.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

First Complainant: Shenzhen Da-Jiang Innovation Technology Co. Ltd.
(深圳市大疆创新科技有限公司)
Second Complainant: iFlight Technology Company Limited
Respondent: Trippro Trading Company
Case Number: DHK-1600128
Contested Domain Name: <dji.com.hk>
Panel Members: David Kreider, Vivien Chan, Gary Soo

1. Parties and Contested Domain Name

First Complainant, Shenzhen Da-Jiang Innovations Technology Co., Ltd., is located at 14th Floor, West Wing, Skyworth Semiconductor Design Building, No. 18 Gaoxin South 4th Ave, Nanshan District in Shenzhen City, P.R. China.

Second Complainant, iFlight Technology Company Limited, is a subsidiary of the First Complainant, located at Units 911-918, 9/F, Building 16W, No. 16 Science Park West Avenue, Hong Kong Science Park, Pak Shek Kok, Hong Kong SAR, P.R. China. The Complainants are represented in these administrative proceedings by Messrs. King & Wood Mallesons, whose address is 17th Floor, One ICC, Shanghai ICC, 999 Huai Hai Road (M), Shanghai 200031, P.R. China.

The Respondent is Trippro Trading Company, located at Flat H, Block 4, 10/F, Kwun Tong Industrial Building, 436 Kwun Tong Road, Kowloon, Hong Kong SAR, P.R. China. Respondent’s telephone number is +852 2304 1238, and email address info@trippro.com.hk. The Respondent is represented in these proceedings by Messrs. Edmond Yeung & Co., whose address is 3A-B, 235 Wing Lok St. Trade Centre, Sheung Wan, Hong Kong SAR, P.R. China.

2. Procedural History

On 13 January 2016, the First Complainant submitted a Complaint, written in Chinese, to the Hong Kong International Arbitration Centre ("HKIAC"), pursuant to the
Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On that same day, the HKIAC confirmed receipt of the Complaint. The First Complainant elected that this case to be dealt with by a one-person panel.

The Complaint noted the First Complainant’s request that Chinese be used as the language of the administrative proceedings and that translation into Chinese not be required for existing English language documents relevant to these proceedings. The reasons provided in the Complaint are:

a) That the website to which the disputed domain name resolves contains both Chinese and English content and that Respondent uses a Chinese language “We Chat” account, suggesting that the use of Chinese in these proceedings would not likely inconvenience the Respondent;

b) The First Complainant’s Complaint and the majority of its annexures were written in Chinese and that the translation of these materials into English would be an unnecessary burden and would reduce efficiency;

c) That the referenced factors fell within the scope of the Panel’s remit for determination, citing Xiaolianghu, case no. DHK-1500121;

d) That the HKIAC’s inherent advantage is that the majority of its experts can concurrently communicate in Chinese and English to fairly and effectively deal with mixed Chinese and English case files.

On 13 January 2016, the HKIAC transmitted by email to the Registrar, Hong Kong Domain Name Registration Company Limited, a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the HKIAC its verification response in English, confirming that the Respondent is listed as the Registrant and that the language of the registration agreement is the English language.

On 19 January 2016, the HKIAC advised the First Complainant by email that, given that the language of the registration agreement is English, therefore, pursuant to paragraph 11 of the Rules, the language of the proceedings would ordinarily be English. The HKIAC acknowledged receipt of the First Complainant’s request that Chinese should be used as the language of the administrative proceedings, and advised that the language issue would be submitted to the Panel for decision.

Also on 19 January 2016, the HKIAC informed the First Complainant of the Registrar’s right to refuse to accept a company outside Hong Kong to register a .com.hk domain, pursuant to Articles 3.6 and 4(i) of the Domain Name Registration Policies, Procedures and Guidelines for .hk and .香港 domain names. The HKIAC granted leave to the First Complainant to rectify the deficiency on or before 26 January 2016. On the same day, Complainants’ counsel submitted to the HKIAC by
email a revised Complaint, to which the Second Complainant, a Hong Kong incorporated company, was added as a party.

On 20 January 2016, the HKIAC sent a Notification of Commencement of Proceedings to the Respondent and all parties, advising the Respondent that it would have until 15 February 2016 to submit a Response to the Complaint.

On 26 January 2016, Complainants’ counsel sent an email to the HKIAC and the parties, advising that it had received the Respondent’s reply email claiming to be the First Complainant’s authorized distributor and requesting that the Panel afford the Complainants an opportunity to submit supplemental statements. By email reply on 02 February 2016, the HKIAC informed the First Complainant that its request would be submitted to the Panel for decision.

Thereafter, on 15 February 2016, the Respondent submitted its Response, written in English, by way of an email that was also written in English. The Respondent elected that a three-member panel deal with the case and that English be used as the language of the proceedings, pursuant to paragraph 11 of the Rules. Respondent additionally requested, however, that the translation of Chinese language documents and evidence into English not be required. Respondent proposed the names of three potential panelists.

By email on 16 February 2016, the HKIAC advised Complainants that a Response had been timely received from Respondent and that Respondent had requested that a three-member panel decide this matter.

By email on 18 February 2016, the HKIAC invited the Respondent to provide an Index of the Response Form and Annexes previously submitted by Respondent, and to serve a copy on Complainants. Respondent served the requested Index on the same day.

By email on 14 March 2016, the HKIAC confirmed the appointments of Mr David Kreider (柯瑞德 先生), as the Presiding Panelist, and Ms Vivien Chan (陈韵云 女士) and Mr Gary Soo (苏国良 先生) as Co-Panelists. The Panel received the file from the HKIAC and should render the Decision on or before 7 April 2015, if there are no exceptional circumstances.

On 15 March 2016, Complainants submitted an email request for an opportunity to submit supplemental statements that would not exceed three (3) pages.

On 22 March 2016, the Panel rendered Arbitration Panel Order No. 1, directing that English would be used as the language of these administrative proceedings, provided however, that Chinese language documents, emails, annexures and evidence heretofore submitted by the parties would not be required to be translated into English. The Order invited the Complainant to submit an English translation of the Complaint.
on or before 24 March, but recited that the Panel would accept no other or further submissions from the parties.

On 24 March 2016, the Complainant submitted an English translation of the Complaint.

3. Parties’ Contentions

For the Complainant

The First Complainant, Shenzhen Da-Jiang Innovations Science and Technology Co., Ltd. (abbreviation is “DJI Innovations”, hereinafter referred to as the “Complainant” or “Da-Jiang”), is a developer and manufacturer of Drone control systems and drone solutions. It is the leading pioneer in flight image systems worldwide. Complainant was incorporated in 2006 in Shenzhen, China. Da-Jiang provides revolutionary intelligent flight control products and solutions of the best performance and optimal experience for the Drone industry, industrial users and professional aerial photography applications. Since its establishment, Da-Jiang has set up branches in Beijing, Hong Kong, USA, Germany, Japan and other places, with customers in over 100 countries. Its products are well received worldwide and the Company enjoys a leading reputation in the industry.

The Second Complainant is a subsidiary established and controlled by the Complainant in Hong Kong.

The following is a listing of the First Complainant’s trademark registrations in the Hong Kong SAR and in the mainland of China:

<table>
<thead>
<tr>
<th>Trademark</th>
<th>Registration Number</th>
<th>Category</th>
<th>Goods/Services</th>
<th>Application Date</th>
<th>Validity</th>
</tr>
</thead>
<tbody>
<tr>
<td>DJI</td>
<td>303073301</td>
<td>7</td>
<td>Aeroengine adapters (engine parts); aeronautical engines; shock absorbers;</td>
<td>July 21, 2014</td>
<td>July 21, 2014</td>
</tr>
<tr>
<td></td>
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<td>transmissions for machines; control mechanisms for machines, engines or</td>
<td></td>
<td>July 20, 2024</td>
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<tr>
<td></td>
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<td>motors; cranks (machine parts); connecting rods for machines, engines or</td>
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</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>motors; crankshaft; speed governors for machines, motors and engines.</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>9</td>
<td>Sonars; navigational instruments; electrodynamic apparatus for the remote</td>
<td>July 21, 2014</td>
<td>July 21, 2014</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>control of signals; electric installations for the remote control of</td>
<td></td>
<td>July 20, 2024</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>industrial operations; naval signaling apparatus; remote control devices;</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
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<td></td>
<td>detectors; aerials; measuring apparatus; socket, plug and other contacts</td>
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<td></td>
<td></td>
<td></td>
<td>(electric connections); network communication equipment; intercommunication</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>apparatus; stands for photographic apparatus; transmitters of</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Trademark</td>
<td>Registration Number</td>
<td>Category</td>
<td>Goods/Services</td>
<td>Application Date</td>
<td>Validity</td>
</tr>
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<td>-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
<td>------------------</td>
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</tr>
<tr>
<td>DJI</td>
<td>10182912</td>
<td>9</td>
<td>Naval signaling apparatus; navigational instruments; sonar navigation and detection system; electronic activation apparatus for remote signal control; measuring apparatus; detector; precision measuring apparatus; optical apparatus and instruments; remote control instruments; electric installations for the remote control of industrial operations.</td>
<td>November 4, 2011</td>
<td>January 14, 2013</td>
</tr>
<tr>
<td>DJI</td>
<td>12033923</td>
<td>7</td>
<td>Aeroengine; aeronautical engines; adapters (engine parts); control mechanisms for machines, engines or motors; speed governors for machines, motors and engines; crank shaft; cranks (machine parts); connecting rods for machines, engines or motors; transmissions for machines; shock absorbers.</td>
<td>January 11, 2013</td>
<td>June 28, 2014</td>
</tr>
<tr>
<td>DJI</td>
<td>12034016</td>
<td>9</td>
<td>Naval signaling apparatus; navigational instruments; intercommunication apparatus; transmitters of electronic signals; sonars; aerals; electro-dynamic apparatus for the remote control of signals; network communication equipment; stands for photographic apparatus; measuring apparatus.</td>
<td>January 11, 2013</td>
<td>June 28, 2014</td>
</tr>
<tr>
<td>DJI</td>
<td>12033972</td>
<td>12</td>
<td>Air vehicles; airplane; amphibious airplanes; aircraft; vehicles for locomotion by land, air, water or rail; aeronautical apparatus, machines and appliances; balloons (dirigible); airships; remote control vehicles (other than toys); seaplanes.</td>
<td>January 11, 2013</td>
<td>June 28, 2014</td>
</tr>
<tr>
<td>DJI</td>
<td>12033961</td>
<td>16</td>
<td>Handbooks (manuals); printed matter; newspapers; posters; newsletters; magazines; printed publications; books; periodicals; publicizing picture.</td>
<td>January 11, 2013</td>
<td>June 28, 2014</td>
</tr>
<tr>
<td>DJI</td>
<td>12033985</td>
<td>28</td>
<td>Game console; games; scale model kits (toys); flying discs (toys); toys; brainpower toys; model plane stuff; pull ware; paragliders; cuff.</td>
<td>January 11, 2013</td>
<td>June 28, 2014</td>
</tr>
</tbody>
</table>
According to Section 4(a) of the Domain Name Dispute Resolution Policy that applies to "hk" domain names with effect from February 22, 2011; the Complainant claims:

1) **The Registrant’s Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights**

   a) The Complainant owns the trademark in Hong Kong.

   As stated above, the Complainant registered No. 10182912 “dji” trademark in mainland China on November 4, 2011, and registered No. 303073301 “dji” trademark in Hong Kong on July 21, 2014.

   b) The disputed domain name is identical to the above trademark.

   The disputed domain name is dji.com.hk, among which.com.hk belongs to generic domain name and plays no role in distinguishing the disputed domain name from the trademark. (Den Braven Sealants B.V. v. Bross Holding AD, (No.D2012-2163), WIPO case); therefore, it depends on the main part of the domain name, i.e., dji, to determine whether the disputed domain name is identical to the trademark of the Complainant.

   The Complainant holds that though the trademark of the Complainant is designed graphics of three letters, the three letters are clearly identifiable and therefore it can still be determined that the domain name is identical with the trademark. (DHK-1500124 HK Case, experts panel determined that the disputed domain name, i.e., “vpower.hk”, was identical with the “” and “” trademarks of the Complainant.)

2) **The Registrant has no rights or legitimate interests in respect of the Domain Name**

   a) The Complainant has never licensed the Respondent to use the registered trademark “dji”;

   b) The Complainant has never authorized the Respondent to use its intellectual property. No IP transaction happened between the Complainant and the Respondent;
c) By checking on Hong Kong Intellectual Property Department, the Respondent does not own registered trademark in connection with “dji”.

The Complainant holds that the above evidence sufficiently constitutes prima facie evidence to prove that the Respondent has no rights or legitimate interests; therefore the burden of proof shifts to the Respondent. (ADMINISTRATIVE PANEL DECISION Croatia Airlines d.d. v. Modern Empire Internet Ltd. WIPO case No. D2003-0455).

3) The Registrant’s Domain Name has been registered and is being used in bad faith

a) Registered in bad faith

i. The Complainant (headquartered in Shenzhen) becomes well-known prior and its reputation has reached both mainland China and Hong Kong.

From the developing history of the Complainant, we can see that after its establishment in 2006, the Complainant registered dji trademark in mainland China for the first time in 2011. Da Jiang launched “dji phantom 1”, the first aerial photography all-in-one drone in the world at the beginning of 2013, and in that October launched “dji phantom 2”, the all-in-one drone with highest sales so far. It can be seen that Da-Jiang had its brand awareness increased rapidly due to its excellent products in 2013, and appeared in the public view across the world. It launched the first and also the top-selling aerial photography all-in-one drone in that year, and the reputation of dji trademark increased to world-renowned level through the accumulation of that year.

Local news media in Hong Kong, such as Hong Kong Trademark, Apple Daily, South China Morning Post, and Ta Kung Pao, reported the news about DJI successively on December 2, 2013.

Therefore, the Complainant contends that the DJI trademark is well known in Hong Kong before the Respondent registered the disputed domain name.

ii. The Respondent shall have already known about DJI before registering the domain name.
Firstly, as stated above, DJI has become well-known in Hong Kong.

Secondly, “DJI” is not a word derived from Chinese pinyin, daily expressions or English, but an invented word derived from the initial capitalized letters of “Da Jiang Innovations”, the English name of Shenzhen Da-Jiang Innovations Science and Technology Co., Ltd.

Furthermore, the domain name in dispute resolves to tripro.com.hk, a website that sells Drone products. According to the query results of WHOIS, the registration date of the domain name tripro.com.hk is November 9, 2012. Besides, by limiting the time as before January 1, 2014 on Google search engine, it can be found that the website with the web page on selling DJI Drone had existed if searching “DJI tripro” and “tripro”.

For further verification, the Complainant checked the caches of tripro.com.hk successively according to the time order via archive.org, and found out that the website had been put into operation from December 2012, which sold GoPro products at first and declared for several times that it was the authorized distributor of GoPro in Hong Kong. On November 29, 2013, the icon of DJI Phantom appeared on the bottom left of the website for the first time, and was listed after a series of brands which were distributed by tripro.com.hk. The image link was also created on November 30, 2013 to sell DJI series products.

As the website also sells GoPro products, based on the information of DJI and GoPro in 2013 as searched through Google, it is not difficult to find that the buyers of DJI, from professional photographers to enthusiastic fans, usually used GoPro with DJI for combination into aerial photography apparatus. Afterwards, as there were an increasing number of buyers having such demand, DJI also officially launched in June 2013 the pan-tilt cradle, support and other products to be used together with GoPro, which were available for sale on many sales platforms. Lots of news media reported about that, and there were also netizens on the enthusiasts BBS that tested and discussed such products.
Thus it can be seen that relevant industrial experts or amateur fans had linked DJI to GoPro. As an "authorized dealer" of GoPro, it is impossible that the Respondent didn’t know the existence of the DJI brand.

On the above grounds, the Complainant holds that the Respondent had already known about the "DJI" trademark of the Complainant before registering the disputed domain name.

iii. Bad faith is obvious. Even if the domain name was registered before the registration of the trademark in Hong Kong, the determination of bad faith will not be affected.

DJI became famous prior and it is reasonably believed that the Respondent have known it. Although the Respondent registered the domain name in question on January 27, 2014 and the "DJI" trademark was registered in Hong Kong in July 2014, which was later than January 2014 when the disputed domain name was registered, the evidence submitted by the Complainant clearly shows that “DJI” trademark has gained high popularity before its registration in Hong Kong, and therefore the determination of bad faith should not be affected. (Baidu Online Network Technology (Beijing) Co., Ltd. vs. HONGKONG ZONGHENG INTERNATIONAL PROPIETARY CO., LIMITED, HK case: DHK-0800040)

In addition, it is found by the Complainant that the Respondent claims that it is the agent of DJI in Hong Kong in its WeChat account TripPro as provided in the contact information of the above-mentioned website. The Complainant, however, was never authorized by the Respondent to act as its exclusive agent. Therefore, such false claim by the Respondent further proves its bad faith in registering the domain name in question.

b) Bad faith use

i. The Respondent uses the disputed domain name in such pattern: After clicking dji.com.hk, the webpage redirects to the domain name of "trippro.com.hk" and the website no longer shows "dji.com.hk". The Respondent takes advantage of DJI’s reputation
to boost the page views of its own website. It usurps DJI’s goodwill and opportunity to accumulate reputation by leading customers who know DJI to notice the respondent’s trade name.

ii. The Respondent also sells Drone products of other brands which are owned by the competitors of Complainant, such as Sky Hero from Belgium, XIRO Xplorer products from Shenzhen and HUBsan. (Refer to Exhibit 15), the Respondent claims itself to be the agent of the Complainant in Hong Kong in its WeChat account (Refer to Exhibit 14), therefore increasing its own business trading opportunities by misleading the consumers to believe it is exclusive agent and all products sold either indorsed by DJI or related to DJI. The Respondent uses the disputed domain name to usurp the business trading opportunities of the Complainant by attracting customers whose original plan is to by DJI products.

Based on the reasons above, the Complainant contends that the Respondent misleads the consumers who intend to do business only with the complaint by using the disputed domain name. It makes the customers believe that the respondent is the exclusive distributor of the complaint; however it is selling products of the complaint’s competitors on website at the same time. The respondent has intentionally increased own opportunity of business trade and accumulating of reputation by using DJI’s goodwill through the disputed domain name. Its use is not bona fide. Bad faith is obvious. It also falls into the provision as provided by Article 4(b)(iv) of the Dispute Resolution Policy that “by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.”

In conclusion, the registrant’s domain name has been registered and is being used in bad faith.

For the Respondent

1. It is submitted the Complainants’ trademark , being a stylized device, is not “identical” to the textual domain name “dji” : DHK-1000058 <mis.com.hk>. Further, by the way it is designed, the Complainant’s device
could be read as “cljl”, “ciji”, “elji” “cijl” as well as “djl” hence the domain name and the trademark are not confusingly similar to each other.

2. In reply to paragraph (6)(二)(1)(b) of the Complaint, it is submitted that the “vpower.hk” case does not assist the Complainants and is in fact against them because in that case, the letters on the device are clear and can be read as “VPOWER” only whilst those in something other than the domain name.

3. It is therefore submitted that the Complainants have failed to satisfy the 1st part of Paragraph 4(a)(i) of the Policy.

First Element: Second Part: If Complainants have rights in Hong Kong?

4. Before examining this question, the Respondent submits that by operation of the wording “in Hong Kong” under Paragraph 4(a)(i) of the Policy, rights outside Hong Kong, if any, should not be considered: Attachment A the Panel’s comment at top of page 6 of the decision in DHK-0600011 <verisign.hk> and therefore the materials produced by the Complainants to show their trademark registration and media reports in China should not be considered.

5. In any event, it is submitted that those media reports in China do not assist the Complainants because as far as trademark rights are concerned, China only recognizes registered trademark rights and not common law trademark rights: Attachment B the Panel’s comment at top of page 10 of the decision in DCN-0900382 <covidien-china.cn> etc.

6. In deciding if the Complainants have trademark rights in Hong Kong, it is submitted that the Panel should take into account if the Complainants themselves regard themselves having rights in purely textual “dji” in Hong Kong: Attachment C the Panel’s comment at top of page 6 of the decision in DN-0300008 <ps.com.hk>. It is submitted that in this case even the Complainants themselves do not regard themselves having rights in purely textual “dji” in Hong Kong because if they did, they would have at least endeavoured to register “dji” in Hong Kong and such places where they had registered the device. All trademark registrations the Complainant has shown are in relation to the device only. It is therefore submitted that the Complainants do not have trademark rights in Hong Kong.
7. To decide, under the Policy, if the Complainants have trademark rights in Hong Kong, it is noted that the Policy purposely makes no reference to (a) what the trademark rights are (i.e. if registered, common law rights or both); or (b) when the rights are acquired (i.e., if the rights have to be acquired before registration of the domain name).

8. It is submitted the reason for (a) is to allow UDRP (based on which the Rules are modelled) to be applied in different jurisdictions where different legal rights are recognized hence UDRP purposely does not define what the “rights” are and leave it to be interpreted according to the local law. That is why in China, where only registered rights are recognized, “rights” cover registered rights only: Attachment B, and in Hong Kong, where both registered and common law trademark rights are recognized, “rights” will cover both.

9. Moving on to (b), it is submitted that that question “whether a complainant has trademark rights in Hong Kong” should be decided by reference to the time the particular “right” is acquired and therefore, in relation to registered rights, when trademark registration was secured (because registered trademark rights only come into existence after trademark registration) and, in relation to common law rights, at which point of time did goodwill being established (because common law trademark rights only come into existence after establishment of goodwill).

10. It is therefore submitted that on the proper construction of the Policy, in deciding whether a complainant has trademark rights in Hong Kong, both registered and common law rights can be take into account but in relation to the former, only if it was registered before the domain name because there cannot be any registered trademark right before trademark being registered, and, in relation to the latter, if goodwill being established before registration of the domain name because there cannot be any common law trademark right before the point in time at which goodwill established.

11. In the present case, the Complainants’ registered trademark rights in Hong Kong were acquired after registration of the domain name, albeit just 6 months after. It is submitted that whilst the proximity between time when trademark right acquired and domain name registration secured will be relevant to the issue of element 3 “bad faith” (this will be dealt with below), it is submitted that by reason of the above, the Complainants have not satisfied Paragraph 4(a)(i) of the Rules as far as registered rights are concerned.

12. Moving on to common law rights. It is the Complaints’ case that the Second Complainant, is a Hong Kong company controlled and owned by the First Complainant.

13. The Second Complainant, formed in 2008, is the operative arm of the Complainants’ businesses in Hong Kong and therefore goodwill in Hong Kong,
if any, would belong to the Second Complainant. It is submitted that the Complainants’ evidence falls short of proving goodwill in Hong Kong, hence common law rights in the trademark “dji”: See the Panel’s comment at paragraph 25 of the decision in DN-0300009 <pps.com.hk> and the Panel’s comment just below the middle of page 6 of the decision in CPR-06-01 <CLAIMSEARCH.COM>. In any event, none of the evidence relates to the Second Complainant. It is therefore submitted that the Complainants have not satisfied Paragraph 4(a)(i) of the Policy as far as common law rights are concerned.

14. It is therefore submitted that the Complainants have failed to satisfy the second part of Paragraph 4(a)(i) of the Policy as a whole.

Second Element: If Respondent has rights or legitimate interests?

15. It is accepted that provided the Complainants have proved prima facie case, the burden of proof would shift to the Respondent to show itself having rights or legitimate interests. It is submitted in this case, the Complainants have not proved prima facie case.

16. In their Complaint, the Complainants rely on three allegations to support their claim that they have proved prima facie case: paragraph (6)(Ⅱ)(2) of the Complaint

17. In reply to the Complainants’ allegation under paragraph (6)(Ⅱ)(2)(a) of the Complaint, the Respondent notes the Complainants own no purely textual “dji” trademark registration in Hong Kong hence there would be no registered trademark to be licensed to be used anyway. It is submitted that paragraph (6)(Ⅱ)(2)(a) of the Complaint is irrelevant to the case.

18. The Respondent agrees to the allegation under paragraph (6)(Ⅱ)(2)(c) of the Complaint, but the Respondent submits it has rights and legitimate interests not because of any trademark registration in its name, but because of the fact that that the Respondent has been selling lawful and genuine goods at his website www.tripro.com.hk by reason that the Respondent is one of the Complainants’ authorized distributors in Hong Kong. The Respondent cannot understand why the Complainants choose to falsely claim they have no relationship with the Respondent under paragraph (6) (Ⅱ)(2)(b) of the Complaint.

19. If the Panel finds the Complainants have not proved prima facie case, it is submitted that the Complainants have not satisfied Paragraph 4(a)(ii) of the Rules.

20. Alternatively, it is submitted that the Respondent has rights to and legitimate interest in the domain name under Paragraph 4(d)(i) of the Policy.
21. Pursuant to that distributorship, the Respondent has been offering genuine goods of the Complainants at his website since at least 29 November 2013 and well before receiving notice of the dispute.

22. The Respondent therefore submits he has “before any notice …… of the dispute” been already using the domain name “in connection with a bona fide offering of goods………..in Hong Kong” and relies on that to demonstrate his rights and legitimate interests to the domain name for purposes of Paragraph 4(a)(ii): Paragraph 4(d)(i) of the Policy.

23. In that regard, the Respondent also relies on the passage under paragraph 20.074, Chapter 20 Intellectual Property And Domain Name Arbitration written by Mr Loke-Khoon Tan of the textbook Arbitration in Hong Kong A Practical Guide, 2nd Edition which says if a respondent uses a complainant’s trademark “as part of a domain name …… to advertise the fact that the ……. site offers the” complainants’ goods and the “respondent is bona fide ……. and has done so prior to receiving notice of the dispute, then it will probably be able to keep its domain name”.

24. The Respondent further refers to a company called FlyCamHK being also one of the Complainants’ authorized distributors in Hong Kong. The Respondent also refers the Panel to the domains www.dji.flycamhk.com and www.dji-phantom3.flycamhk.com, both of FlyCamHK, and the fact that FlyCamHK has been describing itself as “DJI 專門店 荔枝角/灣仔 香港保修” (translated as DJI authorized distributor Lai Chi Kok/Wanchai Guarrantee Repair) and “大疆港粵最大代理 零售/批發維修” (translated as Biggest Dajiijiang authorized distributor in Hong Kong and Macao Retail/Wholesale/Repair) on the internet.

25. Like FlyCamHK, the Respondent has on the internet been describing itself as “DJI-Triippo Trading Co.” and “DJI 香港代理／批發及零售” (translated as DJI Hong Kong agent/wholesale and retail). Not only that, the Respondent has at his website makes it clear that he is the authorized distributor of and not the Complainants by prominently displaying at the top left corner on each of the page of his website his own logo . For these reasons, the Respondent submits the offering of genuine goods at his website has been bona fide.

26. By reason of the above, the Respondent submits that the Complainants have failed to satisfy Paragraph 4(a)(ii) of the Policy.
Third Element: First Part: Domain registered in bad faith?

27. The Respondent submits that in cases like the present one where the domain name was registered before the complainant acquiring trade mark rights in Hong Kong (in this case, by reason of the 1st Complainant’s registered trademark in Hong Kong), “it would generally require stronger evidence” from the complainant “to prove that the domain name was registered in bad faith” by the respondent. See the decision in DHK-1500124 <vpower.hk>.

28. The Respondent submits that the Complainants in this case have not submitted adequate evidence to prove “bad faith” in registering the domain, let alone “stronger evidence”.

29. The Complainants’ main allegations are (a) the Respondent had knowledge of the Complainants before registration of the domain; and (b) the Respondent falsely claiming to be the Complainants’ authorized distributor.

30. By reason of the matters set out above, the Complainants’ allegation (b) is false. In relation to the Complainants’ allegations (a), whilst it is accepted that the Respondent knew of the Complainants before registration of the domain, it is submitted that the Complainant has not produced sufficient evidence to prove goodwill in Hong Kong as alleged. See the decision in DHK-0600010 <kfc.hk>.

31. The Respondent submits that the primary reason for registering the domain is a genuine commercial one, namely, to increase the Respondent’s turnover in sales of the Complainants’ goods and not to prevent the Complainants from reflecting “dji” in a corresponding domain name.

32. Further, the Respondent and the Complainants are not competitors and the Respondent has not disrupted the Complainants’ business, their respective interests are mutual — increase in the Respondent’s turnover would naturally also increase that of the Complainants.

33. The Respondent submits that all the above factors point away from “bad faith” registration of the domain: Paragraph 4(b)(i), (ii) and (iii) of the Policy.

34. By reason of the above, the Respondent submits that the Complainants have failed to satisfy Paragraph 4(a)(iii) of the Policy as far as registration in bad faith is concerned.

Third Element: Second Part: Domain used in bad faith?

35. Whilst it is admitted that using the domain name might result in “Internet users” being “attracted ….. to the” Respondent’s “web site” and “for commercial gain”, it is submitted that the Respondent is not the only stand to benefit from the “commercial gain” or that the Respondent stand to gain at the expense of
the Complainants. The respective "commercial gain" and interests of the Respondent and that of the Complainants stand side-by-side.

36. It is further submitted, there is no "likelihood of confusion" as to the "source" (because the goods are genuine goods lawfully sold at the website sponsorship), "affiliation" or "endorsement" (because the Respondent has made it clear he is the Complainants' authorized distributor and nothing more.

37. By reason of the above, the Respondent submits that the Complainants have failed to satisfy Paragraph 4(a)(ii) of the Policy.

38. By reason of the above, the Respondent submits that the Complainants have failed to satisfy Paragraph 4(a)(iii) of the Policy as far as use in bad faith is concerned.

Summary

39. The Respondent contends that the Policy, like the Uniform Domain-Name Dispute Resolution Policy ("UDRP") on which the Policy is modeled, is designed to prevent clear cases of cybersquatting and not designed to address all types of claims concerning the use of another's trademark on the internet, including claims for trademark infringement and that the Complaint has to be considered in terms of the Policy. See the decision in DHK-0500009 <expedia.hk>.

40. If the Panel finds that the Complainants have failed to satisfy each and every requirement of Paragraphs 4(a)(i), (ii) and (iii) of the Policy, the Respondent requests the dismissal of the Complaint, and the maintenance and full control of the domain name by the Respondent.

4. Findings

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy"), which is applicable hereto, the Complainant has the burden of proving that:

(i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and

(iii) the Disputed Domain has been registered and is being used in bad faith; and

(iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.
(1). **Identical/confusing similarity**

In view of the English transliteration of the First Complainant’s company name, as well as the media coverage extolling the features of the First Complainant’s drone aircraft and related products, the Panel is satisfied that the First Complainant enjoyed common law trademark rights in Hong Kong in respect of its “DJI” mark well before Respondent registered the disputed domain name <dji.com.hk> on 27 January 2014. The Panel finds that the disputed domain name is confusingly similar, if not identical, to the First Complainant’s trademark.

(2). **Rights or Legitimate Interests of Respondent**

The Respondent has produced in evidence a letter dated 5 December 2014, written on the First Complainant’s corporate letterhead, purporting to grant the Respondent the right to distribute certain of the First Complainant’s drones in Hong Kong on a non-exclusive basis. Moreover, it cannot be seriously disputed that Respondent, through its website at URL: [www.trippro.com.hk](http://www.trippro.com.hk), was offering certain models of the First Complainant’s drones for sale at least as early as November of 2013, or that the disputed domain name re-directed Internet users to Respondent’s website.

Key to the Panel’s decision in this matter, the First Complainant alleges that it never gave the Respondent authorization to use its “DJI” mark or the disputed domain name, nor has the Respondent made allegations or produced evidence to suggest the contrary. Rather, this is a case where the Respondent was authorized merely to re-sell certain of the First Complainant’s products as a non-exclusive distributor. It is undisputed that Respondent was in the business of selling drones, aerial photography equipment and related products of other competing manufacturers, in addition to whatever sales it made of the First Complainant’s products.

The Panel finds that the Respondent has no rights or legitimate interest in respect of the disputed domain name.

(3). **Bad faith**

The Respondent concedes, as it must under the facts of this case:

Whilst it is admitted that using the domain name might result in “Internet users” being “attracted ... to the” Respondent’s “web site” and “for commercial gain”, it is submitted that the Respondent is not the only stand [sic] to benefit from the “commercial gain” or that the Respondent stand to gain at the expense of the Complainants. The respective “commercial gain” and interests of the Respondent and that of the Complainants stand side-by-side.

The Panel rejects the Respondent’s conclusion.
By infringing upon the First Complainant’s company name and mark to mislead and misdirect Internet users to the Respondent’s website, the Respondent was blocking the Complainants from making direct Internet sales to customers through the First Complainant’s own website, which could be found at URL: www.dji.com. The ability to make direct sales would presumably have saved the Complainants the cost of a “middleman” or distributor, in this case the Respondent. Respondent’s use of the disputed domain name wrongfully to misdirect the Complainants’ potential customers to Respondent’s own website also increased the risk to the Complainants that potential Internet customers would purchase drones and related products from the Complainants’ competitors, thereby depriving the Complainants of sales altogether.

On the facts of this case, as shown by the evidence, the Panel has no difficulty finding that Respondent registered and used the disputed domain name in bad faith.

5. **If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name**

Not applicable.

6. **Conclusion**

The Complaint is established and upheld. In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, this Panel orders that the disputed domain name <dji.com.hk> be transferred to the Second Complainant, iFlight Technology Company Limited.

On behalf of the Panel:

[Signature]

David L. Kreider, Presiding Panelist

Vivien Chan, Co-Panelist

Gary Soo, Co-Panelist

Dated: 30th March 2016