1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (“the Centre”) on 13 November 2012. The Complaint was made in accordance with the provisions under the CNNIC Domain Name Dispute Resolution Policy (“the Policy”) issued by the China Internet Network Information Center (“CNNIC”), the Rules for CNNIC Domain Name Dispute Resolution Policy (“the Rules”) issued by the CNNIC and the Hong Kong International Arbitration Centre Supplemental Rules to CNNIC Domain Name Dispute Resolution Policy (“the Supplemental Rules”) issued by the Centre. The Policy, the Rules and the Supplemental Rules are all effective as from 28 June 2012.

On 28 November 2012, the Centre transmitted by email to the Registrar a request for Registrar verification in connection of the Disputed Domain Name.

On 6 December 2012, the Centre requested the Complainant to amend the Complaint and the Complainant duly amended the Complaint on the same day.

On 12 December 2012, the Registrar transmitted by email to the Centre its verification. On the same day, the Centre sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 20 days to submit a Response (i.e. on or before 2 January 2013).

No Response was submitted to the Centre by the Respondent.

On 3 January 2013, the Centre advised both the parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the Centre.

On 4 January 2013, the Centre notified the parties that FONG Ho Yin had been appointed as a sole panelist by the Centre.
2. **Factual background**

A. Complainant

The Complainant is a limited company incorporated in the United Kingdom.

The Complainant owns and communicates on the internet through various websites worldwide. The main one is “www.bruichladdich.com” (registered on 25/03/2008), but The Complainant has also registered numerous domain names identical to trademark “BRUICHLADDICH” such as:

- bruichladdich.net registered on 01/04/2009
- bruichladdich.org registered on 01/04/2009

The Complainant owns the trademark “BRUICHLADDICH” in many countries, such as:

<table>
<thead>
<tr>
<th>Trademark</th>
<th>Country</th>
<th>Registration Number</th>
<th>Registration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>BRUICHLADDICH</td>
<td>International</td>
<td>929602</td>
<td>24.05.2007</td>
</tr>
<tr>
<td>BRUICHLADDICH</td>
<td>China</td>
<td>G929602</td>
<td>24.05.2007</td>
</tr>
<tr>
<td>BRUICHLADDICH</td>
<td>United Kingdom</td>
<td>954380</td>
<td>30.01.1970</td>
</tr>
<tr>
<td>BRUICHLADDICH</td>
<td>Japan</td>
<td>1003639</td>
<td>12.03.1973</td>
</tr>
<tr>
<td>BRUICHLADDICH</td>
<td>USA</td>
<td>1206660</td>
<td>24.08.1982</td>
</tr>
</tbody>
</table>

B. Respondent

The Respondent through the Registrar registered the Disputed Domain Name on 1 July 2011.

The Respondent has not filed any Response to these proceedings.

3. **Parties’ Contentions**

A. Complainant

The Complainant’s contentions may be summarized as follows:

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 and interests;**

The Complainant contends that the disputed domain name < bruichladdich.cn > is identical to its trademark “BRUICHLADDICH”.

The Complainant has sold its BRUICHLADDICH products in China for many years. Its trademark BRUICHLADDICH has been widely promoted to the general consuming public in China and the rest of the world for many years and therefore, the BRUICHLADDICH brand is widely known and recognized in China and beyond.
Further, a Baidu search of “BRUICHLADDICH” displays several results, related to the Complainant. (Prior to the registration of the disputed domain name).

The Complainant contends that the addition of the suffix CcTLD “.CN” is not sufficient to escape the finding that the domain is identical to the trademark and does not change the overall impression of the designation as being connected to a trademark of the Complainant.

It does not avoid the likelihood of confusion between the disputed domain name <bruichladdich.cn> and the Complainant, its trademarks and its domain names associated.

On those facts, the Complainant contends the disputed domain name is identical to its prior trademark “BRUICHLADDICH” for which it has provided registration certificates as prima facie evidence of its validity.

II. Holder of the disputed domain name has no legitimate right or interest over the domain name or the major part of the domain name;

According to the WIPO case No. D2003-0455, “Croatia Airlines d.d. v. Modern Empire Internet Ltd.”, a 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, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Complainant contends that the domain name <bruichladdich.cn> is identical to its trademark “BRUICHLADDICH”.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name and he is not related in any way with the Complainant.

The Complainant does not carry out any activity for, nor has any business with the Respondent. Neither licence nor authorization has been granted to the Respondent to make any use, or apply for registration of the disputed domain name by the Complainant.

The Complainant contends that its trademark “BRUICHLADDICH” is so widely-known and so recognized, and has been used in China and other countries for so many years that there is no likely legitimate right or plausible use possible by the Respondent.

The essence of this case is that the wide spread fame of its BRUICHLADDICH brand in China at the date of registration of the Domain Name was such that the Respondent must have been aware of it. Given distinctiveness and the notoriety of the Complainant's trademark, especially in China, the act of the Respondent registering and using the Domain Name <bruichladdich.cn > constitutes an infringement of the Complainant's rights and cannot constitute a bona fide offering of goods or services pursuant to Section 4(c)(i) of the UDRP.

Moreover, since its registration, the website related to the domain name
(www.bruichladdich.cn) displayed an inactive page.

It could be considered as a passive holding. That demonstrates that the Respondent has no interest to use this domain name and therefore to register the domain name in respect of the policy.

III. Holder of the disputed domain name registers or uses the disputed domain name in bad faith.

The Complainant contends that its trademark “BRUICHLADDICH” is well-known worldwide since many years as affiliated to the Complainant. The term “BRUICHLADDICH” is especially known as Complainant's products, there is no reason for a third party to register the disputed domain name.

On this fact, the Complainant contends that the Respondent was aware of the Complainant at the moment of registration of <bruichladdich.cn >.

The bad faith of the respondent is characterized by the use of the disputed domain name. Indeed, since its registration, the domain name is inactive and therefore is considered as a passive holding. As prior WIPO UDRP panels have held, the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use.

See numerous WIPO decisions:
Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003;

The Complainant therefore requests for transfer of disputed domain name.

B. Respondent

The Respondent has not submitted any Response within the stipulated timeframe. Therefore, the Respondent is in default.

4. Findings

1. The Language of the Proceedings

Article 6 of the Policy provides:

“The language of the domain name dispute resolution proceedings shall be in Chinese unless otherwise agreed by the parties or determined by the Panel.”

No agreement has been reached by the parties to use English as the language of the proceedings.

Article 31 of the Rules provides the Panel with a broad discretion for the conduct of the proceedings. However, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving disputed domain name disputes. Language

The Complainant has provided the Panel with the following reasons that English be the language of the proceedings:

1. The domain name is registered in ASCII characters using the Roman alphabet. The term “Bruichladdich” has no significance in Chinese or another language. In further, 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. The Respondent, about whom nothing is known beyond the name and seemingly incomplete contact details provided to the Registrar, made no representations.

2. 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 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.

3. The Complaint is written in English but the Centre informed the Respondent in Chinese and afforded Respondent the opportunity to do all of the above in Chinese.

4. Unless the defendant objects to this language, the Complainant asks that the complaint be in English for better understanding of the parties.

The Respondent did not make any submissions to the language of the proceedings and did not object to the use of English as the language of the proceedings.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties’ ability to understand and use the proposed language, time and costs: see Groupe Auchan v. xmmzl, WIPO Case No. DCC2006-0004; Finter Bank Zurich v. Shumin Peng, WIPO Case No. D2006-0432.

There is no evidence on record that the Respondent is proficient in the English language.

However, the Panel is mindful of the need to ensure the proceedings are conducted in a timely and cost effective manner. In particular, the Panel has to follow Article 31 of the Rules to ensure that the proceedings take place with due expedition.

The Panel notes that all communications from the Centre regarding the language of the proceedings have been sent to the parties in both Chinese and English languages, and the Respondent has been given the opportunity to file submissions regarding the language of the proceedings. Had the Respondent given persuasive submissions that he is not sufficiently proficient in the English language, the Panel might have been persuaded to order that Chinese remains the language of the proceedings.
In the circumstances, bearing in mind the need to conduct the proceedings in a timely and cost effective manner, and the fact the Respondent has chosen not to contest the proceedings, the Panel finds that it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceedings.

Having carefully considered all the above matters, the Panel determines under Article 6 of the Policy that English shall be the language of the proceedings.

2. Discussions and Findings

Article 8 of the 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 and interests;

(ii) The disputed domain name holder has no legitimate right or interest in respect of the domain name or the major part of the domain name;

(iii) The disputed domain name holder has registered or the domain name is being used in bad faith.

Article 7 of the Policy states that the Complainant and the Respondent shall bear the burden of proof for their own claims.

A) Identical / Confusingly Similar

Article 8(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests.

Based on the “BRUICHLADDICH” registered trademark of the Complainant, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s registered trademark.

As noted, the Disputed Domain Name “BRUICHLADDICH.CN”, composes of “BRUICHLADDICH” and “.CN”.

“BRUICHLADDICH” is identical to the registered trademark of the Complainant. “.CN” is a country code top-level domain name (ccTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant’s registered trademark.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(i) of the Policy.

B) Rights and Legitimate Interests

The fact that the Complainant’s adoption and first use of the registered trademark predates the Respondent’s Disputed Domain Name has the practical effect of shifting the burden of proof to the Respondent in establishing that the Respondent has legitimate rights and/or interests in the
Disputed Domain Name: see *Amilcar Perez Lista d/b/a Cybersor*, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Article 7 of the Policy.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(ii) of the Policy.

**C) Bad Faith**

Article 9 of the Policy provides that:

“Any of the following circumstances may be the evidence of the registration and use of a domain name in bad faith:

(i) The purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits;

(ii) The disputed domain name holder, on many occasions, registers domain names in order to prevent owners of the names or marks from reflecting the names or the marks in corresponding domain names;

(iii) The disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant’s name or mark so as to mislead the public;

(iv) Other circumstances which may prove the bad faith.”

On the information before the Panel, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The Complainant has registered the “BRUICHLADDICH” trademark in China long before the Disputed Domain Name was registered.

2. The Complainant’s “BRUICHLADDICH” trademark has been registered, advertised and used widely, and have become well-known amongst the consumers globally and in China. It has been held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: see *The Caravan Club v. Mrgsale*, Case No. NAF/FA95314.

3. The fact that Disputed Domain Name is inactive since registration further suggests that the Disputed Domain Name “is being used in bad faith” by the Respondent: see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003.

Accordingly, the Panel is satisfied that the Complainant has complied with Article 8(iii) of the Policy.
5. Decision

For the foregoing reasons, the Panel is satisfied that the Complainant has proved its case against the Respondent under Article 8 of the Policy.

The Panel hereby orders that the Disputed Domain Name be transferred to the Complainant under Article 14 of the Policy.

FONG Ho Yin
Sole Panelist

Dated: 15 January 2013