1. Parties and Contested Domain Name

The Complainant is HI-TEC SPORTS INTERNATIONAL HOLDINGS B.V. of Amsterdam, The Netherlands.

The Respondent is Lin Shiyi of the People’s Republic of China.

The domain name at issue is <hi-tec.hk> ("Disputed Domain Name"), registered by the Respondent with Web Commerce Communications Limited ("the Registrar") a company incorporated in the British Virgin Islands.
2. Procedural History

On 28 April 2020, pursuant to the Hong Kong Internet Registration Corporation Limited ("HKIRC") Domain Name Dispute Resolution Policy ("Policy") of 22 February 2011, the Domain Name Dispute Resolution Policy Rules of Procedure ("Rules") dated 22 February 2011 and the Hong Kong International Arbitration Centre Supplemental Rules ("Supplemental Rules") dated 1 March 2011, the Complainant submitted a Complaint (including annexes) in the Chinese language (with some text in the English language) to the Hong Kong International Arbitration Centre ("HKIAC"), and elected to have the case in question be dealt with by a panelist ("one panelist").

On 28 April 2020, the HKIAC wrote to the Registrar a request for register verification in connection with the Disputed Domain Name.

On 28 April 2020, the Registrar informed the HKIAC its verification response disclosing the registrant information for the Disputed Domain Name which differed from the information in the Complaint.

On 20 May 2020, the HKIAC wrote to the Complainant, providing the registrant information for the Disputed Domain Name disclosed by the Registrar and invited the Complainant to submit an amended Complaint.

On 26 May 2020, the Complainant submitted the amended Complaint to the HKIAC.
On 27 May 2020, the HKIAC verified that the Complaint satisfies the formal requirements of the HKIRC Policy, the HKIRC Rules and the HKIAC Supplemental Rules.

In accordance with the HKIRC Rules, the HKIAC formally notified the Respondent of the Complaint and the proceedings commenced on 29 May 2020. In accordance with the HKIRC Rules, the due date for the Response from the Respondent was 18 June 2020.

No Response from Respondent was received by HKIAC on 18 June 2020.

On 23 June 2020, the HKIAC wrote to the Complainant copying the Respondent stating that the Respondent did not file a Response to the Complaint within the stipulated timeframe ("on or before 18 June 2020") and as such is in default.

The HKIAC appointed Dr. Christopher To as the Panelist in this matter on 27 June 2020.

The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

In accordance with Rule 15(a) of the HKIRC Rules, the Panel is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Rule 15(d) of the HKIRC Rules and Section 67 of the Hong Kong Arbitration Ordinance (Cap. 609) of the Laws of Hong Kong, this Panel shall issue
a reasoned award.

3. Factual Background

For the Complainant

The Complainant is a private company that produces and distributes shoes, clothing, and accessories with its headquartered in the Netherlands.

The Complainant employs approximately 400 employees and generates global sales in the region of US$ 250 million.

The Complainant is the owner of numerous registrations worldwide for the trademark HI-TEC (the “trademark”) and registered its first trademark in Hong Kong on 25 January 1991.

For the Respondent

The Respondent is an individual from the People’s Republic of China.

The Disputed Domain Name

The Disputed Domain Name was registered on 22 July 2016
4. The Parties’ Contention

For the Complainant

The Complainant made the following submissions in the Complaint.

The Complainant, commonly known as HI-TEC, was established in 1974 by Frank van Wezel. The Complainant operates in 110 countries around the world under the brand of “HI-TEC” and has an active presence online of trading its branded sports shoes and apparel.

The Complainant registered the “hi-tec.com” domain name as early as 17 October 1995 and the “HI-TEC” trademarks in Hong Kong Special Administrative Region of the People’s Republic of China (“Hong Kong”) on 25 January 1991 and 16 December 2014, respectively.

According to the WIPO Global Brand Database, the Complainant registered 4,523 “HI-TEC” trademarks in 61 countries and regions around the world.

The Complainant is well known to the community of Hong Kong.

The Disputed Domain Name is confusingly similar to the Complainant’s trademark.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
The Respondent is not commonly known by the Disputed Domain Name and is not making a bona fide commercial use of the Disputed Domain Name.

The Complainant has not allowed or authorized the Respondent to use its HI-TEC trademark in any way or form.

The Disputed Domain Name was registered by the Respondent on 22 July 2016, some 25 years after the Complainant registered its trademark in Hong Kong.

The Disputed Domain Name has been registered and used in bad faith.

**For the Respondent**

The Respondent did not reply to the Complainant’s contentions. As such, the Respondent has not contested the allegations of the Complaint and is in default.

5. Findings

A. **Language of the Proceedings**

Paragraph 11(a) of the HKIRC Rules provides that:

> “Unless otherwise agreed by the Parties, the language of the arbitration proceeding shall be in English for English .hk domain name, and in Chinese for Chinese.hk or 香港 domain name, subject always to the authority of the Arbitration Panel to determine otherwise, having regard of all circumstances of the arbitration proceeding”
In the present case, the Parties had not agreed a particular language for these proceedings.

On 31 May 2020, the Complainant wrote to the HKIAC to request that the proceedings be conducted in the Chinese language.

On 1 June 2020, the HKIAC wrote to the Respondent requesting the Respondent to respond on or before 5 June 2020 as to whether they are agreeable for the proceedings to be conducted in the Chinese language. No response was received from the Respondent on 5 June 2020.

As this is an “English .hk domain name”, namely, <www.hi-tec.hk>, then in accordance with Paragraph 11(a) of the HKIRC Rules, the proceedings “shall be in English” unless the Panel determines otherwise.

In these circumstances, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language in accordance with Paragraph 11(a) of the HKIRC Rules. As such the Panel shall proceed to decide on the matter based on the documents submitted without having to ask the Parties to translate some of documentation that is in the Chinese language to the English language.

**B. Discussion and Findings**

Having considered all the documentary evidence before me, and the Respondent's non-participation in these proceedings after being afforded every opportunity to do
so in accordance with Paragraph 5(e) of the HKIRC Rules, the Panel is of the view that it should proceed to decide on the Disputed Domain Name, based upon the Complaint and evidence as adduced by the Complainant.

Paragraph 5(e) of the Rules stipulates that:

"If a Respondent does not submit a timely Response, in the absence of exceptional circumstance as determined by the Provider at its sole discretion, the Arbitration Panel shall decide the dispute based upon the Complaint and evidence submitted therewith"

Having said so, Paragraph 4(a) of the HKIRC Policy, which is applicable hereto, the Complainant has the burden of proving the following elements, namely:

"(i) the Registrant’s Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights; and

(ii) the Registrant has no rights or legitimate interests in respect of the Domain Name; and

(iii) the Registrant’s Domain Name has been registered and is being used in bad faith, and

(iv) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual

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(I). **Identical/confusing similarity**

Paragraph 4(a)(i) of the HKIRC 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.

The Panel finds that the Complainant has rights in the trademark acquired through use and registration in Hong Kong and globally.

The Disputed Domain Name incorporates the entirety of the trademark together with the country code top-level domain ("ccTLD") ".hk". The Panel is of the view that the addition of the .hk ccTLD does not distinguish the www.hi-tech.hk domain name from Complainant’s trademark. The “top level domain designator “.hk” is only a necessary portion to form a particular type of domain name in Hong Kong and cannot function to distinguish that name from the Complainant’s mark.

As already stated above, the Respondent has not contested the allegations of the Complaint and is in default.

For all the foregoing reasons, this Panel concludes that the Complainant has discharged its burden of proof to establish the elements of identical or confusingly similar trademark or service mark in Hong Kong as stipulated in Paragraph 4(a)(i) of the HKIRC Policy.
(2). **Rights of Legitimate Interests of the Respondent**

Paragraph 4(d) of the HKIRC Policy sets out examples of circumstances where the Respondent may have rights or legitimate interests over the Disputed Domain Name:

"How to Demonstrate the Registrant’s Rights to and Legitimate Interests in the Domain Name in Responding to a Complaint.

When the Registrant receives a Complaint as defined in Paragraph 3 of the Rules of Procedure, the Registrant should refer to Paragraph 5 of the Rules of Procedure in determining how the Registrant’s Response should be prepared.

Any of the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be proven based on its evaluation of all evidence presented to it, shall demonstrate the Registrant’s rights or legitimate interests to the Domain Name for purposes of Paragraph 4(a)(i):

(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."
There is no evidence that the Complainant has authorized, licensed, or permitted, the Respondent to register or use the Disputed Domain Name or to use the trademark.

The Complainant has prior rights in the trademark which precede the Respondent’s registration of the Disputed Domain Name by some 25 years. Based on the information submitted the Panel finds that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the Disputed Domain Name or that the Disputed Domain Name has been used in connection with a bona file offering of goods or services in Hong Kong.

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

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

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

Paragraph 4(b) of the HKIRC Policy sets out four (4) factors in which the Panel shall take into account in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. The prescribed four (4) factors are as follows:

"Evidence of Registration and Use in Bad Faith"

For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

i. circumstances indicating that the Registrant has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trademark or service mark, or to a competitor of that Complainant, for valuable consideration in excess of the Registrant’s documented out-of-pocket costs directly related to the Domain Name; or

ii. the Registrant has registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that the Registrant has engaged in a pattern of such conduct; or

iii. the Registrant has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
iv. *by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.*”

In the present case, the Complainant had registered the trademark in Hong Kong since 25 January 1991 as such the Panel is of the view that it would be inconvincible for the Respondent to argue that it was unaware of the Complainant’s registered trademark at the time when the Disputed Domain Name was registered on 22 July 2016. In addition, the Complainant’s domain name “hi-tec.com” was registered as early as 17 October 1995, some twenty years ago before the Respondent registered the Disputed Domain Name. From the submissions provided, the Panel is of the view that the Respondent has no good cause or justifiable reasoning of using the Disputed Domain Name.

The Respondent’s motive in registering the Disputed Domain Name seems to what the Complainant is alluding to, that the Respondent is deliberately preventing the owner of the trademark or service mark from reflecting the mark in a corresponding domain name with the purpose of disrupting the business activities of the Complainant in further marketing its products in the Hong Kong market.

Such use of the Disputed Domain Name amounts to clear evidence of bad faith. The Panel therefore finds, in all the circumstances, the requisite element of bad faith has been satisfied under paragraph 4(b) of the HKIRC Policy.
For all the forgoing reasons, the Panel concludes that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly, the third conditions of paragraph 4 (a) of the HKIRC Policy has been fulfilled.

(4). **Individual category of Domain Name**

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

6. **Conclusion**

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

The Complainant has proved its case. It has a registered a trademark in the name “HI-TECH”, to which the contested domain name is confusingly similar.

The Respondent has shown no rights or legitimate interest in the Disputed Domain Name.

The Complainant has proved that the Respondent registered and used the Disputed Domain Name in bad faith.

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

For all the foregoing reasons and in accordance with Paragraph 4 of the HKIRC Policy, the Panel concludes that the relief requested by the Complainant be granted and do hereby order the Disputed Domain Name <www.hi-tec.hk> be transferred to the Complainant – HI-TEC SPORTS INTERNATIONAL HOLDINGS B.V.

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

Dated 16 day of July 2020

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

[Signature]

Dr. Christopher To
Panelist - Arbitrator