1. Procedural History

On 28 February 2019, the Complainant filed a Complaint in English in respect of the domain name <assab101.cn> (the “disputed domain name”) with Hong Kong International Arbitration Centre (“HKIAC”) pursuant to the CNNIC ccTLD Dispute Resolution Policy (“CNDRP”) implemented by CNNIC on 21 November 2014. The Complainant elected to have the case decided by a single member panel. On 1 March 2019, HKIAC acknowledged receipt.

On 1 March 2019, HKIAC sent an email to the Registrar requesting verification of the disputed domain name registration information. On 5 March 2019, HKIAC sent an email to the Complainant regarding the language of the proceeding. On 11 March 2019, the Complainant requested that the language of the proceeding be English. On 14 March 2019, the Registrar sent its verification response to HKIAC providing contact information for the Respondent that differed from that provided in the Complaint. On the same day, HKIAC issued a notice of administrative deficiency to the Complainant and provided the contact information received from the Registrar, requesting that the Complainant rectify the Complaint. On 18 March 2019, the Complainant submitted a revised Complaint. On 21 March 2019, HKIAC issued a further notice of administrative deficiency due to the word count in the facts and reasons section of the revised Complaint. On 22 March 2019, the Complainant submitted a further revised Complaint.

On 26 March 2019, HKIAC verified that the further revised Complaint was in compliance with the CNDRP and sent an email in Chinese and English to the Respondent, forwarding the further revised Complaint, including the Complainant’s language request, and notifying the commencement of proceedings. In accordance with the CNDRP, the CNNIC ccTLD Dispute Resolution Policy Rules (the “Rules”) and the HKIAC Domain Name Dispute Supplemental Rules (the “Supplemental Rules”), the Respondent had twenty (20) days to submit a Response (that is, on or before 15 April 2019). The Respondent did not file any response. Accordingly, on 16 April 2019, HKIAC notified the Respondent’s default.
On 17 May 2019, HKIAC informed the parties of the appointment of Prof. Matthew Kennedy as sole panelist in this dispute. The Panel submitted to HKIAC a Declaration of Independence and Impartiality in writing prior to acceptance of appointment.

2. Factual background

The Complainant is a supplier of tool steel, steel for components and other steel products. It is headquartered in Singapore and operates close to 50 branches and sales offices in the Asia-Pacific region. The Complainant was formerly named ASSAB Pacific Pte Ltd. It uses the name 一胜百 in the greater China area and has affiliates across mainland China, one of them being 一胜百模具(东莞)有限公司, which was licensed on 11 September 2000. The Complainant owns multiple Chinese trademarks for ASSAB, including trademark registrations nos. 13443137, 13443138 and 13443140, registered on 21 January 2015, 21 January 2015 and 28 February 2015, respectively, which collectively specify goods and services in international classes 6, 8 and 40, including steel products, tools and metal plating. The Complainant also owns Chinese trademark registration no. 923529, registered on 28 December 1996, for a device mark (“the Assab logo”), specifying goods in international class 6, including steel plate and steel wire. Those trademark registrations all remain current. The Complainant operates official websites at <assab.com> and <assab-china.com>.

The Respondent is a Chinese company. It registered the disputed domain name on 22 January 2018.

The disputed domain name resolves to a website purportedly for a company named 东莞一胜百模具有限公司. The website prominently displays the Complainant’s ASSAB trademark, the Assab logo and photographs of the building of the Complainant’s affiliate 一胜百模具(东莞)有限公司, and of the Complainant’s booth at an exhibition. The website also reproduces materials from the Chinese version of the Complainant’s official website, including the company introduction and history.

3. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

i. The disputed domain name is confusingly similar to the Complainant’s ASSAB mark. The disputed domain name wholly incorporates that trademark as its only distinctive element. The element “101” is just a number. The country code Top-Level Domain (“ccTLD”) suffix “.cn” does not have trademark significance.

ii. The Respondent has no right or legitimate interest in respect of the disputed domain names. After years of extensive use, the ASSAB mark has acquired significant worldwide recognition. The Complainant and the Respondent have no prior connection, and the latter has not been authorized by the former to use the trademark in the disputed domain name. “Assab” is not a term commonly used in English. There is no evidence that the Respondent has been commonly known by the disputed domain name.
iii. The disputed domain name has been registered and is being used in bad faith. The Complainant registered its ASSAB mark in various jurisdictions which have become widely known among consumers and the relevant public as a result of its long-term promotion and use. The Respondent must have had prior knowledge of the Complainant’s ASSAB mark before the registration of the disputed domain name. The disputed domain name resolves to a website that mimics the look and feel of the Complainant’s website to confuse and deceive consumers.

B. Respondent

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

4. Findings

A. Preliminary Issues

Language of the Proceedings

Article 8 of the Rules provides that, “[u]nless 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.” This Rule does allow the Panel in some circumstances to determine that a language other than Chinese shall be the language of the proceedings. See, for example, Standard Life Employee Services Limited and Aberdeen Asset Management Plc v 申中朝, HKIAC Case no. DCN-1700750.

The Complainant submitted the Complaint in English and requested that the Panel determine the language of the proceedings to be English. Its main arguments are that it would cause tremendous cost, time and unfair prejudice to the Complainant to translate all the evidence into Chinese; the disputed domain name is in the English language; and the disputed domain name resolves to a website in Chinese and English such that the Respondent should have knowledge of the English language.

Despite having received notice in Chinese of the Complaint and of the Complainant’s language request, the Respondent did not respond to the Complaint, comment on the language of the proceeding or express interest in otherwise participating in this proceeding.

Article 31 of the Rules requires the Panel, inter alia, to “ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case” and to “ensure that the proceedings take place with due expedition”.

The Panel observes that the disputed domain name resolves to a website in Chinese and partly in English, from which it is reasonable to conclude that the Respondent is able to understand English. The Complaint and many of its exhibits are in English. Given the circumstances, the Panel considers that requiring the translation of the Complaint and all evidence into Chinese would create an undue burden for the Complainant and unduly
delay the proceedings, while rendering this decision in English does not create unfairness for either party.

Having considered all the circumstances above, the Panel determines that the language of these proceedings shall be English. The Panel would have accepted a Response in Chinese, but none was filed.

B. Substantive Issues

As to the merits, 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**

On the basis of the evidence submitted, the Panel finds that the Complainant has rights in the ASSAB trademark.

The disputed domain name wholly incorporates the ASSAB trademark as its initial element. The additional element “101” is merely a numeral that does not serve to distinguish the disputed domain name from the Complainant’s trademark in an assessment of confusing similarity.

The disputed domain name also includes the ccTLD suffix “.cn”. This element is generally incapable of dispelling confusing similarity between a domain name and a trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s ASSAB trademark.
**Rights or Legitimate Interests of the Respondent**

The disputed domain name, which is confusingly similar to the Complainant’s trademark, resolves to a website that displays material from the Chinese version of the Complainant’s official website and purports to be for a company with a name similar to that of one of the Complainant’s Chinese affiliates. The Complainant states that the Parties have no prior connection, and that the Respondent has not been authorized by the Complainant to use the trademark in the disputed domain name. The Panel does not consider that this constitutes use of the disputed domain name in connection with a bona fide offering of goods or services. Further, the website offers goods and services for sale, which demonstrates that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

There is no evidence that the Respondent has been commonly known by the disputed domain name.

Based on the evidence, the Panel considers that the Complainant has made a prima facie case that the Respondent has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name. The Respondent did not rebut that prima facie case because it did not respond to the Complainant’s contentions.

Accordingly, the Panel finds that the disputed domain name holder has no right or legitimate interest in respect of the disputed domain name or major part of the disputed domain name.

**Bad Faith**

Article 9 of CNDRP provides that certain circumstances may be the evidence of the registration and use of a domain name in bad faith. The third of these is as follows:

“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”.

The disputed domain name was registered after the Complainant obtained registration of its ASSAB trademark in China and it wholly incorporates that mark as its initial and only distinctive element. ASSAB is a coined term with no other apparent meaning in Chinese or English. The disputed domain name resolves to a website that reproduces material from the Chinese version of the Complainant’s official website and gives the false impression that it is approved by, or affiliated with, the Complainant. The Respondent provides no explanation for its choice to register the term ASSAB in the disputed domain name. This all gives rise to the inference that the Respondent was aware of the Complainant’s ASSAB trademark at the time of registration of the disputed domain name and that the Respondent registered it to create confusion with the Complainant’s mark so as to mislead the public.
Accordingly, the Panel finds that the disputed domain name holder has registered the disputed domain name in bad faith.

5. Decision

In conclusion, the Panel finds that the Complainant has satisfied all three elements laid down in Article 8 of CNDRP. Therefore, the Panel supports the Complaint and orders that the disputed domain name be transferred to the Complainant.

综上所述，专家组认为本案投诉符合《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，裁定本案争议域名转移给投诉人。

Panelist: Prof. Matthew Kennedy

Date: 25 May 2019