1. Parties and Contested Domain Name

The Complainant is The Wikimedia Foundation, Inc. (hereinafter referred to as the “Complainant”) of the United States of America.

The Respondent is Petar Ivanov (hereinafter referred to as the “Respondent”) of Bulgaria.

The Complainant and the Respondent are hereinafter referred to collectively from time to time as the “Parties”.

The domain name at issue is < WIKIMEDIA.HK > (hereinafter referred to as
“Disputed Domain Name”), registered by the Respondent with InterNetX GmbH ("the Registrar") of Germany.

2. Procedural History

On 30 June 2020, pursuant to the Hong Kong Internet Registration Corporation Limited ("HKIRC") Domain Name Dispute Resolution Policy ("Policy"), the Domain Name Dispute Resolution Policy Rules of Procedure ("Rules") and the Hong Kong International Arbitration Centre Supplemental Rules ("Supplemental Rules"), the Complainant submitted a Complaint (including annexes) 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 2 July 2020, the HKIAC wrote to the Complainant acknowledging receipt of the Complaint.

On 2 July 2020, the HKIAC wrote to the Registrar a request for register verification in connection with the Disputed Domain Name.

On 2 July 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 2 August 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 3 August 2020, the Complainant submitted the amended Complaint to the HKIAC.

On 3 August 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 6 August 2020. In accordance with the HKIRC Rules, the due date for the Response from the Respondent was 26 August 2020.

On 21 August 2020, the Complainant filed supplementary evidence to its Complaint to the HKIAC.

On 23 August 2020, the HKIAC forwarded such supplementary information to the Respondent.

No Response from the Respondent was received by the HKIAC on 26 August 2020 and as such, the Respondent is in default.

The HKIAC appointed Dr. Christopher To as the Panelist in this matter on 31 August 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 Special Administrative Region of the People’s Republic of China, this Panel shall issue a reasoned award.

3. Factual Background

For the Complainant

The Complainant is a non-profit charitable organization dedicated to encouraging the growth, development, and distribution of free, multilingual, educational content. The Complainant was founded in 2003, and today manages 13 free knowledge projects built and maintained by a community of over 123,000 active volunteers.

The many well-known projects managed by the Complainant include Wikipedia, a free, online encyclopedia compiled, edited, and maintained by over 123,000 active contributors, Wikimedia Commons, a shared media repository of over 58 million freely usable images, sound files, and video files, and Wikinews, a free-content news source. The Complainant provides technological, legal, fundraising, and administrative support for these projects, which together represent some of the most-visited web properties in the world.

The Complainant also supports the Wikimedia movement by overseeing a network
of organizations around the world, including Wikimedia chapters, thematic organizations, and user groups. These organizations, which share the Complainant’s mission, support Wikimedia movement activities within a specified geographical region by collecting donations, organizing local events, and promoting current Wikimedia projects such as Wikipedia. Currently, there are over 39 chapters, over 120 user groups, and 2 thematic organizations that span over 38 countries and six continents.

On 10 January 2006, Complainant obtained a registration for the trademark “WIKIMEDIA” from the United States Patent and Trademark Office, for “[p]roviding information in the field of general encyclopedic knowledge via the Internet.” The registration indicates first use of the mark in January 2001. The Complainant has also registered the mark and name “WIKIMEDIA”. In subsequent years, the Complainant has registered a number of other marks that incorporate the “WIKIMEDIA” mark and name in other parts of the world.

As early as 30 October 2007, the Complainant registered the trademarks “WIKIMEDIA” in the Hong Kong Special Administrative Region of the People’s Republic of China.

The Complainant owns approximately 411 trademark registrations worldwide for the Wikipedia trademark and the foreign equivalents thereof, has extensive common law rights, and has acquired distinctiveness in the Wikipedia trademark since its first use in 2001. Complainant owns national and International Registrations for these marks in over 111 jurisdictions around the world.
For the Respondent

The Respondent is an individual from Bulgaria.

The Disputed Domain Name

The Disputed Domain Name was registered on 21 May 2020.

4. The Parties’ Contention

For the Complainant

The Complainant made the following submissions in the Complaint:

The Wikimedia and Wikipedia marks are unique and proprietary to the Complainant, belong exclusively to the Complainant, and represent the distinctive nature and quality of services that the Complainant provides. Accordingly, the Wikimedia and Wikipedia marks have become very valuable assets of the Complainant. Thousands of contributors and volunteers have spent a considerable amount of time and effort researching and developing the reference services that are promoted under the Wikimedia and Wikipedia marks. The Complainant and its affiliated chapters have also spent considerable time, effort, and money extensively promoting Wikimedia and Wikipedia marks in Hong Kong and throughout the world.

As a direct result of the considerable time, effort, money, and promotion of the Wikimedia and Wikipedia marks, goods and services identified by these marks have
been well received in the marketplace and the Wikimedia and Wikipedia marks have come to serve as a unique identifier of goods and services emanating from the Complainant. The Wikimedia and Wikipedia marks are extremely well known within the Hong Kong Special Administrative Region of the People’s Republic of China and throughout the world such that when consumers see the Disputed Domain Name, they will likely assume the associated website will direct them to one of the Complainant’s websites and the goods and services that the Complainant provides in connection therewith.

The Disputed Domain Name is currently being used in connection with a website offering to sell the Disputed Domain Name. The website provides a button link “Purchase This Domain Name”.

The Disputed Domain Name, WIKIMEDIA.HK, incorporates the Wikimedia mark in its entirety. It has been well-established by domain name dispute resolution panels that a domain name incorporating a distinctive trademark in its entirety creates sufficient similarity between the mark and the disputed domain name so as to render it confusingly similar regardless of the presence of other terms in the domain name.

Given the notoriety of the Wikimedia Marks and the fact that the Disputed Domain Name being identical with the Wikimedia Marks, the Disputed Domain Name is likely to cause consumers to believe that the website accessed through the Disputed Domain Name is affiliated with, authorized by, or endorsed by Complainant.
In light of the foregoing, the Disputed Domain Name is clearly confusingly similar to Complainant’s Wikimedia Marks.

The Complainant further contends that the Respondent has no legitimate rights or interests in the Disputed Domain Name. As noted in previous domain name dispute resolution panel decisions, Complainant must only establish a “prima facie” case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name in order to shift the burden of proof to the Respondent. If the Respondent fails to demonstrate rights or legitimate interests in the Disputed Domain Name in accordance with paragraph 4(c) of the Policy or on any other basis, Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Complainant submits that the Respondent is not a licensee of or otherwise affiliated with the Complainant, and the Complainant has never authorized or otherwise condoned or consented to the Respondent’s registration of the Disputed Domain Name. This alone is sufficient to find the Respondent has no rights or legitimate interests in the Disputed Domain Name.

The Complainant in its Complaint states that there is no evidence to suggest that Respondent is or has been commonly known by “Wikimedia”, “Wikipedia” or any variation thereof. The Complainant further states that the Respondent is offering to sell the domain name. The Respondent is trying to make profits by illicitly taking advantage of the well-known Wikimedia Marks of the Complainant. The manner by which it is being done is not bona fide use.
Under these circumstances, the Complainant deems that it has satisfied paragraph 4(a)(ii) of the Policy as it has made a “prima facie” showing that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

The Complainant further advocates that the Respondent reserved, used, and is holding the Disputed Domain Name willfully, in bad faith, and in complete disregard of the Complainant’s exclusive rights to use and authorize the use of the Wikimedia Marks.

In the Complainant’s supplementary evidence it asserts that the Respondent has been using without permission the Disputed Domain Name identical to Complainant’s distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for Internet users with regard to a potential affiliation or connection with the Complainant.

In summary, the Complainant’s contentions are as follows:

1. The Complainant is well known to the community of Hong Kong Special Administrative Region of the People’s Republic of China.
2. The Disputed Domain Name is confusingly similar to the Complainant’s Wikimedia Marks.
3. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.
4. 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.

5. The Complainant has not allowed or authorized the Respondent to use its Wikimedia Marks in any way or form.

6. The Disputed Domain Name was registered by the Respondent on 21 May 2020, some 19 years after the Complainant first used the mark in January 2001.

7. 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.

As this is an “English .hk domain name”, namely, <WIKIMEDIA.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.

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.

The Panel does not find it necessary to deal with each and every point raised in the written submissions. Instead, the following discussion will focus on those evidence as well as submissions that are enough to dispose of the issues in dispute. For the avoidance of doubt, the Panel wishes to reiterate that whilst all the evidence adduced and submissions made have been carefully considered by the Panel, the
fact that some of the matters or issues raised have not been specially dealt with below does not mean that they have been omitted and not considered by the Panel.

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 category of Domain Name.”
(1). **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.wikimedia.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 Special Administrative Region of the People’s Republic of China and cannot function to distinguish that name from the Complainant’s mark.

The Disputed Domain Name is likely to cause consumers to believe that the website accessed through the Disputed Domain Name is affiliated with, authorized by, or endorsed by the Complainant, when in effect the Complainant has not authorized the Respondent to use the Wikimedia Marks.

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 or 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)(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.”

The Respondent is not a licensee of or otherwise affiliated with the Complainant, and the Complainant asserts in its Complaint that it “has never authorized or otherwise condoned or consented to Respondent’s registration of the Disputed Domain Name”.

The Complainant has prior rights in the trademark which precede the Respondent’s registration of the Disputed Domain Name by some 19 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 fide 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 website 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 website or location or of a product or service on the Registrant’s website or location.”

In the present case, the Complainant had registered the trademark in Hong Kong since 31 October 2007 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 21 May 2020. 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 “using the Disputed Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to a website, by creating a likelihood of confusion
with the Complainant’s well-known mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location, or of a product or service on the Respondent’s website or location.”.

In the Complainant’s supplementary submissions the Complainant provided the Tribunal with evidence that the “Respondent has been using without permission the Disputed Domain Name identical to Complainant’s distinctive trademark in order to get traffic on its web portal and to obtain commercial gain from the false impression created for Internet users with regard to a potential affiliation or connection with the Complainant”.

In the Complainant’s supplementary submissions the Complainant provided the Tribunal with further evidence that the Respondent is operating as a “Serial Squatter”.

From the evidence tendered by the Complainant, there is evidence that the Respondent is offering to sell the domain name with the view of making a profit at the expense of the Complainant’s well-known Wikimedia Marks.

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 foregoing reasons, the Panel concludes that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly the third condition 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 “WIKIMEDIA” 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 “WIKIMEDIA”, 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 <WIKIMEDIA.HK> be
transferred to the Complainant – **The Wikimedia Foundation, Inc.**

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 17 day of **September 2020**

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

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Dr. Christopher To
Panelist - Arbitrator