ADMINISTRATIVE PANEL DECISION
Case No. DCN-1700731

Complainant: ONO International Limited
Respondent: 王晓文
Domain Name: ANNOUSHKA.CN
Registrar: 易介集团北京有限公司

1. Procedural History

On March 9 2017, the Complainant submitted a Complaint in English language in respect of the Disputed Domain Name <ANNOUSHKA.CN> to Hong Kong International Arbitration Centre ("HKIAC") and elected the case to be dealt with by one single panelist according to the CNNIC ccTLD Dispute Resolution Policy ("Policy") implemented by CNNIC on 21 November 2014.

On March 10, 2017, HKIAC sent a New Case Notification to Registrar to the Registrar to verify and confirm registration information. On the same day, HKIAC transmitted the Receipt of Complaint to the Complainant.

On March 13, 2017, the Registrar replied HKIAC to confirm that the registrant of the Disputed Domain Name is same as the Respondent. The Registrar also confirmed that the Policy shall apply.

On March 17, 2017, HKIAC confirmed receipt of the case filing fee from the Complainant. On the same day, HKIAC transmitted the Complaint to the Respondent by email and informed the Respondent of the 20-day period i.e. April 10, 2017 to file a Response. However, no Response has been filed.

On April 11, 2017, HKIAC informed the Complainant and copied the Respondent on the Respondent’s default to respond to the Complaint.

On April 18, 2017, HKIAC informed the parties of the appointment of Mr. William Law as the sole panelist and the decision would be rendered on or before May 2, 2017.
All the communications dispensed by HKIAC to the concerned parties are both in Chinese and English during the whole proceeding.

Language of proceedings

In relation to the language of the proceeding, the Complainant mainly contended that (1) the content in the Disputed Domain Name is displayed in English; and (2) the high cost of translation that will result undue delay and substantial expense to the Complainant and contrary to purpose of the Policy.

HKIAC has been candid enough that all the correspondences to the Respondent and Complainant were sent in both Chinese and English. Had the Respondent contested and requested the Complaint and the present proceeding be maintained in Chinese, the Panelist would have no doubt to adhere to Chinese, which is familiar to the Respondent. However, the Respondent defaulted in filing a Response. I have also considered the language of the content on the website of the Disputed Domain to look for some direction of the underlying services or goods provided, evidence shows that the content of the Disputed Domain is totally in English selling the Disputed Domain Name. The WHOIS record shows the registrant’s address is in China.

The Policy does allow panelist to take a broad view in deviating the language of the proceedings from Chinese, which is the language of the proceeding under the Policy. The Complainant submitted that the content in the Disputed Domain Name is totally displayed in English, which implies the Respondent is able to understand the language. In addition, it would be quite inconvenient for the Complainant to translate the Complaint into Chinese. I cannot rule out a possibility that the default is due to that the Respondent, with address in China, did not understand the Complaint which is written in English. However, if this is the case, the Respondent would have raised to HKIAC in the bilingual email communication and notifications. The evidence before me tells that it was the case which the Respondent failed to file any response despite the various notifications by HKIAC. I therefore rule that this proceeding and the decision would be conducted in English, notwithstanding the Policy; and I do not see how the Respondent’s right will be detrimental or prejudiced had the proceedings been conducted in either Chinese or English.

2. Factual background

The Complainant brand and reputation

Annoushka was founded in 2009 by renowned jewellery designer, Annoushka Ducas MBE, alongside her husband John Ayton MBE. Prior to this, the couple co-founded the company Links of London in 1991 which grew into a global luxury brand with sales of over £50m; the company was sold in 2006 to Greek luxury retailer Folli Follie SA for £45M.
Annoushka Ducas’s experience in the luxury jewellery industry spans almost three decades, working alongside master craftsmen. In the late Eighties she moved from Paris to Hong Kong to work with local artisans, designing jewellery for herself and her friends and family.

Annoushka Ducas has become renowned as one of the world’s leading jewellers and has been rewarded with various awards and accolades:

<table>
<thead>
<tr>
<th>Date</th>
<th>Organization</th>
<th>Description of Award</th>
</tr>
</thead>
<tbody>
<tr>
<td>1996</td>
<td>Veuve Clicquot Business Woman of the Year</td>
<td>Runner Up</td>
</tr>
<tr>
<td>1996</td>
<td>UK Jewellery Awards</td>
<td>Silver Designer of the Year</td>
</tr>
<tr>
<td>1997</td>
<td>British Apparel Export Awards</td>
<td>Accessories Award</td>
</tr>
<tr>
<td>1997</td>
<td>UK Jewellery Awards</td>
<td>Gift Designer of the Year</td>
</tr>
<tr>
<td>1998</td>
<td>British Apparel Export Awards</td>
<td>Accessories Award</td>
</tr>
<tr>
<td>1998</td>
<td>UK Jewellery Awards</td>
<td>Gift Designer of the Year</td>
</tr>
<tr>
<td>1999</td>
<td>UK Jewellery Awards</td>
<td>Best Design in Precious Metal</td>
</tr>
<tr>
<td>2001</td>
<td>UK Jewellery Awards</td>
<td>Gift Retailer of the Year</td>
</tr>
<tr>
<td>2002</td>
<td>UK Jewellery Awards</td>
<td>Gift Brand of the Year</td>
</tr>
<tr>
<td>Year</td>
<td>Award Name</td>
<td>Category</td>
</tr>
<tr>
<td>------</td>
<td>----------------------------------</td>
<td>---------------------------</td>
</tr>
<tr>
<td>2003</td>
<td>UK Jewellery Awards</td>
<td>Gift Brand of the Year</td>
</tr>
<tr>
<td>2004</td>
<td>Walpole Awards for Excellence</td>
<td>Walpole Brand of the Year</td>
</tr>
<tr>
<td>2005</td>
<td>NMA Effectiveness Awards</td>
<td>Best Retail Website</td>
</tr>
<tr>
<td>2005</td>
<td>UK Jewellery Awards</td>
<td>Jewellery Brand of the Year</td>
</tr>
<tr>
<td>2009</td>
<td>Walpole Awards for Excellence</td>
<td>Best British Brand Overseas</td>
</tr>
<tr>
<td>2010</td>
<td>International VM Awards</td>
<td>Best Sale windows</td>
</tr>
<tr>
<td>2010</td>
<td>International VM Awards</td>
<td>Best use of in-store graphics</td>
</tr>
<tr>
<td>2011</td>
<td>Professional Jeweller Top 100 listing</td>
<td>Nominated in the Trendsetters’ Category</td>
</tr>
<tr>
<td>2014</td>
<td>First Woman Awards 2014</td>
<td>Nominated</td>
</tr>
</tbody>
</table>

In 2012, Annoushka Ducas was awarded **Most Excellent Order of the British Empire (MBE)** by Queen Elizabeth II for her services to the British jewellery industry.

To celebrate 25 years of award-winning fine jewellery design, Annoushka Ducas launched *Milestones*, an exhibition devoted to the sources of her design inspirations.

The *Annoushka* brand has also become a covetable brand with many celebrities such as J K Rowling, Adele, Gigi Hadid and The Duchess of Cambridge frequently captured wearing the jewellery.
Annoushka jewellery ships to over 44 countries including China and officially opened its debut Hong Kong boutique at the Mandarin Oriental Hotel, as part of its wider international expansion aims.

Annoushka has enjoyed significant commercial presence for many years. It has been estimated that digital sales made through its online website, www.annoushka.com, continue to grow up to 85 per cent year-on year\(^1\). Through the website the Complainant offers a variety of fine jewellery with prices ranging from around £350-£35,000. Collections include “Annoushka Pearls”, which were famously worn by the Duchess of Cambridge (formerly Kate Middleton).

**The ANNOUSHKA Trademarks**

In accordance with the Policy, Complainant has brought forth the complaint on the basis of Complainant’s substantive rights and interests in the mark “ANNOUSHKA”. Complainant avers that such rights and interests arise from exclusive, extensive, and consistent use of the term for over 25 years. In particular, Complainant seeks to rely on the following trademarks, for which the Complainant is listed as the proprietor; details and copies of which have been attached to the complaint.

<table>
<thead>
<tr>
<th>Mark</th>
<th>Country</th>
<th>Class</th>
<th>Registration No.</th>
<th>Registration Date</th>
</tr>
</thead>
<tbody>
<tr>
<td>ANNOUSHKA</td>
<td>China</td>
<td>18</td>
<td>6826462</td>
<td>2012-09-07</td>
</tr>
<tr>
<td>ANNOUSHKA</td>
<td>China</td>
<td>14</td>
<td>6826463</td>
<td>2010-04-21</td>
</tr>
</tbody>
</table>

The Complainant also features the logo extensively as part of its marketing material, and website in order to distinguish its products from its competitors. As of 21 February 2017 Annoushka has over 14,000 “Likes” on Facebook; 6,789 “Followers” on Twitter and over 16,000 followers on Instagram. The Annoushka brand of products have also featured in various fashion magazines including Harper’s Bazaar, Vanity Fair and Marie Claire.

3. **Parties’ Contentions**

A. Complainant

The Complainant’s contentions may be summarized as follows:

\(^1\) [https://www.ft.com/content/6197067b-6b4c-11e5-8171-ba1968cfe791a](https://www.ft.com/content/6197067b-6b4c-11e5-8171-ba1968cfe791a)
i) **The Disputed Domain Name is identical to Complainant’s Marks**

The second limb of the first requirement is that the Domain Names must be identical or confusingly similar to the mark “ANNOUSHKA”, determined by a visual or aural comparison of the alphanumeric string of the Domain Name with the trademark to assess the likelihood of Internet user confusion.

The Complainant’s registered trademarks in issue are recognisable within the limits of the second level domain, and by applying the identical or confusing similarity test under the Policy, the visual, phonetic and conceptual comparison of the Complainant’s registered trademarks and the Respondent’s Domain Name, there is undoubtedly an identical or confusing similarity between them which inherently exists without any adornment.

The Disputed Domain Name is identical to the trademark “ANNOUSHKA”, incorporating it in its entirety. The addition of a ccTLD “.cn” is not sufficient to escape the finding that the Disputed Domain Name is identical or confusingly similar (See; *Hewlett-Packard Company v Mohammad Hossein Erfani and the Kotobi Group, HKIAC Case No. DCN-0300005 and HKIAC Case No. DCN-0700140 “ferrovia.cn” which follows Croatia Airlines d.d. -v- Modern Empire Internet Ltd., WIPO’s case D2003-0455)*.

ii) **Respondent Has No Legitimate Interest in the Disputed Domain Name**

Under the Policy, a Respondent may demonstrate it has legitimate interest in a domain name by showing that it used or prepared to use the domain for a [bona fide] offering of goods or services, that it is commonly known by the at issue domain name, or that it is making a legitimate noncommercial or [fair] use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

**No Bona Fide Offering of Goods or Services**

Respondent cannot demonstrate or establish any legitimate interest in the Disputed Domain Names for several reasons. Firstly, Respondent has made no attempt to use the Disputed Domain Name and associated website for any legitimate business purpose other than to offer the same for sale as a “powerful internet brand”.

The term “Annoushka” is not a term used in connection with any other manufacturer or distributor in China and derives from its founder Annoushka Ducas MBE.
Complainant is unaware of any circumstances under which Respondent could make legitimate use of the Disputed Domain Name in light of the fact Respondent has never been licensed by the Complainant or authorized in any way to use the “ANNOUSHKA” marks. Moreover, the Respondent is not affiliated with the Complainant, its subsidiaries or affiliates in anyway whatsoever and could not make any legitimate use of the Disputed Domain Name given the pre-existing fame, reputation and goodwill associated with the Complainants’ brand.

Respondent’s public offering of a trademarked domain name for sale cannot be considered non-commercial or commercial fair use. It is therefore reasonable to conclude that the registration of the Disputed Domain Name was made without any credible or legitimate interest.

**Not Commonly Known by the Domain Name**

Complainant further disputes any argument that the Respondent is ‘commonly known’ by the Disputed Domain Name. Knowingly taking advantage of the rights of a third party and then using their goodwill and reputation to obtain a financial gain cannot be considered to give rise to a legitimate right.

The holding page which the Domain Name resolves make it quite clear that the value originates from its use as a “powerful internet brand”. The registration and subsequent sale of domain names which incorporate trademarks is a pattern that the Respondent has adopted and cannot give rise to a legitimate interest.

In order to rely on this defense, what the Respondent must show is that his business must have been ‘commonly known’ by the Domain Name at the time of registration. This would not be possible for the Respondent as the facts of this case show that his intention for registering the Domain Name was maliciously motivated.

The Respondent is listed as 王晓文, using the email addresses chinabrands@qq.com (connected to over 6700 domains). The Respondent evidently seeks to sell domain names through the email address Namepower@126.com as featured on the websites.

The Policy only requires that the Complainant present a prima facie case that Respondent lacks rights or legitimate interests in the Disputed Domain Names, the burden now falls on the Respondent to show to the contrary that it does possess the prerequisite rights and interests in the same.
iii) **Respondent Registered and is Using the Domain Names in Bad Faith**

**Respondent’s Attempt to Sell the Disputed Domain Name**

The Complainant has a long heritage spanning 25 years. In light of this, the Respondent, seeks to take advantage of the goodwill attached to the Complainant and its marks for commercial gain. This is evident from the Respondent’s listing of the Disputed Domain Name on “4.cn”, a domain marketplace and exchange reseller.

Previous Panels have found that the registration of a domain name identical to a trademark in order to offer it to sell constitutes bad faith registration.

It is common knowledge among her followers that Annoushka Ducas has a fondness for Asia; Hong Kong being the place she began her jewellery career. Because of this, the Complainant has spent a considerable amount of time and resources to enable the *Annoushka* brand to become popular among consumers in Asia. Earlier this month, Complainant launched its new boutique within the Mandarin Oriental Hotel in Hong Kong. Prior to this, Annoushka Ducas’s former brand LINKS OF LONDON had a number of stores in Hong Kong. In 2012, *Annoushka* collaborated with Chinese designer, Wendy Yue, to create the “*Fantasie Collection – by Wendy Yue for Annoushka*”, infused with her Chinese roots. Later that year, *Annoushka* teamed up with Chinese jeweller Dickson Yewn, to create a jewellery collection inspired by Chinese heritage for the *Annoushka* brand.

The Disputed Domain Names are not generic, descriptive, and neither do they refer to a popular given name in Chinese culture. To ensure the protection of its brand name, Complainant registered its marks many years prior to Respondent’s registration with the Chinese trademark office which is made publicly available through its online database. Such extensive use of the marks preceding the registration of the Domain Name would bestow upon the Complainant superior rights in the mark “ANNOUSHKA”. Searches conducted through GOOGLE and Baidu clearly reveal results which solely relate to the Complainant and no other brand, further demonstrating the likelihood that Respondent would have been aware of the Complainant.

Without the Respondent being able to demonstrate a legitimate interest in the Domain Name, or any valid explanation as to why he appropriated an identical domain name which corresponds to the Complainant’s mark, there is a strong inference that the Domain Name were merely chosen either for the purpose of selling it to the Complainant or its competitor, or to take unfair advantage of the Complainant’s mark through disruption or blocking registration.

B. **Respondent**
The Respondent has not filed any submission within the prescribed time.

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 attached documents, the Panel of this case considers that:-

**Identical or Confusing Similarity**

The distinctive part of <ANNOUSHKA.CN> is “ANNOUSHKA”, which is identical to the registered trademarks of the Complainant in China. The prior date of the China trademark registrations (21/04/2010 and 07/09/2012) pre-date the date of registration of the Disputed Domain (27/05/2015). The word “ANNOUSHKA” is the name of the jewellery designer Annoushka Ducas MBE, which is highly distinctive, and has been marketing, advertising and promoting through the website (www.annoushka.com), Facebook, Twitter and Instagram of the Complainant. The products of the brand “ANNOUSHKA” have also featured in various fashion magazines. “.cn” is a common ccTLD and it does not make the domain name in dispute more distinctive. As such, with no evidence to the contrary, I am satisfied that the Complainant has civil rights or interests in the mark, “ANNOUSHKA” and that the distinctive part of the Disputed Domain is identical to such mark.

**Rights or Legitimate Interests of the Respondent**

The Complainant, as the registrant of various trademark registrations, submitted that it has never licensed or authorized the Respondent to use any of its intellectual property. The Respondent has the burden of proof to establish that he has rights or legitimate interests in the Disputed Domain. However, since the Respondent defaulted in contesting the Complainant’s allegations, with no evidence to the contrary, I accept the Complainant’s submissions that:
(1) the Respondent’s use of the Disputed Domain is not in connection with a bona fide offering of goods or services;

(2) the Respondent has not been commonly known by the Disputed Domain Name, but the Complainant; Further there has been no evidence to show that the Respondent has acquired any trademark or service mark rights and/or reputations in connection with the mark.

I am therefore satisfied that the Respondent has no rights or legitimate interest to register and use the Disputed Domain.

Bad Faith

I accept that the Complainant and the ANNOUSHKA are well-established marks among the relevant public, in particular in the jewellery industry. Had the Respondent conducted a simple search on popular internet search engines such as Google and Baidu, the Respondent would very likely have been aware of the "ANNOUSHKA" mark and the Complainant’s business activity. The registration of the Disputed Domain Name by the Respondent is in bad faith in this regard.

In the circumstance where the name is not a common given name in Chinese culture, it is likely that the Respondent was aware of the Complainant and its "ANNOUSHKA" trademark and nevertheless, chose to register the Disputed Domain. As such, without evidence to the contrary, I found that the Respondent has registered the Disputed Domain in bad faith.

According to the Complainant, the Disputed Domain Name is listed on the domain marketplace and exchange reseller “4.cn”). Without proper demonstration of legitimate interest in the Disputed Domain Name, there is strong inference that the Respondent registered the Disputed Domain Name with an aim to either sell it to the Complainant or its competitor, or to take unfair advantage of the Complainant’s mark through disruption or blocking registration.

As such, I am satisfied that the Respondent has registered and used the Disputed Domain in bad faith with an intention to sell it to the Complainant or its competitor to capitalize on or otherwise take advantage of the Complainant’s trademark rights.

5. Decision

In conclusion, the Complainant has satisfied all the 3 grounds laid down in Article 8. I therefore order that the Disputed Domain Name be transferred to the Complainant.
综上所述，专家认为本案投诉符合《解决办法》第八条规定的三个条件，即“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；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；被投诉的域名持有人对域名的注册或者使用具有恶意”。

专家组决定支持投诉人的投诉请求，本案争议域名转移给投诉人。

Panelist: William Law
Date: 27 April 2017