1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the “Centre”) on May 31, 2018. On June 5, 2018, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 9, 2018, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and provided the contact details.

The Centre verified that the Complaint satisfied the formal requirements of the CNNIC Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Centre’s Supplemental Rules (the “Supplemental Rules”).

In accordance with Article 5 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 25, 2018.

In accordance with Article 17 of the Policy, the due date for Response was July 16, 2018. No Response was received by that date. Accordingly, the Centre notified the Respondent’s default on July 18, 2018.

2. Factual background

The Complainant, founded in Luxembourg in 2007, together with its subsidiaries, manufacture and design and sell various natural and organic ingredient based cosmetics and beauty products including lotion, cosmetics, soaps and fragrant products. The Complainant has 2,797 outlet locations and has over 8,000 employees worldwide.

The Complainant markets and sells its products under different brand names which include Erborian, L’occitance, Melvita and L’occitane Au Bresil.

The brand Erborian became part of the Complainant’s group in 2012. It distributes in numerous countries including France, Germany, Italy, Korea, China and Hong Kong.
The Complainant own an international trademark registration (which covers China) for the word mark “ERBORIAN”, including class 3 and 5, registered under no. 1125364 on June 29, 2012 and class 18, 21, 24 and 35, registered under no. 1295774 on January 19, 2016.

The Complainant is the holder of the domain <erobian.com>

The Respondent is an individual.

The disputed domain name was registered on June 1, 2016.

The disputed domain name resolves to a page that appears to be advertising the disputed domain name for sale in both Chinese and English.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. Identical or Confusingly Similar

The Complainant contends that the disputed domain name and the trademark ERBORIAN, other than the generic Top-Level Domain (gTLD) “.cn” are identical. The disputed domain name contains ERBORIAN in its entirely as the distinctive part of the disputed domain name.

ii. No rights or legitimate interests

The Respondent has no connection with the Complainant or any of its affiliates and has never sought to obtain any trademark registration for ERBORIAN. It, therefore, has no rights or legitimate interests in the disputed domain name.

iii. Registered or used in bad faith

The Complainant submits that before registration of the disputed domain name, the Respondent knew of the Complainant’s right in the ERBORIAN trademark given its worldwide reputation. The Respondent acquired the disputed domain name to disrupt the business of the Complainant and to improperly benefit from the Complainant’s right.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

4. Findings
A. Language of proceedings

Article 8 of the Rules provides that:

“Unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.”

The Complainant requested the language of the proceeding be English on the grounds that: (1) the Respondent is able to use and understand English; and (2) the Complainant is a Luxembourg entity and is not in position to conduct these proceedings in Chinese – translating the complaint would add time and cost to the proceeding.

The Respondent did not respond to the Complainant’s request.

The final determination of the language of the proceeding lies with this Panel. Article 31 of the Rules gives the Panel a broad discretion with regard to the conduct of the proceeding, bearing in mind that the proceeding shall take place with due expedition and reasonable expense.

Accordingly, the Panel notes the following factors may affect its decision on language: the webpage linked from the disputed domain name clearly has English sentence on it, the sentence shows that “If you want this domain name, please contact QQ:800018872 or our email.” This demonstrates that the Respondent understands and is able to communicate in English.

Notwithstanding this, the Panel has to balance the questions of fairness to both parties with consideration of cost and expedition, taking into account all the relevant circumstances of the case. The fact that the merits are strongly in favour of the Complainant and the Respondent’s default in objecting to the Claimant’s language request are both strong factors to be considered. The Respondent has also defaulted in defending these proceedings. The Panel therefore determines to accept the Complaint in English. It would have accepted any submissions from the Respondent in Chinese.

As the only pleading before the Panel is in English, the Panel will render its decision in English.

B. Substantive Issue

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 disputed domain name <erborian.cn> is, other than the generic Top-level Domain (gTLD) “.cn”, identical to the Complainant’s trademark. The gTLD “.cn” is generally disregarded when making a comparison. The disputed domain name incorporates the Complainant’s ERBORIAN mark in full. The disputed domain name is therefore identical to the Complainant’s registered trademark.

The first part of Article 8 of the Policy is therefore satisfied.

**Rights or Legitimate Interests of the Respondent**

Article 10 of the policy provides that:

Before receiving the complaint, any of the following circumstances may be evidence of the rights to and legitimate interest in the domain name:

(i) Your use of the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services
(ii) You have been commonly known by the domain name, even if you have acquired no trademark or service mark rights;
(iii) You are making a legitimate noncommercial or fair use of the domain name, without intent of or commercial gain to misleadingly divert consumers.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the domain name. The Respondent is neither associated with the Complainant nor authorized or licensed by it to use its trademark. There is no evidence to show that it has been commonly known by the domain name or the domain name was used for noncommercial purposes.

The Respondent has not responded to assert any rights or legitimate interests in the disputed domain name. Accordingly, none of the circumstances in Article 10 of the Policy are, therefore, present in this case.

The second part of Article 8 of the Policy is, therefore, satisfied.

**Registered or used in Bad Faith**
Under Article 8 of the Policy, the Claimant is required to prove the disputed domain name was either registered or used in bad faith. The Panel finds that the disputed domain name was registered in bad faith. It is therefore unnecessary to decide whether it was used in bad faith.

The Complainant Company was established in 2007. The products of the Complainant are a range of beauty products. The term “erborian” is not a common word, it is highly unlikely that the Respondent independently thought of the word.

Nonetheless, the web page of the disputed domain name also appears to be a platform that is selling the disputed domain name for money. The website asks any interested party who “want(s) this domain name, please contact” a social media account. This suggests that the Respondent is attempting to make commercial gain from the website.

The registration of the disputed domain name in this case therefore falls with Article 9 paragraphs (i) and (iii) of the Policy that the disputed domain name holder has registered or acquired the domain name for (1) the purpose of selling it or (2) 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.

The third part of Article 8 of the Policy is, therefore, satisfied.

5. Decision

For all the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, the Panel orders that the disputed domain name <erborian.cn> be transferred to the Complainant.

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Panelist : Douglas Clark

Date: 22 August 2018