1. Parties and Contested Domain Name

The Complainant is Fareportal Inc. of 135 West 50th Street, Suite 500, New York, 10020, the United States of America.

The Respondent is Zhao Ke of email ruochang@gmail.com of the People’s Republic of China.

The Contested Domain Name is <www.cheapoair.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

On 15 May 2018, pursuant to the Hong Kong Internet Registration Corporation Limited ("HKIRC") Domain Name Dispute Resolution Policy ("Policy"), the 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 panelist of "one".

On 14 June 2018 [09:34], 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 <cheapoair.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...". The HKIAC also stated in the email that "The HKIAC did not receive a Response from the Respondent within the required period of time".

On 15 June 2018 [11.11], Dr Christopher To wrote to HKIAC confirming his willingness to act independently and impartially between the parties.

The Panel comprising of Dr. Christopher To as a single panelist was appointed by the HKIAC on Thursday, 21 June 2018 [09:19]. Papers pertaining to the case were delivered to the Panel at the same time.

In accordance with Rule 15(a) of the Rules, the Panel is of the view that it shall decide the complaint on the basis of statements and documents submitted to it.
According to Rule 15(d) of the Rules 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 a technology company that develops computer software used to power travel-related websites, including the highly successful, multi-national Internet-based travel agency “CheapOair”. Through these and other websites, the Complainant offers high-value, low-cost travel-related services including airfare, temporary lodging, car rentals, and vacation packages.

The Complainant makes available travel services relating to Hong Kong and other locations throughout Asia. The Complainant’s website for CheapOair, www.cheapoair.com enables Internet users to access information regarding the services the Complainant has to offer. According to the Complainant, the Complainant has invested hundreds of millions of dollars, and has expended substantial time and other resources in developing, advertising, and promoting its Internet-based travel agency under its registered trademarks around the world, including in the United States, Mainland of China, and Hong Kong.

The Complainant is the owner of the “CHEAROAIR”, “CHEAPOAIR.COM”, “WWW.CHEAPOAIR.COM” marks registered with the United States Patent and Trademark Office of the United States of America, “CHEAPOAIR” mark registered with the Trademark Office of the State Administration for Industry and Commerce of
the People’s Republic of China and “CHEAPOAIR” registered with the Intellectual Property Department of the Government of the Hong Kong Special Administrative Region. (hereinafter collectively referred to as the “CHEAPOAIR” mark).

The Complainant is of the view that consumers readily identify the CHEAPOAIR mark as being of the highest quality and emanating exclusively from and being sponsored and approved by the Complainant. Because of the extensive use and promotion by the Complainant, the Complainant owns valuable goodwill in the CHEAPOAIR Mark, which in turn substantially increases the value of the Complainant’s business and services.

The Complainant has been using the CHEAPOAIR mark in the United States of America since 1 July 2005 prior to the registration of the Disputed Domain Name, which was registered on 7 May 2013.

For the Respondent

The Respondent, Zhao Ke is from the People’s Republic of China.

On 7 May 2013, the Disputed Domain Name <www.cheapoair.hk> was registered by the Registrar.

On 14 June 2018 [09:34], the HKIAC sent an email to notify the Panel that “The HKIAC did not receive a Response from the Respondent within the required period of time”. 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 the dispute is properly within the scope of jurisdiction of the *Policy*, and that the Panel has the jurisdiction to decide on the disputed matter. The *Policy* has been incorporated into and became a part of the registration agreement whereby the *Disputed Domain Name* is registered as such the Respondent is obliged to participate in these proceedings.

The Complainant uses the *CHEAPOAIR* mark to advertise and promote its travel services domestically in the United States of America and internationally by offering flights, vacation packages, and other travel services to and from Hong Kong. The Complainant also uses the *CHEAPOAIR* mark as its business name and therefore functions as both a trademark and a trade name.

Without the Complainant’s permission, the Respondent registered the *Disputed Domain Name* on 7 May 2013. The Complainant asserts that even though the Respondent registered the *Disputed Domain Name* that consists of the *CHEAPOAIR* mark, nevertheless the Respondent is not and has not been affiliated or associated or related with the Complainant’s business, nor has the Complainant authorized, licensed, or otherwise permitted the Respondent to use its *CHEAPOAIR* mark in anyway or form.

According to the Complainant, the Respondent uses the *Disputed Domain Name* to generate pay-per-click by redirecting Internet visitors to the *Disputed Domain Name* to other third-party websites thus creating an impression that these third-party
websites are operated, endorsed by, or affiliated with the Complainant thus misleading Internet users and creating confusion to the detriment of the Complainant.

The *Disputed Domain Name* is confusingly similar to the CHEAPOAIR mark in that it incorporates the exact term “CHEAPOAIR” without any modifications. The Complainant draws to the Panel’s attention of the cases of *Giglio S.P.A. v. 李鴻*, HKIAC Case No. DCN-1600676 (May 4, 2016) and *LEGO Hong Kong Limited v. ITRAVEL Limited*, HKIAC Case No. DHK-1400110 (Dec. 2, 2014), in that incorporation of an entire trademark is sufficient to establish that a domain name is identical or confusing similar to the Complainant’s registered mark.

The Complainant further states that the word “CHEAPOAIR” followed by the ccTLD for Hong Kong “.hk” does not preclude a finding of confusing similarity as the Complainant drew to the Panel’s attention the case of *Vemmas Nutrition Co. v. Jerry Wang*, HKIAC Case No. DHK-1200084 (Jan. 10, 2013) where the panelist in that case stated that “It is a well-established rule that in making an enquiry as to whether a trademark is identical or confusingly similar to a domain name, the domain extension . . . should be disregarded.”, the Complainant also drew to the Panel’s attention the case of *Verisign, Inc. v. Kristopher Kent Harris*, HKIAC Case No. DHK-0700012 in that “verisign.hk” is confusingly similar to Complainant’s “VeriSign” trademark.

The Complainant advanced the case of *Panavision Int’l, L.P. v. Toeppen*, 141 F.3d 1316, 1326 (9th Cir. 1998), a United States of America court case in that “A Customer who is unsure about a company’s domain name will often guess that the domain name
is also the company's name . . . \[A\] domain name mirroring a corporate name may be a valuable corporate asset . . . .”

Internet users would be confused as to whether they had reached the Complainant’s official website or if the products offered for sale or the companies or services featured on the redirected websites are, themselves, sponsored, endorsed by, or affiliated with the Complainant. The public is therefore being misled, not to mention potentially frustrated if they ended up on a blank webpage. As such the Complainant is of the view that the Respondent is taking advantage of Internet users’ “initial interest confusion” for its own commercial advantage by capitalizing wrongfully on the Complainant’s goodwill in its mark to divert Internet traffic to other sites with the ultimate goal of disrupting the Complainant’s business and reputation.

The Complainant drew to the Panel’s attention the United States of America court case of Brookfield Commc’ns, Inc. v. West Coast Entm’t Corp., 174 F.3d 1036, 1062 (9th Cir. 1999) in that “[T]here is . . . initial interest confusion in the sense that, by using ‘moviebuff.com’ or ‘MovieBuff’ to divert people looking for ‘MovieBuff’ to its website, [the infringing party] improperly benefits from the goodwill that the [trademark owner] developed in its mark.”.

Based on the above, the Complainant is of the view that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights thus satisfying Article 4(a)(i) of the Policy.

The Complainant advocates that the Respondent has no rights or legitimate interests in the Disputed Domain Name and is not using it for any bona fide or fair purpose.
The CHEAPOAIR mark belongs exclusively to the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent obtained permission, either express or implied, from the Complainant to use the CHEAPOAIR mark, or any domain name incorporating such mark.

The Complainant drew to the Panel’s attention the case of Conair Corp. v. Tom Lee CCTV Limited, HKIAC Case No. DHK-1400108 (July 23, 2014), in that the Respondent has no legitimate interest where “[r]espondent is not called ‘Babylisspro’”.

The Complainant also mentioned the fact that the Respondent has never operated any bona fide or legitimate business under the Disputed Domain Name and is simply using the Disputed Domain Name to achieve commercial gain and to mislead Internet users by diverting them to competing websites, where it receives either click-through or affiliate revenue in connection with the websites to which it redirects.

Based on the above, the Complainant is of the belief that the Registrant has no rights or legitimate interests in respect of the Disputed Domain Name thus satisfying Article 4(a)(ii) of the Policy.

According to the Complainant, the Complainant has had an online presence and has been successfully selling and marketing travel-related services for some time now.

The Complainant states that the Respondent registered the Disputed Domain Name in bad faith with knowledge of the Complainant’s exclusive rights in the
CHEAPOAIR mark so as to disrupt the Complainant's normal business by redirecting users to competing websites, and to create consumer confusion with the Complainant's CHEAPOAIR mark.

The Complainant further states that the Respondent is deemed to have constructive knowledge with regards to the Complainant's United States of America trademark rights by the Complainant's federal registration of the CHEAPOAIR mark and drew to the Panel's attention the cases of America Online, Inc. v. aolgirlsgonewild.com, NAF Claim No. FA 117319 (Sept. 19, 2002) and Samsonite Corp. v. Colony Holding, NAF Claim No. FA 94313 (Apr. 17, 2000), by stating that evidence of bad faith includes actual or constructive knowledge of commonly known mark at the time of registration.

The Complainant advocates that by luring consumers away from the Complainant's website and redirecting it to other websites demonstrates bad faith use under the Policy and drew to the Panel’s attention to the case of Popular Enters., LLC v. Am. Consumers First et al., WIPO Case No. D2003-0742 (Nov. 30, 2003).

The Complainant advocates that the Disputed Domain Name is so “obviously indicative” of the Complainant that the Respondent's use of this domain name would, at a minimum, “inevitably lead to confusion of some sort” with respect to the CHEAPOAIR Mark and quotes the case of AT&T v. Rice, WIPO Case No. D2000-1276, § 6 (Nov. 25, 2000) for the Panel's attention.

The Complainant stated that the Respondent has engaged in a pattern of registering many domain names that incorporate marks in which other persons have legitimate
rights and interest (For example, the Respondent registered “armani.tv” and “avis.hk”, which infringe on the domain names “armani.com” and “avis.com,” owned by Giorgio Armani S.p.A. and Avis Budget Group, Inc.) with a purpose of earning money based on marks in which the Respondent has no legitimate rights and interest. For example, the “armani.tv” domain name leads to a website featuring pay-per-click ads and indicating that the domain name may be for sale. This practice according to the Complainant is further evidence of bad faith registration and use of the Disputed Domain Name.

As such the Complainant believes that the Respondent has registered and is using the Disputed Domain Name in bad faith to capitalize on the goodwill that the Complainant has developed in its CHEAPOAIR mark to drive Internet traffic inappropriately to other web sites for commercial gain.

The Complainant drew to the Panel’s attention of the cases of Chopard Int’l SA, et al. v. Shenyang Zhongxu Economic and Trade Co Ltd, HKIAC Case No. DCN0400020 (Jan. 3, 2005) and Maxtor Corp. v. Shenyang Shixin Co., Ltd, HKIAC Case No. DCN-0300001 (July 4, 2003) in which the Complainant stated that stock piling of well know marks which the Respondent has no rights is evidence of bad faith.

The Complainant attempted to purchase the Disputed Domain Name from the Respondent, but the Respondent refused to sell the Disputed Domain Name for less than US$5,199.00, which is substantially more than the cost to register and maintain the Disputed Domain Name. The Complainant quotes the case of Qualtrics, LLC v. Shanta Chw, HKIAC Case No. DHK-1700142 (July 17, 2017) to the Panel and states that “demanding an amount in excess of Respondent’s out-of-pocket expenses [to
purchase a domain name] is a clear example of registering a domain name in bad faith”. As such, the Complainant is of the view that the Respondent acquired the Disputed Domain Name with the intention to sell or transfer it to Complainant for valuable consideration in excess of Registrant’s out-of-pocket expenses.

Based on the above, the Complainant is of the belief that the Disputed Domain Name has been registered and is being used in bad faith thus satisfying Article 4(a)(iii) of the Policy.

The Complainant states that the Respondent is not called “CheapOair” or anything similar and that the Respondent does not meet the registration requirements for an individual category of domain name under Article 4(a) (iv) of the Policy and quotes the case of Asia Television Limited v. XIE Chao Xu, HKIAC Case No. DHK-1800152 (Feb. 26, 2018), for the Panel’s attention.

Based on the Complainant’s submissions as stated above, the Complainant requests that the Panel issue a decision on the basis that the Disputed Domain Name www.cheapoair.hk be transferred to the Complainant.

For the Respondent

On 7 May 2013, the Disputed Domain Name “www.cheapoair.hk” was registered by the Registrar.

As noted by the Hong Kong Internet Registration Corporation Ltd Whois website, the holder of the Disputed Domain Name is Zhao Ke.
On 14 June 2018, [09:34], the HKIAC sent an email to notify the Panel that the Respondent had not responded to the HKIAC within the stipulated timeframe. As such, the Respondent has not contested the allegations of the complaint and is in default.

5. Findings

A. Language of the Proceedings

Paragraph 11(a) of the Rules 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, <cheapoair.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, <www.cheapoair.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 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."

(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 in the LEGO Juris A/S believed:

"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 in the LEGO Juris A/S 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 CHEAPOAIR mark in various jurisdictions including Hong
Kong, Mainland of China and United States of America.

The Respondent registered the *Disputed Domain Name* through the *Registrar*, on 7 May 2013. In contrast, the Complainant registered the first United States of America trademark “CHEAPOAIR” on 1 July 2005, roughly seven (7) years 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. 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 *www.cheapoair.hk* domain name from Complainant’s CHEAPOAIR mark. 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 the 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 trade mark 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."

17
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-130097) (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 in the Newegg Trading Limited case 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 the Sothys International 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, “CHEAPOAIR”, as mentioned previously, the Complainant registered the Trade Mark thereon on 1 July 2005 in the United States of America before the Respondent registered the Disputed Domain Name on 7 May 2013.

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

21
Based on the Complainant’s registration of the CHEAPOAIR mark on 1 July 2005, some 7 years prior to the Respondent registering the Disputed Domain Name, the Panel is of the view that the Respondent cannot have any legitimate rights in the www.cheapoair.hk domain name in connection with a web page that merely drives Internet traffic to other web sites in direct competition with the Complainant business.

In fact, the Complainant submits that it has never authorized nor permitted the Respondent to use its registered trademark. Furthermore, the Complainant submits to the Panel that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The mere fact the Respondent drives Internet traffic to other web sites is a clear indication that the Respondent has no legitimate rights in the Disputed Domain Name and, by the use of a confusingly similar domain name, is attempting to use that confusion to drive Internet traffic to its www.cheapoair.hk web site when Internet users are trying to reach the www.cheapoair.com 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 in that case found that:

"... the fact that Complainant's WIKIPEDIA trademark pre-dates Respondent's registration of <wikipeidia.com> and <wikipeidia.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); Pancel 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 in that case 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 the Ecco Sko A/S case observed and found that:

“The 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, the Complainant had registered the trademark of “CHEAPOAIR”
in the United States of America on 1 July 2005, 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 7 May 2013.

The mere explanation of what has happened in this case is that the Respondent’s motive in registering the Disputed Domain Name <www.cheapoair.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 CHEAPOAIR mark to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with Complainant’s CHEAPOAIR mark as to the source, sponsorship, affiliation or endorsement of his 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 trademark, as well as to profit from the goodwill closely connected and associated with the trademark thereon.

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 CHEAPOAIR mark.

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.

(4). Individual category of Domain Name

As the Respondent is not called or affiliated with the name “CheapOair” in any way or form, the Panel is of the view that the Respondent does not meet the registration requirements for the individual category of domain name as per Article 4(a) (iv) of the Policy.

6. Conclusion

Having carefully considered all the statements, documents, representations and submissions made by the Parties (or on behalf of the Parties), the Panel hereby renders the following decision.

The Complainant has proved its case. It has a registered a trademark in the name “CHEAPOAIR”, 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.

The Respondent does not meet the registration requirements for an individual category of domain name.

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* <www.cheapoair.hk> be transferred to the Complainant – Fareportal Inc.

Unless the Panel can be of further assistance, the Panel would like to thank the Parties, their Legal Counsel and the HKIAC for their assistance rendered to the Panel in this matter.

Dated 3rd July 2018

In the Hong Kong Special Administrative Region of the People's Republic of China

[Signature]

Dr. Christopher To
Panelist - Arbitrator