Case Number: DHK-1900166
Complainant: PP Produits Prestiges SA
Respondent: Swiss Perfection (Hong Kong) Limited
Disputed Domain Name: <swissperfection.com.hk>

1. Parties and Contested Domain Name

The Complainant is PP Produits Prestiges SA, of Avenue Claude Nobs 14, 1820 Montreux, Switzerland, self-represented.

The Respondent is Swiss Perfection (Hong Kong) Limited, of UNIT 2613-15, 26/F, PAUL Y. CENTRE, 51 HUNG TO ROAD, KWUN TONG, HONG KONG.

The contested domain name is <swissperfection.com.hk> (the “Domain Name”), registered by the Respondent with Hong Kong Domain Name Registration Company Limited (the “Registrar”).

2. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the “Centre”) on September 25, 2019. On September 30, 2019, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. The Centre sent follow-up emails to the Registrar on November 19, 2019 and December 4, 2019. The Registrar did not respond to the Centre’s verification request. On December 20, 2019, Hong Kong Internet Registration Corporation Limited (“HKIRC”) sent an email to the Centre in response to the Centre’s verification response sent to the Registrar on September 30, 2019. In its verification response, HKIRC (1) disclosed an address for the Respondent which differed from the address for the Respondent listed in the Complaint; and (2) highlighted the eligibility requirements for registration of .com.hk domain names (the “Eligibility Requirements”). On January 6, 2010, the Centre sent an email communication to the Complainant (1) providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint; and (2) inviting the Complainant to comment with respect to the Eligibility Requirements. On January 9, 2020, the Complainant filed an amended Complaint, and confirmed that it was seeking cancellation of the Domain Name.

The Centre verified that the Complaint satisfied the formal requirements of the HKDNR Domain Name Dispute Resolution Policy (the “Policy”) and the HKDNR Domain Name Dispute Resolution Rules (the “Rules”).
In accordance with paragraphs 2(a) and 4(a) of the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced, on January 13, 2020.

In accordance with paragraph 5(a) of the Rules, the due date for Response was January 31, 2020. The Respondent did not submit any response. Accordingly, the Centre notified the Parties of the Respondent’s default on February 5, 2020.

The Centre appointed Sebastian Hughes as the sole Panelist in this matter on February 11, 2020. The Panel finds that it was properly constituted. The Panel has confirmed its impartiality and independence, in accordance with paragraph 7 of the Rules.

On February 11, 2020, the Panel issued Arbitration Panel Order No. 1, requesting the Complainant to provide by February 18, 2020:

(1) Details of the relevant trademark(s) or service mark(s) in Hong Kong in which the Complainant has rights (paragraph 4(a)(i) of the Policy); and

(2) In accordance with Article 3.6 of the Domain Name Registration Policies, Procedures and Guidelines for .hk. and .香港 domain names, a copy of the Business Registration Certificate from the Inland Revenue Department, or a copy of the Certificate of Registration of Overseas Company from the Companies Registry, for the Complainant or its authorised representative and agent.

On February 12, 2020, the Complainant submitted, in response to Arbitration Panel Order No. 1, details of several trade mark registrations in Hong Kong owned by Global Skin Care Holding SA (the “Trade Mark Registrations”); and a copy of the Complainant’s commercial business registration in Switzerland.

On March 4, 2020, the Panel issued Arbitration Panel Order No. 2, requesting the Complainant to provide by March 6, 2020:

(1) Evidence to demonstrate that it has rights in the Trade Mark Registrations; and

(2) Confirmation that it seeks cancellation of the Respondent’s registration of the Domain Name.

On March 6, 2020, the Complainant submitted, in response to Arbitration Panel Order No. 2, commercial registration certificates for the Complainant and for Global Skin Care Holding SA in Switzerland; a redacted copy of the distribution agreement dated September 14, 2009 entered into between the Complainant and Global Skin Care Holding SA (collectively) and, apparently, their former distributor in Hong Kong (the distributor’s name having been redacted) for the distribution in Hong Kong of products bearing the trade mark SWISS PERFECTION (the “Trade Mark”); and an Authorization document dated March 5, 2020 and signed by the same natural
person on behalf of both Global Skin Care Holding SA and the Complainant, whereby Global Skin Care Holding SA has authorized the Complainant to use the Trade Mark.

The Respondent did not file any submissions in response to Arbitration Panel Order No. 1 and Arbitration Panel Order No. 2.

3. **Factual Background**

   **A. Complainant**

   The Complainant is a company incorporated in Switzerland and the wholly owned subsidiary of Global Skin Care Holding SA, a company incorporated in Switzerland, and with the same address as the Complainant, Avenue Claude Nobs 14, 1820 Montreux, Switzerland.

   Global Skin Care Holding SA is the registered owner of several mark registrations in Hong Kong for the Trade Mark, the earliest registration, No. 1998B11673, with a registration date of November 11, 1998.

   **B. Respondent**

   The Respondent is a company incorporated in Hong Kong and was until September 17, 2018 a distributor in Hong Kong of the Complainant’s products bearing the Trade Mark (the “Products”) under a distribution agreement signed between the Complainant and the Respondent dated March 17, 2012 (the “Distribution Agreement”).

   **C. The Contested Domain Name**

   The Domain Name was registered on September 10, 2012.

   **D. Use of the Contested Domain Name**

   The Domain Name was previously resolved to a website used by the Respondent to sell the Products. As at the date of this Decision, it is not being used.

4. **Parties’ Contentions**

   **The Complainant**

   The Complainant contends that the Domain Name is identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the Domain Name, and the Domain Name has been registered and is being used in bad faith.

   **The Respondent**

   The Respondent did not reply to the Complainant’s contentions.
5. Findings

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving that:

(i) The Domain Name 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 Domain Name; and

(iii) The 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). Identity/confusing similarity

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration. The Complainant has been authorized to use in Hong Kong the registrations owned by its parent company, Global Skin Care Holdings SA, and has entered into distribution agreements in Hong Kong in respect of the Products, both in its sole name and in conjunction with Global Skin Care Holdings SA.

The disputed domain name comprises the Trade Mark in its entirety and is therefore, excluding the ccTLD “.com.hk”, identical to the Trade Mark.

Accordingly, the first element under paragraph 4(a) of the Policy has been made out.

(2). Rights or Legitimate Interests

Paragraph 4(d) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a registrant has rights or legitimate interests in a contested domain name:

(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 are 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.

Article 24 of the Distribution Agreement provided as follows:

“[The Complainant] or its affiliated company Global Skin Care Holdings SA is the whole and exclusive owner of the patents, copyrights, trademarks, trade secrets relating to the Products, its trade names, trademarks and service marks and all goodwill associated therewith including... SWISS PERFECTION and all combinations and variations thereof... All patents, trademarks, trade names and other similar rights related to the Products shall at all times remain the sole property of [the Complainant] or Global Skin Care Holdings SA.”

Article 28 of the Distribution Agreement provided as follows:

“Upon the expiration, or earlier termination of this Agreement, the Distributor has to change immediately its websites to eliminate the name and products of [the Complainant] and their trademarks, particularly Swiss Perfection.”

Following termination of the Distribution Agreement, the Respondent has ignored the Complainant’s requests, sent by email on June 24, 2019, July 2, 2019 and July 8, 2019, requesting the Respondent to give up its registration of the Domain Name.

There has been no evidence adduced to show that the Respondent has been commonly known by the Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Domain Name.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the Domain Name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

(3). Bad faith

The Panel finds that the Respondent’s continued registration of the Domain Name, in breach of the Distribution Agreement, supports a finding of bad faith for the purposes of the Policy. Accordingly, the third element under paragraph 4(a) of the Policy has been made out.

(4). 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

The fourth limb under paragraph 4(a) of the Policy is not applicable to this proceeding, as the Domain Name has not been registered by an individual person.
(5). Eligibility Requirements

In accordance with Article 3.6 of the Domain Name Registration Policies, Procedures and Guidelines for .hk and .香港 domain names, registrants of .com.hk domain names must be commercial entities registered in Hong Kong. The Eligibility Requirements are a copy of the registrant’s Business Registration Certificate from the Inland Revenue Department, or a copy of the registrant’s Certificate of Registration of Overseas Company from the Companies Registry.

As the Complainant is seeking cancellation of the Domain Name, it does not need to address the Eligibility Requirements.

6. Award

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <swissperfection.com.hk> be cancelled.

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

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Sebastian Hughes
Dated: March 16, 2020