Hong Kong International Arbitration Centre
.hk Domain Name Dispute Resolution

ADMINISTRATIVE PANEL DECISION

Complainant: N.V. NUTRICIA
Respondent: HOHOSALES LIMITED
Case No. DHK-1600135
Disputed Domain Name: <profutura.com.hk>

1. The Parties and Contested Domain Name

The Complainant is N.V. Nutricia of Eerste Stationsstraat 186, 2712 HM Zoetermeer, The Netherlands.

The Respondent is Hohosales Limited of Rm. 511, 5/FL., Lee King Industrial Bldg., 12 Ng Fong Street, San Po Kong, Hong Kong.

The domain name at issue is <profutura.com.hk> (“the disputed domain name”). The disputed domain name is registered with the Hong Kong Domain Name Registration Company Limited.

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre ("the Centre") on November 15, 2016. On November 16, 2016, the Centre confirmed that the complaint with respect to the disputed domain name had been received.

On November 16, 2016, the Centre transmitted by email to the Hong Kong Domain Name Registration Company Limited a request for registrar verification in connection with the disputed domain name and in particular whether the Respondent was the Registrant or holder of the disputed domain name.

On November 21, 2016 the Hong Kong Domain Name Registration Company Limited transmitted by email to the Centre its response that, inter alia, the Respondent is the domain name holder of the disputed domain name, that the Domain Name Dispute Resolution Policy for .hk and .香港 domain names (“DNDRP” or “the Policy”) is applicable to this proceeding and that pursuant to Section 2a (i) of the HKIRC DNDRP Rules of Procedure under the DNDRP (“the Rules”), and provided the billing contact information for the disputed domain name.
By the same communication the Hong Kong Domain Name Registration Company Limited advised the Centre that the disputed domain name was currently in ACTIVE status and that on receiving the Centre’s information for the dispute filing, it had put the disputed domain name into BLACKLIST, meaning that it could not be transferred and/or deleted during the relevant period.

On November 21, 2016, the Centre confirmed to the Complainant that it had received the case filing fee concerning the disputed domain name.

On November 21, 2016, the Centre, by email communication, sent to the Respondent the Notification of Commencement of Proceedings stating that the Complaint had been filed with the Centre, attaching thereto the Complainant and its annexures and advising the Respondent that it had 15 business days, i.e. on or before December 12, 2016, to submit a Response.

On December 12, 2016 the Respondent wrote to the Centre by email attaching its Response to the Complaint and on December 13, 2016 the Centre acknowledged the timely receipt of the Response.

On December 13, 2016 the Centre wrote to The Honourable Neil Anthony Brown QC by email to the effect that it was minded to appoint him as the sole Arbitrator of the dispute and requesting him to confirm to the Centre his availability to act as Arbitrator in this matter and if so, whether he was in a position to act independently and impartially between the parties.

On December 13, 2016 the said The Honourable Neil Anthony Brown QC wrote to the Centre by email confirming his availability to act as Arbitrator in the dispute and that he was in a position to act independently and impartially between the parties.

On December 14, 2016 the Centre wrote to the parties and to the said The Honourable Neil Anthony Brown QC by email confirming his appointment as Arbitrator and advising that a decision in the dispute was to be rendered on or before January 6, 2017.

The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rule 7.

The Panel finds that the Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the documents submitted and in accordance with the Policy, the Rules, and the HKIAC Supplemental Rules, the eligibility requirements of the relevant Domain Name Category and the law which the Arbitration Panel deems applicable.

3. **Factual background**

The following background is taken from the submissions of the parties except where otherwise stated.
The Complainant is a company incorporated pursuant to the Laws of The Netherlands and is engaged in the provision of early life nutrition (baby nutrition) and medical nutrition and related goods and services. The Complainant or its predecessors in title have been engaged in the production of medical nutrition since 1905 and it launched its first baby food in 1946. The Complainant operates internationally including in Hong Kong.

The Complainant submits in substance that the disputed domain name entirely reproduces its trademark PROFUTURA and that it resolves to a website that offers the Complainant’s APTAMIL products for sale, including its APTAMIL PROFUTURA products.

The Respondent is a company incorporated in Hong Kong and it appears from the evidence that it registered the disputed domain name on or about October 27, 2014 in its own name. The Respondent concedes that it registered and has used the disputed domain name and that it has done so for more than 3 years without any claim or complaint from the Complainant.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

1. This Complaint is based on the Complainant’s following trademark rights:

(a) Hong Kong trademark PROFUTURA no. 302673775, registered since July 16, 2013 covering goods and services in classes 5, 29, 30 and 32, more particularly set out in the Complaint; and

(b) European Union Trademark PROFUTURA No. 011982956, registered since May 4, 2014, covering goods and services in classes 5, 29, 30 and 32, more particularly set out in the Complaint.

2. The Complainant is engaged in its aforesaid business internationally, including in Hong Kong. As part of its business, the Complainant has developed Aptamil PROFUTURA Growing Up milk for children of 1-2 years, a nutritionally tailored milk to support toddlers aged 1-2 years as they continue to undergo significant growth and cognitive development. The Complainant’s advanced formulation features a unique blend of scientifically researched ingredients to help build strong foundations for the baby's future progress. Aptamil PROFUTURA is specially formulated to support the nutritional needs of a baby.

3. The Complainant has become aware of the registration of the disputed domain name <profutura.com.hk> which entirely reproduces Complainant’s trademark PROFUTURA. The disputed domain name resolves to a website offering Complainant’s APTAMIL goods for sale, including APTAMIL PROFUTURA products without authorization.
4. Before commencing this proceeding, Complainant made efforts to resolve the present dispute amicably by sending a cease-and-desist letter to Respondent via registered letter and e-mail on December 16, 2015, relying on its aforesaid trademark rights. The cease-and-desist letter requested Respondent to cease the use of the domain name in dispute and to transfer it to Complainant. A reminder was sent to Respondent on December 23, 2015 but no response was received.

5. A further cease-and-desist letter was sent to the hosting provider requesting it to deactivate the website to which the disputed domain name resolved. A reminder was sent to the hosting provider on December 21, 2015 but it refused to deactivate the website. Accordingly, the Complainant initiated the present proceeding in order to obtain the cancellation of the disputed domain name.

6. **Policy, Paragraph 4(a)(i).** The disputed domain name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights, namely the Complainant’s Hong Kong trademark PROFUTURA n° 302673775 aforesaid.

7. Complainant enjoys a worldwide reputation and owns numerous PROFUTURA trademark registrations around the world including in Hong Kong. Complainant also commercialises various APTAMIL PROFUTURA products in Hong Kong.

8. The disputed domain name <profutura.com.hk> entirely reproduces the trademark PROFUTURA. Previous Panels have held that where a domain name incorporates the whole of the trademark, it is considered to be confusingly similar to the reproduced trademark (DJK-1500126, *Television Broadcasts Limited v Samuel Chan*, Annex 8: “It is confusingly similar to the TVB trademark because the domain name incorporates the whole of the trademark”). Likewise, by registering the said domain name, Respondent created a likelihood of confusion with Complainant’s trademark PROFUTURA. It is likely that the domain name could mislead Internet users into thinking that it is, in some way, associated with Complainant’s activities in Hong Kong.

9. The confusing similarity between the disputed domain name and Complainant’s trademark is further heightened with the website set up by Respondent. Indeed, the disputed domain name directs towards an online store commercialising Complainant’s products. Shipping services and contact details are also provided. Moreover, Complainant’s products and logo are reproduced on the said website. Hence, it is submitted that internet users are more likely
to believe that the disputed domain name is endorsed by Complainant and is used to commercialise its products.

10. In that regard, the Complainant relies on the decision in Nike Innovate C.V. and Nike Hong Kong Limited v UBN Limited, DHK-1600129 as the Complainant’s products, as PROFUTURA, are famous worldwide and the Complainant has used the trademark PROFUTURA in connection with a wide variety of products and services around the world. Consequently, the public has learnt to perceive the goods and services offered under this mark as being those of Complainant.

11. Moreover, the addition of generic top-level domain names such as “.com” or country code top-level domain names such as “.hk” or “.com.hk” to portions of the subject domain name is irrelevant in relation to the confusingly similar analysis (DHK-1400108, Conair Corporation v Tom Lee CCTV Ltd., ).

12. Accordingly, the disputed domain name is identical or confusingly similar to the trademark PROFUTURA in which the Complainant has rights, and the requirements of Paragraph 4(a)(i) of the Policy are satisfied.

13. **Policy, Paragraph 4(a)(ii).** The Respondent has no rights or legitimate interests in respect of the disputed domain name.

14. Respondent is not commonly known by the name PROFUTURA. Neither is it affiliated with Complainant in any way nor has it been authorized by Complainant to use and register its trademark, or to seek registration of any domain name incorporating said mark. Furthermore, Respondent has no prior rights or legitimate interest in the domain name. The registration of the PROFUTURA trademark preceded the registration of the disputed domain name.

15. Moreover, the domain name in dispute is so similar to the famous PROFUTURA trademark of Complainant, that Respondent cannot reasonably pretend it was intending to develop a legitimate activity through the disputed domain name.

16. Besides, Respondent did not demonstrate use of, or demonstrable preparations to use, the disputed domain name or name corresponding to the disputed domain name in connection
with a bona fide offering of goods or services. Indeed, the domain name in dispute resolves to a website imitating Complainant’s official website by offering on sale Complainant’s products and thereby creating some sort of false affiliation with Complainant. Due to the presence of APTAMIL PROFUTURA products on the website, indicating Complainant’s line of products and APTAMIL PROFUTURA ads of Complainant, internet users are likely to believe wrongly that it is an official website. Additionally, when clicking on the products displayed on the website, Internet users are redirected towards the website, http://www.aptamil.com.hk. The domain name <aptamil.com.hk> is another domain name litigiously registered reproducing another trademark of Complainant. It is presently subject to an administrative procedure. Competitors’ products like “Babydream” and “Dontodent” are also offered on sale of the website. Indeed, when searching the denomination “Dontodent” on the website, the Internet user is redirected toward the website www.aptamil.com.hk, which offers the Complainant’s as well as competitors’ products for sale. Such circumstances do not represent a use in connection with a bona fide offering of goods and services. Respondent is thus not accurately disclosing its relationship with Complainant.

17. Respondent is making a non-legitimate use of the domain name, with intent for commercial gain to misleadingly divert consumers from Complainant’s official website. Moreover, Respondent uses the disputed domain name to sell items which could be non-authentic. They could be hazardous to people’s health. Such behaviour is not a legitimate or fair use of the disputed domain name.

18. Additionally, Respondent did not answer Complainant’s cease and desist letter despite Complainant’s reminder. When Respondent do not avail itself of its rights to respond to Complainant, it can be assumed that Respondent has no rights or legitimate interest in the disputed domain name: WIPO Case No. D2010-1017, AREVA v. St James Robyn Limoges.

19. Accordingly, the Respondent has no rights or legitimate interests in respect to the domain name in dispute under Paragraph 4(a)(ii) of the Policy.

20. **Policy, Paragraph 4(a)(iii).** The disputed domain name has been registered and is being used in bad faith.
21. It is implausible that Respondent was unaware of Complainant when he registered the disputed domain name.

22. Bad faith can be found where Respondent “knew or should have known” of Complainant’s trademark rights and, nevertheless registered a domain name in which he had no rights or legitimate interest: WIPO Case No. D2009-0320, Research In Motion Limited v. Privacy Locked LLC/Nat Collicot.

23. The Respondent’s reproduction of the Complainant’s well known trademark in its entirety in the disputed domain name clearly proves that the Respondent was aware of the existence of Complainant’s trademark.

25. The web pages set up by Respondent show that it had the Complainant and its activities in mind at the time of the registration of the disputed domain name.

26. A PROFUTURA trademark or Google search would have revealed to Respondent the existence of Complainant and its trademark, showing bad faith.

27. It is inconceivable that Respondent was unaware of the existence of Complainant and its trademarks at the time of registration of the disputed domain name.

28. The Respondent’s failure to reply to the cease-and-desist letter and reminder that Complainant sent gives rise to an inference of bad faith.

29. It is therefore apparent that Respondent registered the disputed domain name in bad faith.

30. Respondent also uses the domain name in bad faith.

31. As the disputed domain name is confusingly similar to Complainant’s trademark, there is a likelihood of confusion resulting in the diversion of internet traffic from Complainant’s web site to Respondent’s website: WIPO Case N° D2006-1095, Edmunds.com, Inc. v. Triple E Holdings Limited.

32. Indeed, the disputed domain name resolves towards a website commercialising Complainant’s products, displaying Complainant’s logo and requesting personal information from customers.
33. The imitation of Complainant’s website and activities revealed by the evidence shows an unlawful commercial use misleadingly to divert consumers and the non-existence of any fair use of the disputed domain name: Nike Innovate C.V. and Nike Hong Kong Limited v UBN Limited, DHK-1600129.

34. Respondent’s primary motive in registering and using the disputed domain name to capitalize on or otherwise take advantage of Complainant’s trademark rights is shown by the creation of initial interest confusion by the Respondent.

35. It is also likely that Respondent registered the domain name to prevent Complainant from reflecting its trademark in the disputed domain name, which is bad faith use: L’oreal v. Chenxiansheng, (WIPO Case n° D2009-0242.

36. Accordingly, the Respondent both registered and used the disputed domain name in bad faith within the meaning of Paragraph 4(a)(iii) of the Policy.

37. **Policy, Paragraph 4(a)(iv).** The fourth limb under paragraph 4(a) of the Policy is not applicable to this proceeding, as the disputed domain name has apparently not been registered by an individual person but by a body corporate.

38. **Remedy.** For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Complainant requests that the Panel order that the disputed domain name <profutura.com.hk> be cancelled.

B. **Respondent**

The Respondent made the following contentions.

1. The disputed domain name has been registered and used by the Respondent for more than 3 years without any claim or complaint by the Complainant.
2. The Complainant cannot register the disputed domain name as it is not a Hong Kong registered company.
3. The Complainant does not use any other domain name incorporating “profutura”, which it could have done.
4. The Complainant did not take any action to obtain the disputed domain name in a timely manner and the delay shows it regarded the domain name as unimportant to it.
5. The Complainant had the chance to register the disputed domain name before the Respondent but it did not do so.
6. A trademark registration does not unconditionally and automatically grant the right to the corresponding domain name in many cases.

5. **Findings and Discussion of the Issues**

Paragraph 4(a) of the Domain Name Dispute Resolution Policy for .hk and 香港 domain names provides that each of following four findings must be made in order for a Complainant to prevail:

(i) 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; and

(ii) The Registrant has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Registrant’s Domain Name has been registered and is being used in bad faith; and

(iv) If the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

The Panel will address each of those elements in turn.

**A) Identical / Confusingly Similar**

The first question that arises is whether the Complainant has a trademark in Hong Kong on which it can rely. The Complainant has adduced evidence that the Panel accepts to the effect that the Complainant has trademark rights on which it can rely with respect to the disputed domain name.

The registered Hong Kong trademark is the Hong Kong trademark for PROFUTURA n° 302673775, registered since July 16, 2013 covering goods and services in classes 5, 29, 30 and 32 and more particularly set out in the Complaint.

The Complainant has proved that trademark by evidence of a registration certificate annexed to the Complaint as part of Annexure 5 and being a certificate produced by a Hong Kong SARG IPD Trade Mark Search. The Panel accepts that evidence. It shows that the trademark has a date of registration of July 16, 2013 and an “Actual Date of Registration” of April 4, 2014, both of which are prior to the date on which the Respondent registered the disputed domain name which was on October 27, 2014 and that it was registered in the name of the Complainant.

The Panel therefore finds that the Complainant has proved that it has a trademark or service mark in Hong Kong in which it has rights.

The second question that arises is whether the disputed domain name is identical or confusingly similar to the trademark in question. The Panel finds that the domain name is identical to the corresponding mark as, in making this comparison, the gTLD suffix “com.hk” is to be ignored.
and the domain name incorporates the trademark in its entirety with nothing else. In other words, it is a complete copy. Even if the domain name were not identical to the trademark, it is confusingly similar to it, as in view of the prominence of the trademark and the goods known to be sold under it, an objective bystander would naturally assume that the domain name was invoking the trademark.

In any case it is generally accepted that if, as in the present case, a trademark is embedded as a whole in a domain name, the domain name is to be taken as identical or confusingly similar to the trademark that has been taken without authority and used in that manner.

The Complainant has therefore established that the domain name is identical or confusingly similar to the trademark and has made out the first of the four elements that it must establish.

B) Rights and Legitimate Interests

It is now well established that the Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a) (ii) of the Policy and then the onus of proof shifts to the Respondent to show it does have rights or legitimate interests. There are many decisions to that effect under the analogous Uniform Domain Name Dispute Resolution Policy (“the UDRP”), one of the most notable of which is *Hanna-Barbara Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006) where it was held that a complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under paragraph 4(a)(ii) of the UDRP before the onus of proof shifts to the respondent to show that it does have rights or legitimate interests in the domain name).

Having regard to the substantial evidentiary case presented on behalf of the Complainant, the Panel finds that the Complainant has made out a *prima facie* case that arises from the following considerations:

(a) the Respondent has chosen to take the Complainant’s trademark and to use it in its domain name without any alteration at all being made to the trademark;

(b) the domain name has used the domain name to resolve to a website that displays the Complainant’s name and logo and purports to sell products of the Complainant, potentially counterfeit products and other similar products in competition with those of the Complainant, all under the Complainant’s trademarked name;

(c) by that means the Respondent has maintained that it is the owner of the domain name and that it is permitted to sell such products under the Complainant’s trademarked name, which is patently false;

(d) the Respondent has engaged in these activities without the consent or approval of Complainant and for what must be assumed to be commercial reasons.

These matters go to make out the *prima facie* case against the Respondent and it is then up to the Respondent to rebut that case.
As the Respondent has filed a Response, it is therefore a matter for the Panel to decide if that Response rebuts the *prima facie* case against it. The Panel finds that the Respondent has not rebutted the *prima facie* case and that the Respondent therefore has no rights or legitimate interests in the disputed domain name. That is so for the following reasons.

The Respondent has made a number of points that are set out above, but none of them help to dispose of these issues.

The Respondent says, first, that the disputed domain name has been registered and used by the Respondent for more than 3 years without any claim or complaint by the Complainant. Delay in bringing proceedings may be a factor to take into account, but it is not an automatic bar to success and need only be considered if it shows, for instance, that by not taking action the trademark owner lulled the domain name registrant into a false sense of entitlement or right or, it is often said, the registrant suffered some prejudice, or if the delay shows that the trademark owner can be taken to have abandoned its claim to the domain name. There is no evidence to that effect in the present case and the evidence is to the contrary. Moreover, the Policy and its intention are clear and the sole question at this stage is whether, considering all of the evidence, the registrant has an identifiable right or legitimate interest in the domain name and the delay alone cannot establish that proposition. In any event, all the circumstances must be considered and in the present case there is no conclusion that can be drawn from the evidence other than that the registrant embarked on a deliberate course of action to mislead the public by inferring that it was the Complainant, that it had the right to sell products under the Complainant’s name and that it had the right to use the Complainant’s trademark and name to sell counterfeit and/or competing products, all of which were false.

The Respondent then says that the Complainant cannot register the disputed domain name as it is not a Hong Kong registered company. However, the Complainant is not seeking in this proceeding to register the disputed domain name after it is transferred to it but is seeking only the cancellation of the domain name. In any event, the provision that the Respondent has in mind, paragraph 4(a) (iv), does not apply in this case as the domain name is registered in the name of the Respondent, which is a company and not an individual person.

The Respondent also submits that the Complainant does not use any other domain name incorporating “profutura”, which it could have done. That argument is rejected as the case is concerned solely with one domain name, the disputed domain name, and not other domain names that the Complainant could have obtained but did not. In any event, Complainant is entitled to try to acquire the eminent domain name extension “.com.hk” as this is presumably more valuable for businesses in Hong Kong than others that may have been available. Moreover, as the Complainant’s trademark is PROFUTURA, it is understandable that it should want the whole of its trademark in a domain name.

The Respondent has made some other submissions set out above but, although they each have some merit as abstract concepts, they do not answer the fundamental question at issue here which is: can those matters give a registrant the right to register and use a domain name in a deceitful manner, pretend that it is the trademark owner, use the domain name to sell possibly counterfeit, but certainly competing products and to make money from doing so? The answer to that question is “no”.

There are also two other factors that have influenced the Panel. The first is that some serious allegations were made against the Respondent in the Complaint. It had a chance to reply to all of them, but did not reply to any of them, other than by filing a transparently inadequate response
that avoided all of the important factual issues. The Panel concludes that the real reason for the Respondent’s reticence is that anything it could honestly say about those issues would not benefit it in this proceeding but would simply confirm its untoward conduct.

The second is that products of this sort, that are either pharmaceuticals, drugs, foodstuffs or supplements and the like are notoriously risky when bought over the internet and carry substantial public and private health consequences. That underlines and exacerbates the entirely inappropriate conduct in which the Respondent has engaged and puts an even heavier burden on it to show that it was entitled to do what it did, or as the Policy puts it, to show it had a right or legitimate interest in the domain name, which, in the opinion of the Panel it has not done and which must surely be impossible for it to do.

The Respondent has therefore not rebutted the *prima facie* case against it. The Complainant has therefore shown that the Respondent does not have a right or legitimate interest in the disputed domain name and the Complainant has thus made out the second of the four elements that it must establish.

**C) Bad Faith**

It is clear that to establish bad faith for the purposes of the Policy, the Complainant must show that the disputed domain name was registered in bad faith and has been used in bad faith.

That case may be made out if there are facts coming within the provisions of paragraph 4(b) of the Policy. That paragraph sets out a series of circumstances that are to be taken as evidence of the registration and use of a domain name in bad faith, namely:

“(i) circumstances indicating that the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented out-of-pocket costs directly related to the Domain Name; or

(ii) the Registrant has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged in a pattern of such conduct; or

(iii) the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) 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.”

However, those criteria are not exclusive and Complainants in DNDRP, as in UDRP proceedings, may also rely on conduct that is bad faith within the generally accepted meaning of that expression.
Having regard to those principles, the Panel finds that the disputed domain name was registered and used in bad faith. That is so for the following reasons, the essence of which has already been dealt with under Rights and Legitimate Interests.

First, the facts come squarely within paragraph 4(b)(iii). It is clear from the evidence that the Respondent has acted dishonestly to damage the Complainant’s business, had no right to acquire the domain name and has not attempted in a Response to explain its actions, other than by generalized statements none of which get to grips with what the Respondent has done and why it did it. It is a reasonable inference that the primary purpose of the whole exercise was to direct internet traffic to the Respondent itself or its associates so that internet users would buy products from the Respondent’s website, and not buy products from the Complainant’s official site and to make money by encouraging internet users to do so. The products on sale on the Respondent’s website include products sold under the Complainant’s name and other products under different brands. By definition this conduct is disrupting the business of the Complainant. The case is therefore a clear application of paragraph 4(b) (iii) and the Panel so finds.

Secondly, the facts also come within paragraph 4(b) (iv) of the Policy for it is clear from the evidence that the Respondent created the confusion contemplated by the paragraph and for commercial gain, being the benefit the Respondent hoped to derive from damaging the Complainant’s business, directing internet traffic to its own or an associated website and, probably, eventually forcing the Complainant to buy the domain name from the Respondent.

Thirdly, the only inference that can be drawn from the evidence, as the Complainant submits, is that the Respondent had actual knowledge of the Complainant’s trademark. It is a prominent trademark, including where the Respondent is domiciled, it is clearly an invented name and there is no reason apparent as to why the Respondent would have chosen PROFUTURA as its domain name other than that it knew of the PROFUTURA trademark and intended to use it illegally for its own commercial purposes. The Respondent therefore knew it was taking and using the Complainant’s trademark illegally, which is bad faith.

In addition, apart from applying the specific criteria in paragraph 4(b) and having regard to the totality of the evidence, the Panel finds that, in view of the Respondent’s acquisition of the disputed domain name using the trademark of the Complainant in the manner described above and in view of the Respondent’s subsequent dishonest conduct, the Respondent registered and used the disputed domain name in bad faith within the generally accepted meaning of that expression.

Complainant has thus made out the third of the four elements that it must establish.

D) Registration Requirements

The fourth limb under paragraph 4(a) of the Policy is not applicable to this proceeding, as the disputed domain name has apparently not been registered by an individual person but by a body corporate.

6. Decision

Having established all three elements required under the Policy that the Complainant must establish in this proceeding, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name <profutura.com.hk> be CANCELLED.
The Honourable Neil Anthony Brown QC

Dated: December 24, 2016