序规则》第八条的宗旨时在选择程序语言时应当综合考虑当事人对于语言的掌握程度、如果需要翻译可能造成的额外费用和程序的延误、以及其他因素。（参见 *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. D2003-0679）

很多在先做出的裁决已经认定了专家组在决定程序语言时需要考虑以下风险：

- (1) 翻译费用对于投诉人造成的过度负担；和
- (2) 严格执行注册协议的语言可能造成造成的程序的不当拖延。

（比如，*Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd.*, WIPO Case No. D2008-0293; *Finter Bank Zurich v. Shumin Peng*, WIPO Case No. D2006-0432; *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, WIPO Case No. D2006-0334; *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. D2003-0679; *Beiersdorf AG v. Good Deal Communications*, WIPO Case No. D2000-1759).

(ii) 本案的特殊情形

本案中，投诉人位于德国，并不认识中文。如程序以中文进行，“投诉人需聘用专业翻译服务，费用极有可能较本程序的整体费用更高。在本程序中使用中文因此会对投诉人产生负担，在本程序所涉较低费用的背景下，该等费用应算为重大支出”。（参见 *Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010）。

投诉人已提供证据表明在其用英文发出警告状之后被投诉人用英文进行了回复，具体内容如下“Your email we have received. This domain name is our legal registration, we can consider the transfer, the transfer price of \$5000 USD.” 尽管被投诉人之后声称他看不懂英文，被投诉人并未对他于2015年6月29日用英文回复投诉人警告状的这一电子邮件证据的真实性提出质疑。此外，在被投诉人和香港国际仲裁中心的通信往来中使用的英文默认签名也可以暗示被投诉人熟悉英文。专家组认为以上信息足以显示被投诉人能够阅读和理解英文，至少在域名争议的背景下（参见 *Vicente Gandia PLA, S.A. v. 厦门易名网络有限公司 / 严伟*, HKIAC Case No. DCN-1300512）。对于被投诉人在收到英文警告状后用英文回复并要求投诉

人购买域名，而在投诉书提交之后又否认自己能看懂英文的前后矛盾的行为，专家组的解读是被投诉人恶意企图通过增加程序的成本、时间和不便等方式来挫败投诉人。

专家组很谨慎它应当平衡《解决办法》追求经济、效益的宗旨和对于程序公平的考虑。专家组认为被投诉人没有被剥夺用他可以用熟练掌握的语言陈述事实、说明理由及提供证据的机会。

综合考虑本案的全部情形，专家组认为使用中英双语作为行政程序语言符合公平和正义的要求。这一决定不会对任何当事人陈述案件的能力造成偏见，同时能够避免由于翻译造成的不必要的费用和拖延。因此，根据《程序规则》第八条和《解决办法》第六条的规定，专家组决定程序语言应是中英双语。

专家组接受用投诉人用英文提交的投诉书。如果被投诉人在规定期限内用中文提交了答辩书，专家组也会接受。专家组认为本案中程序的公平性在适当程度上得到了保障。原因是本投诉程序的提出和有关详情都用中文通知被投诉人。虽然投诉书的全文是以英文书写，专家组认为被投诉人可以理解英文，被投诉人也被给予机会用中文做出答辩。

专家组认为“程序公平性涉及的范围不仅包括双方当事人提交的文件，也包括裁决的做出和通知程序” (*Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010)。因此，本裁决以中英文双语做出，并应以中英文双语通知双方当事人。

b. 变更注册人信息

从以上的案件程序中可以看出，争议域名的注册人在香港国际仲裁中心于2015年7月23日早上10时38分发出注册信息确认后的半小时内发生了变更，注册人由“段佐春”变成了“晏松”。在香港国际仲裁中心的邀请下，投诉人修改了投诉书，把被申请人改为“晏松”。

专家组认为被投诉人“在注意到投诉书的发出，行政程序进行中，故意企图通过用更改争议域名注册人的手段破坏行政程序。” (*NRG Scandinavia A/S v. RexRotary Inc*, WIPO Case D2014-0790) 在先的裁决认为已认定程序从投诉书的提交开始，而非域名争议解决程序的正式开始日期。(参见 *Canwest Mediaworks Publications Inc. v. Laksh Internet Solutions Private Limited/SA c/o FP*, WIPO Case No. D2008-0687; *LPG SYSTEMS v. Jerry / Mr. Jeff Yan*, WIPO Case No. D2010-0387)

专家组认定被投诉人的行为已构成“域名规避”，因为被投诉人的行为“完全了解〔域名系统〕的运作，并且知道如何利用〔域名系统〕来逃避其注册域名时已经同意的强制[...]程序，尽管这一强制程序是注册域名的必要条件。在这种情况下，专家组认为，“被投诉人的行为除了故意企图破坏行政程序和逃避专家组的管辖权之外没有其他合理解释。” (*Group Kaitu, LLC, Darkside Productions, Inc. v. Group Kaitu LLC aka Manila Industries, Inc.*, WIPO Case D2005-1087) 此外，专家组认为被投诉人这样做的目的是“通过增加费用、时间和不便来挫败投诉人。” (*NRG Scandinavia A/S v. RexRotary Inc*, WIPO Case D2014-0790)

B. 实体问题

根据《中国互联网络信息中心国家顶级域名争议解决办法》第八条规定，符合下列条件的投诉应当得到支持：

（一）被投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的近似性；

（二）被投诉的域名持有人对域名或者其主要部分不享有合法权益；

（三）被投诉的域名持有人对域名的注册或者使用具有恶意。

投诉人在行政程序中必须举证证明以上三种情形同时具备。

A) 关于被投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的近似性

投诉人提交的证据充分表明，投诉人的“SYNJARDY”商标在包括中国在内的多个国家注册。在中国的商标注册信息如下：

商标	国家	注册号	注册日期
SYNJARDY	International	1199259	2014.02.17

（投诉书附件五）

被投诉人没有提出相反之证据。专家组认定“SYNJARDY”商标在早于争议域名之注册日期（2015年6月6日）前已在中国取得商标保护（投诉书附件六）。

争议域名<cynjardy.cn>的主要识别部分是“synjardy”。其与投诉人的商标完全相同。<.cn>只是顶级域名国家代码，并不会就此造成区分。

鉴于此，专家组裁定投诉人的投诉已满足了《解决办法》第八条中的第一项。

B) 关于被投诉的域名持有人对域名或者其主要部分不享有合法权益

一般来说，《解决办法》第八条第二项条件的举证责任应当由投诉人承担。然而，域名专家通常认为投诉人只需就被投诉的域名持有人对域名或者其主要部分不享有合法权益这一主张提供表面证据。如果投诉人提供了表面证据，则举证责任转向被投诉人，由被投诉人证明其享有相应权益（参见世界知识产权组织域名专家对于有关《统一域名争议解决政策》部分问题的看法概要（以下简称“看法概要”）第 2.1 段；*Croatia Airlines d.d. v. Modern Empire Internet Ltd., Belupo d.d. v. WACHEM d.o.o.*, WIPO Case No. D2004-0110, *Banco Itau S.A. v. Laercio Teixeira*, WIPO Case No. D2007-0912, *Malayan Banking Berhad v. Beauty*,

Success & Truth International, WIPO Case No. D2008-1393, *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701)。

本案中投诉人主张被投诉人对争议域名不享有合法权益，因为（1）投诉人与被投诉人此前并没有任何商务联系，被投诉人也没有得到任何授权允许其在争议域名中使用投诉人的商标；（2）争议域名被放入“停放域名”并提供关于域名售卖的信息，同时争议域名通过 Sedo 平台出售，可见被投诉人对争议域名不享有合法权益（投诉书附件六）；（3）在投诉人发出警告状后被投诉人也没有提出其对争议域名享有合法权益的主张（投诉书附件七）。

专家组认为投诉人已就此事项提供了表面证据。在此情形下，举证责任应由被投诉人承担，比如按照《解决办法》第十条所列举的情形进行举证，说明自己对争议域名享有合法权益。本案中被投诉人没有进行相应证明。

鉴于此，专家组裁定投诉人的投诉已满足了《解决办法》第八条中的第二项条件。

C) 关于被投诉的域名持有人对域名的注册或者使用具有恶意

本案中，投诉人提供的证据充分表明“SYNJARDY”商标具有显著性。因此，可以推定被投诉人是参照投诉人的商标注册本案争议域名的。被投诉人独立想出争议域名将是不可思议的巧合。（参见，*Tetra Laval Holdings & Finance S.A. v. TetraPak Global PH-AU, Gerald Smith*, WIPO case No. D2012-0847; *Giorgio Armani S.p.A. Milan, Swiss Branch Mendrisio v. ICS INC. / PrivacyProtect.org*, WIPO case No. D2013-0195)

2015年6月29日，被投诉人企图出售域名，提出“此域名已被我方注册。但我放可以考虑转让，转让价格是5000美金。”根据《解决办法》第九条第一款，专家组认为被投诉人注册争议域名的目的是“获取不当得利”。因此专家组认为被投诉人使用域名存在恶意。（参见 *Hewlett-Packard Company v. Mohammad Hossein Erfani and the Kotobi Group*, HKIAC Case No. DCN-0300005)

此外，被投诉人把争议域名在www.sedo.com网站上出售，该网站主要为“停放域名”等提供商业化服务。尽管“有专家组认为零星使用或者在第三方的域名停留也可以构成‘被动持有’”（“看法概要”第3.2段）。在本案中，专家组不同意投诉人提出的把网站连接到“停放域名”这一行为构成“被动持有”的主张。相反，这应当是对网站的使用，因为它连接到一个能够带来商业利益的正在运作的网站。专家组认为使用商业化服务本身并不足以证明域名持有者的恶意。但是，本案中，综合考虑提供的证据，专家组认为被投诉人注册域名是为了通过混淆与投诉人的区别，尤其是通过出售域名和通过获得点击量收益而取得不当利益。（参见 *LEGO Juris A/S v. wangqingjun*, WIPO Case No. D2012-0427; *Harrods Limited v. Josh Crutchley*, WIPO Case No. D2007-1848)

最后，如前所述，本案情形来看被申请人无疑在进行“域名规避”，即域名注册者通过转移域名注册人的手段而破坏程序的进行。在先的裁决已经认定以上行为足以证明被申请人的“恶意”。（参见 *British Broadcasting Corporation v. Data Art Corporation / Stoneybrook* WIPO Case No. D2000-0683, *Kirkbi AG v. Company Require / Karlina Konggidinata and Pool.com, Inc.* WIPO Case No. D2004-0359; *Sony Kabushiki Kaisha also trading as Sony Corporation v. Admin*

鉴于此，专家组裁定投诉人的投诉已满足了《解决办法》第八条中的第三项条件。

5. 裁决

基于以上分析，专家组认为，在本案中《解决办法》第八条规定的三项条件均得到满足。因此，根据《解决办法》第十四条的规定，专家组裁定支持投诉人的投诉请求，将争议域名< synjardy.cn>转移给投诉人。

专家组：樊莛

2015年9月24日于香港



香港國際仲裁中心
Hong Kong International
Arbitration Centre

ADMINISTRATIVE PANEL DECISION
Case No. DCN-1500638

Complainant:	Boehringer Ingelheim International GmbH
Respondent:	晏松
Disputed Domain Name:	SYNJARDY.CN
Registrar:	杭州爱名网络有限公司

1. Procedural History

On 22 July 2015, the Complainant submitted a Complaint in English to the Hong Kong International Arbitration Center (the “HKIAC”), under the *CNNIC ccTLD Dispute Resolution Policy* (hereinafter “the Policy”) issued by the China Internet Network Information Center (hereinafter “the CNNIC”) and effective on 21 November 2014, the *CNNIC ccTLD Dispute Resolution Policy Rules* (hereinafter “the Rules”) issued by the CNNIC and become effective on 21 November 2014, and the *HKIAC Supplemental Rules for CNDRP and Rules of CNDRP* (hereinafter “Supplemental Rules”), issued by the HKIAC and become effective on 21 November 2014. The original Complaint was filed against “段佐春” (“the prior registrant”). The Complainant requests to have the case considered and decided by a single-member panel.

On 23 July 2015, the HKIAC notified the Complainant of the receipt of the Complaint by email in Chinese and in English.

On 23 July 2015, at 10:38 AM, Hong Kong time, the HKIAC formally notified the Registrar of the disputed Domain Name of the proceedings by email, and requested the Registrar to provide the WHOIS information regarding the disputed Domain Name. The email is copied to the CNNIC, requesting the CNNIC to keep the above disputed Domain Name locked until the proceeding is finalized.

On the same day, at 11:05 AM, the Registrar acknowledged this notification by email, confirming its registration of the Domain Name at issue and including its WHOIS information. However, the Registrar informed the HKIAC that the named Respondent “段佐春” in the original Complaint is no longer the registrant/holder of the disputed Domain Name.

At 11:31 AM, a person named “晏松” (the current Respondent in the amended Complaint) sent an email to the HKIAC in Chinese, claiming that he does not understand English and requesting the document to be submitted in Chinese.

The HKIAC note that the Registrant of the Disputed Domain Name has been changed from “段佐春” to “晏松” within 30 minutes after it sent the New Case Notification to the Registrar on 23 July 2015, at 10:38 AM, based on reply from the Registrar, the information submitted by the Complainant and the WHOIS information captured from the official website of CNNIC by it at on 23 July 2015, at 10:29 AM, and asked the Registrar to provide the explanation on this matter together with the relevant information.

On 23 July 2015, at 2:17 PM, the Registrar replied that when checking the WHOIS information that morning, the registrant/holder of the disputed Domain Name was already shown as “晏松”. The Domain Name is currently blocked. On the same day, the HKIAC requested further information on this issue from the CNNIC but did not receive a reply.

On 4 August 2015, the HKIAC informed the Complainant of the administrative deficiencies of the Complaint, and requested the Complainant to (i) revise the Complaint Form according to the information provided by the Registrar, or provide the relevant reasons why “段佐春” is the real registrant/holder of the disputed Domain Name; and (ii) provide the HKIAC with the a Chinese translation of the Complaint Form or provide with the reasons for requesting English as the language of the proceedings.

On 11 August 2015 and 12 August 2015, the Complainant filed the amended Complaint in English, naming “晏松” as the Respondent. The Complainant further requested the proceeding be conducted in English and provided reasons for such request.

On 19 August 2015, the HKIAC confirmed receipt of the revised Complaint within the required period of time, noting that the Complainant requests that English shall be the Language of proceeding of the captioned case, and parties have no mutual consent on the Language of Proceeding. The HKIAC informed the Complainant that pursuant to Article 8 of the Rules, the language issue should be decided by the Panel to be appointed by the HKIAC. Before the appointment of the Panel, the HKIAC shall administer the case bilingually in both Chinese and English, including serving the Notice of Commencement of Proceeding (NCP) to the Respondent in a separate email. On the same day, the HKIAC served the NCP on the Respondent in the dual-language of Chinese and English, and requested the Respondent to submit a Response within twenty (20) days, in either English or Chinese.

On 19 August 2015, the Respondent replied to the HKIAC by email in Chinese, restating its objection to the use of English as the language of the proceedings and requested the Complainant to submit all documents in Chinese.

On 28 August 2015, the HKIAC replied to the Respondent, copied to the Complainant, that in accordance with Article 8 of the Rules, the language of the proceeding may be decided by the Panel, and the Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese. The Rules does not seem to empower the dispute resolution provider to decide on the language issue. Therefore, the Center decided to administered the bilingually till the appointment of the panel.

No response from the Respondent was filed with the HKIAC on or before the prescribed deadline (8 September 2015).

Subsequently, on 9 September 2015, the HKIAC requested the undersigned, Prof. FAN Kun, to indicate the ability to act as sole Panelist and if so confirm ability to act independently and impartially. On the same day, the undersigned responded in affirmative on all points.

On 9 September 2015, the HKIAC notified the parties that the Panel in this case had been selected, with Prof. FAN Kun acting as the sole panelist. On that same date, the Panel received the file from HKIAC.

2. Factual background

The Complainant in this case is Boehringer Ingelheim International GmbH, a company organized under the laws of Germany, whose address is Postfach 200 D-55216 INGELHEIM, Germany. Its authorized representative in these proceedings is Mr. Laurent Becker, Nameshield, 27, rue des arènes 49100 Angers France.

The Respondent is 晏松, whose address is 广东珠海市新香洲心华路 42 号富康花园 13-2-404.

The Domain name in dispute is <synjardy.cn>. It was registered on the 6 June 2015.

The registrar is 杭州爱名网络有限公司, whose address is 1F, Building No.2, the Digital Entertainment Industry Park No.75 West Wenyi Road, West Lake District Hangzhou Zhejiang 310 012, China.

3. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i. The Complainant owns several trademarks consisting in the wording Synjardy® in several countries, especially in China:

Trademark	Country	Registration Number	Registration Date
SYNJARDY	International	1199259	2014.02.17

(See Attachment 5).

The Complainant is also the owner of an important domain names portfolio including the trademark SYNJARDY ® (See Attachment 6).

The disputed domain name <synjardy.cn> was registered on June 06th, 2015.

ii. The Complainant contends that the disputed Domain Name <synjardy.cn> is identical with or confusingly similar to the its trademark SYNJARDY in which the Complainant has civil rights and interests. To this end, the Complainant observes that *“the domain name includes the Complainant's trademark in its entirety and without any adjunction of letter or word”*.

iii. The Complainant argues that the Respondent has no rights or legitimate interests in the disputed Domain Names because (i) the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use the trademark SYNJARDY; (ii) the disputed Domain Name is in parking page with information regarding the sale of the domain name, and is also on sale through the Sedo Platform; which proves that the Respondent has no legitimate interest by maintaining the disputed Domain Name (See Attachment 6 of the Complaint); and (iii) the Respondent has not provided rights or legitimate interests on the disputed Domain Name following the sending of the cease-and-desist letter (See Attachment 7 of the Complaint).

iv. In order to demonstrate that the Respondent has registered the disputed Domain Name in bad faith, and is using the said Domain Name in bad faith, the Complainant relies on the following arguments:

- the Domain Name (registered on the 6th June 2015) is identical to the prior trademark SYNJARDY (registered on the 17 February 2014) and domain names owned by the Complainant;
- the Domain Name gives access to a parking page which, according to the Complainant, constitutes an passive use of the Domain Name likely to demonstrate the Respondent's bad faith;
- the disputed Domain Name being on sale on the platform Sedo, this shows that the Domain Name was registered only for a commercial gain;
- the Respondent's use of the disputed Domain Name intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website, which is evidence of registration and use in bad faith.

B. Respondent

Respondent did not file a reply within the deadline.

4. Findings

A. Preliminary Issues

a. Language of the Proceedings

According to Article 8 of the Rules and Article 6 of the Policy, unless otherwise agreed by the

parties, or determined in exceptional circumstances by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese.

The Complainant submitted the Complaint in English, and requested that the proceedings be held in English. The Respondent replied in Chinese and contended that all documents should be submitted in Chinese. The parties have not reached an agreement with respect to the language of the present proceedings.

By email dated 11 August 2015 and 12 August 2015 (in English), the Complainant gave the following reasons in support of its request that English be used as the language of the proceedings:

1. First, in the present case, the Domain Name is registered in ASCII characters using the Roman alphabet.
2. Second, this choice of language is presumably related to the combined fact that the English language is the language most widely used in international relations and is one of the working languages of the Centre.
3. Third, the Complainant contends that the Respondent is familiar with the English language. The Complainant provides as evidence a reply of the owner in English in an email dated 29 June 2015, after the Complainant sent the cease-and-desist letter on the same day.
4. Fourth, under Article 8 of the Rules, the Administrative Panel should consider the overall “circumstances” of the case. In this case, Complainant is located in France [sic] and has no knowledge of Chinese. In order to proceed in Chinese, Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings. The use of Chinese in this case would therefore impose a burden on the Complainant which must be deemed significant in view of the low cost of these proceedings.
5. Fifth, the Complaint is written in English but the Center informed the Respondent in Chinese and afforded Respondent the opportunity to do all of the above in Chinese.

By emails dated 23 July 2015 and 19 August 2015, Respondent replied in Chinese, and objected to the use of English as the language of the proceedings. The respondent alleged that he did not understand English, and requested the Complainant to submit all documents in Chinese.

(i) The Panel’s Discretion

In deciding on the language of the proceedings under Article 8 of the Rules, the Panel should consider the overall “circumstances” of the case, including the parties’ ability to understand and use the proposed language, time and cost. The Panel’s discretion under Article 8 of the Rules must be applied in accordance with the overriding requirements of Article 31 of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition.

The Panel must take into account of “the objective of the Policy of providing a cost-effective

system for resolving straightforward domain name disputes and the risk that this could be jeopardized by the considerable expense of translating documents” (see *Beiersdorf AG v. Good Deal Communications*, [WIPO Case No. D2000-1759](#)), and the impact of language on procedural fairness (see *Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010). The spirit of Article 8 of the Rules is to ensure fairness in the selection of language by giving full consideration to the parties’ level of comfortability with each language, the expenses to be incurred and possibility of delay in the proceeding in the event translations are required and other relevant factors (see *Deutsche Messe AG v. Kim Hyungho*, [WIPO Case No. D2003-0679](#)).

There have been many previous decisions which acknowledged that due regard must be had to the risk of:

- (1) Undue burden on a complainant in terms of translation expenses; and
- (2) Undue delay resulting from the imposition of strict adherence to the language of the Registration Agreement.

(e.g. *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd.*, [WIPO Case No. D2008-0293](#); *Finter Bank Zurich v. Shumin Peng*, [WIPO Case No. D2006-0432](#); *General Electric Company v. Edison Electric Corp. a/k/a Edison Electric Corp. General Energy, Edison GE, Edison-GE and EEEGE.COM*, [WIPO Case No. D2006-0334](#); *Deutsche Messe AG v. Kim Hyungho*, [WIPO Case No. D2003-0679](#); *Beiersdorf AG v. Good Deal Communications*, [WIPO Case No. D2000-1759](#)).

(ii) Special Circumstances of This Case

In this case, the Complainant is located in Germany, and has no knowledge of Chinese. In order to proceed in Chinese, “the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall cost of these proceedings”. To impose Chinese as the sole language of the proceedings would therefore “impose a burden on the Complainant, which must be deemed significant in view of the low cost of these proceedings” (See *Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010).

The Complainant has furnished evidence that the Respondent replied in English to the cease-and-desist letter written by the Complainant in English, stating that “Your email we have received. This domain name is our legal registration, we can consider the transfer, the transfer price of \$5000 USD. ” Even though the Respondent later contended that it did not understand English, it has not objected to the authenticity of the evidence of his email reply dated 29 June 2015 in English, responding to the cease-and-desist letter in English of the same date. Furthermore, the Respondent’s default signature (in English only) in all his email communications to the HKIAC can also be read as an indication that the Respondent has good knowledge in English. The Panel believes that this would have been a sufficient basis that the Respondent is able to read and understand English, at least in the context of domain name disputes (See *Vicente Gandia PLA, S.A. v. 厦门易名网络有限公司 / 严伟*, HKIAC Case No. DCN-1300512). The Panel reads the Respondent’s inconsistent acts of replying to the cease-and-desist letter in English and asking the Complainant to pay a transfer price, but later alleging that it did not understand English after the Complaint was filed, as a bad faith attempt to frustrate the Complainant to the greatest extent possible by increasing the costs, time and inconvenience in these proceedings.

The Panel is mindful that it should balance the overarching objectives of the Policy in terms of efficiency and economy and concerns on procedural fairness. The Panel believes that the Respondent should not be deprived of its right to a fair opportunity to present its case, give out its reasons and provide the evidence to rebut the case against it in a language that the Respondent is competent to use.

Taking into account all circumstances of the case, the Panel is of the opinion that it is fair and just to conduct the proceedings in the dual-language of English and Chinese. The Panel believes that such arrangement would not be prejudicial to the Parties in their abilities to articulate the arguments for the case, and that this has the advantage of avoiding unnecessary further expense and delay on translations. Accordingly, the Panel determines that the dual-language of English and Chinese be the language of the proceedings, pursuant to Article 8 of the Rules and Article 6 of the Policy.

The Panel accepts the Complaint filed in English. The Panel would have accepted a Response in Chinese from the Respondent if it were filed by the due date. The Panel believes that an appropriate level of procedural fairness has been safeguarded. This is because the existence and details of the proceedings were notified to the Parties in both English and Chinese. Even though the full text of the Complaint was in English, the Panel is satisfied that the Respondent can understand English, and the Respondent was given the opportunity to present its case in Chinese.

As a further safeguard to procedural fairness, which “extends beyond the parties’ submissions, to the decision and its notification” (*Accor, Société Anonyme v. Hangzhou Yage Electronic Corporation*, HKIAC Case no. DCN-0300010), this decision should rendered and notified to the Parties in the dual-language of English and Chinese.

b. Change in Registrant Information

As is shown from the procedural history, the registrant of the disputed Domain Name has been changed from “段佐春” to “晏松” **within 30 minutes** after the HKIAC sent the New Case Notification to the Registrar on 23 July 2015, at 10:38 AM, Hong Kong time, before the Registrar could lock the disputed Domain Name. Following an invitation from the HKIAC, the Complainant amended the Complaint naming “晏松” as the Respondent.

The Panel finds that the Respondent “deliberately tried to disrupt this proceeding by transferring the disputed Domain Name into the name of another registrant, after having notice of the original Complaint, and during a pending administrative proceeding”. ([NRG Scandinavia A/S v. RexRotary Inc](#), [WIPO Case D2014-0790](#)). Prior cases have found that process starts from the filing of the Complaint rather than from the formal commencement of the proceedings (see *Canwest Mediaworks Publications Inc. v. Laksh Internet Solutions Private Limited/SA c/o FP*, WIPO Case No. D2008-0687; *LPG SYSTEMS v. Jerry / Mr. Jeff Yan*, WIPO Case No. D2010-0387).

The Panel finds that the conduct of the Respondent constitutes “cyberflying”, because the Respondent acts “with full knowledge of the [domain name system], and with an appreciation of how the [dispute resolution system] might be manipulated in an effort to avoid the mandatory [...] proceeding the Respondent agreed to submit to as a necessary condition of its registration of the disputed domain names”. Under such circumstances, this Panel can “conceive of no plausible explanation for the Respondent’s actions other than a deliberate attempt to disrupt these

proceedings [...] and evade the jurisdiction of the Panel” (*Group Kaitu, LLC , Darkside Productions, Inc. v. Group Kaitu LLC aka Manila Industries, Inc.*, WIPO Case D2005-1087). Furthermore, the Panel considers that the Respondent did so “in order to frustrate the Complainant by potentially increasing cost, time and inconvenience” (*NRG Scandinavia A/S v. RexRotary Inc*, WIPO Case D2014-0790).

B. Merits

As to the case, Article 8 of Policy 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 Policy states that the Complainant and the 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

According to evidence provided by the Complainant, the Complainant owns several trademarks consisting in the wording SYNJARDY in several countries, including China. Particulars of the registration of the trademark SYNJARDY in China are as follows:

Trademark	Country	Registration Number	Registration Date
SYNJARDY	International	1199259	2014.02.17

(See Attachment 5 of the Complaint).

The Respondent has not provided contrary evidence. The Panel is satisfied that the Complainant’s trademark SYNJARDY is protected in China prior to the registration of disputed Domain Name (6 June 2015).

The distinctive part of the disputed Domain Name <synjardy.cn> is “synjardy”. It is identical to the Complainant’s registered trademarks. <.cn> is merely country code top level domains and does not alter such identity.

The Panel therefore finds that the disputed Domain Name is identical with the Complainant's trademark in which the Complainant has civil rights and interests.

Accordingly, the first condition of Article 8 of the Policy is satisfied.

Rights or Legitimate Interests of the Respondent

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied the second condition under Article 8 of the Policy (See Paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (hereinafter "WIPO Overview 2.0"), *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, *Belupo d.d. v. WACHEM d.o.o.*, [WIPO Case No. D2004-0110](#), *Banco Itau S.A. v. Laercio Teixeira*, [WIPO Case No. D2007-0912](#), *Malayan Banking Berhad v. Beauty, Success & Truth International*, [WIPO Case No. D2008-1393](#), *Accor v. Eren Atesmen*, [WIPO Case No. D2009-0701](#)).

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed Domain Names because (i) the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use the trademark SYNJARDY; (ii) the disputed Domain Name is in parking page with information regarding the sale of the domain name, and is also on sale through the Sedo Platform; which proves that the Respondent has no legitimate interest by maintaining the disputed Domain Name (See Attachment 6 of the Complaint); and (iii) the Respondent has not provided rights or legitimate interests on the disputed Domain Name following the sending of the cease-and-desist letter (See Attachment 7 of the Complaint).

The Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed Domain Name, and the burden is shifted on the Respondent to demonstrate its rights or legitimate interests in the disputed Domain Name under Article 10 of the Policy. The Respondent has not provided any evidence to prove its rights or legitimate interests in the disputed Domain Name.

In light of the above, the Panel finds that the second condition of Article 8 of the Policy is satisfied.

Bad Faith

The Complainant has produced evidence to demonstrate to the satisfaction of the Panel that the SYNJARDY trademark is distinctive. In such circumstances, it is very likely that the Domain Name has been selected with the Complainant's brand in mind. It would be an extraordinary coincidence if the Respondent had come up with the Domain Name independently (see, *Tetra Laval Holdings & Finance S.A. v. TetraPak Global PH-AU*, *Gerald Smith*, [WIPO case No. D2012-0847](#); *Giorgio Armani S.p.A. Milan, Swiss Branch Mendrisio v. ICS INC. / PrivacyProtect.org*, [WIPO case No. D2013-0195](#)).

By email dated 29 June 2015, the Respondent offered to sell the Domain Name and stated that "This domain name is our legal registration, we can consider the transfer, the transfer price of

\$5000 USD”. Pursuant to Article 9(1) of the Policy, the Panel finds that Respondent has attempted “to obtain unjustified benefits”. Thus, the Panel finds that Respondent has used the disputed domain name in bad faith (see *Hewlett-Packard Company v. Mohammad Hossein Erfani and the Kotobi Group*, [HKIAC Case No. DCN-0300005](#)).

Furthermore, the Respondent puts the disputed Domain Name for sale at “www.sedo.com”, a Domain Name marketplace offering monetization services essentially consisting in parking webpages. Even though “[s]ome panels have also found that the concept of passive holding may apply even in the event of sporadic use, or of the mere ‘parking’ by a third party of a domain name” (see paragraph 3.2 of the WIPO Overview 2.0), the Panel disagrees with the Complainant when it suggests that connecting a domain name to a parking webpage consists in an inactive website. On the contrary, this must be considered as a use of the Domain Name since it results to an active website that can generate revenues. The Panel considers that the use of monetization services in itself does not necessarily demonstrate the bad faith of the domain name holder. However, in the present case, viewing the evidence as a whole, the Panel is satisfied that the Respondent registered the Domain Name in order to take advantage of its confusing similarity to the Complainant’s trademark, in particular by selling it for valuable consideration and by obtaining click-through commissions from links on a monetization platform (see *LEGO Juris A/S v. wangqingjun*, [WIPO Case No. D2012-0427](#); *Harrods Limited v. Josh Crutchley*, [WIPO Case No. D2007-1848](#)).

Finally, and as discussed above, the circumstances of this case also compel a conclusion that the Respondent has engaged in “cyberflying”, where a registrant of a domain name dispute case, systematically transfers the domain name to a different registrant to disrupt the proceeding. Prior Panels have found such a practice to be clear evidence of a respondent’s bad faith under the Policy (see in particular, *British Broadcasting Corporation v. Data Art Corporation / Stoneybrook* [WIPO Case No. D2000-0683](#), *Kirkbi AG v. Company Require / Karlina Konggidinata and Pool.com, Inc.* [WIPO Case No. D2004-0359](#); *Sony Kabushiki Kaisha also trading as Sony Corporation v. Admin* [WIPO Case No. D2004-1040](#); *Unilever PLC v. ABC Corp.* [WIPO Case No. D2003-0164](#); and *Merck KGaA v. Taha Chhipa* [WIPO Case No. D2004-0905](#)).

In light of the above, the Panel finds that the third condition of Article 8 of the Policy is satisfied.

5. Decision

For all the foregoing reasons, all three conditions under Article 8 of the Policy are satisfied. Therefore, in accordance with Article 14 of the Policy, the Panel orders that the disputed Domain Name <synjardy.cn> be transferred to the Complainant.

Sole Panelist: Fan Kun

24 September 2015, Hong Kong