1. Parties and Disputed Domain Name

The Complainant is **The Ddrops Company Inc.** of 126 Trowers Road, Woodbridge, Ontario L4L 5Z4, Canada.

The Respondent is **Asia Manufacture & Inspection Co.** of RM. 1707, 17/F., Hollywood Plaza, 610 Nathan Road, Mong Kok, Kowloon, Hong Kong.

The Disputed Domain Name **< ddrops.com.hk >** is registered with **UDomain Web Hosting Company Limited (the Registrar).**

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the **HKIAC**) on 1 April 2019 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 of Procedure**) and the HKIAC Supplemental Rules (the **Supplemental Rules**) effective from 1 March 2011.

On 2 April 2019, the HKIAC transmitted by email to the Registrar a request for verification. On 3 April 2019, the Registrar transmitted by email to the HKIAC its verification.

On 4 April 2019, the HKIAC invited the Complainant to comment on the response from the Registrar.

On 12 April 2019, the Complainant filed the Complaint duly amended. On the same day, the HKIAC sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 15 business days to submit a Response (i.e. on or before 3 May 2019).
No formal Response was submitted to the HKIAC by the Respondent.

On 6 May 2019, the HKIAC advised both parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the HKIAC.

On 24 May 2019, the HKIAC notified the parties that Mr. FONG Ho Yin had been appointed as a Sole Panelist by the HKIAC.

Paragraph 11(a) of the Rules of Procedure provides that unless otherwise agreed by the Parties, the language of the arbitration proceedings shall be in English for English .hk domain name, subject always to the authority of the Arbitration Panel to determine otherwise, having regard to all the circumstances of the arbitration proceeding. The Arbitration Panel determines that the language of the present arbitration proceedings shall be in English.

3. Factual Background

For the Complainant

The Complainant is a corporation organized and existing under the laws of Ontario, Canada. It is 100% Canadian-owned and operated, and was founded in response to a need for a simpler and better way to provide vitamin D, not just for infants but for older children and adults too.

The Complainant conducts its own research and development which is geared towards developing and marketing safe, effective, convenient and economical forms of vitamin D supplements under its “DDROPS” brand. It takes pride in its products as these are manufactured in government licensed GMP (good manufacturing practice) facilities in Canada and hold NSF product certification worldwide.

Receiving an NSF International (previously known as the National Sanitation Foundation) certification is not an easy feat as NSF conducts rigorous product testing, material analyses and unannounced plant inspections to ensure that certified products continue to meet the high standards for public health protection. To achieve this, the Complainant follows the good manufacturing standards common in the industry, and takes steps beyond these high standards to ensure that its product is consistent, safe and of the highest quality.
The Complainant is the registered owner of the “DDROPS ONE”, “DDROPS +A”, “BABY DDROPS +A” trade marks, and other trade marks containing the word “DDROPS” in Class 5 in Hong Kong.

In addition, the “DDROPS” trade mark and other trade marks containing the word “DDROPS” were also registered in Australia, Canada, China, the European Union (“EU”) and the United States (“US”).

Furthermore, the Complainant or its duly designated representative is the registrant of domain names using the word “ddrops” in Hong Kong and other countries as well as other domain names containing “ddrops” as part of the domain names in a number of countries. While the WHOIS search result on these domain names list Complainant or its designated representative as the Registrant, the WHOIS search result on the domain names ddrops.asia, ddrops.ca, and ddrops.org have redacted this information for privacy reasons. Nonetheless, these domain names are linked to the Complainant’s main webpage http://ca.vitaminddrops.com/.

For the Respondent

On 19 May 2014, the Respondent through the Registrar registered the Disputed Domain Name.

The Respondent has not filed any formal Response to these proceedings.

4. Parties’ Contentions

The Complainant

1. Identical or confusingly similar to a trade mark - Paragraph 4(a)(i) of the “.hk” Domain Name Dispute Resolution Policy

The disputed domain name is identical and wholly incorporates the Complainant’s trade mark registrations in Hong Kong with details as follows:-
<table>
<thead>
<tr>
<th>No.</th>
<th>Trade Mark</th>
<th>Registration No.</th>
<th>Registration Date</th>
<th>Class of Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Ddrops</td>
<td>301685449</td>
<td>10-08-2010</td>
<td>5</td>
</tr>
<tr>
<td>2</td>
<td>Baby Ddrops pour bébé</td>
<td>301685458</td>
<td>10-08-2010</td>
<td>5</td>
</tr>
<tr>
<td>3</td>
<td>DDROPS ONE</td>
<td>304072824</td>
<td>10-03-2017</td>
<td>5</td>
</tr>
<tr>
<td>4</td>
<td>Ddrops</td>
<td>304365298</td>
<td>12-12-2017</td>
<td>5</td>
</tr>
<tr>
<td>5</td>
<td>DDROPS +A</td>
<td>304402908</td>
<td>18-01-2018</td>
<td>5</td>
</tr>
<tr>
<td>6</td>
<td>BABY DDROPS +A</td>
<td>304402926</td>
<td>18-01-2018</td>
<td>5</td>
</tr>
</tbody>
</table>

2. **The Respondent has no rights or legitimate interests in “ddrops.com.hk” - Paragraph 4(a)(ii) of “.hk” Domain Name Dispute Resolution Policy**

The Respondent has never been authorised to register the disputed domain name. It has neither acquired trade mark nor service mark rights in the disputed domain name.

The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent no longer has any connection or affiliation with the Complainant and has not received any license or consent, express or implied, from the Complainant to use its mark in a domain name or in any other manner.
3. **The Respondent's Bad Faith - Paragraph 4(a)(iii) of ".hk" Domain Name Dispute Resolution Policy**

The bad-faith evidence includes:

(1) As a previous reseller of the Complainant’s “DDROPS” products, the Respondent is aware and ought to be aware of the Complainant’s exclusive registered rights in “DDROPS” around the world, including but not limited to Hong Kong, the EU and the US. However, the Respondent still chose to register the disputed domain name on 19 May 2014 well after the Complainant obtained trade mark registrations for marks containing the word “DDROPS” in Hong Kong, the US and EU, with the bad faith intention of exploiting the Complainant’s goodwill in the said trade marks.

(2) The Respondent does not have a website linked to the disputed domain name. The absence of the legitimate use of the disputed domain name plus the cessation of the Respondent’s business, in effect prevents the Complainant from reflecting its duly registered trade mark in a corresponding domain name.

Accordingly, it is respectfully alleged that the Respondent registered the disputed domain name in bad faith.

**The Respondent**

The Respondent has not submitted any formal Response within the stipulated timeframe. Therefore, the Respondent is in default.

5. **Findings by the Arbitration Panel**

According to Paragraph 4(a) of 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.

(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 Hong Kong in which the Complainant has rights.

Based on the “DDROPS” registered trademarks of the Complainant, the Arbitration Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s registered trademarks in Hong Kong.

As noted, the Disputed Domain Name wholly incorporates the registered trademarks of the Complainant.

The Disputed Domain Name “ddrops.com.hk”, composes of “ddrops”, “.com” and “.hk”. No doubt, “.com” is a generic top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant’s registered trademark: see Pomellato S.p.A v. Tonetti, WIPO Case No. D2000-0493. And “.hk” indicates the country of origin (also known as a country code top-level domain), it is without legal significance as it is not necessary for every domain name to indicate the country of origin.

Accordingly, the Arbitration Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

(2) **Rights or Legitimate Interests of Respondent**

The fact that the Complainant’s adoption and first use of the registered trademarks predates the Respondent’s Disputed Domain Name has the practical effect of shifting the burden of proof to the Respondent in establishing that it has legitimate rights and/or interests in the Disputed Domain Name: see PepsiCo, Inc. v. Amilcar Perez Lista d/b/a Cybersor, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy.

Accordingly, the Arbitration Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

(3) **Bad faith**

Paragraph 4 (b) of the Policy provides:
“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.”

On the information before the Arbitration Panel, the Arbitration Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Arbitration Panel takes into account of a number of facts into consideration:

1. The Complainant has registered the “DDROPS” trademarks in Hong Kong long before the Disputed Domain Name was registered.

2. The Arbitration Panel accepts that as a previous reseller of the Complainant’s “DDROPS” products, the Respondent is aware and ought to be aware of the Complainant’s exclusive registered rights in “DDROPS” trademarks around the world, including but not limited to Hong Kong.

3. It is well established that the Respondent's registration and use of the Disputed Domain Name must involve mala fides where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in the “DDROPS” trademarks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trademarks, for such registration and use: see Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163.
4. The Arbitration Panel accepts that by registering the Disputed Domain Name, the Respondent has prevented the Complainant from registering a corresponding domain name reflecting its trademarks.

Accordingly, the Arbitration Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

(4) **If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name**

Paragraph 4(a)(iv) of the Policy is not applicable as the Disputed Domain Name is not registered by an individual person.

6. **Award**

For the foregoing reasons, the Arbitration Panel is satisfied that the Complainant has proved its case against the Respondent under Paragraph 4(a) of the Policy.

The Arbitration Panel hereby orders that the Disputed Domain Name be cancelled.

Date of Issue: 11 June 2019

Place of arbitration: Hong Kong

FONG Ho Yin
Sole Panelist of the Arbitration Panel