



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0900220
Case ID	CN-0800242
Disputed Domain Name	www.雀巢.com
Case Administrator	Xinmin Cui
Submitted By	Lulin Gao
Participated Panelist	

Date of Decision	10-02-2009
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The Parties Information

Claimant	SOCIETE DES PRODUITS NESTLE S.A.
Respondent	Chiu Tien Fu

Procedural History

The Complainant in this case is SOCIETE DES PRODUITS NESTLE S.A. Its address is in VEVEY, SWITZERLAND. Its authorized representative is Beijing Janlea Trademark Agency Co., Ltd.
The Respondent in this case is Chiu Tien Fu, whose address is at 200 Garfield Ave Alhambra CA, 91801, US.

The Disputed Domain Name is 雀巢.com. The Registrar of the Disputed Domain Name is Name.com LLC.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") implemented by the Internet Corporation for Assigned Names and Numbers ("ICANN") on October 24, 1999, and under ICANN Rules for Policy and Asia Domain Name Dispute Resolution Center ("ADNDRC") Supplemental Rules for Policy, was received by the ADNDRC Beijing Office on November 11, 2008. On November 25, 2008, the ADNDRC Beijing Office requested the Registrar by email to provide information from its WHOIS database in respect to the Disputed Domain Name, and the registration information was confirmed by the Registrar on November 26, 2008.

On December 16, 2008, the ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On December 22, 2008, the ADNDRC Beijing Office received the Supplementary Evidence submitted by the Complainant.

On the same day, the ADNDRC Beijing Office notified the Complainant by email that the Complaint had been reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. The ADNDRC Beijing Office also requested that the Respondent file a Response within the 20 days scheduled time.

On January 7, 2009, the ADNDRC Beijing Office received from the Respondent a request for an extension to file their response. On the same day, ADNDRC Beijing Office extended the deadline for the Respondent to file the Response to January 19, 2009 .

On January 19, 2009, the ADNDRC Beijing Office received the Response from the Respondent. On January 20, 2009, the ADNDRC Beijing Office transmitted the Response to the Complainant and transmitted the Notification for Selection of Panelist to the Parties.

On January 21, 2009, the ADNDRC Beijing Office received the ranking list of the candidates by the Complainant. The Respondent did not submit a ranking list of the candidates.

On January 23, 2009, the ADNDRC Beijing Office contacted the Complainant's chosen candidate, Dr. Lulin Gao, requesting that he confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

Having received a declaration of impartiality and independence and a statement of acceptance from Dr. Lulin Gao, the ADNDRC Beijing Office informed the parties by email that Dr. Lulin Gao would be the sole Panelist of this case and formally transferred the files of this case to the Panel on January 24, 2009.

On January 24, 2009, the Panel received the file from the ADNDRC Beijing Office and should render its decision on or before February 7, 2009.

Factual Background

For Claimant

The Complainant, the world's leading food manufacturer, was established in 1866 in Switzerland and has a history of over 140 years. It is the world's leading manufacturer of soluble coffee, infant nutrition products, dairy products, confectionery, bouillons and seasonings, ice cream and bottled water, as well as petcare products. The Complainant is also involved in the production of non-food-related products, including ophthalmic products (Alcon), and is a minority stakeholder in the L'Oreal cosmetics group.

The development history of the Complainant started in 1866. In 1967, Mr. Henri Nestlé launched his company in Switzerland. He also showed early understanding of the power of branding. He adopted his own coat of arms as a trademark; in Swiss German, Nestlé means 'little nest'. One of his agents suggested that the nest could be exchanged for the white cross of the Swiss flag. Nestlé's response was firm: "I regret that I cannot allow you to change my nest for a Swiss cross I cannot have a different trademark in every country; anyone can make use of a cross, but no one else may use my coat of arms." "NESTLE" is the family name of the founder of the Complainant and bears the meanings of safety, warmth, motherly love, nature and nutrition.

The Complainant operates 508 factories in 85 countries worldwide and employs 276,000 people. Worldwide company sales in 2007 reached RMB 681 billion.

By as early as 1908, the Complainant had established its first trading office in Shanghai. Its first liaison office was established in Guangzhou in 1984. In 1990, production began at Nestlé Shuangcheng Ltd. In 1992, production began at Nestlé Dongguan Ltd. In order to better serve the entire China area, the Complainant opened a corporate head office in Beijing in 1996. In 1999, the Complainant established a joint-venture (80% Nestlé) with Totole in Shanghai.

To date, the Complainant has made an investment of some RMB 7 billion in the Greater China Region and operates 20 world-class factories. 99% of its products sold in Mainland China are locally manufactured. Nestlé employs more than 13,000 people in the Greater China Region, and its total sales reached RMB 13 billion in 2007.

The Complainant has 6 strategic worldwide brands: "NESCAFE", "NESTLE", "NESTEA", "MAGGI", "PURINA" and "BUIIONI". Together, these brands form its core property, which is estimated to be worth more than CHF 90 billion. In 2003's list of World Top Brands, the Complainant's "NESCAFE" is ranked No.21, with an estimated value of USD 12.34 billion. In 2004's list of World Top 100 Brands, sponsored by "Business Week," the Complainant's "NESCAFE" was ranked No.23, with an estimated value of USD 11.82 billion, and its "NESTLE & device" (QUE CHAO in Chinese & device) was ranked No.62, with an estimated value of USD 4.529 billion. In 2006's "Top 500 World Brands", the Complainant was ranked No.55.

After a long history of development, mergers and acquisitions, the Complainant has now become the world's leading food producer and distributor. These developments are listed below:

- 1905 Merger between Nestlé and Anglo-Swiss Condensed Milk Company
- 1929 Merger with Peter, Cailler, Kohler Chocolats Suisses S.A.
- 1947 Merger with Alimentana S.A. (Maggi)
- 1969 Vittel (equity interest)
- 1971 Merger with Ursina-Franck
- 1974 L'Oréal (equity interest)
- 1977 Acquisition of Alcon (2002: partial IPO)
- 1985 Acquisition of Carnation
- 1988 Acquisition of Buitoni-Perugina
- 1988 Acquisition of Rowntree
- 1992 Acquisition of Perrier
- 1998 Acquisition of Sanpellegrino and Spillers Petfoods

2000 Acquisition of PowerBar
 2001 Acquisition of Ralston Purina
 2002 Acquisition of SchÖller and Chef America
 2003 Acquisition of MÖvenpick, Powwow and Dreyer’ s
 2004 Acquisition of Valio (ice cream activities)

By 1990, the Complainant had become a global operator with regard to worldwide cooperation in the areas of food and cereal. The Complainant worked with a number of global beverage companies in 1991 and cooperated with the American Milk Product Company in 2002. The Complainant has now become the world’ s leading food products producer, with total assets of CHF 870.94 billion, net profits of CHF 67.17 billion and total investments of CHF 11523.7 billion. In addition, the Complainant has also invested a large amount of money in research and development. For example, in 2004, the company invested CHF 14.13 billion.

There are no other companies comparable to the Complainant in respect to business scope, product categories, trademarks, value of brands and market share. The Complainant’ s sales volume, range of product items and total sales amount rank No.1 out of all companies worldwide in the same industry. The Complainant and its brands have become a symbol of good quality both in China and throughout the world.

For Respondent

The Respondent registered the Disputed Domain Name on May 17, 2004.

Parties' Contentions

Claimant

The Complainant’ s contentions are as follows:

I . The key element “雀巢” (Que Chao in Chinese) of the Disputed Domain Name is identical to the brand name and trademark owned by the Complainant (SOCIETE DES PRODUITS NESTLE S.A.), and it is likely to cause confusion between the two.

(1) The Complainant and its associated companies enjoy prior company name rights to “QUE CHAO in Chinese” and the Disputed Domain Name is identical to the Complainant’ s brand name.

Since 1866, the Complainant has consistently used “NESTLE” as its company name. In correspondence with this company name, “QUE CHAO in Chinese” has been used consistently in China, including Taiwan and Hong Kong, up to now. The Disputed Domain Name is identical to the Complainant’ s company name, has infringed the Complainant’ s prior company name rights, and is likely to mislead consumers to assume that the Disputed Domain Name is owned by the Complainant or that the Disputed Domain Name is associated with the Complainant and its products. Therefore, the Respondent’ s registration and use of the Disputed Domain Name was obviously committed in bad faith.

The Complainant has established many associated companies in China that are all named “QUE CHAO in Chinese” . “QUE CHAO in Chinese” has already become the Complainant’ s important symbol throughout China. As a company name and brand name, the rights to “QUE CHAO in Chinese” are without a doubt owned by the Complainant.

In summation, the Complainant is a company with a long history and is well-known throughout the world. The Complainant has already established numerous subsidiary companies around the world, and both “QUE CHAO in Chinese” and its English version “NESTLE” have been used consistently as its company name and brand name. Therefore, the Complainant and its associated companies enjoy prior company name rights and brand name rights to “QUE CHAO in Chinese.”

(2) The Complainant has exclusive, prior trademark rights to “QUE CHAO in Chinese”

The Complainant’ s registration of “NESTLE” as its trademark can be dated back to as early as January 1, 1800, when the Complainant filed applications in Belize, Dominica, the Falklands, Grenada and Saint Vincent and Grenada. It has a history of over 200 years. This trademark has been registered and enjoys protection in more than 160 countries around the world, including the United States, Singapore, China, Hong Kong, Finland, France, etc.

The Complainant’ s trademark “QUE CHAO in Chinese” has been registered for goods in classes 1 to 44 in Hong Kong, Macao, Mongolia, Singapore, Switzerland, Taiwan, etc., and as a Chinese language trademark, it is well-known in the region and widely used.

As stated above, the Complainant has advertised and promoted its brands and products for a long time since entering China's market and has registered "NESTLE", "QUE CHAO in Chinese & NESTLE" as its trademark for goods in numerous classes.

To summarize, the Complainant's ownership of the company name rights (brand name rights) and trademark rights to "QUE CHAO in Chinese" predates, by a number of years, the registration of the Disputed Domain Name on May 17, 2004. Therefore, the Complainant enjoys prior rights to "QUE CHAO in Chinese".

II. The Complainant's serial trademark "QUE CHAO in Chinese" had already become well-known among the Chinese public before the registration date of the Disputed Domain Name

The Complainant had used "NESTLE" and "QUE CHAO in Chinese" as its brand name and trademark and had obtained the influence of a well-known trademark among Chinese consumers before the registration date of the Disputed Domain Name. Before 2004, the influence and well-known status of "QUE CHAO in Chinese" ranked among the highest of all international companies in China.

After having been used, advertised and sold for a long time with various kinds of products, the Complainant's serial trademark "QUE CHAO in Chinese" enjoys a high reputation among the common consumer in China.

III. The Disputed Domain Name is identical to the Complainant's trademark and thus has been registered in bad faith

As stated above, "QUE CHAO in Chinese," used as the Complainant's trademark and brand name, is a unique translation of its English trademark "NESTLE" into Chinese. The Complainant enjoys exclusive civil rights to it and it is solely related to the Complainant. If you put the phrase "QUE CHAO in Chinese" into the search engine of "The Britannica Chinese Pocket Encyclopedia", the direct search result displays "QUE CHAO(NESTLE) Food Company". This fact shows that "QUE CHAO in Chinese" is clearly associated with the Complainant and represents the Complainant's high status and influence.

To advertise its products and strengthen its influence in the industry, the Complainant has established many websites to introduce the company, its brands, its products, etc, including its websites in the Greater China Region: www.nestle.com.cn, www.nestle.com.hk, www.nestle.com.tw, etc.

The Disputed Domain Name is identical to the Complainant's trademark "QUE CHAO in Chinese" and is likely to be assumed to be the corresponding translated version of its English trademark "NESTLE". As a result, it is likely to cause confusion among consumers. The Disputed Domain Name directs to a Chinese website that contains the words "Nestle Milk Powder in Chinese" in its keyword links. This fact clearly shows that the Respondent is attempting to attract visits to gain commercial profits by using the Complainant's trademark and brand name. The Respondent's conduct is infringing on the Complainant's rights to "QUE CHAO in Chinese".

IV. The Respondent "Chiu Tien Fu" does not have any legitimate rights to the Disputed Domain Name

As stated above, "QUE CHAO in Chinese" is the Complainant's core trademark and company name. There is not any relation between the Complainant and the Respondent, neither is there any association between the Complainant and any of the webpages linked by the Disputed Domain Name. Therefore, the Respondent does not enjoy any legitimate rights to the Disputed Domain Name.

V. It is in bad faith for the Respondent to have registered and used the Disputed Domain Name

(1) After having been used as a trademark, company name and brand name by the Complainant and its affiliates consistently over many years, "NESTLE" and "QUE CHAO in Chinese" are closely associated with Complainant and its products and bear strong distinctiveness, and the right of use and intangible property rights (such as good will) to "QUE CHAO in Chinese" are owned by the Complainant and its affiliates. Upon seeing "QUE CHAO in Chinese", the public will automatically form an association with the Complainant and its products. The Respondent's registration of "QUE CHAO in Chinese" as a domain name is thus obviously an intentional act of reproduction.

(2) The Complainant as a company was established in 1866 and has used and advertised the brand names of "NESTLE" and "QUE CHAO in Chinese" for over 100 years throughout the world, and the Complainant's operated products are all goods consumed daily and closely related to the public. Based on the well-known status and popularity of Complainant's products, the Respondent must have had some experience with and knowledge of the Complainant's products. Therefore, it is impossible for the Respondent not to be familiar with the Complainant's trademark and corporate name.

(3) As stated above, Respondent does not own any prior legitimate rights to "NESTLE" and "QUE CHAO in

Chinese” . Being familiar with the well-known status of “NESTLE” and “QUE CHAO in Chinese” and having no legitimate rights to and interests in these trademarks and corporate names, the Respondent’ s registration of “雀巢.com (QUE CHAO in Chinese.com)” as a domain name is an obvious attempt to obtain illegitimate profits through cyber-squatting.

After promotion over many years, “QUE CHAO in Chinese” has become a very famous brand name in China and the Greater China Region, and it contains great intangible property undisputably owned by the Complainant. Cyber squatting and any attempt to acquire unfair profits by any individual or corporate entity should be prohibited.

(4) The Respondent’ s use of the Disputed Domain Name is not in good faith but for commercial benefits, gained through unfair use of the Complainant’ s good fame to attract visits, and the Respondent’ s registration of the Disputed Domain Name bars the Complainant’ s fair registration and use of this domain name to advertise and promote its products online, and thus has severed the online relationship between the Complainant and its customers. Therefore, the Respondent’ s use and registration of the Disputed Domain Name is obviously in bad faith.

In accordance with the UDRP and on the basis of the above grounds, the complainant requests the Expert Panel to decide the Disputed Domain Name be transferred to the complainant.

Respondent

According to the Uniform Domain Name Dispute Resolution Policy (As Approved by ICANN on October 24, 1999): The Complainant must prove three conditions are present simultaneously (Policy, Paragraph 4(a)):

(i)The respondent’ s domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii)The respondent has no rights or legitimate interests in respect of the domain name; and

(iii)The respondent’ s domain name has been registered and is being used in bad faith.

In the administrative proceeding, the Complainant must prove that each of these three elements are present at the same time.

However, the Complainant's above-mentioned three elements are not present:

I . The domain name is not identical or confusingly similar to a trademark or service mark in which the complainant has rights.

(1) <雀巢.com> is an information website, <雀巢.com> is neither a store nor a product, everyone knows what is .com;

(2)雀, 巢 and 雀巢 are all Generic Nouns and Popular Names,

雀:sparrow,finch,bird

<http://baike.baidu.com/view/373381.htm>

雀

que

1) a sparrow

Please see:

<http://www.baidu.com/s?ie=gb2312&bs=%B3%B2&sr=&z=&cl=3&f=8&tn=baidu&wd=%C8%B8&ct=1048576>

The “true sparrows” , the Old World sparrows in the family Passeridae, are small passerine birds. As eight or more species nest in or near buildings, and the House Sparrow and Eurasian Tree Sparrow in particular inhabit cities in large numbers, sparrows may be the most familiar of all wild birds.

巢:nest

巢 is also a Chinese Surname,Please see:

<http://baike.baidu.com/view/97779.htm>

巢

chao

1) a nest;

Please see:

<http://www.baidu.com/baidu?ie=gb2312&bs=&sr=&z=&ct=1048576&cl=3&f=8&word=%B3%B2>

雀巢:bird's nest, sparrow's nest

(3)<雀巢.com>≠<雀巢.net>≠<雀巢.cn>≠<雀巢.tw>≠<雀巢.hk>≠<雀巢.cc>≠<雀巢.tv>≠<雀巢.biz>≠<雀巢.jp>≠<雀巢.info>≠<雀巢.de>≠<雀巢.kr>≠NESTLE

(4)Does the domain name belong to the Complainant? Does the Complainant want to plunder and occupy all domain sources? It is not fair.

(5)The Complainant has no 雀巢 trademark in USA, while the domain name was registered in USA.

II .The Respondent has rights or legitimate interests in respect to the domain name.

(1)Before any notice to the respondent of the dispute, the domain name has been in use for over 4 years;

(2)Since 2004-05-17, the respondent has used <雀巢.com> for 4 years. <雀巢.com> started to use Hangzhou 365

Network Limited(365.com, Inc.)'s DNS servers to construct website since June 1, 2006 and the DNS servers for <雀巢.com> are dns1.365.com, dns2.365.com, dns3.365.com, dns4.365.com. The Hangzhou 365 Network Limited (365.com, Inc.) has proved this point. <雀巢.com> is a classified information legitimate website and a formal legal website. The respondent legally registered <雀巢.com>. The respondent is the legitimate holder of <雀巢.com> and the respondent has legal right to hold and use <雀巢.com>.

(3)After over 4 years of use and promotion,<雀巢.com> is commonly known;

(4)The Respondent is making a legitimate noncommercial or fair use of the domain name <雀巢.com>, without intent for commercial gain or to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

(5)Everyone can search for ownership of any domain name using the WHOIS database, such as <http://www.whois-search.com/>. <雀巢.com> xn--bstu97j.com' s owner is Chiu Tien Fu.

III. The domain name has been registered and is being used in good faith.

(1)The Complainant did not put forward any evidence to prove that the Respondent has registered the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or anyone;

(2)<雀巢.com> is a classified information website to provide a variety of information services. <雀巢.com>' s information classified as:(1)Business,(2)Computer networks, (3)Education and training,(4)Leisure,(5)Financial,(6) Health,(7)Life,(8)Shopping, in eight major categories under which there are 67 small classifications. After two years of promotion and maintenance, <雀巢.com> has many visitors and a lot of people know <雀巢.com>. As a result, the Respondent has the rights to and legitimate interest in <雀巢.com>, so the Complainant has no right to deprive the Respondent of his rights and legitimate interests.

(3)Furthermore, the Respondent is planning to use <雀巢.com> to construct a charitable Web site, Bird Protection:

There are many things you can do to attract and protect birds during migration and throughout the year. Migrating birds need food to refuel and shelter from the weather and from predators. In addition, migrating birds have to deal with many obstacles including windows, large buildings, and other structures such as monuments and radio towers. To find out how you can help protect birds or attract them to food and shelter in your yard, check out the links below:

Landscape with birds in mind
Avoid using pesticides
Keep cats indoors
Modify hazardous windows
Finding an Injured or Dead Bird

To sum up, the Complainant's complaints do not meet three basic requirements: under the Uniform Domain Name Dispute Resolution Policy 4a (i) (ii) (iii) The Complainant must prove that each of these three elements is present at the same time.

Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming a domain name registered by Respondent, the Complainant must prove each of the followings:

(i) that the domain name of the Respondent's is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(ii) that the Respondent has no rights or legitimate interests in respect to the domain name; and

(iii) that the domain name has been registered and is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the aforementioned prerequisites. If the answer is yes, the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant' s claims shall be rejected.

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark to which the Complainant has rights. In order to meet this requirement, the Complainant has provided proof certifying its entitlement to the registered trademark “雀巢” in many countries and regions, including China, Hong Kong and Singapore, which are still valid. As demonstrated by the Complainant' s exhibits, the Complainant' s trademark was registered well before the Respondent registered the Disputed Domain Name (May 17, 2004). Thus, the Panel is of the opinion that the Complainant enjoys the prior

trademark right to “雀巢”.

As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “雀巢” and the Disputed Domain Name “雀巢.com”. Obviously, “雀巢”, as the identifying part of the Disputed Domain Name, is exactly the same as the Complainant’s registered trademark.

Therefore, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant’s trademark, and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

Rights and Legitimate Interests

The Panel makes the decision based on the evidence provided by both parties, and in case that either party fails to meet its burden of proof, such a party shall undertake the risk of a possible unfavorable result against it. The Complainant claims that the Respondent has no rights or legitimate interests in respect to the Disputed Domain Name. The Panel finds that the Complainant has already fulfilled the burden of proof required by the second condition under Paragraph 4(a) of the Policy, thus the burden of proof regarding “rights or legitimate interests” is generally on the party making the defense in the dispute resolution of a domain name, namely, the Respondent.

The Panel considers that Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the Disputed Domain Name as an argument against the Complainant’s claim. Although the Respondent contends that he is making a legitimate noncommercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue, he fails to provide any evidence to prove he had any right or legitimate interest whatsoever in respect to the mark “雀巢”, or that there was any association between the mark “雀巢” and his activities before registering the Disputed Domain Name. Given that there is no evidence from the Respondent on his contention that he has legitimate rights, the Panel cannot draw the conclusion that the Respondent has any rights or legitimate interests in respect to the Disputed Domain Name.

Meanwhile, the Panel is not convinced by the Respondent’s contention that he legally registered the Disputed Domain Name and has legal right to hold and use the Disputed Domain Name, since the mere fact of registering the Disputed Domain Name by the Respondent is not grounds to prove the Respondent has any right or legitimate interest with respect to the Disputed Domain Name. If the registration act per se were sufficient grounds for the Respondent to have rights or legitimate interests, then the whole Policy would lose its meaning.

In view of the foregoing, the Panel comes to the conclusion that the Respondent has no legitimate right or interest in respect to the Disputed Domain Name. Accordingly, the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

Bad Faith

The Complainant also needs to establish the Respondent’s bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in bad faith:

- (i) Circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) You have 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 you have engaged in a pattern of such conduct; or
- (iii) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your 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 your web site or location or of a product or service on your web site or location.

First of all, various evidence shows that the Complainant’s trademark “雀巢” has achieved a high reputation throughout the world through a long history of use, and meanwhile “雀巢” has become the brand name of worldwide significance. As such, the public has come to recognize and associate the Complainant’s trademark “雀巢” as originating from the Complainant and no other. This entitles the Panel to infer that the Respondent knew, or should have known, of the existence of the Complainant and its trademark, while the Respondent has registered the Disputed Domain Name “雀巢.com” that consists of the Complainant’s mark “雀巢” only, thereby inevitably preventing the Complainant from reflecting its trademark in such a corresponding domain name. These findings, together with the finding above that the Respondent has no rights or interests in the Disputed Domain Name, lead the Panel to conclude that the Disputed Domain Name has been registered by the Respondent in bad faith.

Secondly, as demonstrated above, the Complainant's mark “雀巢” has a high reputation and is widely known around the world. Although the Respondent contends that he is planning to use the Disputed Domain Name to construct a charitable Web site, he fails to provide any evidence whatsoever of any actual or contemplated good faith use of the domain name. According to exhibit 27 provided by the Complainant, the Panel notes that the website of the Disputed Domain Name turns to a webpage consisting of many search links, including the search link related to “雀巢milk powder in Chinese”, which has further led the Panel to the conclusion that the Respondent, by using Disputed Domain Name for a website, has intentionally created confusion with the Complainant's trademark and website in order to induce the public to believe that this website is the website of the Complainant and to attract the public to visit the Respondent's website via the Disputed Domain Name. Even where Internet users realize when they view the Respondent's website that it is not connected with the Complainant, the Respondent may still profit from their initial confusion.

In light of all of the above circumstances, the Panel concludes that the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

Status

www.雀巢.com

Domain Name Transfer

Decision

For all of the above reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel directs that the Disputed Domain Name be transferred to the Complainant.

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