1. Parties and Contested Domain Name

The Complainant is Vanguard Trademark Holdings USA LLC of 600, Corporate Park Drive, St Louis Missouri 63105, the United States of America.

The Respondent is YE GENRONG of domainpros@163.com of the People’s Republic of China.

The Contested Domain Name is <alamorentacar.hk> (“Disputed Domain Name”).

The Registrar of the Disputed Domain Name is 1 API GmbH (“the Registrar”) of Talstrasse 27, Homburg Saarland, 66424, Germany.

2. Procedural History

Complainant: Vanguard Trademark Holdings USA LLC
Respondent: YE GENRONG
Case Number: DHK-1700140
Contested Domain Name: alamorentacar.hk
Panel Member: Dr. Christopher To
On 5 April 2017, pursuant to the HKDNR Domain Name Dispute Resolution Policy ("Policy"), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure ("Rules") and the Hong Kong International Arbitration Centre Supplemental Rules ("Supplemental Rules"), the Complainant submitted a complaint (including annexes) in the English language to the Hong Kong International Arbitration Centre ("HKIAC"), and elected to have the case in question be dealt with by a one-person panel. The Complainant also informed the HKIAC that it had sent a copy of the complaint (including annexes) to the Respondent and the Hong Kong Internet Registration Corporation Limited ("HKIRC").

On 6 April 2017, the HKIAC notified the Registrar of the Disputed Domain Name proceedings by email. From this, the HKIAC requested the Registrar to provide the following information, namely:

“…

1. Whether the domain name <alamorentacar.hk> is registered with your company “1API GmbBH”;

2. Whether the Respondent “YE GENRONG” is the Registrant or holder of the disputed domain name;

3. Whether the Domain Name Dispute Resolution Policy for .hk and .香港 domain name is applicable to the current dispute;

4. Whois information regarding the disputed domain name;

5. Please provide us the Status of the domain name…”

In the meantime, the HKIAC reminded the Registrar to take appropriate action towards the Disputed Domain Name, namely, <alamorentacar.hk> in accordance with the rules stipulated by the Policy, such as prohibiting the Disputed Domain Name from being transferred to a third party.
On 6 April 2017, the **HKIAC** notified the Complainant that they received the complaint concerning the **Disputed Domain Name**, namely, `<alamorentacar.hk>`. The **HKIAC** requested the Complainant to submit the case filling fee on or before 10 April 2017, in accordance with Article 15 of the **Supplemental Rules** as well as Article 18(c) of the **Rules**. The **HKIAC** also stated that:

> “We have notified the concerned Registrar of your complaint. Upon receipt of the Registrar’s confirmation on the WHOIS information, we shall proceed to review your Complaint and let you know whether it is in administrative compliance with the Domain Name Dispute Resolution Policy (“DNDRP”). If it is in compliance, we shall forward your complaint to the Respondent and formally commence the proceedings in accordance with Paragraph 4(b) of the Rules. If it is not in compliance and in accordance with Paragraph 4(b) of the Rules, you will be requested to rectify the deficiencies within 5 business days after being notified of such deficiencies.”

On 6 April 2017, the **Registrar** sent an email to the **HKIAC** notifying the **HKIAC** that:

> “please find our answers inserted into the text. Please be informed that we are not able to place any lock on the domain. It seems that the lock is already placed from the registry. Please let us know how to proceed...

…

1. Whether the domain name `<alamorentacar.hk>` is registered with your company “IAPI GmbH”

   **confirmed**

2. Whether the Respondent “YE GENRONG” is the Registrant
or holder of the disputed domain name;

confirmed

3. Whether the Domain Name Dispute Resolution Policy for .hk and .香港 domain name is applicable to the current dispute;

confirmed

4. Whois information regarding the disputed domain name;

... YE GENRONG... domainpros@163.com ... Commencement Date: 11-09-2012... Account Name: HK4392344T...

5. Please provide us the Status of the domain name...

Status Information:

Domain Prohibit Status:

From this, the Registrar confirmed with the HKIAC that the Respondent is the registered holder of the Disputed Domain Name. As a result, the HKDNR Domain Name Dispute Resolution Policy is applicable to the Disputed Domain Name.

On 7 April 2017, the HKIAC acknowledged that it had received the case filing fee from the Complainant concerning the Disputed Domain Name <alamorentacar.hk> within the stipulated timeframe.

On 10 April 2017, the HKIAC sent a Notification of Commencement of Proceedings (“Notification”) consisting of the complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the Hong Kong Internet Registration Corporation Limited’s WHOIS database) in both the Chinese and English languages. The Notification gave the Respondent fifteen (15) business days to file a Response (i.e. on or before 5 May 2017). The HKIAC further
stated that “...In accordance with Article 11 of the Rules of Procedure, the language of the arbitration proceeding for this case should be in English. If you wish to request to change the language of the arbitration proceedings to Chinese, you should notify the HKIAC within **Five 5 business days from today (on or before 19 April 2017)**…”

On 8 May 2017, the HKIAC sent an email notifying the Complainant (with a copy to the Respondent) that the Respondent failed to submit a response within the stipulated timeframe (i.e. on or before **5 May 2017**).

On 11 May 2017, the HKIAC wrote to Dr Christopher To seeking his response as to whether he would like to be considered for appointment as the sole arbitrator for the **Disputed Domain Name <alamorentacar.hk>** and to confirm “...your availability to act as Arbitrator in this matter and if so, whether you are in a position to act independently and impartially between the parties...”.

On 12 May 2017, Dr Christopher To wrote to HKIAC stating the following:

“...

*Private and Confidential
By Email Only*

Dear Ms. Wong,

Thank you for your email.

I confirm that I am available and as far as I am aware I do not have a conflict with the matter on hand.

If I can assist further please do not hesitate to revert back to me.

Yours sincerely,
Christopher ...”
The Panel comprising of Dr. Christopher To as a single panelist was appointed by the
HKIAC on Monday 15 May 2017. Papers pertaining to the case were delivered to the

In accordance with Rule 15(a) of the HKDNR Domain Name Dispute Resolution
Policy Rules of Procedure, the Panel is of the view that it shall decide the complaint
on the basis of statements and documents submitted.

Also, according to Rule 15(d) of the HKDNR Domain Name Dispute Resolution
Policy Rules of Procedure and Section 67 of the Hong Kong Arbitration Ordinance
(Cap. 609) of the Laws of Hong Kong, this Panel shall issue a reasoned award.

3. Factual Background

For the Complainant

The Complainant, is the owner of the ALAMO and ALAMO RENT-A-CAR marks
(“ALAMO marks”) which it licenses to Alamo RentA-Car. Started in 1974, Alamo
Rent-A-Car is a value-oriented, internationally recognized brand serving the rent a
car needs of travelers throughout the United States, Canada, Mexico, the Caribbean,
Latin America, Asia and the Pacific Rim.

Alamo RentA-Car is the largest rent a car provider to international travelers visiting
North America.

Alamo Rent-A-Car operates an online vehicle rental site at alamo.com that offers
vehicle rentals at all Alamo Rent-A-Car locations throughout the world.

The domain names alamo.hk, alamocarrental.hk and alamocar.hk all resolve to the
in the world, including Hong Kong, can access the Alamo Rent-A-Car web site to
make arrangements to rent a car from any Alamo Rent-A-Car location throughout the
world.

For the Respondent
The Respondent, YE GENRONG is from the People’s Republic of China.

On 11 September 2012, the Disputed Domain Name <alamorentacar.hk> was registered by the Registrar. As noted by the Registrar’s email of 6 April 2017, the holder of the Disputed Domain Name is YE GENRONG.

On 8 May 2017, the HKIAC sent an email to notify the Complainant (with a copy to the Respondent) that the Respondent had not responded to the HKIAC within the stipulated timeframe (i.e. on or before 5 May 2017). As such, the Respondent has not contested the allegations of the complaint and is in default.

4. The Parties’ Contention

For the Complainant

The Complainant submits that it is the registered proprietor of the “ALAMO” mark in Hong Kong under Hong Kong Registration No. 1994B00507 with a date of registration of 2 March 1992, ALAMO in International Class 39 for “vehicle rental and leasing services”.

The Complainant submits that it is the registered proprietor of the “ALAMO RENT-A-CAR” mark in the United Kingdom under Registration No. UK2002527 issued on 16 February 1996, ALAMO RENT-A-CAR in International Class 39 for “car renting, leasing and hire services”.

The Complainant further submits that it is the registered proprietor of the “ALAMO” mark in the United States of America under Registration No. 1,097,722 issued on July 25, 1978, ALAMO in International Class 39 for “automotive renting and leasing services”.

The Complainant advocates that it’s registration in Hong Kong is sufficient to prove
its rights in the ALAMO mark for rent a car services and cites the case of Twin Disc, Incorporated v. Twin-Disc (Hk) International Holding Group Co., Limited; and Shuiyuan Chen, Case Number DHK-1300099 (HKIAC 2013) in which the Panel in that case accepted that the Complainant has rights in respect of the “TWIN DISC” trade mark on the basis of its trade mark registrations in Hong Kong.

In addition, Complainant’s extensive use of the “ALAMO” and “ALAMO RENT-A-CAR” marks establish its right to stop others from adopting .hk domain names confusingly similar to those marks and quotes the case of Nervous Tattoo, Inc. v. Chen Jin Sheng, Case Number DHK0900050 (HKIAC 2009) in which it stated that “I hold that the Complainant does have “rights” and the ambit of paragraph 4a(i) covers this aspect, namely, that of taking foreign rights and misappropriating those rights by, in this case, a domain name registration”.

On the matter of “Confusing similarity” the Complainant is of the view that the alamorentacar.hk domain name is confusingly similar to the Complainant’s registered “ALAMO” mark. The alamorentacar.hk domain name fully incorporates the Complainant’s “ALAMO” mark, merely adding a descriptive term, “rentacar”, which describes the Complainant’s services, before the ccTLD “.hk”.

The Complainant advocates that the alamorentacar.hk domain name is also confusingly similar to the Complainant’s “ALAMO RENT-A-CAR” mark in that it fully incorporates the mark, merely deleting the hyphens between the words, before the ccTLD “.hk”. The incorporation of a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark. In support of this, the Complainant advances the case of Banyan Tree Limited v. Home Essentials (H.K.) Limited, Case No. 0207-0003 (HKIAC 2002) in
which it stated that “I consider the evidence provided by the Complainant provides a prima facie claim to its being the true owner of the trade mark BANYAN TREE at least in respect of the goods and services recited in paragraph 1 above and, consequently, they can lay an ex-facie claim to ownership in Hong Kong of a domain name that consist of, or contains, the word 'banyantree', or, at least, validly raise an objection to another's registration of such a domain name”.

The Complainant further states that the addition of the descriptive term “rentacar” in the alamorentacar.hk domain name does not distinguish it from the Complainant’s “ALAMO” mark and it remains confusingly similar to that mark. Combining a mark with terms that describe the Complainant’s business is an inadequate change to prevent confusing similarity. To support this stance, the Complainant cites the case of Nervous Tattoo, Inc. v. Chen Jin Sheng, Case Number DHK0900050 (HKIAC 2009) where it stated that “It is long established trade mark law that the addition of extraneous material to a trade mark does not obviate the risk of confusion. This proposition must apply most acutely where the additional matter is highly descriptive or non-distinctive”.

In fashioning the alamorentacar.hk domain name, the Complainant is of the view that the Respondent has deleted the hyphens between the words from the Complainant’s “ALAMO RENT-A-CAR” mark. Deleting hyphens or spaces from a mark when forming a domain name, does not prevent confusing similarity when the domain name maintains the distinctive part of the mark. To support this rationale the Complainant cites the case of Tommy Bahama Group, Inc. v. Xiaole Shen, Case No. DHK-1300090 (HKIAC 2013) whereby it stated that “The Disputed Domain Name is identical to the ‘TOMMY BAHAMA’ trade mark. The Panel accordingly finds that the Disputed Domain Name is identical or confusingly similar to the ‘TOMMY BAHAMA’ trade mark in finding domain name confusingly similar to the TOMMY BAHAMA mark”.
The Complainant believes that the addition of the .hk ccTLD, does not distinguish the alamorentacar.hk domain name from the Complainant’s “ALAMO” marks and cites the case of China Network Communications Group Corporation v. Liang Feng, Case No. DHK-0800029 (HKIAC 2008) whereby it stated that “[T]he top level domain designator “.hk” is only a necessary portion to form a particular type of domain name in Hong Kong and cannot function to distinguish that name from the Complainant’s mark”.

The Complainant further advocates that the Complainant’s Hong Kong registration for ALAMO has an effective registration date of 2 March 1992. This pre-dates the 11 September 2012 registration date of alamorentacar.hk by more than twenty years.

On the matter of “Rights to or Legitimate Interests”, the Complainant contends that the Respondent has no rights or legitimate interests in the alamorentacar.hk domain name.

On 28 March 2017, the web site at the alamorentacar.hk domain name resolved to a web page with lists of “Related Links” that consisted of links to web sites offering rent a car services in direct competition with Alamo Rent A Car. The “Related Links” are “Auto Rent a Car; Car Renting; Where Can I Rent a Car; Auto Rent a Car; Europ [sic] Car Rental; Car Ental [sic]; Cheep [sic] Car Hire; Car Renting: Euro Car; Budgetrent [sic] a Car”.

The Complainant further states that the alamorentacar.hk web site also contained a link stating: “Buy this domain The domain alamorentacar.hk may be for sale by its owner!”. 
In light of the long-standing use and registration of the **ALAMO** marks by the Complainant in connection with rent a car services, the Complainant is of the view that the Respondent cannot have any legitimate rights in the **alamorentacar.hk** domain name in connection with a web page that merely drives Internet traffic to other websites offering rent a car services in direct competition with Alamo Rent-A-Car and contains a generalized offer to sell the domain name.

The Complainant contends that the Respondent’s use is neither a bona fide offering of goods or services pursuant to **HKDNR Policy 4d(i)** nor a legitimate non-commercial or fair use pursuant to **HKDNR Policy 4d(iv)** and cites the case of **Vanguard Trademark Holdings USA LLC v. Zhao Ke, Case No. DHK-1400114 (HKIAC 2015)** where it stated that “The website to which the Disputed Domain Name resolves is a parking page that provides sponsored links and includes a message stating that the Disputed Domain Name is for sale. The Panel therefore finds that the Respondent has not been using the Disputed Domain Name in connection with a bona fide offering of goods or services, or for a legitimate non-commercial or fair use”.

The Complainant further states that the WHOIS record lists “**YE GENRONG**” as registrant and technical contact for the **alamorentacar.hk** domain name. Nothing in the WHOIS record or the web page at **alamorentacar.hk** indicates that Respondent is known as, operates a business as, or advertises as “**alamorentacar**” and cites the case of **Hysan Development Company Limited v. Lee Gardens, Case No. DHK-1400106 (HKIAC 2014)** in which it stated that “[T]he Complainant’s research has failed to identify anyone or entity with those names who could be the Respondent. Without a response to the Complaint, the Panel has to accept that the Respondent does not have a legitimate interest in the name by virtue of having that name”. Further, a search of the trademark database of the Hong Kong Intellectual Property Department did not locate any trademark applications or registration in Hong Kong owned by anyone
whose includes either “GENRONG” or “Genrong”.

The Complainant has not licensed or otherwise permitted the Respondent to use its ALAMO marks in connection with rent a car services or any other goods or services or to apply for any domain name incorporating the ALAMO marks. In addition, the Respondent is clearly not making any legitimate noncommercial or fair use of alamorentacar.hk. In fact, any claim in that regard is easily dismissed since the alamorentacar.hk web page is a generic type of web page commonly used by domain name owners seeking to monetize their domain names through “click-through” fees. To support this stance, the Complainant cites the case of Blue Cross and Blue Shield Association, Empire HealthChoice Assurance, Inc. dba Empire Blue Cross Blue Shield and also dba Empire Blue Cross v. Private Whois Service / Search and Find LLC. / Michigan Insurance Associates / 4 Letter Domains Inc. / New York Health Ins., Case No. D2010-1699 (WIPO Dec. 1, 2010) where it stated that “It is clear in this case that all the Domain Names are being used for use with a “domain name parking” or “pay-per-click” services ... if the owner of the domain name in question is using it with such a service in order to unfairly capitalise upon or otherwise take advantage of a similarity with another’s mark then such use would not provide the registrant with a right or legitimate interest in the domain name”.

As stated above the Complainant’s licensee operates an online rent a car web site at alamo.com. It is clear that the Respondent has no legitimate rights in the alamorentacar.hk domain name and, by the use of a confusingly similar domain name, the Complainant is of the view that the Respondent is attempting to use that confusion to drive Internet traffic to its alamorentacar.hk web site when Internet users are trying to reach the Alamo Rent-A-Car web site. Such use constitutes a lack of rights or legitimate interest in the disputed domain name under HKDNR Policy 4d(i) and (iv) and cites the case of Normalu SA v. France Barrisol (Hong Kong)
Industrial Co., Limited, Case No. DHK-1200083 (HKIAC 2012) in which it stated that “Given that the Respondent ought to have known about the BARRISOL brand and offered goods similar to those offered by the Complainant, it cannot be said that the Respondent was involved in a bona fide offering of goods and services using the Disputed Domain Name”.

The Complainant states that once the Complainant makes a prima facie case that the Respondent lacks rights or legitimate interests, the burden shifts to the Respondent to prove that they have rights or legitimate interests. To support this rationale the Complainant cites the case of Arena Pharmaceuticals GmbH v. Qi Fei Gao, Case No. DHK-1300094 (HKIAC 2013) in which it states that the “Respondent has the burden of proof once the Complainant demonstrates prima facie evidence that the Respondent lacks rights or legitimate interests”. The Complainant also cites the case of Salvatore Ferragamo, S.p.A. v. Duan Zuochun, Case No. DHK-1200085 (HKIAC 2013) in which the “Complainant has in a credible way alleged that Respondent has no rights or legitimate interests in respect of the domain name at issue. Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the domain name at issue. This entitles the Panel to infer that Respondent has no rights or legitimate interests in respect of the domain name at issue”. The Complainant further cites the case of The Hong Kong Land Company, Limited v. Diguangchang Zhi, Case No. DHK-1400104 (HKIAC 2014) in which its states that “In this case, the Respondent has not provided any explanation as justify his use of the disputed domain name. In light of the trade mark registrations for LANDMARK I cannot see what justification there could be”.

On the matter of “Bad Faith”, the Complainant believes that the Respondent has registered and is using the alamorentacar.hk domain name in bad faith. The
Respondent’s registration of a domain name that is confusingly similar to the Complainant’s ALAMO marks for a web page that attempts to attract Internet users to the Respondent’s web site based upon such similarity evidences a clear intent to trade upon the goodwill associated with the Complainant’s ALAMO marks. The Complainant is of the view that the Respondent is deliberately using a domain name that is confusingly similar to the Complainant’s ALAMO marks to attract, for commercial gain, Internet users to its web site, by creating a likelihood of confusion with the Complainant’s ALAMO marks as to the source, sponsorship, affiliation or endorsement of its web site and the rent a car services promoted on such web site. The web page to which the alamorentacar.hk domain name resolves is a “pay-per-click” web page. It contains online advertising that will provide someone, presumably the Respondent, with revenue from “click-through” fees from Internet users who find their way to the web page at alamorentacar.hk. At least some Internet visitors to the Respondent’s web page at alamorentacar.hk will either not realize that they have been unwittingly directed to a web site that has no affiliation to Alamo Rent-A-Car or not care that they are not at the “official” Alamo Rent-A-Car web site and will “click through” the links provided by the Respondent. The Complainant states that the business model based upon use of an infringing domain name to attract users to Respondent’s web site is clear evidence that the Respondent registered and is using the alamorentacar.hk domain name in bad faith pursuant to HKDNR Policy 4b(iv).

The Complainant believes that the fact that the alamorentacar.hk web page contains the statement: “Buy this Domain The domain alamorentacar.hk may be for sale by its owner!” is additional evidence of the bad faith use of the alamorentacar.hk domain name under HKDNR Policy 4b(i) and to support this the Complainant cites the case of Ets Leobert, SARL v. Jeonggon Seo, Case No. D2009-0004 (WIPO April 8, 2009) in which it stated that “In addition, the Respondent is offering to sell the domain name to the highest bidder. It is well established that registering a domain name for the primary purpose of offering to sell, rent, or otherwise transfer the domain name
for an amount in excess of the registration cost is evidence that a domain name was registered and being used in bad faith”. The Complainant states that no matter how it is viewed, the very essence of setting up the alamorentacar.hk web site must be that it does result in commercial gain from Internet users accessing other web sites through the alamorentacar.hk web site. The Complainant further states that it is clear that the Respondent’s registration and use of the alamorentacar.hk domain name falls squarely within the parameters of HKDNR Policy 4b(iv) and cites the case of Vanguard Trademark Holdings USA LLC v. Zhao Ke, Case No. DHK-1400114 (HKIAC 2015) in support, whereby it stated that the “Using a domain name to intentionally attract Internet users to a website for commercial gain, in an effort to trade upon Complainant’s goodwill, is evidence of bad faith registration and use under the Policy”.

The Complainant stated that, it cannot be disputed that the Complainant has long-standing and well recognized rights and goodwill in its ALAMO marks that pre-date the Respondent’s 11 September 2012 initial registration of the alamorentacar.hk domain name, as such the alamorentacar.hk domain name is confusingly similar to the Complainant’s ALAMO marks and that the Respondent has no legitimate rights in the alamorentacar.hk domain name.

The Complainant believes that the Respondent has registered and is using the alamorentacar.hk domain name in bad faith to capitalize on the goodwill that the Complainant has developed in its ALAMO marks to drive Internet traffic inappropriately to other web sites for commercial gain.

As such the Complainant requests that the Panel issue a decision that the alamorentacar.hk domain name be transferred to the Complainant.

For the Respondent
On 11 September 2012, the Disputed Domain Name “alamorentacar.hk” was registered by the Registrar. As noted by the Registrar’s email of 6 April 2017, the holder of the Disputed Domain Name is YE GENRONG.

On 8 May 2017, the HKIAC sent an email to notify the Complainant (copying the Respondent) that the Respondent had not responded to the HKIAC within the stipulated timeframe (i.e. on or before 5 May 2017). As such, the Respondent has not contested the allegations of the Complaint and is in default.

5. Findings

A. Language of the Proceedings

The Hong Kong Domain Name Registration Company Limited (“HKDNR”), Domain Name Dispute Resolution Policy (“Policy”) and Rules of Procedure (“Rules”) Paragraph 11(a) provides that:

“Unless otherwise agreed by the Parties, the language of the arbitration proceeding shall be in English for English .hk domain name, and in Chinese for Chinese.hk or .香港 domain name, subject always to the authority of the Arbitration Panel to determine otherwise, having regard of all circumstances of the arbitration proceeding”

In the present case, the Parties had not agreed a particular language for these proceedings. As this is an “English .hk domain name”, namely, <alamorentacar.hk>, then in accordance with Paragraph 11(a) of the Rules, the proceedings “shall be in English”. In these circumstances, the Panel considers that it
would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in English.

B. Discussion and Findings

Having considered all the documentary evidence before me, and the Respondent’s non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 5(e) of the Rules, the Panel is of the view that it should proceed to decide on the Disputed Domain Name, namely, <alamorentacar.hk> based upon the complaint and evidence as adduced by the Complainant.

Paragraph 5(e) of the Rules stipulates that:

“If a Respondent does not submit a timely Response, in the absence of exceptional circumstance as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and evidence submitted therewith”

Having said so, Paragraph 4(a) of the HKDNR Domain Name Dispute Resolution Policy (“Policy”), which is applicable hereto, the Complainant has the burden of proving the following elements, namely:

“(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.”

[as the Disputed Domain Name is not registered in the category of “individual” domain name, the Panel will not consider this factor within its decision]

(1). **Identical/confusing similarity**

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

In the case of **LEGO Juris A/S v Gerardo Rodriguez Lara** (Case No. D2013-1522) (Dated 17 October 2013) (“LEGO Juris A/S”), the Panel found that:

“The fame of the trademark has been confirmed in numerous previous UDRP decisions: LEGO Juris A/S v. Rampe Purda, WIPO Case No. D2010-0840 (‘LEGO is clearly a well-known mark’); LEGO Juris A/S v. Domain Administrator, WIPO Case No. D2010-1260 (‘In the present case, the disputed domain names incorporate the Complainant’s well-known registered trademark LEGO’); and LEGO Juris A/S v. Reginald Hastings Jr, WIPO Case No. D2009-0680 (‘LEGO is a mark enjoying high reputation as construction toys popular with children’)”
On this basis, the Panel was of the opinion that:

“The disputed domain name is confusingly similar to the Complainant’s world famous trademark LEGO. The addition of the generic top-level domain (gTLD) ‘.org’ does not have any impact on the overall impression of the dominant portion of the disputed domain name and is therefore irrelevant to determining the confusing similarity between the trademark and the domain name”

From this, the Panel concludes that:

“Anyone who sees the domain name is bound to mistake it for a name related to the Complainant. The likelihood of confusion includes an obvious association with the trademark of the Complainant. With reference to the reputation of the trademark LEGO there is a considerable risk that the trade public will perceive the Respondent’s domain name either as a domain name owned by the Complainant or that there is some kind of commercial relation with the Complainant. By using the trademark as a dominant part of the domain name, the Respondent exploits the goodwill and the image of the trademark.”

In the present case, as akin to the facts of LEGO Juris A/S, the Complainant is the registered proprietor of trademarks in various jurisdictions including Hong Kong, United Kingdom and United States of America.

The Respondent registered the Disputed Domain Name through the Registrar, on 11 September 2012. In contrast, the Complainant registered the first United States of
America trademark “ALAMO” on July 25, 1978 and acquired the first Hong Kong trademark of “ALAMO” on 2 March 1992, thirty-four (34) and twenty (20) years retrospectively before the Respondent registered the Disputed Domain Name.

The Complainant advocates that the Disputed Domain Name is the same and is clearly identical to the Complainant’s registered trademark. In saying so, the Panel is of the opinion that the addition of “rentacar” “does not distinguish it from Complainant’s ALAMO mark and it remains confusingly similar to that mark. Combining a mark with terms that describe Complainant’s business is an inadequate change to prevent confusing similarity”. Thus, the Panel concurs with the Complainant’s view that the Disputed Domain Name is identical and/or confusingly similar to the Trademark in all material respects.

The Panel is also of the view that the “addition of the .hk ccTLD does not distinguish the alamorentacar.hk domain name from Complainant’s ALAMO marks”..... the “top level domain designator “hk” is only a necessary portion to form a particular type of domain name in Hong Kong and cannot function to distinguish that name from the Complainant’s mark”.

As already stated above, the Respondent has not contested the allegations of the complaint and is in default.

For all the foregoing reasons, this Panel concludes that the Complainant has discharged its burden of proof to establish the elements of identical and confusingly similar mark as stipulated in Paragraph 4(a)(i) of the Policy.

(2). Rights or Legitimate Interests of Respondent
Paragraph 4(d) of the Policy sets out examples of circumstances where the Respondent may have rights or legitimate interests over the Disputed Domain Name:

“How to Demonstrate the Registrant’s Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.

When the Registrant receives a Complaint as defined in Paragraph 3 of the Rules of Procedure, the Registrant should refer to Paragraph 5 of the Rules of Procedure in determining how the Registrant’s Response should be prepared.

Any of the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be proven based on its evaluation of all evidence presented to it, shall demonstrate the Registrant’s rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(ii):

(i) before any notice to the Registrant of the dispute, the Registrant’s use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a bona fide offering of goods or services in Hong Kong; or

(ii) the Registrant (as an individual, business, or other organisation) has been commonly known by the Domain Name, even if the Registrant has acquired no trade mark or service mark rights in Hong Kong; or

(iii) the Registrant has trademark or service mark rights that the mark is identical to the Domain Name the Registrant is holding; or

(iv) theRegistrant is making a legitimate non-commercial or fair use of the Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue; or

(v) If the Domain Name is registered in one of the Individual Domain Name Categories, the Domain Name registered must be the Registrant’s own “individual name”, which can be either (1) the Registrant’s legal name, or (2) a name by which the Registrant is commonly known and can include, for example, a pseudonym the Registrant uses if the Registrant is an author or a painter, or a stage name if the Registrant is a singer or actor, or the name of a fictional character if the Registrant has created or can otherwise show it has rights in such fictional character.”

In the case of Alibaba Group Holding Limited v hiyeah hu (ADNDRC’s Decision, Case No: HK-1300550) (dated 19 November 2013) (“Alibaba Group Holding Limited”), the Panel in that case found that:
“Complainant is headquartered in Hangzhou, China, and has offices in 70 cities across China, as well as in Hong Kong, Taiwan, Korea, Japan, India, Singapore, the United States of America, and the European Union. Complainant’s marketplaces are some of the most successful Internet operations in the world. Complaint, Annexes 4, 5, 6 and 7.

Complaint has numerous trademark applications pending for its TMALL mark and TMALL.COM and related marks. In addition, registrations have issued for the TMALL mark in Cambodia, Ecuador, Egypt, Hong Kong, Japan, Macau, Mexico, New Zealand, Norway, the Philippines, Singapore, Switzerland, and the United States of America. The earliest of these registrations issued on 5 November 2010 in Hong Kong. Registrations of Complainant’s TMALL.COM and related marks have issued in China, Hong Kong, and Singapore, the earliest of these registrations issued on 25 October 2011 in Hong Kong and in Singapore. Complaint, Annexes 2 and 3. Virtually all of such registration issued prior to 1 September 2013”

As regards to the burden of demonstrating rights or legitimate interest in the domain name, the Panel in that case stated the following:

“While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a
complainant is required to make out an initial prima facie case that
the respondent lacks right or legitimate interests. Once such prima
facie case is made, respondent carries the burden of demonstrating
rights or legitimate interests in the domain name. If the respondent
fails to come forward with such appropriate allegations or
evidence, a complainant is generally deemed to have satisfied
paragraph 4(a)(ii) of the UDRP”

From this, the Panel concluded that:

“In the present case the Complaint alleges that Respondent has no
rights or legitimate interests in respect of the domain name and
Respondent has failed to assert any such rights. Accordingly, the
Panel finds that Respondent has no rights or legitimate interests in
respect of the domain name at issue”

Similarly, in the case of Newegg Trading Limited & Newegg Inc. v GUCCN (HONG KONG) GROUP STOCK CO., LIMITED (Case No. DHK-1300097) (Dated 9 September 2013) (“Newegg Trading Limited”), the Panel observed that:

“The Complainants assert that the Respondent (i) has no
connection or affiliation with the Complainants, and (ii) the
Complainants have not authorised the Respondent to use the Trade
Mark. Meanwhile there is no evidence to suggest the Respondent
has any rights to the Trade Mark in any way”

In a nutshell, the Panel concluded that:

“Having been presented with the prima facie case by the
Complainant and in the absence of a reply from the Respondent,
there is a lack of evidence before the Panel to suggest that the Respondent has established rights or legitimate interests based on any of the grounds mentioned in paragraph 4(d) of the Policy.

In conclusion, the Panel is satisfied that the condition under paragraph 4(a)(ii) is met.“

As akin to the facts of Alibaba Group Holding Limited as well as Newegg Trading Limited, in the case of Sothys International v Siamak Khoshkholgh Sima / Domain ID Shield Service Co., Ltd (WIPO’s Decision, Case No: D2013-1494) (dated 21 October 2013) (‘Sothys International’), the Panel in that case found that:

“Whilst the Policy states that the complainant must prove each of the elements in paragraph 4, it is often observed that it is difficult for the complainant to prove a negative, i.e. that a respondent has no rights or legitimate in a domain name. It is therefore generally accepted under the Policy that, once a complainant has presented a prima facie showing a respondent’s lack of rights or legitimate interest in domain name, the burden of the production of evidence shifts to the respondent. The respondent must then come up with appropriate allegations or evidence demonstrating its rights or legitimate interests in the domain name to refute the prima facie case.”

On this basis, the Panel in that case concluded that:

“The Panel finds that the Complainant has made a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain names so the burden of production has effectively
shifted to the Respondent, who did not reply to the Complainant’s contentions and, therefore, has not made such a showing”

By applying the principles stipulated in *Alibaba Group Holding Limited*, *Newegg Trading Limited* as well as *Sothys International*, one can assert that the *Disputed Domain Name* is clearly identical to the Complainant’s registered trademark, namely, “*ALAMO*”, as mentioned previously, the Complainant registered the Trademark thereon for thirty-four (34) years in the United States of America and twenty (20) years in Hong Kong before the Respondent registered the *Disputed Domain Name* on 11 September 2012.

In the meantime, the Panel is of the opinion that the name “*ALAMO*” does not in any way reflect the Respondent’s Name (“*YE GENRONG*”) nor has the Respondent registered a company or business name pertaining to the word “*ALAMO*”. On this basis, the Panel concludes that there is “no evidence” suggesting that “*ALAMO*” is the Respondent’s legal name. In addition, there is “no evidence” suggesting that the Respondent is commonly known by the name of “*ALAMO*”.

The Panel concurs with the Complainant statement that “*In light of the long-standing use and registration of the ALAMO marks by Complainant in connection with rent a car services, Respondent cannot have any legitimate rights in the alamorentacar.hk domain name in connection with a web page that merely drives Internet traffic to other web sites offering rent a car services in direct competition with Alamo Rent-A-Car and contains a generalized offer to sell the domain name.*”.

In fact, the Complainant submits that it has never authorised the Respondent to use its registered trademark “*in connection with rent a car services or any other goods or services or to apply for any domain name incorporating the ALAMO marks*”. 
Furthermore, in the present case, the Complainant submits to the Panel that the “Respondent has no rights or legitimate interests in the alamorentacar.hk domain name. On 28 March 2017, the web site at the alamorentacar.hk domain name resolved to a web page with lists of “Related Links” that consisted of links to web sites offering rent a car services in direct competition with Alamo Rent A Car…….
Respondent cannot have any legitimate rights in the alamorentacar.hk domain name in connection with a web page that merely drives Internet traffic to other web sites offering rent a car services in direct competition with Alamo Rent-A-Car and contains a generalized offer to sell the domain name… Respondent has no legitimate rights in the alamorentacar.hk domain name and, by the use of a confusingly similar domain name, is attempting to use that confusion to drive Internet traffic to its alamorentacar.hk web site when Internet users are trying to reach the Alamo Rent-A-Car web site.”

By applying the principles stipulated in Alibaba Group Holding Limited, Newegg Trading Limited as well as Sothys International, this Panel concludes that the Respondent has “no right” and/or “legitimate interest” in respect of the Disputed Domain Name.

(3). **Bad Faith**

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panel shall take into account in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. The prescribed four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain
Name in bad faith:

(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.”

In the case of *Wikimedia Foundation Inc. v Kevo Ouz a/k/a Online Marketing Realty* (WIPO’s Decision, Case No: D2009-0798)(dated 7 April 2009) (“*Wikimedia Foundation Inc*”), the Panel found that:
“… the fact that Complainant’s WIKIPEDIA trademark pre-dates Respondent’s registration of <wikipeadia.com> and <wikipediia.com> is noteworthy. Given Complainant’s established rights in the WIKIPEDIA trademark and the Respondent’s registered domain name are ‘so obviously connected with’ Complainant, Respondent’s action suggest ‘opportunistic bad faith’ in violation of the Policy. Research in Motion Limited v. Dustin Picov, WIPO Case No. D2001-0492. See Also: Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D20000-0003 (‘it is not possible to conceive of a plausible circumstance in which the Respondent could legitimately use’ the disputed domain name); Pancil LLC v. Domain Deluxe, WIPO Case No. D2003-1035; and Kate Spade LLC v. IQ Management Corporation, WIPO Case No. D2005-109”

Likewise, in the case of Ecco Sko A/S v Privacy Protect.org / Li Jing, Wang Jianguo, and Yang Yan (WIPO’s Decision, Case No: D2013-0016)(dated 19 February 2013) (“Ecco Sko A/S”), the Panel stated that:

“Under paragraph 4(b) of the Policy, it shall be evidence of registration and use in bad faith if the Complainant can show that, by using the disputed domain name, the Respondent have intentionally attempted to attract, for commercial gain, Internet users to their websites or other online locations, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of their websites or locations or of a product or service on their websites or locations”
From this, The Panel in that case observed and found that:

“This Panel finds that the Respondents have done so in the case of each of the four disputed domain names. In particular, it is obvious from the Respondent’s use of the Complainant’s word and stylized marks for their websites offering counterfeit goods that the Respondents must have known of the Complainant’s ECCO marks and that they registered and have used the disputed domain names with the intention of unfairly profiting from the Complainant’s goodwill. This conduct plainly constitutes registration and use of the disputed domain names in bad faith for the purpose of the Policy”

In the meantime, in the case of Newegg Trading Limited, the Panel reiterated that:

“… The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trade mark of another (Match.com, LP v. Bill Zag and NWLAWS.ORG, WIPO Case No. D2004-0230)”

In the present case, as akin to the case of Wikimedia Foundation Inc, the Complainant had registered the trademark of “ALAMO” in the United States of America on July 25, 1978, in Hong Kong on 2 March 1992 and the United Kingdom on 16 February 1996. On this basis, the Panel is convinced that the prescribed Trade Mark are commonly acknowledged as reputable in Hong Kong, inter alia, in the People’s Republic of China (The Respondent is located in the People’s Republic of
As such, the Panel is of the view that it would be inconvincible for the Respondent to argue that it was unaware of the Complainant’s registered trademark at the time when the Disputed Domain Name was registered on 11 September 2012.

The mere explanation of what has happened in this case is that the Respondent’s motive in registering the Disputed Domain Name <alamorentacar.hk> seems to be what the Complainant is alluding to that the “Respondent is deliberately using a domain name that is confusingly similar to Complainant’s ALAMO marks to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with Complainant’s ALAMO marks as to the source, sponsorship, affiliation or endorsement of his web site and the rent a car services promoted on such web site”.

Based on such reasoning, the Panel concurs with the Complainant’s view that the Respondent registered the Disputed Domain Name deliberately in order to capture the goodwill of the Complainant’s Trade Mark, as well as to profit from the goodwill closely connected and associated with the trademark thereon.

Additionally, in the present case, as akin to the case of Ecco Sko A/S, the Respondent intended to implement the Complainant’s word by “fashioning the alamorentacar.hk domain name, the Respondent has deleted the hyphens between the words from Complainant’s ALAMO RENT-A-CAR mark” into the Disputed Domain Name website and use it as a means “to capitalize on the goodwill that Complainant has developed in its ALAMO marks to drive Internet traffic inappropriately to other web sites for commercial gain”.

China).
From this, the Panel is of the opinion that the Respondent registered as well as used the **Disputed Domain Name** with a “clear intent to trade upon the goodwill associated with Complainant’s **ALAMO** marks”.

As a result, the Panel is also of the view that such conduct has in fact infringed the overriding objective stipulated under the **Policy** (See: In the case of **Newegg Trading Limited**, the Panel reiterated that, “… The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant is seeking to profit from and exploit the trade mark of another** (Match.com, LP v. Bill Zag and NWLAWS.ORG, WIPO Case No. D2004-0230)), and is material in proving that the Respondent registered and used the Disputed Domain Name in bad faith”.

By applying the principles stipulated in **Wikimedia Foundation Inc, Ecco Sko A/S** as well as **Newegg Trading Limited** coupled with the Complainant’s submissions as well as the facts and evidence prescribed hereinabove, the Panel is of the view that the Respondent has **NO good cause or justifiable reasoning** of using the **Disputed Domain Name**.

For the foregoing reasons, the Panel concludes that the Respondent registered and used the contested domain name in bad faith.

6. **Conclusion**

The Complainant has proved its case. It has a registered Hong Kong trademark in the name “**ALAMO**”, to which the contested domain name is confusingly similar.

The Respondent has shown no rights or legitimate interest in the **Disputed Domain Name**.
The Complainant has proved that the Respondent registered and used the **Disputed Domain Name** in bad faith.

For all the foregoing reasons and in accordance with Paragraph 4 of the **Policy**, the Panel concludes that the relief requested by the Complainant be granted and do hereby order the **Disputed Domain Name** `<alamorentacar.hk>` be transferred to the Complainant - **Vanguard Trademark Holdings USA LLC**.

Dated 6th June 2017
In the Hong Kong Special Administrative Region of the People’s Republic of China

Dr. Christopher To
Panelist - Arbitrator