.hk Domain Name Dispute Resolution
ARBITRATION PANEL DECISION

Complainant: Helen of Troy Limited
Respondent: Intermedia Studio Limited
Case Number: DHK-1800156
Contested Domain Name: <pur.com.hk>
Panel Member: Raymond HO

1. Parties and Contested Domain Name

The Complainant is Helen of Troy Limited, a public liability company incorporated in Barbados whose registered office is situate at 13 8th Avenue, Belleville, P.O. Box 836E, St. Michael, Barbados; and in this case the Complainant's authorized representative is Bird & Bird of 4/F Three Pacific Place, 1 Queen's Road East, Hong Kong.

The Respondent is Intermedia Studio Limited, a company incorporated in Hong Kong whose address is situate at Rm B, 8/F, Excelsior Building, 68-76 Sha Tsui Road, Tsuen Wan, Hong Kong.

The domain name at issue is <pur.com.hk> (the "Disputed Domain Name"). The Disputed Domain Name is registered with Hong Kong Domain Name Registration Company Limited (the "Registrar") of Unit 501, Level 5, Core C, Cyberport 3, 100 Cyberport Road, Hong Kong.

2. Procedural History

On 24 May 2018, Hong Kong International Arbitration Centre ("HKIAC") received the Complaint filed by the Complainant pursuant to the Domain Name Dispute Resolution Policy, adopted by the Hong Kong Domain Name Internet Registration Corporation Limited (HKIRC) on 22 February 2011 (the "Policy"), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure, approved by HKIRC on 22 February 2011 (the "Rules") and the HKIAC Supplemental Rules (the "Supplemental Rules") effective from 1 March 2011.
On 28 May 2018, HKIAC transmitted by email to the Registrar, a request for registrar verification in connection with the registrant of the Disputed Domain Name. In response to this request, the Registrar confirmed that the Respondent is the registrant or holder of the Disputed Domain Name; and that the Policy is applicable to the current dispute; and provided HKIAC with the WHOIS information regarding the Disputed Domain Name, including the administrative and technical contacts of the Respondent.

On 7 June 2018, HKIAC served on the Respondent by email the notification of commencement of proceedings (“NCP”) and that the Respondent had 15 business days, on or before 28 June 2018, to submit a Response to the Complaint in accordance with the Policy, the Rules and the Supplemental Rules. The Complaint and its annexures were attached to the NCP.

A Response was received from the Respondent by HKIAC on 28 June 2018.

On 9 July 2018, HKIAC appointed Mr. Raymond HO as sole Panelist in the proceeding who had, prior to his appointment, submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the Rules. On the same date, HKIAC transferred the case file to the said Panelist.

3. **Factual Background**

**For the Complainant**

Found in 1968, the Complainant is a global designer, developer, importer, marketer and distributor of a portfolio of brand-name consumer products, publicly traded on NASDAQ and headquartered in El Paso, Texas. As of February 2017, the Complainant operated in 13 offices across North America, Europe, Asia, and Latin America. The Complainant’s business is divided into different business segments, including housewares, health & home, and beauty.

PUR is a brand in the domestic water filtration category for faucet water filters, water pitchers and dispensers, replacement filters, and refrigerator filters. The PUR brand and all relevant trade mark rights were sold and assigned by Procter & Gamble Co. to the Complainant in January 2012. Following this assignment, the PUR brand became part of the Complainant’s health & home segment; and the Complaint and/or its affiliates became the owner of the world-wide PUR trademark
portfolio as shown by the trademark registration documents at Exhibit B to the Complaint, including but not limited to the registration in Hong Kong.

In addition, the Complainant is the registrant of the domain name <pur.com> (the "Complainant's Domain Name") and it is currently used by the Complainant for the PUR brand's official global website ("Complainant's Website").

**For the Respondent**

The Respondent has registered the Disputed Domain Name <pur.com.hk> since 30 November 2015 for a registration period up to 7 December 2018. The Disputed Domain Name is used by the Respondent for its website that advertises and offers for sale "PUR" branded water filter products.

4. **Parties’ Contentions**

**The Complainant**

The Complainant’s contentions are as follows:

(i) The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.

It is the Complainant's case that as shown in Exhibit B, the Complainant holds the rights and interests in the "PUR" trademarks registered in Chile, China, Egypt, France, Germany, Hong Kong, Japan, Korea, Mexico, Australia, USA, and Switzerland, mostly in class 11. The Complainant submits that for the purpose of considering whether the Disputed Domain Name is identical or confusingly similar to the "PUR" marks, the generic Top-Level Domain ".com.hk" element of the Disputed Domain Name should be disregarded as it is non-descriptive and merely instrumental to the use of the Disputed Domain Name on the internet. (Telecom Personal, S.A., v Namezero.com, Inc, WIPO Case No. D2001-0015 and Rohde & Schwarz GmbH & Co. KG v. Pertshire Marketing Ltd, WIPO Case No. D2006-0762 refer).

The Complainant also submits that the second-level portion of the Disputed Domain Name, "PUR" is the identifying element of the domain name, which comprises and is identical to the Complainant trade mark "PUR". As it is well established that when a domain name
incorporates a distinctive mark in its entirety it creates sufficient similarity between the mark and the domain name to render it confusingly similar. In this case, the Complainant argues that the Disputed Domain Name incorporates the Complainant’s "PUR" marks in its entirety, therefore the Complainant submits that the Disputed Domain Name is identical to the Complainant’s registered "PUR" trademarks. (Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale, WIPO Case No. D2000-0662; and Oakley, Inc. v. Zhang Bao, WIPO Case No. D2010-2289 refer).

Furthermore, the Complainant contends that according to trade mark principles, the likelihood of confusion must be appreciated globally, taking into account all relevant circumstances. Besides the degree of similarity between the marks, which in this case is identical, the degree of similarity between the goods or services should also be taken into consideration. It is the Complainant’s contention that the Respondent has connected the Disputed Domain Name to a website (the "Respondent’s Website") (the printouts of screenshots of the Respondent’s Website are shown on Exhibit F to the Complaint) that advertises and offers for sale "PUR" branded water filter products, which creates a confusion to internet users that the Respondent is the Complainant’s Hong Kong authorized distributor.

The Complainant points out that the Disputed Domain Name is substantially similar to the Complainant’s Domain Name. In the Complainant’s contention by using a different generic Top-Level Domain it is a common type of squatting practice adopted by domain name squatters. The Complainant submits that the Respondent’s registration and use of the Disputed Domain name is intentionally designed to cause deception through the practice of domain name squatting.

(ii) The Respondent has no rights or legitimate interests in the Disputed Domain Name

The Complainant submits that none of the circumstances set out in Paragraph 4(d) of the Policy can be satisfied by the Respondent and the Respondent has no rights or legitimate interests in the Disputed Domain Name.

First, the Complainant submits that the Respondent is unable to show that before notice to it of the dispute it has used or prepared to use the Disputed Domain Name or a name corresponding to the Disputed
Domain Name in connection with a bona fide offering of goods or services. The Complainant argues that the Respondent should have been well aware of the Complainant's rights in the "PUR" marks at the time the Disputed Domain Name was created (30 November 2015), particularly because the "PUR" marks have been used extensively around the world and well known in the water filter industry, and the Complainant started using the domain name <pur.com> and <purwater.com> prior to the date of registration of the Disputed Domain Name.

Given the Respondent is also engaged in the sales of water filter products, the Complainant argues that the Respondent should have been well aware of the Complainant as a result of the Complainant's extensive use of its "PUR" marks for water filter products and the "PUR" brand offering water filter products. In the Complainant's submission, it is also evident that the Respondent was aware of the Complainant at the time the Disputed Domain Name was registered due to the selection of the generic Top-Level Domain ".com.hk", as PUR branded products were available in the market prior to the Respondent registering the Disputed Domain Name.

The Complainant submits that the website design of and most of the contents on the Respondent's Website are taken directly from the Complainant's Website's page without authorization, without limitation to the unauthorized use of the Complainant's registered trademarks "PUR", the description of the PUR brand and products, photos and specifications of "PUR" water filter products, etc. The Complainant submits that the Complainant owns all of the copyrights in the photos, text and design displayed on the Complainant's Website and all such contents have been published prior to the creation of the Disputed Domain Name. Accordingly, the Respondent must have copied the content directly from the Complainant's Website.

Given the above, the Complainant contends that such use of the Disputed Domain Name by the Respondent cannot conceivably constitute a bona fide offering of goods or services. (Provent Holdings Ltd., Harmony Park International Inc. v. Xia jiang/ ganzao huang, WIPO Case No. D2014-2226 and Graybar Services Inc. v. Gratbar Elec, Grayberinc Lawrenge, WIPO Case No. D2009-1017 refer).

Second, it is the Complainant’s contention that the Respondent (so far as can be ascertained by the Complainant) neither owns nor would the Respondent be expected to own any registered trademarks which are identical, similar or related to the Disputed Domain Name, and nor does the Respondent appears to be commonly known by the
Disputed Domain Name or use the Dispute Domain Name or a name corresponding to the Disputed Domain Name. Therefore, the Complainant submits that the Respondent does not have any rights or legitimate interests to "PUR".

The Complainant says that the Respondent is not affiliated with or related to the Complainant, and there exists no previous or existing relationship between the Complainant and the Respondent that would give rise to any license, permission or authorization by which the Respondent could own or use the Disputed Domain Name which incorporates the Complainant’s "PUR" marks. Under such circumstances, the Respondent cannot show legitimate rights or interests in the Disputed Domain Name.

The Complainant also avers that the Complainant has never authorized the Respondent to sell any of its products, in particular, the "PUR" branded water filter products.

Third, the Complainant submits that it is obvious that the Respondent is not making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s "PUR" marks.

As submitted above, it is the Complainant’s case that the Respondent should have been well aware of the Complainant’s rights in the "PUR" marks, as they have been used by the Complainant extensively prior to the date of creation of the Disputed Domain Name, the Respondent is selling the Complainant’s "PUR" branded products and the "PUR" marks used in the Respondent’s website are identical to the Complainant’s "PUR" marks. Given the Respondent’s knowledge of the Complainant and its "PUR" marks, the registration of the Disputed Domain Name was clearly intentional to block the Complainant from registering and using the Disputed Domain Name and it is implausible that the Disputed Domain Name was selected for any other reason other than for commercial gain through misleadingly diverting internet users to the Respondent’s Website.

(iii) The Disputed Domain Name is being registered and is being used in bad faith

It is the Complainant’s case that given the history and reputation of the Complainant, and considering the fact that the Respondent is engaged in the same business and market as the Complainant, and selling the Complainant’s "PUR" products, it is inconceivable for the Respondent to
have never heard about the Complainant’s "PUR" marks before it registered the confusingly similar Disputed Domain Name. The very fact that the Respondent registered the Complainant's “PUR” mark as a domain name while having notice of such registered marks amounts to bad faith.

The Complainant submits that it cannot be a coincidence that the Respondent’s Website looks substantially similar to the Complainant’s Website page. As mentioned above, the website design and contents on the Respondent’s Website are substantially similar/identical to the design and contents shown on the Complainant’s Website (the printouts of screenshots of the Complainant’s Website are shown on Exhibit J to the Complaint). The only plausible explanation for such similarity is that the design and contents were copied directly from the Complainant’s Website. Such act shows the Respondent was well aware of the Complaint, its registered "PUR" marks and its website at the time it registered the Disputed Domain Name.

The Complainant also submits that the Respondent purposefully replaced the Complainant’s contact information with a fill-in message box and deliberately avoiding the disclosure of its own contact information to internet users, while copying most of the other contents directly from the Complainant’s Website. This proves the Respondent is attempting to divert internet users, who intended to contact the Complainant, to the Respondent's website in bad faith. (Grupo Costamex, SA de C.V. v. Stephen Smith and Oneandone Private Registration / 1&1 Internet Inc., WIPO Case No. D2009-0062 refer).

The Complainant points out that the Respondent included a disclaimer in small print at the bottom of the Respondent's website, which could be easily overlooked by the internet user, as internet users are likely to pay more attention to the much more prominently displayed trademarks and product information on the website, internet users without ever noticing the disclaimer may eventually purchase water filter products from the Respondent's website believing that they have ordered the product directly from the Complainant or its authorized distributors.

Taking into consideration that most of the content is taken directly from the Complainant's website, even internet users who are familiar with the Complainant's products and website, are likely to be misled by such similarity of the content and conclude that Respondent is licensed by or is in cooperation with the Complainant. As the panel concluded in Volvo Trademark Holding AB v. e-motordealer Ltd., (WIPO Case No. D2002-0036), if a domain name chosen by a party, at
first sight appears to be one of another party’s “and it is only upon arriving at and studying the web page that the disclaimer can be seen, at that point, the consumer has already been diverted and mislead, attracted by the false impression created by the misleading domain name.” The Complainant submits that the inconspicuous disclaimer in the Respondent’s Website does nothing or very little to prevent the Respondent from unfairly passing itself off as related to the Complainant. (Six Continents Hotels, Inc. v. Hotel Partners of Richmond, WIPO Case No. D2003-0222 and SIEMENS AG v. Domain ID Shield Service CO., Limited / Maksim SPD Chervinchuk, WIPO Case No. D2018-0364 refer).

In the present case, Respondent has registered the Disputed Domain Name that fully incorporates Complainant’s "PUR" mark with the geographic indicator “hk”, which stands for Hong Kong. Given that Complainant promotes and sells the PUR branded water filter products in numerous countries around the world, the Disputed Domain Name is likely to be viewed by internet users as linked to Complainant and/or to a website that is authorized to sell the Complainant’s PUR branded products in Hong Kong. The Complainant submits that the registration of the Disputed Domain Name by the Respondent is an attempt to attract commercial gain and stop internet users from locating the Complainant’s Website. (Ansell Healthcare Products Inc. v Australian Therapeutics Supplies Pty, Ltd., WIPO Case No. D2001-0110 and Long Realty Uptown v. Domains By Proxy, LLC / Lloyd Fox, WIPO Case No. D2015-2076 refer).

In view of the above, under paragraph 4(b)(iv) of the Policy, the Disputed Domain Name is registered and being used by the Respondent in bad faith.

**The Respondent**

The Respondent’s contentions are as follows:

(i) Website design is not identical

The Complainant mentioned “the website design and contents on the Respondent’s Website are substantially similar/identical to the design and contents shown in the Complainant’s Website”. The Respondents argues that the logo of PUR.COM.HK is the word “PUR.COM.HK” in blue with a small water droplet icon; and the logo of the website accurately describes which domain the users are
visiting. The Respondent contends that it would be difficult to tell if they are similar/identical logo design. The Respondent asserts that if conducting an image search on Google with the keyword “water filtration company logo”, there could be thousands of logos with blue colour and with water droplet icon as shown in Exhibit A to the Response filed.

In addition, the Respondent asserts if searching for some water filtration websites, most of the websites would have blue colour as the main theme, but it would be difficult to tell if they have similar/identical website design as shown in Exhibit B to the Response.

(ii) Disclaimer has been placed on every page

The Respondent says that a disclaimer has been placed on the website footer in every single page, stating “This website is not affiliated with, maintained, authorized, endorsed or sponsored by the Helen of Troy Company, Kaz USA, Inc, PUR.COM or any of its affiliates”. The Respondent argues that if the Respondent were attempting to divert internet users, such a disclaimer would not have to be placed anywhere at the Respondent’s website.

(iii) Website content is accurate and not misleading

The Respondent refers to the Complainant’s submission that “the Respondent purposefully replaced the Complainant’s contact information with a fill-in message box and deliberately avoiding disclosure of its own contact information to internet user”; and contends that since the Respondent’s Website does not have any kind of affiliation with the Complainant’s website, it would be reasonable to say that no linkages are built or claimed with the Complainant’s website.

The Respondent claims that in order to accurately describe the products, the Respondent has taken the product descriptions and specifications from Amazon Website. This information generally describes facts and data that can be hardly converted to other words. The Respondent queries, if a product can be traded freely at public platforms and forums, why such a product cannot be displayed in a website.

(iv) Reason for domain registration
The Respondent claims that the Respondent has searched and tried many keywords for use such as PURE, CLEAR, CLEAN, and finally registered the 3 character domain name PUR.COM.HK.

5. Findings

According to Paragraph 4(a) of the Policy which is applicable to the present case, 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.

Identical/confusing similarity

The first question that arises for consideration is whether the Complainant has a trademark or service mark in Hong Kong on which it can rely.

Based on the documentary evidence in Exhibit B to the Complaint, the Panel finds that of the countries and territories mentioned in the Complainant’s submission, the Complainant is the registered holder of the “PUR” trademark TM No. 302225394 registered on 18 April 2012 in Class 11 at the Trade Marks Registry of Hong Kong (“Complainant’s Hong Kong registered “PUR” Trademark”). The specific class of goods registered by this “PUR” trademark is described in the trademark certificate as “antimicrobial water purification units, water filter cartridges, water purification units for domestic use, and household appliances, namely water filters for domestic use and water dispensers”. From this documentary evidence, the Panel also finds that the Complainant is also the registered holder of the “PUR” trademarks in class 11 that were registered long before the registration of the Disputed Domain Name in Chile, China, Egypt, France, Germany, Japan, Korea, Mexico, Australia, USA, and
Switzerland. This finding supports the Complainant’s case that the Complainant’s “PUR” brand of water filtration products have been marketed and promoted worldwide.

It follows that the second question for consideration is whether the Disputed Domain Name is identical or confusingly similar to the Complainant’s Hong Kong Registered “PUR” Trademark that was registered in 2012 prior to the registration of the Disputed Domain Name by the Respondent.

The Panel accepts the Complainant’s submission that that the Disputed Domain Name contains the entire “PUR” trademark in its identifying component. It is generally accepted that the suffix “com.hk”, the generic Top-Level domain element, can be disregarded in making this comparison as it is non-descriptive and merely instrumental to the use of the Disputed Domain Name on the internet as the Complainant contends. The Panel therefore finds that the Disputed Domain Name is identical to the Complainant’s Hong Kong registered “PUR” Trademark.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

The Panel considers that the submissions by the Parties on the similarity between the Respondent’s Website and the Claimant’s Website are irrelevant to the requirement in paragraph 4(a)(i) of the Policy. Nevertheless, these submissions will be dealt with when the other requirements in paragraphs 4(a)(ii) and 4(a)(iii) of the Policy are considered below.

**Rights or Legitimate Interests of Respondent**

It is well established that the Complainant must first establish a prima facie case that Respondent lacks rights and legitimate interests in the Disputed Domain Name under paragraph 4(a)(ii) of the Policy; and then the onus of proof shifts to the Respondent to show the Respondent does have rights or legitimate interests. On the evidence presented by the Complainant, the Panel finds that a prima facie case has made out by the Complainant against the Respondent that Respondent lacks rights and legitimate interests in the Disputed Domain Name.

The Panel has examined carefully the contentions of the Respondent and finds that the Respondent has not rebutted the prima facie case against it for the following reasons:
(a) The Respondent does not dispute the Complainant’s Hong Kong registered “PUR” Trademark nor any of the other “PUR” trademarks of the Complainant registered in any of the countries or territories as shown in Exhibit B to the Complaint prior to the registration of the Disputed Domain Name by the Respondent.

(b) The disclaimer at the foot of each page of the Respondent’s Website states: “PURE.COM.HK website and policy is only available and applicable to Hong Kong region. This website is not affiliated with, maintained, authorized, endorsed or sponsored by the Helen of Troy Company, Kaz USA, Inc, PUR.COM or any of its affiliates”. By the Respondent’s own admission in this disclaimer, the Panel finds that (i) the Complainant was well known to the Respondent; (ii) the Respondent was fully aware of the Complainant’s Website “www.pur.com”; and (iii) the Respondent had full knowledge of the Complainant’s “PUR” brand of water filter products.

(c) By marketing and offering for sale the “PUR” brand products at the Respondent’s Website without any prior authorization or licence given by the Complainant, it is a clear case that the Respondent was engaging in commercial activities that infringed the trademark rights of the Complainant’s Hong Kong registered “PUR” Trademark. The selection by the Respondent of the “PUR” mark for the registration of the Disputed Domain Name and using it for the Respondent’s Website for marketing and sale of the “PUR” brand water filter products is clearly an act of infringement by the Respondent of the Complainant’s Hong Kong registered “PUR” Trademark in class 11 goods. Such act on the part of the Respondent could not be regarded as a use in connection with a bona fide offering of goods or services in Hong Kong. The selection of the 3-letter word “PUR” by the Respondent for the Disputed Domain Name could not be at random as the Respondent claims.

(d) Without the necessity of going into the question of the similarity of website designs or layouts between the Respondent’s Website and the Complainant’s Website, there are a clear factual supports from comparing the contents of these websites. First, the names of the domains are <pur.com> for the Complainant’s Website and <pur.com.hk> for the Respondent’s Website that are almost identical except the suffix “.hk”. Second, the “PUR” brand of water filtration products are marketed on both websites. Third, in the Complainant’s Website, there is a passage which reads: “MAXION TM Filter Technology is our commitment to superior filtration performance and innovation, by using activated carbon and ion exchange to reduce more contaminants than any other brand.” While in the Respondent’s Website, a similar passage states: “MAXION Technology is PUR’s unique formulation
approach for blending carbon and ion exchange materials for maximum contamination reduction.” These passages are confusingly similar.

Fourth, there are other similar messages, such as the message “For 30 years, our goal has been to make your water clean” in the Complainant’s Website; and the message “PUR has been innovating for more than 30 years, trying to give you clean, crisp, great tasting water” in the Respondent’s Website. The similarities in these passages, messages and other contents (including the technical details of the products) in the Complainant’s Website and the Respondent’s Website clearly show that the latter is a copy of the former. The Panel therefore rejects the Respondent’s contention that the product descriptions and specifications of the Respondent’s Website were taken from the Amazon website. It must be pointed out that the “PUR” branded products in class 11 are trademark protected and cannot be traded freely at public platforms or websites without the authorization of the Complainant. The Panel also rejects the Respondent’s contention that there are no linkages or connections between the Respondent’s Website with the Complainant’s Website having regard to the similarities between these websites despite that the blue colour and the water droplet icon are commonly used in website for water filtration products. The similarities in the contents between the Respondent’s Website and the Complainant’s Website are clear connections.

Paragraph 4(d) of the Policy provides as follows:

"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) 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.”

On totality of the evidence established, the Panel accepts the Complainant’s submission and finds none of the circumstances in paragraph 4(d) exists in the present case.

First, the Disputed Domain Name or the use of the “PUR” brand by the Respondent would have infringed the Complainant’s Hong Kong registered “PUR” Trademark. As such the use of the Disputed Domain Name for the Respondent’s Website could not be a use in connection with a bona fide offering of goods or services in Hong Kong.

Second, nothing shows that the Respondent as the registrant of the Disputed Domain Name has been commonly known by this domain name.

Third, there is no evidence that the Respondent has trademark or service mark rights in the distinctive “PUR” mark in the Disputed Domain Name.

Fourth, the Disputed Domain Name is not registered in one of the Individual Domain Name Categories under the Policy and it is not the Respondent’s own “individual name”, neither the Respondent’s legal name nor a name by which the Respondent is commonly known.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(ii) of the Policy.

**Bad faith**

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

Paragraph 4(b) of the Policy provides:
"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."

However, those criteria are not exclusive and the Complainant may also rely on conduct that is bad faith within the generally accepted meaning of that expression.

Having regard to these principles, the Panel finds that the Disputed Domain Name was registered and used in bad faith for the following reasons.

(a) The Panel has found that with full knowledge of the existence of the Complainant in the business of water filtration products, the Complainant’s “PUR” brand, and the Complainant’s official website “www.pur.com”, the Respondent intentionally selected the 3-letter “PUR” mark for the registration of the Disputed Domain Name; and used it for the Respondent’s Website for marketing and sale of the “PUR” brand of water filter products that would have infringed the Complainant’s Hong Kong registered “PUR” Trademark in class 11 goods. The Panel has also found that the Respondent did copy the Complainant’s
Website when using the Disputed Domain Name for the Respondent’s Website. On the totality of evidence established in the circumstances of this case, it can be irresistibly inferred on the generally accepted meaning of bad faith that the Respondent has registered and used the Disputed Domain Name in bad faith.

(b) The Panel agrees with the Complainant that it is a pattern of squatting commonly used by domain name squatters by selecting a different generic Top-Level domain for registration. It can reasonably be inferred that the Respondent’s registration and use of the Disputed Domain Name in the “.com.hk” generic Top Level domain that differs from the “.com” generic Top Level domain of the Complainant’s registered and in use <pur.com> domain name was intentional so as to confuse internet users. The Panel respectfully adopts the principle enunciated by the learned panelist in WIPO Case No. D2002-0036, that as the Disputed Domain Name chosen by the Respondent at first sight appears to be that of the Complainant; and “it is only upon arriving at and studying the web page that the ... disclaimer can be seen, at that point, the consumer has already been diverted and mislead, attracted by the false impression created by the misleading domain name.” As the learned panelist said, “[t]he Policy wants to avoid this.” The Panel agrees; and accepts the Complainant’s submission that taking into consideration the similarity of the Disputed Domain Name with the domain name of the Complainant’s Website; and also the similarity of the Respondent’s Website with the Complainant’s Website, even internet users who are familiar with the Complainant’s products and website, are likely to be misled and concluded that Respondent was licensed by the Complainant to market and sell the “PUR” brand of water filter products despite the disclaimer at the foot of the Respondent’s Website. In addition, the first sentence of the disclaimer which says: “PUR.COM.HK website and policy is only available and applicable to Hong Kong region” is misleading. That could give rise to confusion to consumers who might be misled that the Respondent was the Hong Kong dealer of the Complainant’s “PUR” brand water filter products despite the small print of the “disclaimer” underneath this opening sentence. The Panel therefore finds that by registering and using the Disputes Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to the Respondent’s Website, by creating a likelihood of
Based on the above, the Panel finds that Respondent has registered and used the Disputed Domain Name in bad faith under paragraph 4(b)(iv) and within the generally accepted meaning of bad faith.

Accordingly, the Complainant has satisfied the requirement of paragraph 4(a)(iii) of the Policy.

Non individual category of domain name

As the Disputed Domain Name is not one of the Individual Domain Name Categories as referred to in paragraph 4(c) of the Policy, paragraph 4(a)(iv) of the Policy is therefore not applicable.

6. Conclusions

For all the foregoing reasons, in accordance with paragraphs 4(a) of the Policy, the Panel orders that Disputed Domain Name <pur.com.hk> be transferred to the Complainant.

Raymond HO, Sole Panelist

Date: 26 July 2018