1. Parties and Contested Domain Name

The Complainant is N.V. Nutricia of the Netherlands.

The Respondent is Hohosales Limited of Hong Kong.

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

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (“HKIAC”) on November 29, 2016. On November 30, 2016, HKIAC transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On December 2, 2016, the Registrar transmitted by email to HKIAC its verification response confirming the Respondent as the registrant and provided contact details.

HKIAC verified that the Complaint satisfied the formal requirements of the Hong Kong Internet Registration Corporation Limited (“HKIRC”) Domain Name Dispute Resolution Policy (the “Policy”), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (the “Rules”), and the HKIAC Domain Name Dispute Supplemental Rules (the “Supplemental Rules”).

In accordance with the Rules, HKIAC formally notified the Respondent of the Complaint, and the proceedings commenced on December 7, 2016. The Respondent was informed that the due date for Response was December 30, 2016. No Response was filed by the Respondent. Accordingly, HKIAC notified the Respondent’s default on January 3, 2017.

HKIAC appointed Gabriela Kennedy as the sole panelist in this matter on January 11, 2017. The Panel finds that it was properly constituted.
3. **Factual Background**

For the Complainant

The Complainant is in the industry of early life nutrition and medical life nutrition. The Complainant owns registered rights in the PROFUTURA trade mark in Hong Kong and the EU (registered since July 16, 2013 and May 4, 2014, respectively).

For the Respondents

The Disputed Domain Name was registered by the Respondents on October 27, 2014.

4. **Parties’ Contentions**

The Complainant

The Complainant’s submissions can be summarised as follows:

(a) The Disputed Domain Name is identical to its PROFUTURA trade mark which is registered in Hong Kong and around the world.

(b) The Respondent is not commonly known by the Disputed Domain Name, and it has not been licensed, authorised or given permission to use the PROFUTURA trade mark by the Complainant.

(c) The Disputed Domain Name does not resolve, and has never resolved to an active website and there has been no use of the Disputed Domain Name in connection with a legitimate offering of any goods or services.

(d) Given the worldwide reputation of the Complainant, and multiple trademark registrations of the PROFUTURA trade mark around the world, the Respondent should have known of the Complainant at the time it registered the Disputed Domain Name.

(e) The registration of the Disputed Domain Name was made in bad faith, in order to capitalize on the Complainant's trademark rights and reputation, and to prevent the Complainant from reflecting its trademark in a domain name.

(f) The Respondent has also registered the domain name <profutura.com.hk> which resolves to a website that imitates the Complainant's official website, and offers the Complainant's products for sale, thereby creating a false affiliation with the Complainant.

(g) On December 16, 2015, the Complainant sent a cease and desist letter to the Respondent, asking the Respondent to transfer the Disputed Domain Name to the Complainant. Despite several reminders, the Respondent never responded to the Complainant.
The Respondent

The Respondents did not submit a Response.

Pursuant to paragraph 5(e) of the Rules, "[if a Respondent does not submit a timely Response, in the absence of exceptional circumstances as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and evidence submitted therewith." The Panel finds that there are no exceptional circumstances in this case. The Panel will therefore proceed to determine the case based upon the Complaint and the evidence submitted.

5. Findings

According to Paragraph 4(a) of the Policy, the following elements must be established by the Complainant:

(i) the Disputed Domain Name 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 Name; and

(iii) the Disputed Domain Name 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

The Panel accepts that the Complainant has rights in Hong Kong in respect of the PROFUTURA trade mark, based on the Hong Kong trade mark registration number 302673775.

The Disputed Domain Name incorporates the PROFUTURA trade mark in its entirety. It is well-established that in making an enquiry as to whether or not a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.hk>, should be disregarded (China Network Communications Group Corporation v. Zhou Ao, HKIAC Case No. DHK-0800030).

The Panel therefore finds that the Disputed Domain Name is identical or confusingly similar to the PROFUTURA trade mark, and the Complainant has satisfied paragraph 4(a)(i) of the Policy.

(2) Rights or Legitimate Interests of Respondent
It is widely accepted that once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See *Schonbek Worldwide Lighting, Inc. v. Rich Point Hong Kong Development Limited*, HKIAC Case No. DHK-1200077; and *ALDI GmbH & Co. KG v Qinghua Zhou*, HKIAC Case No. DHK-0800038.

The Panel accepts that the Complainant has never authorised the Respondent to use the PROFUTURA trade mark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the trade mark. Accordingly, the Panel is of the view that a *prima facie* case has been established and it is for the Respondent to prove it has rights or legitimate interests in the Disputed Domain Name.

Pursuant to paragraph 4(d) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

(i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a *bona fide* offering of goods or services; or

(ii) the Respondent has become commonly known by the Disputed Domain Name, even if it has acquired no trade mark or service mark rights;

(iii) the Respondent has trade mark or service mark rights in a mark that is identical to the Disputed Domain Name; or

(iv) the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence to show that the Respondent has become commonly known by the Disputed Domain Name or that it has any trade mark or service marks that correspond with the Disputed Domain Name. The Disputed Domain Name is also currently inactive. The Panel therefore finds that the Respondent has failed to show that it has made use of, or demonstrated any preparations to use, the Disputed Domain Name for the *bona fide* offering of goods or services or for a legitimate non-commercial or fair use.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

(3) **Bad faith**
The Panel accepts that the Respondent likely knew of the Complainant and the Complainant’s PROFUTURA trade mark at the time it registered the Disputed Domain Name, and registered and used the Disputed Domain Name in bad faith, as the Complainant has been operating for many years and is known worldwide. The Respondent also owns another domain name (<profutura.com.hk>) which resolves to a website purporting to sell the Complainant’s products.

Further, the passive holding of the Disputed Domain Name does not as such prevent a finding of bad faith use (see, for example, Newagg Trading Limited and Newegg Inc. v. Guccn (Hong Kong) Group Stock Co. Ltd, HKIAC Case No. DHK-1300097). In Newagg Trading Limited and Newegg Inc. v. Guccn (Hong Kong) Group Stock Co. Ltd, HKIAC Case No. DHK-1300097, it was held that in the circumstances where "(i) the Respondent failed to reply to the [Complaint]; (ii) the website of the Disputed Domain Name is inactive and (iii) the Respondent is holding the Disputed Domain Name passively" then these elements amount to bad faith. It was further held that "the Trade Mark is distinctively identifying the Complainants…so that the choice of the Disputed Domain Name cannot be reasonably explained otherwise than as a reference to the Trade Mark of the Complainant". The same reasoning can be applied in this case.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

(4). 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

Paragraph 4(a)(iv) of the Policy is not relevant for the purposes of this decision, as based on paragraph 4(c) of the Policy it only applies in relation to the violation of the eligibility requirements for <.idv.hk>, <.個人.hk> or <.個人.香港> domain names (i.e. domain names registered in the individual domain name categories). Either way, even if paragraph 4(a)(iv) of the Policy did apply, it is clear that the name of the first Respondent (i.e. the registrant), does not correspond with the Disputed Domain Name, and paragraph 4(a)(iv) of the Policy is satisfied.

6. Conclusions

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Disputed Domain Name, <profutura.hk>, be transferred to the Complainant.

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Gabriela Kennedy
Dated: 9 February 2017