1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre ("Centre") on 15th April 2013 in relation to the contested domain name. On 16th April 2013, the Centre transmitted by email to the registrar, 杭州爱名网络有限公司, a request for verification of the registered particulars of the disputed domain name <bearingpoint.com.cn>.

On the same day, 16th April 2013, the registrar replied to the Centre by email, advising that the disputed domain name <bearingpoint.com.cn> had been locked, thereby prohibiting further transfer of the domain during the pendency of these proceedings. The Registrar identified the Respondent, 孙启峰, as the Registrant of the contested domain name.

The Centre confirmed that the Complaint satisfied the formal requirements of the CNNIC Domain Name Dispute Resolution Policy ("CNDRP") issued by the China Internet Network Information Center ("CNNIC"); the Rules for CNNIC Domain Name Dispute Resolution Policy ("CNDRP Rules"); and the HKIAC Supplemental Rules for CNDRP and Rules of CNDRP ("Supplemental Rules") issued by the Centre; respectively, each of which became effective on 28th June 2012.

On 30th April 2013, in accordance with Articles 5 and 14 of the CNDRP Rules and Article 5(3) of the Supplemental Rules, the Centre formally notified the Respondent of the Complaint. These proceedings commenced. In accordance with Article 17 of the CNDRP Rules, the due date for the Respondent’s Response was 20th May 2013.

No Response was submitted to the Centre by the Respondent in relation to the contested domain name. The Centre accordingly sent a Notice of Default to the parties by email on 21st May 2013.

The Centre appointed David L. Kreider as the sole panelist in this matter on 29th May 2013. The Panel finds that it was properly constituted. The Panel has submitted the
Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with Article 9(2) of the Supplemental Rules.

By email to the Centre on 25th April 2013, the Claimant’s representative confirmed the Claimant’s request that English be used as the language of these proceedings. The Claimant argues as grounds that the Complainant is located in the Netherlands and has no knowledge of the Chinese language, and that the cost of retaining specialized translation services would very likely be higher than the overall cost of these proceedings and would impose a relatively significant burden on the Complainant, given the nature of these administrative proceedings. The Claimant cites as additional grounds that the disputed domain name resolves to an English language website; that the disputed domain name is itself written in English; and that it is reasonable to infer from these facts that the Respondent is familiar with the English language.

This Panelist notes that the Centre sent an email to the Respondent on 30th April 2013 requesting the Respondent’s comments in relation to the Complainant’s request that English be designated as the language of these proceedings. The Respondent failed to reply. Further, it is noted that the Respondent has received copies of all correspondence and notices in both Chinese and English, and yet has not submitted a response after having been afforded an opportunity to do so.

Having considered all the circumstances of the instant proceedings, the Panel finds merit in the Complainant’s request and decides, as an exception to the general mandate of Article 6 of the CNDRP and Article 8 of the CNDRP Rules, that the instant proceedings shall be conducted in English, rather than in Chinese.

2. **Factual background**

The Complainant, BEARINGPOINT IP HOLDING B.V., together with its affiliated companies, is a long-established European business and IT consultancy with an entrepreneurial, adaptive flair and the ability to proactively drive business change among its customers. The Complainant has been providing its clients with management skills and functional expertise suitable to their particular industries, and has demonstrated an ability to adapt the Complainant’s strategic insights to their individual concerns.

The Complainant’s Representative in these proceedings is Mr Bo Yu of Messrs. Baker & McKenzie, in Hong Kong.

According to the record of the Whois database of HiChina (www.net.cn), the Respondent, 孙启峰, a natural person with the e-mail address of domainjet@foxmail.com, is the registrant of the disputed domain name <bearingpoint.com.cn> and has, therefore, been named the Respondent in these proceedings.
3. **Parties’ Contentions**

A. Complainant

The Complainant’s contentions may be summarized as follows:

i) **The Complainant brings this action to protect its rights in the "BearingPoint" trademark.**

The Complainant holds registrations worldwide for the "BearingPoint" mark and has been promoting and using the mark extensively and consistently. In China, the Complainant currently holds 14 registrations for the "BearingPoint" mark (listed below).

<table>
<thead>
<tr>
<th>Mark</th>
<th>Class</th>
<th>Registration Number</th>
<th>Application Date</th>
<th>Registration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>BearingPoint</td>
<td>42</td>
<td>3337524</td>
<td>October 16, 2002</td>
<td>June 21, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>41</td>
<td>3337525</td>
<td>October 16, 2002</td>
<td>January 7, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>37</td>
<td>3337526</td>
<td>October 16, 2002</td>
<td>August 21, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>36</td>
<td>3337527</td>
<td>October 16, 2002</td>
<td>August 21, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>35</td>
<td>3337528</td>
<td>October 16, 2002</td>
<td>May 7, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>16</td>
<td>3337529</td>
<td>October 16, 2002</td>
<td>April 28, 2004</td>
</tr>
<tr>
<td>BearingPoint</td>
<td>9</td>
<td>3337530</td>
<td>October 16, 2002</td>
<td>October 28, 2003</td>
</tr>
<tr>
<td></td>
<td>42</td>
<td>3441275</td>
<td>January 20, 2003</td>
<td>December 28, 2004</td>
</tr>
<tr>
<td></td>
<td>41</td>
<td>3441276</td>
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<td>June 21, 2004</td>
</tr>
<tr>
<td></td>
<td>37</td>
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</tr>
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<td>August 21, 2004</td>
</tr>
<tr>
<td></td>
<td>16</td>
<td>3441280</td>
<td>January 20, 2003</td>
<td>December 21, 2004</td>
</tr>
<tr>
<td></td>
<td>9</td>
<td>3441281</td>
<td>January 20, 2003</td>
<td>July 14, 2004</td>
</tr>
</tbody>
</table>

Complainant registered the domain names "bearingpoint.com", "bearingpoint.net" and "bearingpoint.cn", and established websites for these domain names.

Based on the Complainant's continuous use and promotion of the "BearingPoint" trademark, the mark has acquired extensive goodwill and a substantial reputation worldwide for consulting services.

The disputed domain name "bearingpoint.com.cn" was registered on April 16, 2012, about eight years after the Complainant's "BearingPoint" trademarks achieved registration.
The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Roman letters "bearingpoint" used in the disputed domain name share identical spelling with the Complainant's prior registered and used "BearingPoint" trademark. The Respondent's domain name comprises the Complainant's entire BearingPoint trademark and is therefore confusingly similar in sound and appearance, and conveys the same commercial impression, as the Complainant's BearingPoint Marks.

The Respondent's use of BearingPoint in its domain name also diverts or routes Internet user traffic to the <BearingPoint.cn> website by leading users to believe that the website is somehow related to or sponsored by the Complainant. This results in initial interest confusion as well as a likelihood of confusion on the part of Internet users.

For the foregoing reasons, the Respondent's domain name is confusingly similar to the Complainant’s BearingPoint Marks and domain name and consumer confusion is likely to result and is, in fact, already present.

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

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

The "BearingPoint" trademark has been registered and used by the Complainant in connection with the company's consulting services for several years, and the mark has acquired extensive goodwill and a substantial reputation worldwide.

The Respondent has no connection with the Complainant, and has not been licensed or authorized by the Complainant to use its trademark in the disputed domain name. Furthermore, the research conducted by the Complainant has revealed that the Respondent has not been commonly known by the disputed domain name; and that "BearingPoint" is not a generic term. Therefore, the Respondent's use of the disputed domain name incorporating the wording is a deliberate attempt to trade off the Complainant's reputation in the "BearingPoint" mark.

In addition, based upon the numerous trademark registrations for and the fame, goodwill and notoriety associated with the Complainant's BearingPoint Marks, it is impossible to conceive of a circumstance in which the Respondent could legitimately use the disputed domain name.

There is no evidence that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name without intent for commercial gain.

Given this and the fact that Complainant has prior rights in the trademark preceding the Respondent’s registration of the disputed domain name, the Complainant has established a **prima facie** case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondent to
produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

iii) Registered and Used in Bad Faith

The Complainant has used and promoted the "BearingPoint" trademark in connection with its consulting services for many years. The Complainant was using the "BearingPoint" trademark for a long time prior to Respondent registering the disputed domain name. As such, the Complainant's business would have been well known to the Respondent at the time the disputed domain name was registered.

The Respondent had registered and used the disputed domain name in bad faith:

Firstly, a review of the website that the Respondent established for the disputed domain name confirmed that the Respondent’s purpose in registering the domain name is to sell or otherwise transfer the domain name registration to the Complainant, which is the owner of the trademark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent’s out-of-pocket costs directly related to the disputed domain name.

At the top left-hand side of the Respondent’s homepage to which the disputed domain name resolves is a function to "inquire about this domain name". It links to a page that allows the user to offer an amount of money to purchase the disputed domain name.

Secondly, the Respondent has a history of registering names or marks in which other persons have legitimate rights and interest as his own domain names with a purpose to prevent the owners of the names or marks from using such names and marks in which they have legitimate rights and interest on the Internet as their domain names.

A domain name proprietorship search against the Respondent indicated that the Respondent has engaged in a pattern of conduct in registering numerous domain names for the monetization and/ or cybersquatting purposes. The search as of April 13, 2013 revealed that the Respondent has registered 3,328 domain names. It is practically impossible for any individual to make "a legitimate noncommercial use or fair use of" over 3,000 domain names. As a pattern, it is clear that the Respondent is seeking to profit from and exploit trademarks of another by pre-emptively registering the domain names.

Google search for the Respondent revealed that the Respondent has been involved in quite a few prior UDRP disputes and his registered domains has been decided to be transferred back to the right owners. This also confirms that the Respondent registered domain names only for monetization and / or cybersquatting purposes.

Thirdly, the Respondent registered the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business operation or creating confusion between him and the Complainant to mislead the public.
The Respondent registered the disputed domain name in order to prevent the Complainant from reflecting its "BearingPoint" trademark in a corresponding domain name, which eventually disrupted the Complainant's normal business operations.

By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website or other online location by creating a likelihood of confusion with the Complainant’s "BearingPoint" trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s website or location or service on his web site of location. The Respondent’s registration and use of the disputed domain name is likely to mislead or deceive Internet users into believing that the web site is affiliated with the Complainant.

In conclusion, the Complainant alleges that the Respondent has registered and used the disputed domain name in bad faith under Article 9(1), (2) and (3) of the Policy.

B. Respondent

The Respondent has defaulted and has not filed a Response in these proceedings. In accordance with Article 31 of the CNDRP Rules, therefore, there being no exceptional circumstances mitigating in favor of a contrary approach, the Panel will decide the dispute based upon the Complaint.

4. Findings

As to the case, Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:

i) The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;

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

iii) The disputed domain name holder has registered or has been using the domain name in bad faith.

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

**Identical or Confusing Similarity**

As alleged by the Complainant, the Respondent's domain name comprises the Complainant's entire BearingPoint trademark and is therefore confusingly similar in sound and appearance, and conveys the same commercial impression as the Complainant's BearingPoint Marks. The Respondent's use of BearingPoint in its domain name also diverts or routes Internet user traffic to the <BearingPoint.cn> website by leading users to believe that the website is somehow related to or sponsored by the Complainant. This results in initial interest confusion as well as a likelihood of confusion on the part of Internet users.
This Panelist concludes that 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.

**Rights or Legitimate Interests of the Respondent**

As alleged by the Complainant, the "BearingPoint" trademark has been registered and used by the Complainant on the company's consulting services for several years, and the mark has acquired extensive goodwill and a substantial reputation worldwide. The Respondent has no connection with the Complainant, and has not been licensed or authorized by the Complainant to use its trademark in the disputed domain name. "BearingPoint" is not a generic term, and the Respondent's use of the disputed domain name incorporating the wording is a deliberate attempt to trade off the Complainant's reputation in the "BearingPoint" mark.

The Complainant has established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name. Rather than doing so, the Respondent has defaulted and has failed to file a Response to the Complaint.

The requirements of article 4(ii) have been satisfied.

**Bad Faith**

The website to which the disputed domain resolves purports to offer a disparate selection of commercial goods and services. Significantly, the website prominently features a functionality that enables viewers to easily "inquire about this domain name" and to offer an amount of money to purchase the disputed domain name for a valuable consideration.

By using the disputed domain name, the Respondent seeks intentionally to attract, for commercial gain, Internet users to his website or other online location by creating a likelihood of confusion with the Complainant’s "BearingPoint" trademark as to the source, sponsorship, affiliation or endorsement of the Respondent’s web site or location or service on his web site of location.

Key to the issue of the Respondent’s bad faith, *vel non*, the Complainant has furnished numerous examples of UDRP decisions involving this same Respondent where the relevant registered domains have been ordered transferred back to their rightful owners (CIETAC UDRP decisions in cases CND-2010000008; CND-2011000020; CND-2008000126; CND-2010000127; CND-2012000079; CND-2012000054; and CND-2010000031). In fact, this Panelist decided a prior CNDRP matter adversely to this same Respondent in case number DCN-1300522. This is compelling evidence that the Respondent makes it his practice to register domain names only for monetization and / or cybersquatting purposes.

As further grounds supporting this conclusion, the Complainant in the instant matter asserts:
A domain name proprietorship search against the Respondent indicated that the Respondent has engaged in a pattern of conduct in registering numerous domain names for the monetization and/or cybersquatting purposes. The search as of April 13, 2013 revealed that the Respondent has registered 3,328 domain names. It is practically impossible for any individual to make "a legitimate noncommercial use or fair use of" over 3,000 domain names. As a pattern, it is clear that the Respondent is seeking to profit from and exploit trademarks of another by pre-emptively registering the domain names. (Emphasis original)

This Panelist has no difficulty whatsoever in concluding from the available evidence that the Respondent registered, or has been using the disputed domain name, or both, in bad faith.

5. **Decision**

For the foregoing reasons, in accordance with Article 14 of the CNDRP, the Panel orders that the disputed domain names <bearingpoint.com.cn> be transferred to the Complainant, BEARINGPOINT IP HOLDING B.V.

_____________________
David L. Kreider
Sole Panelist
4 June 2013