ADMINISTRATIVE PANEL DECISION
Case No. DCN - 1800809

Complainant: New Directions Australia Pty Ltd.
Respondent: Zhu Yulin (朱玉林)
Domain Name: newdirections.com.cn
Registrar: EJEE Group Holdings Limited (易介集团北京有限公司)

1. Procedural History

On 4 March 2018, the Complainant filed a Complaint in this matter with the Hong Kong International Arbitration Centre (HKIAC) pursuant to the CNNIC ccTLD Dispute Resolution Policy (the “Policy”) implemented by CNNIC on 21 November 2014. On 5 March 2018, the HKIAC confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On 5 March 2018, HKIAC notified 易介集团北京有限公司 EJEE Group Holdings Limited (“Registrar”) of the Disputed Domain Name of the proceedings by email. On 6 March 2018, Registrar acknowledged the email of HKIAC confirming that the Disputed Domain Name is registered with Registrar, that 朱玉林 Zhu Yulin is the holder of the Disputed Domain Name, that the CNNIC ccTLD Dispute Resolution Policy (“Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is Chinese as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 9 March 2018, the HKIAC sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of Respondent’s nominated registrant contacts for the Disputed Domain Name (as recorded in the WHOIS database). The Notification gave the respondents twenty (20) calendar days to file a Response (i.e. on or before 2 April 2018).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the HKIAC on 30 April 2018. The papers pertaining to the case were delivered to the Panel by email on the same day.

2. Factual background

According to the information submitted by the Complainant, New Directions Australia is an ISO 9001 accredited market leader in manufacturing of natural and certified organic skincare, colour cosmetics, supplements and essential oils. It formulates and manufactures for many leading Australian and international skincare and cosmetic brands. It provides retail packaging solutions to many businesses in Australia and abroad.
The Name “New Directions Australia” has been a registered trademark in Australia since 1991 (Australian Company No. 052 973 743) and in Taiwan since 2017 (Trademark No. 01790611). The name “New Directions Supplements” is a registered trademark in China (Trademark No. 20319693). It has been trading under the name “New Directions” for 27 years in Australia and overseas.

New Directions Australia has been expanding its presence across the globe by opening offices in the UK, Canada and local distributors in China, Taiwan, Hong Kong and it has well established clients in other countries. It has an active presence in the Asian market and has been attending international fairs and exhibitions such as “Cosmoprof Asia – Hong Kong”, “The Shanghai International Beauty Expo” and many other events in last two decades under the name “New Directions”. Complainant is also in possession of the below domains operated by New Directions in Australia and abroad.

1. newdirections.com.au
2. newdirectionsUK.com
3. newdirectionspackaging.com.au
4. newdirections.jp
5. newdirections.tw
6. newdirections.fr

According to the Complainant, on 20 Aug 2009, the Complainant registered the internet domain name newdirections.com.cn to expand its presence in China and Hong Kong. The domain was registered with an Australian domain registrar Netregistry http://www.netregistry.com.au a subsidiary of Melbourne IT http://www.melbourneit.com.au. Netregistry also provided hosting services for this domain for the past 8 years. The domain was up for renewal on 5 October 2017 but due to a glitch in registrar’s system, the domain was deregistered days before the expiration date. The Domain is currently under the control of the new registrant which has been redirecting visits to newdirections.com.cn to a betting and gambling website www.fx4248 (as last seen on 8 March 2018).

The domain was available for registration on 18 Oct 2017 when it was registered by 朱玉林 Zhu Yulin via the domain registrar 易介集团北京有限公司 (EJEE Group Holdings Limited http://www.ejeegroup.com) for a period of one year till 18 Oct 2018 with email address 2174304799@qq.com as main contact.

The Respondent did not file a Reply with the Centre.

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 rights and interests;

The Complainant contends that the disputed domain name <newdirections.com.cn> is confusingly similar to its trademarks. The trademark is reproduced in its entirety.

The addition of the dash “-” and the suffix ccTLD “.COM.CN” is not sufficient to escape the finding that the domain is confusingly similar to the trademark and does not change the overall impression of the designation as being connected to the trademark of the Complainant.

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

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

The disputed domain name was registered by 朱玉林 Zhu Yulin. The Complainant provides no information showing that the Respondent is commonly known by the disputed domain name.

The Complainant does not contend that the Respondent is in any way related with the Complainant.

Moreover, since its registration, the domain name has been listed as being linked to a gambling website. Consequently, the Complainant contends that the Respondent registered the domain name in connection with offering for sale goods or services.

III. The holder of the disputed domain name registered or used the disputed domain name in bad faith

The Complainant contends that it has been operating under the name “Newdirections” for over 27 years in Australia and overseas including in China and that there is no likely legitimate right or plausible use by the Respondent.

The Complainant further strongly believes that the new registrant has no rights or legitimate interests in the domain name and as domain is being redirected to a gambling website with adult content (as seen last on 8 March 2018), it has been registered in bad faith to tarnish Complainant’s name and brand’s reputation and seeks that it be returned to New Directions as the rightful owner of the brand and trademark.

The Complainant therefore requests for transfer of disputed domain name.
B. Respondent

The Respondent’s contentions may be summarized as follows:

The Respondents did not submit a reply.

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:

Preliminary Issue: Language of Proceedings

Prior to the Panels consideration of the application of Article 8 of the CNDRP Policy to the facts in this case, one preliminary issue must be addressed: the language of the proceedings.

With regard to the language of the proceedings, according to Article 6 of the CNNIC ccTLD Dispute Resolution Policy (“Policy”), the language of the domain name dispute resolution proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the Panel.

While the Panel observes that the language of the registration agreements of Respondent is Chinese, in accordance with the Rules of CNNIC ccTLD, the Panel has the authority to determine the language of the proceedings, having regard to the circumstances. Having reviewed the Complainant’s submission, including consideration of the costs of translation and volume of documents involved and given that the language of the disputed domain name is English, and that the Respondent has not issued any objection, for reasons of efficiency the Panel has thus determined that the language of the proceedings is English.

Identical or Confusing Similarity

The Complainant has established its right to the “New Directions Australia” and “New Directions Supplements” trademark by submitting trademark registration certificates and records in a number of jurisdictions including in Mainland China. It has further shown
that it has been trading under the name “New Directions” for 27 years in Australia and overseas including within China.

The disputed domain name <newdirections.com.cn> contains two elements: “newdirections” and “cn” and finally top-level domain “com”. Numerous CNNIC precedents have established that the top-level domain does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion. Similarly, “cn” is not a distinctive word and is merely descriptive. The addition of this term does nothing to minimise the risk of confusion. There is a long line of authorities which make it clear that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

The only distinctive part of the disputed domain should be "newdirections", which is identical to the Complainant's "New Directions" trade name and associated “New Directions Australia” and “New Directions Supplements” trademarks. This striking resemblance will no doubt mislead consumers into believing that the website is operated by or associated with the Complainant. There is no doubt that the Disputed Domain Name <newdirections.com.cn> completely incorporates the Complainant’s “New Directions” trade name which is the distinctive part of the Disputed Domain Name, and such incorporation makes the Disputed Domain Name confusingly similar with the Complainant’s associated trademark.

In conclusion, the Panel finds that the Complainant has satisfied Article 8(i).

Rights or Legitimate Interests of the Respondent

Based on documentary evidence tendered in 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.

If the Respondent fails to rebut this prima facie case established against the Respondent, the Complainant is deemed to have satisfied the second condition of Article 8 of CNDRP.

The Panel finds that it is established in the Complainant that (a) the Respondent has no relationship with the Complainant’s business and has not been authorized or licensed to use any of the Complainant’s trade name “New Directions”; and (b) the Respondent is not known by the Disputed Domain Name. The Panel finds that the Respondent has not put the Disputed Domain Name into any bona fide use, but the Disputed Domain Name resolves to a gambling website with adult content.

In the circumstances, the Panel finds that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name; and accordingly, the second condition of Article 8 of CNDRP is met by the Complainant.

Bad Faith
Article 9 of CNDRP provides that any of the following circumstances may serve as evidence of the registration and use of a domain name in bad faith:

(a) 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;

(b) 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;

(c) 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; and

(d) Other circumstances which may prove the bad faith.

As discussed above, there is clear evidence adduced by the Complainant that the Disputed Domain Name redirects to a gambling website.

The Panel accepts the Complainant’s submission that it is obvious from the gambling site to which the Dispute Domain Name has resolved that the Respondent has registered the Disputed Domain Name with the aim 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. By the reasons aforesaid, the Panel finds that the circumstances as particularized in Article 9 (c) of CNDRP exist in the present case; and therefore finds that the Respondent has registered or has been using the Disputed Domain Name in bad faith; and accordingly, the third condition of Article 8 of CNDRP is met by the Complainant.

5. Decision

For all the foregoing reasons, in accordance with Article 14 of CNDRP, the Panel orders that the Disputed Domain Name <newdirections.com.cn> be transferred to the Complainant.

Dr. Shahla F. Ali （夏兰）
Sole Panelist

Date: 15 May 2018