1. Parties and Contested Domain Name

The Complainant is Discovery Communications, LLC. whose registered office is situated at 8403 Colesville Road, Silver Spring, Maryland 20910, United States of America (hereinafter ‘USA’ or ‘US’); and its authorized representative in this matter is Deacons, whose address is 5/F, Alexandra House, 18 Chater Road, Central, Hong Kong (hereinafter ‘Complainant’ or ‘Discovery’).

The Respondent is Liqun Wang, whose address is Chendan Zhen Wuxian Cun 174, Zip: 338000, Xinyu, China.

The domain name at issue is <discoveryplus.hk> (the “Disputed Domain Name”) registered with 1API GmbH (the “Registrar”) whose address is Im Oberen Werk 1 66386 St. Ingbert, Germany.

2. Procedural History

On 7 January 2021, Hong Kong International Arbitration Centre (“HKIAC”) received a complaint (which was subsequently amended on 21 January 2021) (the “Complaint”) filed by the Complainant pursuant to the Domain Name Dispute Resolution Policy for .hk and. 香港 domain names (the “Policy”), adopted by the Hong Kong Domain Name Internet Registration Corporation Limited (“HKIRC”) on 22 February 2011, the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure (the “Rules”), approved by HKIRC effective from 15 July 2020, and the HKIAC Supplemental Rules for HKIRC Domain Name Dispute Resolution Policy (“Supplemental Rules”), effective from 15 July 2020.
On 19 January 2021, HKIAC transmitted by email to the Registrar, a request for registrar verification in connection with the WHOIS of the registrant of the Disputed Domain Name.

By email of 20 January 2021, the Registrar confirmed that the Respondent is the registrant or holder of the Disputed Domain Name; and that the Policy is applicable to the current dispute; and provided HKIAC with the WHOIS information regarding the Disputed Domain Name, including the administrative and technical contacts of the Respondent.

On 21 January 2021, HKIAC served on the Respondent by email the Notification of Commencement of Proceedings (“NCP”) and that the Respondent had 15 business days, on or before 11 February 2021, to submit a Response to the Complaint in accordance with the Policy, the Rules and the Supplemental Rules. The Complaint and its annexures were attached to the NCP issued by HKIAC.

The Respondent did not respond to the Complaint by the due date; and on 16 February 2021, HKIAC issued a notification of the Respondent in Default.

On 16 February 2021, HKIAC appointed Dr. George Tian as the sole Panelist of the Arbitration Panel in this matter. The said sole Panelist has, prior to the appointment, submitted his Statement of Acceptance and Declaration of Impartiality and Independence in compliance with the Rules; and the case file was transferred by HKIAC to the said sole Panelist on the same date.

3. Factual Background

For the Complainant

The Complainant is a world leading entertainment, educational and broadcasting business, which launched the “Discovery” Channel back in 1985 in the US. It has since then expanded its network of television channels, business, products and services under and by reference to the “Discovery” brand around the world. As one of the world’s largest pay-TV programmers, the Complainant’s “Discovery” branded programmes/channels provides original and purchased content and live events to approximately 3.8 billion cumulative subscribers and viewers worldwide (Annex 6 to the Complaint).

The Complainant has exclusive rights in the DISCOVERY and DISCOVERY+ trademark (collectively DISCOVERY mark) globally. The Complainant is the exclusive owner of well-known registered trademark DISCOVERY in many countries and regions, including DISCOVERY mark registered in the US (since 26 April 2011; the US Trade Mark registration number); DISCOVERY mark registered in China (since 7 May 2001; the Chinese Trade Mark registration number 1567915); DISCOVERY mark registered in Hong Kong China (hereinafter ‘HK’) (since 19 May 2005; the HK Trade Mark registration number 300422676) (Annexes 2-4 to the Complaint). Moreover, The
Complainant has filed DISCOVERY+ mark application in HK on 5 June 2020 (the HK Trade Mark application number 305295312) (Annex 5 to the Complaint).

For the Respondent

The Respondent, based in China, has registered the Disputed Domain Name <discoveryplus.hk> on 5 November 2020, long after the DISCOVERY trade mark became internationally well-known. At the date of this Award, the Disputed Domain Name resolved to a website in English language, which is offering the sale of the disputed domain name (Annex 12 to the Complaint).  

4. Parties’ Contentions

The Complainant

The Complainant contends that the Disputed Domain Name is confusingly similar to Complainant’s DISCOVERY Marks and its use and registration will cause confusion amongst the public;

The Complainant submits that the Respondent has no rights or legitimate interests to the Disputed Domain Name at all, in particular any rights or legitimate interest which predates those of the Complainant; and

The Complainant submits that the Respondent has registered and used the Disputed Domain Name and these related domain names in bad faith, and that the Respondent is a serial cyber-squatter;

The Complainant requests that the Disputed Domain Name be transferred to it.

The Respondent

The Respondent did not respond to the Complaint.

5. Findings

5.1. Language of the Proceeding

In relation to Language of the Arbitration Proceeding, Paragraph 11 of the Rules provides that:

(a) 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

1 See www.discoveryplus.hk
the Arbitration Panel to determine otherwise, having regard to all the circumstances of the arbitration proceeding;

(b) An Arbitration Panel may order that any documents submitted in a language other than the language of the arbitration proceeding shall be accompanied by a translation in whole or in part into the language of the arbitration proceeding.

On the evidence contained in the case file of this matter, the Disputed Domain Name <discoveryplus.hk> is an English .hk domain name. The Arbitration Panel finds that the language of the arbitration proceedings shall be in English.

5.2. Substantive issues

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, the Complainant has the burden of proving that:

(i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and

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

(iii) the Disputed Domain has been registered and is being used in bad faith; and

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

(1). Identical/confusing similarity

The Panel finds that The Complainant has rights in the DISCOVERY marks acquired through registration. The DISCOVERY marks have been registered in China (2001) and Hong Kong China (2005). The disputed domain name <discoveryplus.hk> comprises the DISCOVERY mark in its entirety.

Generally, a respondent may not avoid likely confusion by appropriating another’s entire mark and adding descriptive or non-distinctive matter to it. (The Argento Wine Company Limited v. Argento Beijing Trading Company, WIPO Case No. D2009-0610; PCCW-HKT DataCom Services Limited v. Yingke, ADNDRC Case No. HK0500065).

The disputed domain name only differs from Complainant’s trademarks by the suffix ‘plus’ and the gTLD suffix “.hk” to the DISCOVERY marks. This does not eliminate the confusing similarity between Complainant’s registered trademarks and the disputed domain name.

Thus, the Panel finds that disregarding the suffix ‘plus’ and the gTLD suffix “.hk”, the disputed domain name is confusingly similar to the DISCOVERY marks. The Panel
therefore holds that the Complainant fulfils the first condition of paragraph 4(a) of the Policy.

(2). Rights or Legitimate Interests of Respondent

Paragraph 4(d) of the Policy sets out five circumstances which, without limitation, shall be evidence of the Registrant’s rights or legitimate interests to the Domain Name, namely:

(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.”

In the present case, the Complainant is the exclusive owner of famous and well-known registered trademark DISCOVERY in many countries, including USA (since 2011), and China (since 2001), which long precedes Respondent’s registration of the disputed domain name (5 November 2020). According to Complaint, the Complainant is a world leading entertainment, educational and broadcasting business, which launched the “Discovery” Channel back in 1985 in the US. The Complainant’s “Discovery” branded programmes/channels provide original and purchased content and live events to approximately 3.8 billion cumulative subscribers and viewers worldwide.

Moreover, the Respondent is not an authorized dealer of DISCOVERY-branded products or services. The Complainant has therefore established a prima facie case that The Respondent has no rights or legitimate interests in the disputed domain name and thereby shifted the burden to the Respondent to produce evidence to rebut this presumption (The Argento Wine Company Limited v. Argento Beijing
Based on the following reasons the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name:

(a) There has been no evidence adduced to show that The Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services. The Respondent has not provided evidence of a legitimate use of the disputed domain name or reasons to justify the choice of the word “discovery” in its business operation or the use of the DISCOVERY trademark and design on its website (without disclaimer or other clarifying details). There has been no evidence to show that the Complainant has licensed or otherwise permitted The Respondent to use the DISCOVERY trademark or to apply for or use any domain name incorporating the DISCOVERY trademark;

(b) 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 has any registered trademark rights with respect to the disputed domain name. The Respondent registered the disputed domain name <discoveryplus.hk> on 5 November 2020. The disputed domain name is identical or confusingly similar to Complainant’s DISCOVERY trademark.

(c) There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. By contrast, according to the information provided by the Complainant, the disputed domain name <discoveryplus.hk> is connected to the webpage which is offering the sale of disputed domain name.

The Panel finds that The Respondent has failed to produce any evidence to establish its rights or legitimate interests in the disputed domain name in light of Complainant’s *prima facie* case. The Panel therefore holds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

(3). Bad faith

Paragraph 4(b) of the Policy sets out four circumstances which, without limitation, shall be evidence of the registration and use of the disputed domain name in bad faith, namely:

(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.

The Panel concludes that the circumstances referred to in paragraph 4(b)(iv) of the Policy are applicable to the present case and upon the evidence of these circumstances and other relevant circumstances, it is adequate to conclude that The Respondent has registered and used the disputed domain name in bad faith.

(a) Registered in Bad Faith

The Panel finds that The Complainant has a widespread reputation in the DISCOVERY marks with regard to its products and services. As mentioned above, the Complainant is a world leading entertainment, educational and broadcasting business, which launched the “Discovery” Channel back in 1985 in the US. As one of the world’s largest pay-TV programmers, the Complainant’s “Discovery” branded programmes/channels provide original and purchased content and live events to approximately 3.8 billion cumulative subscribers and viewers worldwide. The Complainant has rights in the DISCOVERY marks in China and internationally. It is not conceivable that the Respondent would not have been aware of Complainant’s trademark rights at the time of the registration of the disputed domain name (in 2020).

The Panel therefore finds that the DISCOVERY mark is not one that a trader could legitimately adopt other than for the purpose of creating an impression of an association with Complainant (The Argento Wine Company Limited v. Argento Beijing Trading Company, supra).

Moreover, Respondent has chosen not to respond to Complainant’s allegations. According to the UDRP decision in The Argento Wine Company Limited v. Argento Beijing Trading Company, supra, “the failure of the Respondent to respond to the Complaint further supports an inference of bad faith”. See also Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc., WIPO Case No. D2002-0787.
Thus, the Panel concludes that the disputed domain name was registered in bad faith.

(b) Used in Bad Faith

Complainant also has adduced evidence to show that by using the confusingly similar disputed domain name, Respondent has “intentionally attempted to attract, for commercial gain, Internet users to Respondent’s website or other online location”. To establish an “intention for commercial gain” for the purpose of this Policy, evidence is required to indicate that it is “more likely than not” that such intention existed (*The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*).

As noted above, the disputed domain name has been used to attract Internet users seeking Complainant’s website to a website offering the sale of the disputed domain name. Such conduct falls within the language of paragraph 4(b)(iv) of the Policy.

Further, given the lack of response, the Panel cannot envision any other plausible use of the disputed domain name that would not be in bad faith under the present circumstances. Taking into account all the circumstances of this case, the Panel concludes that current use of the disputed domain name by Respondent is in bad faith also.

In summary, Respondent, by choosing to register and use a domain name which is confusingly similar to Complainant’s trademark, intended to ride on the goodwill of Complainant’s trademark, disrupt the Complainant’s normal business, and create confusion with the Complainant’s name or mark so as to mislead the public. In the absence of evidence to the contrary and rebuttal from Respondent, the choice of the disputed domain name and the conduct of The Respondent as far as the website on to which the disputed domain name resolves is indicative of registration and use of the disputed domain name in bad faith.

The Panel therefore holds that the Complaint fulfils the third condition of paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the circumstances which shall be evidence of the registration in violation of the eligibility requirements for.idv.hk/.個人.hk /.個人.香港 Domain Names (“Individual Domain Name Categories”). These include ‘the name incorporated in the Domain Name is not the Registrant’s legal name for個人.hk and 個人.香港 domain names as set out in the Registration Agreement and the Registration Policies, Procedures and Guidelines and the Published Policies’.
As the Respondent is not called or affiliated with the name “discoveryplus” 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 the domain name (Yageo Corporation v. Yang ShuHua, HKIAC Case No. DHK-2000175)

The Panel therefore holds that the Complaint fulfils the fourth condition of paragraph 4(a) of the Policy.

For all the reasons aforesaid, the Arbitration Panel concludes that the Complainant has satisfied all the requirements under Paragraph 4(a) of the Policy.

6. Conclusions

For all the foregoing reasons, in accordance with paragraphs 4(a) of the Policy and Paragraph 15(a) of the Rules, the Arbitration Panel AWARDS, ORDERS AND DIRECTS that Disputed Domain Name <discoveryplus.hk> be transferred to the Complainant.

_______________________
George Yijun Tian

Dated 12 March 2021