.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: PuraPharm International (H.K.) Limited
Respondent: Pongrui Cheng (郑邦睿)
Case Number: DHK-1700144
Contested Domain Name: <Nongs.hk>
Panel Member: Douglas Clark

1. Parties and Contested Domain Name

The Complainant is PuraPharm International (H.K.) Limited, represented by Hogan Lovells. The Respondent is Pongrui Cheng (郑邦睿), self-represented.

The disputed domain name is <Nongs.hk> which is registered with Eranet International Limited (the “Registrar”).

2. Procedural History

The Complaint was filed in English with the Hong Kong International Arbitration Centre (HKIAC) (the “Centre”) on 11 July 2017. On 11 July 2017, the Centre transmitted an email to the Registrar to request for registrar verification in connection with the disputed domain name. On 14 July 2017, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Centre verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Hong Kong Internet Registration Corporation Limited (HKIRC) Domain Name Dispute Resolution Policy (the “Policy”), the Domain Name Dispute Resolution Policy for .hk and .香香 domain names Rules of Procedure (the “Rules”) and the HKIAC Domain Name Dispute Supplemental Rules (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Centre formally notified the Respondent in English and Chinese of the Complaint, and the proceeding commenced on 17 July 2017. In accordance with the Rules, paragraph 5, the due date for Response was 7 August 2017. In accordance with Rules, paragraph 11, the language of the arbitration proceeding for this case should be in English; any request to change
the language of the arbitration proceedings to Chinese should be made to the Centre on or before 24 July 2017.

The Respondent did not submit any substantive response to the Complaint. The Centre notified the Parties the commencement of panel appointment process on 8 August 2017.

The Centre appointed Douglas Clark as the sole panelist in this matter on 17 August 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 Rules, paragraph 7.

3. Factual Background

The Complainant is part of the PuraPharm Group which is engaged in the business of modernization and internationalization of traditional Chinese medicine. PuraPharm Group is headquartered in Hong Kong and has offices or subsidiaries in various jurisdictions including mainland China, Japan, Canada and Australia. On 8 July 2015, PuraPharm Corporation Limited, a PuraPharm group company, was listed on the Hong Kong Stock Exchange (Stock Code 1498).

The Complainant is the owner of trademarks registered in:

Hong Kong

<table>
<thead>
<tr>
<th>Mark</th>
<th>Registratio n No.</th>
<th>Registratio n Date (yyyy-mm-dd)</th>
<th>Goods/Services</th>
</tr>
</thead>
</table>
| NONG’S | 200104326 | 2000-09-07 | Class 5
Chinese herbal medicine; pharmaceutical, veterinary and sanitary preparations; dietetic substances adapted for medical use; all included in Class 5. |
| NONG’S | 302093265 | 2011-11-22 | Class 44
Medical services; veterinary services; hygienic and beauty care for human beings or animals; agriculture, horticulture and forestry services, etc. |
| NONG’S | 302517237 | 2013-02-05 | Classes 3, 5, 7, 10, 11, 29, 30, 31, 32, 35
Bleaching preparations and other |
<table>
<thead>
<tr>
<th>Mark</th>
<th>Registratio No.</th>
<th>Registratio Date (yyyymmdd)</th>
<th>Goods/Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NONG’S</strong></td>
<td>302974771</td>
<td>2014-04-25</td>
<td>substances for laundry use, Nutrition capsule not for medical purpose, etc.</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Class 9</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Computer hardware and software; computer hardware and software relating to pharmacy and Chinese medicines dispensary system; dosage dispensers, etc.</td>
</tr>
</tbody>
</table>

**Mainland China**

<table>
<thead>
<tr>
<th>Mark</th>
<th>Registratio No.</th>
<th>Registratio Date (yyyymmdd)</th>
<th>Goods/Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NONG'S</strong></td>
<td>1656505</td>
<td>2001-10-28</td>
<td>Class 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Vitamins preparations; dietary and nutritional supplements for medical use; pharmaceutical preparations, etc.</td>
</tr>
<tr>
<td><strong>NONG'S</strong></td>
<td>10216403</td>
<td>2013-01-21</td>
<td>Class 44</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Medical clinics; medical assistance; pharmacy advice; health care; sanatoriums; nutrition consultation, etc.</td>
</tr>
</tbody>
</table>

**Macau**

<table>
<thead>
<tr>
<th>Mark</th>
<th>Registratio No.</th>
<th>Registratio Date (yyyymmdd)</th>
<th>Goods/Services</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>NONG'S</strong></td>
<td>N/054828</td>
<td>2011-06-24</td>
<td>Class 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Health food supplements; herbal extract in the forms of capsule, tablet, powder and granule, etc.</td>
</tr>
</tbody>
</table>
### NONG'S

<table>
<thead>
<tr>
<th>Mark</th>
<th>Registration No.</th>
<th>Registration Date (yyyy-mm-dd)</th>
<th>Goods/Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/054829</td>
<td>2011-06-24</td>
<td>Class 29</td>
<td>Meat, fish, poultry and game; meat extracts; preserved, dried and cooked fruits and vegetables; jellies, jams, fruit sauces; eggs, edible oils and fats.</td>
</tr>
<tr>
<td>N/054830</td>
<td>2011-06-24</td>
<td>Class 30</td>
<td>Sugar, rice, tapioca, sago, etc.</td>
</tr>
<tr>
<td>N/054831</td>
<td>2011-06-24</td>
<td>Class 44</td>
<td>Hospital, medical center and clinic management services; Medical clinic services, etc.</td>
</tr>
</tbody>
</table>

**Taiwan**

<table>
<thead>
<tr>
<th>Mark</th>
<th>Registration No.</th>
<th>Registration Date (yyyy-mm-dd)</th>
<th>Goods/Services</th>
</tr>
</thead>
<tbody>
<tr>
<td>NONG’S</td>
<td>962671</td>
<td>2001-10-01</td>
<td>Class 5</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Herbal extract, Chinese traditional medicine in pills and granules; vitamins, etc.</td>
</tr>
<tr>
<td>NONG’S</td>
<td>01680216</td>
<td>2014-12-01</td>
<td>Class 44</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Medical services; veterinary services; public baths for hygiene purposes, bathing houses, skin maintenance, etc.</td>
</tr>
</tbody>
</table>

The Complainant owns and controls a portfolio of domain names bearing the NONG'S Mark:

<table>
<thead>
<tr>
<th>Domain Name</th>
<th>Registration Date (year/month/day)</th>
</tr>
</thead>
</table>


The Complainant has used and continues to use these domain names in connection with various websites that provide information about the Complainant’s products and services.

The Respondent registered the disputed domain name <Nongs.hk> on 16 August 2015, about a month after the listing of PuraPharm Corporation Limited in Hong Kong. According to the evidence submitted by the Complainant, the disputed domain name does not resolve to any page. The Respondent is only passively holding the disputed domain name.

4. Parties’ Contentions

The Complainant

Identical or confusingly similar

The Complainant argues that the disputed domain name <Nongs.hk> is made entirely up of the registered trademark NONG’S to which the generic Top-Level Domain (“gTLD”) “.hk” has been added. It is therefore identical or confusingly similar to the Complainant’s registered trademark NONG’S.

No rights or legitimate interests

The Complainant submits that the Respondent has not been known by the disputed domain name and the Respondent has no connection with the Complainant or any of its affiliates and has not been authorized by the Complainant to register the disputed domain name anywhere in the world and has never sought or obtained any trademark registrations for NONG’S in Hong Kong or China.

Registered and is being used in bad faith

The Complainant submits that before registration of the disputed domain name the Respondent knew of the Complainant’s rights in the NONG’S trademark. The Complainant further submits that by only passively holding the disputed domain name the Respondent is not making any genuine or legitimate use of the disputed domain name and registered the disputed domain name for the purpose of preventing
the Complainant from registering the same. As such, even though the disputed domain name has not been used the Complainant alleged registration and use of the disputed domain name was in bad faith.

The Respondent

The Respondent did not submit a formal response.

5. Findings

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

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

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

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

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

A. Identical or Confusingly Similar

The disputed domain name <Nongs.hk> is made up of the registered trademark NONG’S, and the gTLD “.hk”. As the gTLD being a technical requirement is typically disregarded for the purpose of the confusing similarity test, the Panel finds the disputed domain name is identical to the registered trademark NONG’S.

The first element of the paragraph 3(a) of the Policy is therefore satisfied.

B. Rights or Legitimate Interests

The Respondent has not responded to the Complaint to assert any rights or legitimate interests. Paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) provides:

“While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence
demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.”

Paragraph 4(d) of the Policy sets out how a respondent can prove its rights or legitimate interests in a disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your 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) the Registrant 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.”

The Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. None of the circumstances in paragraph 4(d) of the Policy, which sets out how a respondent can prove its rights or legitimate interests, are present in this case.

The element of paragraph 4(a) of the Policy is therefore satisfied.

C. Registered and Used in Bad Faith

For the same reasons as those above, the Panel has no hesitation in finding that the disputed domain name <Nongs.hk> was registered and is being used in bad faith.
The Complainant registered its NONG’S trademark in Hong Kong as early as in 2000 and the Complainant also owns the domain names <Nongs.com>, <Nongs.net>, <Nongs.org>, and <Nongs.ca>, the Panel considers it difficult to believe that the Respondent was not aware of the Complainant's trademark at the time of registration of the disputed domain name. Furthermore, the timing of the registration, which is just a month after the listing of PuraPharm Corporation Limited in Hong Kong also suggests that the domain name was registered to somehow take advantage of the listing.

While the disputed domain name is currently not used, this does not prevent a finding of bad faith (see paragraph 3.3 of the WIPO Jurisprudential Overview 3.0).

Having examined all the circumstances of the case the Panel finds that the Respondent registered, used and is using the disputed domain in bad faith.

The third element of the paragraph 4(a) of the Policy is therefore satisfied.

**Registration requirements for that individual category of domain name**

Rule 4(d)(v) of the policy provides:

“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.”

The Respondent’s name is Pongrui Cheng. This is not the same as nongs. The Respondent has filed no evidence to show nongs is a pseudonym of the Respondent.

The 4th element of paragraph 4(a) of the Policy is therefore 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, <Nongs.hk>, be transferred to the Complainant.

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Douglas Clark
Dated: 7 September 2017