1. Parties and Contested Domain Name

Complainant 1 in this case is Pentair plc, the parent company and ultimate beneficial owner of (inter alia) Complainant 2, Pentair Filtration Solutions, LLC (formerly known as Everpure, LLC), who is the lawful trade mark owner of EVERPURE and 爱惠浦 in Hong Kong. Complainant 1 is incorporated in Ireland, whose address is 10, Earls Terrace Dublin 2, D02 T380, Ireland.

1 The Registrant of the disputed domain name < everpurefilter.hk >.
2 The HKDNR’s records state that the Registrant’s name is “MING TAK THOMAS CHENG MING TAK THOMAS”. On the 19 November 2019 [16:04:10], the Registrar WebNIC confirmed that the Registrant’s name is “Ming Tak Thomas CHENG”.
3 With bundled domain name: 爱惠浦.香港.
Complainant 2 in this case is Pentair Filtration Solutions, LLC (formerly known as Everpure, LLC), incorporated in the United States of America, whose address is 1040 Muirfield Drive, Hanover Park, Il 60133, United States of America.

Both Complainant 1 and Complainant 2 are represented by Ribeiro Hui of 6th Floor, Wilson House, 19-27 Wyndham St, Central, Hong Kong.

The Respondent is Ming Tak Thomas CHENG (an individual). The Respondent is also the company secretary and shareholder of “Everpure Engineering Co. Ltd” incorporated in Hong Kong, whose address is No. 6, 43th Floor, Block F, Sunshine City, Ma On Shan, Hong Kong.

The domain name in dispute is <everpurefilter.hk>.

The Registrar of the disputed domain name is Web Commerce Communications Limited, whose address is L4E2 Enterprise 4, Technology Park Malaysia, Bukit Jalil, 57000 Kuala Lumpur, Malaysia (the “Registrar”).

2. Procedural History

On 17 October 2019, pursuant to the Hong Kong Domain Name Registration Company Limited (“HKDNR”) Domain Name Dispute Resolution Policy (“the

4 Hereinafter referred to individually as “Complainant 1” and “Complainant 2”, and collectively known as “the Complainants”.

5 With bundled domain name: 愛惠浦.香港.
Policy”), the HKDNR Domain Name Dispute Resolution Policy Rules of Procedure (“the Rules”) and the Hong Kong International Arbitration Centre Supplemental Rules (“the HKIAC Supplemental Rules”), the Complainants submitted a complaint in the English language to the Hong Kong International Arbitration Centre (the “HKIAC”), and elected that this case to be dealt with by a one-person panel.

On 4 November 2019, the HKIAC sent an email to the Complainants acknowledging receipt of the complaint and informed the Complainants that a review of the complaint for compliance with the Policy, the Rules and the HKIAC Supplementary Rules will follow.

On 4 November 2019, the HKIAC sent an email to the Registrar asking the Registrar; whether the disputed domain name is registered with the Registrar; whether the Respondent is the Registrant or holder of the disputed domain name; Whether the HKDNR Policy is applicable to the disputed domain name; whois information regarding the disputed domain name; and the status of the disputed domain name.

On the same day, the Registrar replied stating that the disputed domain name in question is under the management of the Registrar; the disputed domain name holder is “MING TAK THOMAS CHENG MING TAK THOMAS”; confirmed that the HKDNR Policy is applicable; supplied the whois information; and stated that the disputed domain name is under “Registrar Lock” status.

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On 15 November 2019, the HKIAC sent an email to the Complainants informing them that the Registrant of the disputed domain name as informed by the Registrar is “MING TAK THOMAS CHENG MING TAK THOMAS” and asked the Complainants to amend the complaint.

On the 18 November 2019, the Complainants sent an email to the HKIAC to request that Registrar to check the identity of the Registrant of the disputed domain name.

On 19 November 2019, the HKIAC sent an email to the Registrar requesting the Registrar to check the Registrant’s “HKID card copy on record” and to “double confirm the full name” of the Registrant.

On the same day, the Registrar replied stating that the Registrant of the disputed domain name first name is “Ming Tak Thomas” and the last name is “CHENG”.

On 26 November 2019, the HKIAC informed the Complainants about the details of the Respondent and requested the Complainants to amend the complaint. The Complainants on the same day submitted the amended complaint to HKIAC.

On 27 November 2019, the HKIAC confirmed that the complaint was in compliance with the HKDNR Policy and on the same day submitted a notice to the Respondent requesting the Respondent to submit a response to the complaint on or before 18 December 2019.

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8 “Notification of Deficiency of the Complaint” dated 15 November 2019 [12:02:42].
On 20 December 2019, the HKIAC informed the Complainants that the Respondent’s email address in which the notice was sent to was incorrect.

On 25 December 2019, the Complainants through an email to HKIAC stated that “We refer to your email below, since receiving which we note the HKDNR has amended its records in relation to the Registrant’s email...” and as such included an attachment to its email, the amended complaint.

On 30 December 2019, the HKIAC confirmed that the complaint was in compliance with the HKDNR Policy and Rules.

On 7 January 2020, the HKIAC submitted a notice to the Respondent requesting the Respondent to submit a response to the complaint on or before 27 January 2020.

On 4 February 2020, the HKIAC informed the Complainants that the Respondent did not file a response and that the HKIAC will proceed with the appointment of the Panelist.

On 10 February 2020, the HKIAC wrote to Dr. Christopher To enquiring whether he is available to act and that he can act independently and impartially between the Complainants and the Respondent in relation to the disputed domain name.

10 “Notification of Deficiency of the Complaint” dated 20 December 2019 [5:26pm].
12 Email dated 25 December 2019 [2:06:21 AM].
On 11 February 2020, Dr Christopher To confirmed that he is willing to act and that he can act independently and impartially between the Complainants and the Respondent in relation to the disputed domain name in accordance with paragraph 7 of the Rules.

On 11 February 2012, the HKIAC informed the Complainants and the Respondent that Dr. Christopher To (“the Panelist”) had been appointed by the HKIAC as the Panelist pursuant to the Policy, the Rules and the HKIAC Supplemental Rules and informed the parties that the case file will be transferred to the Panelist shortly. The HKIAC also stated that the Panelist shall render its decision on 2 March 2020.

On the same day the Panelist received the file from the HKIAC and confirmed that the appointment was made in compliance with the HKIAC Supplemental Rules.

Having reviewed the file the Panelist further confirmed that the Panelist does have jurisdiction to determine the disputed domain name in accordance with the Policy, the Rules and HKIAC Supplemental Rules. As such the Panelist finds that it was properly constituted.

3. Factual Background

   A. For the Complainants

The Complainants began as a business entity in 1933 trading under the name of Tested Appliance Company. In 1973, the Tested Appliance Company changed its name to Everpure, Inc., and adopted EVERPURE as a company name as well as a product brand name.
This use of EVERPURE as a company name and product brand name continued through to (and beyond) 2004 when Everpure, Inc. merged into Everpure, LLC, which was organized under the laws of Delaware of the United States of America.

In 2009, Everpure, LLC., once again changed its name to Pentair Filtration Solutions, LLC (Complainant 2’s present name), EVERPURE remains to be used as a brand name and is the world’s leading water treatment company for the foodservice industry.\(^\text{15}\)

**The Complainants** are holder of numerous worldwide trade mark registrations (including Hong Kong)\(^\text{16}\) for the marks EVERPURE\(^\text{17}\) and 爱惠浦, which marks have been in continuous use in Hong Kong and numerous other countries worldwide since at least as early as 1949 (Complainant 2, through its affiliated entities and predecessors in title filed and obtained its first trade mark registration for EVERPURE in Canada on 9 May 1949.\(^\text{18}\)). All the said trade marks were registered prior to 21 December 2018, when the disputed domain name was first registered by the Respondent.\(^\text{19}\)

Complainant 2 (and its predecessors in title) is the lawful trade mark owner of EVERPURE and 爱惠浦 in Hong Kong, nevertheless due to Complainant 1’s internal policy, the EVERPURE and 爱惠浦 trade marks and domain names may from time to time be legally owned by different entities within Complainant 1’s  

\(^{\text{15}}\) [complaint, Exhibit 4].  
\(^{\text{16}}\) [complaint, Exhibit 3 and Exhibit 6].  
\(^{\text{17}}\) in both block lettering and stylised form as stated in the complaint.  
\(^{\text{18}}\) [complaint, Exhibit 5].  
\(^{\text{19}}\) [complaint, Exhibit 2].
Pentair Group, but all rights and interests therein enure to the sole and ultimate benefit of Complainant 1\textsuperscript{20}.

Apart from being the registered owner of the EVERPURE and 愛惠浦 trade marks in Hong Kong, Complainant 2 also owns the EVERPURE trade name. Complainant 2 was formerly called “Everpure, LLC” and had used “Everpure” as its trade name since at least as early as 1957\textsuperscript{21}.

Complainant 1, through its affiliated entities, is the owner of the domain name EVERPURE.COM, the domain name was registered on 21 Dec 1995\textsuperscript{22}.

Complainant 1, through its affiliated entities, also owns many domain names\textsuperscript{23} incorporating the word EVERPURE, some of which are listed below:

<table>
<thead>
<tr>
<th>Domain Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>everpure-europe.com</td>
</tr>
<tr>
<td>everpure-pentair.com</td>
</tr>
<tr>
<td>everpure.asia</td>
</tr>
<tr>
<td>everpure.co.jp</td>
</tr>
<tr>
<td>everpure.com</td>
</tr>
<tr>
<td>everpure.com.au</td>
</tr>
<tr>
<td>everpure.info</td>
</tr>
<tr>
<td>everpure.online</td>
</tr>
<tr>
<td>everpureforhome.com</td>
</tr>
<tr>
<td>everpureonline.com</td>
</tr>
<tr>
<td>everpurepentair.com</td>
</tr>
<tr>
<td>everpurepurifiers.com</td>
</tr>
<tr>
<td>everpuresecure.com</td>
</tr>
</tbody>
</table>

\textsuperscript{20} [complaint, Exhibit 1].
\textsuperscript{21} [complaint, Exhibit 4].
\textsuperscript{22} [complaint, Exhibit 7].
\textsuperscript{23} [complaint, Exhibit 8].
B. For the Respondent

The Respondent is an individual. The Respondent has not responded to the HKIAC within the stipulated timeframe ("on or before 27 January 2020") as set out in an email dated 7 January 2020 from HKIAC to the Respondent. As such the Respondent has not contested the allegations of the complaint and is in default.

4. Parties’ Contentions

A. The Complainants

The Complainants assert that according to an online search conducted with the HKDNR, the disputed domain name is registered by the Respondent.

At the time of registration of the disputed domain name the Respondent was the company secretary and shareholder of Everpure Engineering Co. Ltd. A company that was first registered with the Companies Registrar of the Hong Kong Special Administrative Region on 17 December 2018 as a private company limited by shares.

24 Through the website https://www.hkdnr.hk.
25 [complaint, Exhibit 2].
26 [complaint, Exhibit 9].
The disputed domain name points to a website operated by Everpure Engineering Co. Ltd., where both its English name (Everpure Engineering Co. Ltd.) and Chinese name (愛惠浦工程有限公司) appear prominently.27

The website operated by Everpure Engineering Co. Ltd., introduces the Complainants as:

“American EVERPURE was started in 1933 ... as of 2015 EVERPURE is the largest and most advanced water treatment manufacturer; its sales reach 120 nations worldwide (美國EVERPURE（愛惠浦）創立於1933年，......直至2015年止EVERPURE為全球最大最先進的濾水處理設備製造商，產品銷售到世界120餘國家。)”28

As such, the Complainants contend that Everpure Engineering Co. Ltd., is familiar with the Complainants.

Everpure Engineering Co. Ltd., claims to be a Hong Kong authorised distributor of the “Everpure” (“愛惠浦工程有限公司是愛惠浦濾水器香港代理商之一”)29 which the Complainants refute. The Complainants have never authorised Everpure Engineering Co. Ltd., to sell their products in Hong Kong or anywhere else.

The website operated by Everpure Engineering Co. Ltd., offers for sale only products under the trade marks Everpure, 愛惠浦 and Pentair, all of which marks belong to the Complainants.30 The Complainants do not know the source of these products.

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27 [complaint, Exhibit 10].
28 [complaint, Exhibit 10].
29 [complaint, Exhibit 10].
30 [complaint, Exhibit 10].
The website also lists “3M” and “T&S” under the “Products” tab, no actual products of these 2 brands are in fact offered for sale from the website\(^\text{31}\).

According to the Complainants most if not all products displayed in the website refer to the Complainants’ certifications and warranties.

The Complainants advocate that the Respondent has either registered the disputed domain name as nominee for Everpure Engineering Co. Ltd., or the Respondent has authorised Everpure Engineering Co. Ltd., to use the disputed domain name. In either case, it is clear that the registration of the disputed domain name by the Respondent who allowed or directed Everpure Engineering Co. Ltd., to use the same as its official website, has deceived the public and constituted passing off. Both the disputed domain name and Everpure Engineering Co. Ltd., are instruments of fraud of the Respondent.

As such, the Complainants claims that the website misleads and misrepresents to the public and passes off as the Complainants’ distributor in Hong Kong in respect of products bearing the Complainants’ trade marks.

The Complainants on 16 June 2019 issued a cease and desist letter to Everpure Engineering Co. Ltd., for the attention of the Respondent\(^\text{32}\) demanding the change of

\(^{31}\) [complaint, Exhibit10].

\(^{32}\) [complaint, Exhibit 11].
company name and return of the disputed domain name. No response was received from either Everpure Engineering Co. Ltd., or the Respondent.

The Complainants in the cease and desist letter also alleged unauthorised use of their Hong Kong registered trade marks. Without prejudice thereto, even if Everpure Engineering Co. Ltd., had (which the Complainants do not admit) purchased genuine goods sourced directly or indirectly from the Complainants, Everpure Engineering Co. Ltd., is only one of the Complainants’ many customers and do not thereby acquire any rights in the Complainants’ trade marks or trade names.

Despite the Complainants’ issue of a cease and desist letter, Everpure Engineering Co. Ltd., / the Respondent has failed to return the disputed domain name to the Complainants.

The Complainants further state that:

“it is inconceivable that any person who has ever purchased a genuine bottle of Coca-Cola, or has ever visited the Disney World, or has bought a genuine iPhone, can thereby claim any legitimate rights to register “Coca-Cola”, “Disney” or “Apple” or “iPhone” as a .hk domain name”33.

The Complainants avers that they have never directly or indirectly authorised any party, not even their appointed Hong Kong agent, to register (among others) any .hk domain name, which incorporates their trade marks EVERPURE and/or愛惠浦. As such the Respondent’s registration and/or use of the disputed domain name will

33 As stated in the complaint.
likely confuse members of the trade and/or the public to think that Everpure Engineering Co. Ltd., / the Respondent is/are the Complainants own subsidiary, official agent or otherwise duly authorised by the Complainants, thereby constituting passing off, for which the Complainants refute.

The Complainants contends that the disputed domain name is identical or confusingly similar to the Complainants’ prior trade/service mark(s), which has been registered by Complainant 2 in Hong Kong and elsewhere. Additionally, the disputed domain name is also identical or confusingly similar to the trade names / domain names in which the Complainants have prior legitimate rights.

The Complainants asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that conditions established under Paragraph 4(d) of the Policy have not been met, nor does the Respondent have any rights or legitimate interests in EVERPURE, whether as a trade mark or trade name.

The Complainants further states the Respondent had registered the disputed domain name in bad faith. With full knowledge of the Complainants’, and affiliated entities’, rights in and to the trade marks and trade names (inter alia) EVERPURE, the Respondent’s inclusion thereof as the only distinctive part of the respective disputed domain name undoubtedly misleads the trade and the public to think that Everpure Engineering Co. Ltd., / the Respondent is/are the Complainants, or Complainants’ subsidiary, or Complainants’ appointed agents, which are untrue.

In conclusion, the Complainants assert that the disputed domain name at issue is identical or confusingly similar to the Complainant’s Everpure marks, in that the
disputed domain name at issue is comprised of the Everpure mark with the addition of the word “filter”. The Complainants further alleges that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the Respondent’s disputed domain name has been registered in bad faith and is being used in bad faith.

B. The Respondent

The Respondent did not file a response to the HKIAC within the required timeframe stipulated by the HKIAC in its email of 7 January 2020 and as such has not contested the allegations of the complaint and is in default.

5. Findings

A. The Languages of the Proceedings

Paragraph 11(a) of the Rules provides:

“Unless otherwise agreed by the Parties, the language of the arbitration proceedings shall be in English for English .hk domain name, and in Chinese for Chinese .hk domain name or 香港 domain name, subject always to the authority of the Arbitration Panel to determine otherwise, having regard to the circumstances of the arbitration proceeding.”

The registration agreement is in the English language and given that the disputed domain name is an English .hk domain name. The correspondence from the Complainants’, and the HKIAC are in the English language coupled with the

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34 As provided by the Complainants in their email of 2 November 2019 [1:40:00].
Respondent’s default in these proceedings, the Panel determines that the language of the arbitration proceedings shall be English.

B. The Burden of Proof

Under paragraph 4(a) of the Policy, the Complainants have the burden of proving that:

1. the domain name registered by the Respondent is identical or confusing similar to a trade mark or service mark in which the Complainants have rights; and
2. the Respondent has no rights or legitimate interests in respect of the domain name; and
3. the domain name has been registered and is being used in bad faith; and
4. the domain name is registered by an individual person who does not meet the registration requirements for that individual category of domain name.

C. Analysis

1. Identical or Confusing Similarity

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 Paragraphs 5 and 14 of the Rules, the Panelist is of the view that it should proceed to decide the disputed domain name, namely, < everpurefilter.hk > based upon the complaint and evidence as adduced by the Complainants.

Paragraph 5(e) of the Rules states that:
“If a Respondent does not submit a timely Response, in the absence of exceptional circumstances as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and evidence submitted therewith.”

Whereas paragraph 10(d) of the Rules states that:

“The Arbitration Panel shall determine the admissibility, relevance, materiality and weight of the evidence presented to it.”

The Panelist would like to state that the Respondent’s default (i.e., failure to submit a formal response) would not by itself mean that the Complainants claims are deemed to have prevailed. If fact, the Respondent’s default is not necessarily an admission that the Complainants claims are true. The burden of proof still rests with the Complainants to establish the three elements contained with paragraph 4(a) of the Policy as stated above by a preponderance of the evidence.35

The Complainants contends that the disputed domain name is confusing similar to the Complainants trade mark.

Paragraph 4(a)(i) of the Policy requires the Complainants to prove that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainants has rights. The trade mark is registered under Complainant 2, a subsidiary of Complainant 1, as such the Complainants are considered to have rights in a trade mark under the Policy for the purposes of standing to file a complaint. The threshold test for confusing similarity under the Policy involves a comparison

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35 As per paragraph 10(d) of the Rules.
between the relevant marks (i.e., trade mark or service mark) in Hong Kong belonging to the Complainants and the disputed domain name to ascertain the presence of the trade mark in the disputed domain name. In order to satisfy this test, the relevant marks would generally need to be recognizable as such within the disputed domain name, with the addition of merely descriptive, common or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

In the case of Portakabin Limited v. James Richens, WIPO Case No. D2017-0320 (Dated 10th April 2017) (“Portakabin Limited”), the Presiding Panelist Anthony Gold stated that:-

“Whether the disputed domain name is similar to the Complainant's trade mark requires consideration of a number of factors. First, as the Complainant says, when assessing the degree of similarity between a disputed domain name and a complainant's trade mark it is established practice to disregard the gTLD suffix, that is “.com” in the case of the disputed domain name. Second, the Complainant's trade mark is incorporated in its entirety into the disputed domain name, is clearly distinguishable within it and is the dominant component of it. Third, the Complainant's trade mark is sandwiched between two other words within the disputed domain name. The word which precedes the trade mark, “Richens”, has no known meaning in the English language and is likely to be perceived, correctly, as the name of a person. The word which follows the Complainant’s trade mark, namely “hire”, is, as the Complainant says, prone to be associated with one of the principal services associated with the Complainant. Finally, the disputed domain name in its entirety suggests that the Respondent has available the Complainant's products for hire. For this reason, the additional words do not prevent the disputed domain name from being confusingly similar to the Complainant's PORTALOO trade mark.

36 Persuasive authority within the Hong Kong context.
The decisions of other UDRP panels to which the Complainant has referred deal with circumstances in which either a descriptive term or a personal name has been used in conjunction with a third party trade mark in a domain name rather than to both added elements being used in combination. However, the same principles are applicable if both a descriptive term and a personal name are used within the disputed domain name.” (Emphasis Added)

By applying the principles stipulated in Portakabin Limited, this Panelist has to consider whether the disputed domain name, namely, <everpurefilter.hk>, is a central and distinguishable part of the Complainants trade mark.

As stated in the Complainants complaint:

“The Complainants are holder of numerous worldwide trade mark registrations (including Hong Kong) for the marks EVERPURE and 爱惠浦, which marks have been in continuous use in Hong Kong and numerous other countries worldwide since at least as early as 1949.”

On a side-by-side comparison of the disputed domain name and the textual components of the Complainants trade mark, the trade mark is recognizable within the disputed domain name. The website operated by Everpure Engineering Co. Ltd., in which the Respondent is the secretary and shareholder shows that the Everpure Engineering Co. Ltd./the Respondent is to a certain extent trading off the Complainants reputation.

The Panelist agrees with the Complainants contentions that the disputed domain

37 [complaint, Exhibit 3 and Exhibit 6].
name is the same and is a central and distinguishable part of the Complainants registered trade mark “EVERPURE”. In saying so, the Panelist is also of the opinion that the addition of “filter” does nothing to distinguish it from the Complainants trade mark of “EVERPURE” but rather increases the likelihood of confusion. As a result, the Panelist further concurs with the Complainants stance that the disputed domain name can easily mislead consumers into believing that the disputed domain name is owed or operated by the Complainants, or that the Respondent has a relationship or association with the Complainants in some way or form.

As stated previously, the Respondent has not contested the allegations of the complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainants have discharged the burden of proof to establish the elements of identical and confusingly similar trade mark or service mark in Hong Kong in accordance with Paragraph 4(a) (i) of the Policy.

2. Rights or legitimate Interests of the Respondent

The burden of proof shifts to the Respondent once the Complainants provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.38

Paragraph 4(d) of the Policy provides, inter alia, that the burden of proof vests on the Respondent to prove and satisfy the following circumstances, in order to demonstrate

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38 Neusiedler Aktiengesellschaft v. Kulkarni, WIPO Case No. D2000-1769, which is persuasive authority in Hong Kong.
that it has rights and legitimate interests in the disputed domain name:

(i) before any notice to you of the dispute, your 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; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights in Hong Kong; or

(iii) you have trade mark or service mark rights that the mark is identical to the domain name you are holding; or

(iv) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

(v) If the domain name is registered in one of the Individual domain name categories, the domain name registered must be your own “individual name”, which can be either (1) your legal name, or (2) a name by which you are commonly known and can include, for example, a pseudonym you use if you are an author or a painter, or a stage name if you are a singer or actor, or the name of a fictional character if you created or can otherwise show you have rights in such fictional character.

Given that the Respondent did not reply to the Complainants contentions, there is no evidence to prove that the Respondent has any prior rights relating to “EVERPURE” mark or similar marks, nor did the Respondent claim any civil rights in relation to them, nor did the Respondent obtain authorization from the Complainants to register the disputed domain name. The Respondent is not
affiliated in any way or form with the Complainants.

As such the Panelist accepts that the Respondent has failed to provide any evidence to support its rights and legitimate interests in using the disputed domain name nevertheless the Complainants are still required to prove that the Respondent has no rights and legitimate interests.

As aforementioned, the Panelist is convinced that the Complainants have acquired rights and interests in the “EVERPURE” mark, including but not limited to Hong Kong. The Complainants have been using the “EVERPURE” mark in Hong Kong since 23 July 2003, which pre-dates the registration of the disputed domain name [21 December 2018] by about 15 years. The Panelist affirms that the word “EVERPURE” does not reflect the Respondent’s name.

Further, the Panelist asserts that the decision in Cathay Pacific Airways Limited v. Tang Nguyen Case No. HK-0400054 has some relevance to the matter on hand, whereby the Tribunal in that case stated that:-

“The addition of the common word “airline” is not sufficient to remove the very real risk of confusion from the Mark or the Complainant’s own website...given the weight of evidence in relation to the substantial name and reputation vested in the Complainant’s Mark worldwide, and particularly in Asia, something the Respondent must have been aware of ...the panel finds that the Respondent’s prior use of the Disputed Domain Name was not bona fide.”
The Panelist finds that the Respondent through Everpure Engineering Co. Ltd, created the website intended to mislead consumers into thinking that the Respondent has some kind of business relationship with the Complainants. The Panelist considered the decision of Paris Hilton v. Deepak Kumar, WIPO Case No. D2010-1364\(^{39}\) which is of relevance, whereby the Tribunal in that case concluded that:-

“the assessment of rights or legitimate interests boils down to a question as to whether the Respondent is using the domain name with the Complainant’s marks in mind and with a view to taking unfair advantage of the reputation of the Complainant’s marks?”.

In this case, the Panelist considers that it is apparent from the prima facie evidence that the Respondent knowingly used the disputed domain name notwithstanding its knowledge of the established reputation of both the Complainants and its “EVERPURE” mark. Such acts of the Respondent clearly shows that the Respondent deliberately misled internet users into believing that the disputed domain name is identical to the Complainants official website, enabling the Respondent to obtain commercial gain from internet users who accessed the disputed domain name.

The Complainants have in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the disputed domain name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. This ineffectively entitles the

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\(^{39}\) Persuasive authority in Hong Kong.
Panelist to infer that the Respondent has no rights or legitimate interests in respect of the disputed domain name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent’s use of the disputed domain name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainants to use its trade mark. Nor is there any evidence that the Respondent has been commonly known by the disputed domain name or similar name. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark of the Complainants. In fact the use of the disputed domain name in connection with a website that creates a misleading impression of association with the Complainants does not give rise to any rights or legitimate interests in the disputed domain name on the part of the Respondent.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainants have discharged their burden of proof to show that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a) (ii) of the Policy.

3. Bad Faith

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist shall take into consideration in determining whether the Respondent has registered and used the disputed domain name in bad faith. Either one (1) of these four (4) factors are
evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainants have presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

The evidence submitted by the Complainants is sufficient to establish the fact that the “EVERPURE” mark is uniquely associated with the Complainants.

As such, the Panelist considers that the Respondent should have had knowledge of the rights of the Complainants on the “EVERPURE” mark at the time of registering the disputed domain name on 21 December 2018, in particular to the Complainants reputation and goodwill globally as a water treatment solutions provider for the food service industry.

Previous domain name dispute resolution Tribunals have found that “where the reputation of a complainant in a given mark is significant and the mark has strong similarities to the disputed domain name, the likelihood of confusion is such that bad faith may be inferred”40.

The Panelist contends that the Respondent’s bad faith is evident by Paragraph 4(b) (iv) of the Policy:

“(iv) by using the Domain Name, the Registrant has

40 Verner Panton v. Fontana di Luce Corp, WIPO Case No. D2012-1909, which is persuasive authority in Hong Kong.
intentionally attempted to attract, for commercial gain, Internet
users to 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.”

The disputed domain name is identical in substance to the Complainants
“EVERPURE” mark (leaving aside the word “filter” as explained above) thus
demonstrating that the Respondent’s sole purpose is to pass off as the Complainants.
Through such a behavior the Respondent attempts to confuse/mislead consumers into
believing that the goods/services offered on the website <everpurefilter.hk> are
somewhat associated with and endorsed by the Complainants thus creating a
likelihood of confusion with the intention to attract internet users to the website <
everpurefilter.hk> for commercial gain.

The Panelist further considers the case of Cathay Pacific Airways Limited and Tang
Nguyen HK-0400054 where the Tribunal in that case stated that:

“The name/mark “CATHAY PACIFIC” is an invented mark and
is not a term commonly used in the daily English language. The
Complainant mainly uses the name/mark “CATHAY PACIFIC”
in its global airline business. It is said that it cannot be a mere
co-incidence that the Respondent has chosen the Disputed
Domain Name comprising of both the words “CATHAY
PACIFIC” and “AIRLINE” as a domain name. Therefore the
Respondent is seeking to ride on the name and reputation of the Complainant and uses the Disputed Domain Name, which is substantially similar to the Mark, deliberately in order to attract, for commercial gain, Internet users to the website www.flightreservationsonline.com and to divert them to another website www.bookairlinetickets.com, both of which offer airline ticket reservation services, by creating a likelihood of confusion with the Mark as to the source and affiliation of these airline-related websites”.

In the present case, the evidence submitted by the Complainants clearly shows that the Respondent has an intention to mislead and/or to deceive internet users into believing that the disputed domain name is that of the Complainants by registering the disputed domain name on 21 December 2018.

The Panelist also notes that the Complainants rights in the mark predate the Respondent’s registration of the disputed domain name. The Panelist finds that, given the fact that the Complainants marks are widely known, it is overwhelmingly likely that the Respondent, at the time of registration of the domain name and thereafter, was aware that it was infringing the Complainants mark. Therefore the Panelist concludes that the Respondent has registered the disputed domain name and is using the disputed domain name in order to attract internet users to the Respondent’s website for commercial gain, thereby creating a likelihood of confusion for the purposes of paragraph 4(b) (iv) of the Policy. The Panelist therefore finds the requisite element of bad faith has been satisfied under paragraph 4(b) (iv) of the Policy.
For the foregoing reasons, the Panel concludes that the Complainants have discharged the burden of proof to establish that the Respondent registered and used the disputed domain name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

4. Domain Name registration by an individual person

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

D. Reverse Domain Name Hijacking

Given that the Respondent did not reply to the Complainants contentions, and in light of the Complainants success in establishing the three elements under paragraph 4(a) of the Policy, the Panelist does not find that the complaint was brought in bad faith to harass and deprive the Respondent of the disputed domain name as such reverse domain name hijacking as stated under 15(e) of the Rules is not evident in this case.

E. Decision

For all of the foregoing reasons and in accordance with paragraph 4 (a) of the Policy, the Panelist decides that the disputed domain name registered by the Respondent is identical to the mark in which the Complainants have rights, that the Respondent has no rights or legitimate interest in respect of the disputed domain name at issue and that the Respondent’s domain name has been registered and is being used in bad faith.
In pursuant to paragraph 3 of the Policy, the Panel requires that the registration of the domain name < everpurefilter.hk > be transferred as requested by the Complainants to Complainant 2 “Pentair Filtration Solutions, LLC”.

Dated 2\textsuperscript{nd} March 2020.

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

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Dr. Christopher To  
Panelist -Arbitrator