



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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Decision Submission

[English](#)
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Version	
Decision ID	DE-0800130
Case ID	HK-0700141
Disputed Domain Name	www.baiweiwine.com
Case Administrator	Dennis CAI
Submitted By	Arthur Chang
Participated Panelist	Yun Zhao

Date of Decision 24-01-2008

Language Version : English

The Parties Information

Claimant	Anheuser-Busch, Inc
Respondent	Mr Zhao Tianhui

Procedural History

The Complainant of this case is Anheuser-Busch, Inc Its address is at One Busch Place, St Louis, Missouri 63118, United States of America. Its authorized representative is Lovells.

The Respondent of this case is Mr Zhao Tianhui with addresses at 50 Silver Star Blvd. Unit 241.

The domain name in dispute is baiweiwine.com. The Registrar of the dispute domain name is GODADDY.COM, INC..

On September 11, 2007, the Complainant has submitted Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”)

The Complainant has sought a one-person Panel.

On September 11, 2007, the Centre has forwarded a request to GODADDY.COM, INC. to verify the registration information of disputed domain name and on September 12, 2007, GODADDY.COM, INC. confirmed with registrant details as shown above.

On October 3, 2007, the Centre forwarded a copy to the Respondent by on-line notification. The 20 day deadline for the Respondent to respond calculated from October 3, 2007 expired and the Respondent did not file a Response with the Centre, as confirmed by the Centre.

On November 28, 2007, Arthur Chang has been appointed as the sole Panelist for this case and all parties have been informed by email.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

Factual Background

For Claimant

Established in 1876, the Complainant is one of the largest breweries in the world and the company behind the famous international

"BUDWEISER" brand of beer.

The Complainant has spent significant amount of money in advertising and promoting its "BUDWEISER" trade mark in numerous countries around the world in many forms of media including print publications, billboards, television, radio, the Internet and airships, "BUDWEISER" has now become one of the world's largest selling beer according to volume.

The Complainant's worldwide brands of beer, including "BUDWEISER", brought international sales of 125 million barrels in 2006, translating into net sales of US\$15.7 billion. In the first quarter of this year alone sales have already reached 30.9 million barrels (or US\$3,858 million in net sales). In light of the extent of the sales, and against the background of the Complainant's continuous worldwide advertising and promotional efforts spanning the past few decades, the trade mark "BUDWEISER" has achieved universal recognition in relation to beers and related products and has acquired high degree of goodwill that it has attained the status of a "famous" trade mark. This is demonstrated by 30th ranking in BusinessWeek's 100 "Best Global Brands" in 2007.

For Chinese speaking beer drinkers all over the world, 百威 is synonymous with "BUDWEISER". The Mandarin pinyin translation for 百威 is "baiwei".

"BUDWEISER" branded beer was first introduced to the PRC in 1995 under the Chinese trade mark 百威/BAIWEI. The name "BAIWEI" was selected as the Chinese trade mark for "BUDWEISER" on the basis of their close phonetic resemblance.

The Complainant, through its subsidiary Anheuser-Busch International, Inc, operates 14 breweries in China, the largest and fastest growing beer market in the world according to volume. In addition to its main brewery in Wuhan, it has regional offices in each of Beijing, Chengdu, Guangzhou, Harbin, Qingdao and Shanghai and a further 33 representative offices throughout China, which employ more than 8,800 employees, most of whom are Chinese nationals. The Wuhan brewery has capacity for 3.4 million barrels, which of itself demonstrates the demand for, and popularity of, 百威/BAIWEI beer in China.

In PRC, 百威/BAIWEI has been the subject of long running advertising and marketing campaigns carried out through city and provincial cable television, through large outdoor billboards in China's key cities, as well as through high-quality signs outside key restaurants and bars. 百威/BAIWEI is also a major supporter of sports events in PRC, both through local extensions of the brand's global sports sponsorships and through local, market-specific events and programs. The Complainant's annual marketing expenditure in PRC for beer produced under the 百威/BAIWEI trade marks for the past 6 years are consistently 8-digit figures.

The advertising, promotional and sponsorship efforts have established popularity of 百威/BAIWEI beer amongst the Chinese beer drinking population and its status as the leading premium international beer sold in the PRC. In fact, the Complainant's 百威/BAIWEI branded beers collectively brought sales in the PRC and Hong Kong of over 2.5 million barrels in 2006, translating into net sales of nearly USD250 million.

Having acquired an extensive reputation in the PRC amongst the country's vast and steadily growing beer drinking population, "BUDWEISER" beer branded under the Chinese trade mark 百威/BAIWEI was introduced to other countries having a significant Chinese speaking population, including Hong Kong and Taiwan. The 百威/BAIWEI trade marks have now also acquired a reasonable reputation in these areas.

The Complainant has expanded significant resources in registering and enforcing its 百威 and BAIWEI trade marks in the PRC, Hong Kong and Taiwan, which together make up approximately 90% of the world's Chinese speaking population.

The Complainant has secured in excess of 65 trade mark registrations comprising of or incorporating 百威 in China, Hong Kong and Taiwan, the first registration dating back to 1995 and most of the others predating the Respondent's registration of the Disputed Domain Name. The Complainant also has a trade mark registration in the PRC for BAIWEI in class 10, as well as a pending application for this mark in class 1. Some of the trademark registered in China and Taiwan include:

BAIWEI (PRC trade mark registration no. 1317545, pending trade mark application no. 5829348), 百威 (PRC trade mark registration nos. 895091, 921015, 3778261, 1316822, 1221628, 930680, 944327, 953607, 935364, 950545, 935330, 175283, 931991, 1317546, 136007, 1022842, 1663055, 953607, 921015, 944347, 1494649, 922691, 199900839AA, 19822316; Taiwan registration nos. 0063133, 00178202), 百威啤酒 (PRC trade mark registration no. 1331878), Device marks incorporating 百威 (PRC trade mark registration nos. 4083984, 831105, 927305, 928068, 928530, 930401, 930450, 930966, 932922, 934250, 935692, 935802, 937875, 937886, 938826, 938956, 940759, 941790, 941819, 941877, 943832, 947942; 947958, 951557, 955646, 1331878, 1380327, 932016, 945694, 960410, 1002944, 1576975, 1259620, 1422795, 1229590, 3030689, 3030691, 1259614, 1711372, 200112181AA)

Email correspondence received from investigation agency CDS setting out the results of preliminary investigations carried out on the Respondent reveals that the Respondent is a Chinese born Canadian immigrant, who immigrated from China to Canada in 2003. The Respondent is the founder of a company called Beer & Wine Inc, which is incorporated in Canada ("Respondent's Company")

The Respondent and/or the Respondent's Company use the Disputed Domain Name to operate a website called "百威酿酒" (<http://www.baiweiwine.com>) which sells wine and beer products ("Baiwei Website"). Copies of the webpages from the Baiwei Website are attached at Annexure 11. The Complainant draws the Panel's attention to the fact that the only language used on the Baiwei Website is Chinese. It is therefore submitted that the only consumers and Internet browsers targeted by the Baiwei Website are Chinese people (whether living in the PRC, Hong Kong, Taiwan or as immigrants in other countries).

For Respondent

The Centre confirmed that documents have been sent to the Respondent's address as registered with the registrar GODADDY.COM, INC.. Nothing has been received by the Centre regarding response of the Respondent related to this case. The disputed domain name was registered on October 21, 2003.

Parties' Contentions

Claimant

The Disputed Domain Name is identical and/or confusingly similar to trade marks or service marks in which the Complainant has rights

The Disputed Domain Name is confusingly similar to the Complainant's registered trade marks "BAIWEI" and "百威", in which the Complainant has also acquired civil rights in the PRC, Hong Kong, Taiwan and other countries having a Chinese speaking population by virtue of the extensive reputation and goodwill that the Complainant has acquired in this mark through its use and the marketing, promotional and sponsorship efforts detailed above. With respect to "百威", it is well established that a trade mark registration for Chinese characters confers upon the owner of such trade mark a legitimate right in a domain name which incorporates or reflects the Pinyin of the Chinese characters comprised in the trade name. The Complainant refers the Panel to *Kabushiki Kaisha Toshiba d/b/a Toshiba Corporation v Liu Xindong* (Case No.D2003-0408), a copy of which is attached at Annexure 12.

The Disputed Domain Name comprises of the Complainant's registered trade mark BAIWEI, to which the generic noun "wine" has been added. The ability of the word "wine" to distinguish the Disputed Domain Name from the Complainant's "BAIWEI" trade mark is limited. The addition of commonly used word (such as wine) in a domain name otherwise fully incorporating a well known trade mark has been held in the case of *PepsiCo, Inc. v. Diabetes Home Care, Inc. and DHC Services* (Case No. D2001-0174), a copy of which is attached at Annexure 13 to be of no import.

This is especially the case if the Complainant's reputation in BAIWEI among the world's Chinese population (including overseas Chinese immigrants) for beer, being a product closely related to wine is taken into account. In light of the Complainant's reputation in BAIWEI in relation to beer, the Complainant submits that there is a likelihood that consumers would be led to believe that the Disputed Domain Name is associated with the Complainant.

On seeing the Disputed Domain Name, Chinese Internet browsers would reasonably believe that it is related to the Complainant. Moreover, consumers who search the Internet for the Complainant by using the Complainant's Chinese name and/or trade mark will in some cases be directed to the Baiwei Website, thereby creating a further source of confusion.

The Complainant refers the panel to the analogous cases of *Nokia Corporation v. pepsigirls.com a.k.a IBCC* (Case No. D2000-0102) and *PepsiCo Inc. v. Amilcar Perez Lista d/b/a Cybersor* (Case No. D2003-0174), which respectively held that <pepsigirls.com> and <pepsixxx.com> were confusingly similar to the complainant's PEPSI trade mark for the reasons set out above.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is confusingly similar to both registered and unregistered trade marks in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The fact that the Complainant's adoption of and extensive use in the PRC, Hong Kong and Taiwan of its Chinese brand 百威/BAIWEI pre-dates the Respondent's registration and first use of the Disputed Domain Name by almost a decade has the practical effect of shifting Respondent's burden of proof in establishing that it has legitimate rights and/or interests in the Disputed Domain Name. The Complainant refers the panel to *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, a copy of which is attached at Annexure 16.

In the absence of such evidence, the Respondent's burden of proof in this respect will not be satisfied and accordingly the Panel should find that the Respondent does not have any legitimate right or interest in the Disputed Domain Name.

In any case, the Complainant submits that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name on the following grounds:

- (a) The Disputed Domain Name does not reflect the Respondent's name nor the name of the Respondent's Company);
- (b) The Respondent does not have any registered trade mark rights in the PRC, Hong Kong or Taiwan or Canada (being the country in which the Respondent's Company is incorporated and operates its business as evidenced by the webpages of the Baiwei Website, copies of which are attached at Annexure 11) which reflect the Disputed Domain Name;
- (c) The Respondent cannot itself, by virtue of the Complainant's trade mark registrations for 百威/BAIWEI and its reputation in 百威/BAIWEI among the world's Chinese population in relation to beer (both predating the Respondent's registration of the Disputed Domain Name), have acquired any legitimate reputation or civil rights in "百威酿酒" or "BAIWEIWINE" in connection with wine and beer such that the Respondent can be said to establish any of the matters set out in Article 3(c) of the ICANN UDRP (as set out above).

The Disputed Domain name does not reflect either the Respondent's name (Zhao Tianhui) or the name of the Respondent's Company (Beer & Wine Inc).

The Complainant's legal representatives also conducted trade mark searches in the names of "Zhao Tianhui" and "Beer & Wine Inc" which revealed that neither the Respondent nor the Respondent's Company is the owner of any registered trade marks in the PRC, Hong Kong or Taiwan (being the world's predominant Chinese speaking countries), or in Canada (being country in which the Respondent's Company is incorporated and operates its business) comprising of or incorporating the word "BAIWEI". Copies of these search results are attached at Annexure 17. It is impracticable for the Complainant to conduct trade mark searches on a global basis but the Complainant submits, unless the Respondent submits evidence to the contrary, it is reasonable to presume that the Respondent similarly does not have any relevant trade mark registrations in other countries sufficient to establish a legitimate right in the Disputed Domain Name.

The fact that the Respondent is using the Disputed Domain Name to operate a website under the name "百威酿酒" (Pinyin transliteration: "baiwei-liang-jiu"; translation "baiwei wine") does not of itself confer upon the Respondent any legitimate right or interest in the Disputed Domain Name.

The "baiwei" component of the "百威酿酒" is comprised of the same Chinese characters as the Complainant's Chinese brand and registered trade mark "百威". The Complainant submits that the adoption by the Respondent of "百威酿酒" as the name of the Baiwei Website and, in turn, the Respondent's registration and use of the Disputed Domain Name, were calculated to capitalize on the goodwill associated with the Complainant's 百威/BAIWEI trade marks by confusing Internet users and diverting Internet traffic to the Baiwei Website which it otherwise would not have attracted. In these circumstances, the use of the Disputed Domain Name by the Respondent accordingly cannot be said to be in connection with a bona fide offering of goods or services for the purposes of Article 4 (c)(i) of the ICANN UDRP.

To the extent that the Respondent submits evidence to establish that it has become known by the Disputed Domain Name for the purpose of Article 4(c)(ii) of the ICANN UDRP (which is not admitted by the Complainant), it is the Complainant's submission that any such reputation will have been acquired by the Respondent in bad faith. This is because in light of the Complainant's reputation in 百威/BAIWEI among the world's Chinese population, it would not be possible for the Respondent could make any active use of the Disputed Domain Name in connection with beer or related products (including wine) without creating a false impression of association with the Complainant.

Accordingly, any such reputation cannot be relied upon by the Respondent as the basis of proving that the Respondent has a legitimate right or interest in the Disputed Domain Name. The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the ICANN UDRP.

The Disputed Domain Name has been registered by the Respondent in Bad Faith

The Complainant submits that the Respondent selected the Disputed Domain Name to attract, for financial gain, Internet users to the Baiwei Website by creating a likelihood of confusion with the Complainant's 百威 and BAIWEI trade marks as to the source, sponsorship, affiliation and/or endorsement of the Baiwei Website and the products advertised, promoted and/or sold on Baiwei Website for the purposes of Article 3(b)(iv) of the ICANN UDRP. This is substantiated by the following:

- (a) The Respondent does not have any legitimate right or interest in the Disputed Domain Name;
- (b) The Respondent, as a Chinese Canadian individual who lived in China up to 2003, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name by virtue of the Complainant's reputation in 百威 and BAIWEI at least in China;
- (c) The Respondent is using the Complainant's registered trade mark 百威 prominently on the Baiwei Website;
- (d) The Respondent is using the Disputed Domain Name and the Baiwei Website to sell beer and wine, being the very products in respect of which the Complainant has acquired a substantial reputation in 百威/BAIWEI among the world's Chinese population.

The widespread fame of the 百威/BAIWEI trade marks in China from 1995 to 2001 is such that the Respondent must have been aware of these trade marks and in the Complainant's rights in them as of the date of registering the Disputed Domain Name, which is only two years after the Respondent emigrated to Canada from China. This presumption is further strengthened by the fact that the Respondent has selected the name "百威酿酒" (Pinyin transliteration: "baiwei-liang-jiu"; translation "baiwei wine"), with the "baiwei" component of the name comprising of exactly the same Chinese characters adopted by the Complainant in its Chinese brand 百威/BAIWEI. (There are 15 Chinese characters having the Pinyin phonetic translation "BAI" and 79 Chinese characters having the Pinyin phonetic translation "WEI").

Furthermore, 百威/BAIWEI is a 'made up' word, coined by the Complainant and having no common meaning in the Chinese language independent of the Complainant's trade mark. Accordingly, there can be no objective justification for the Respondent to have selected to base the Disputed Domain Name on this word. Copies of the "百" entries contained in the Xiandai Hanyu Cidian (現代漢語辭典), as well as copies of Internet searches carried out using the search term "百威" are attached at Annexure 18. The Complainant refers the panel to the case of Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Kil Inja (Case No. D2000-1409) where this was held to be a relevant factor in the determination of bad faith in adopting a third party trade marks as a domain name. A copy of this decision is attached at Annexure 19.

The Respondent's registration and use of the Disputed Domain Name must involve mala fides in circumstances where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in these trade marks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trade marks, to such registration and use. The Complainant refers the panel to the case of Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co. (Case No. D2000-0163), a copy of which is attached at Annexure 20. In this case, in deciding that the registrant had used and registered the domain name in bad faith, the panel took into account the fact that the respondent registered the domain

name with knowledge of the Complainant's longstanding prior rights.

The Complainant's Website is offered only in Chinese. It is therefore reasonable to presume that the target audience for the Complainant's Website is Chinese speaking people from around the world. While the Complainant's Company is located in Canada, there is nothing on the Respondent's Website to indicate that the Respondent does not supply products outside of Canada, including to the PRC, Hong Kong and Taiwan.

In light of this and the fact the Respondent must be presumed to have been aware of the 百威/BAIWEI trade marks due to their widespread fame in China from 1995 to 2001, considered together with the fact that the Respondent's Website is used to sell wine and beer products (being the very products in respect of which the Complainant has acquired its reputation in 百威/BAIWEI among the world's Chinese population) to Chinese consumers, it is almost inconceivable that the Respondent came up with the "百威酿酒" and "BAIWAI WINE" independently of the Complainant's Chinese brand and registered trade marks.

Furthermore, given the Complainant's extensive reputation in 百威/BAIWEI for beer, being one of only two products offered for sale on the Respondent's website (the only other being wine, which is closely related to beer), the only plausible reason for the Respondent to have registered the Disputed Domain Name is to intentionally confuse Internet users and to divert Internet traffic to the Baiwei Website which it otherwise would not have received, for the Respondent's own commercial gain and profit. This constitutes evidence of bad faith under Article 4(b)(iv) of the ICANN UDRP.

The Complainant accordingly submits that it has proved that the Respondent has registered the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

Respondent

Save as outlined above, the Respondent did not respond to any of the claim as submitted by the Complainant.

Findings

The Policy requires a Complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

Identical / Confusingly Similar

The panel is satisfied that the Disputed Domain Name is confusingly similar to the Complainant's registered trade marks "BAIWEI" and "百威" due to the following reasons:

1. The Complainant has registered in the PRC, Taiwan and other countries the trademark "BAIWEI" and "百威" and the first registration dating back as early as 1995 which is far earlier than the dispute domain name registration by Respondent. With respect to "百威", it is well established that a trade mark registration for Chinese characters confers upon the owner of such trade mark a legitimate right in a domain name which incorporates or reflects the Pinyin of the Chinese characters comprised in the trade name.
2. The Disputed Domain Name comprises of the Complainant's registered trade mark "BAIWEI", to which the generic noun "wine" has been added. The ability of the word "wine" to distinguish the Disputed Domain Name from the Complainant's "BAIWEI" trade mark is not only limited, but actually reflect the intention of use of the dispute domain name in the "wine" category which is closely related to the Complainant's major business/reputation among the world's Chinese population for beer (which is one of the wine products). In light of this, it is very likely to confuse consumers that the Disputed Domain Name is associated with the Baiwei wine related product and therefore related to the Complainant.
3. In the disputed domain name "baiweiwine.com", ".com" is the top level domain name. Taking away ".com", the domain name baiweiwine is confusingly similar to the trade mark of the Complainant as explained in point 2.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) and the disputed domain name is confusingly similar to the trademark that the Complainant holds.

Rights and Legitimate Interests

The Panel is satisfied that the Complainant has met the requirements of Policy 4(a)(ii) regarding Respondent's rights and legitimate interests in the disputed domain name because:

1. The Disputed Domain Name (or in any reasonable variation derived from the name) does not reflect the either the Respondent's name (Zhao Tianhui) or the name of the Respondent's Company (Beer & Wine Inc).;
2. The Complainant has not authorized the Respondent to use the "baiwei" trademark for any form of use;

3. The Respondent does not have any registered trade mark rights in the PRC, Hong Kong or Taiwan or Canada (being the country in which the Respondent's Company is incorporated and operates its business as evidenced by the webpages of the Baiwei Website) The Complainant's legal representatives has conducted trade mark searches in the names of "Zhao Tianhui" and "Beer & Wine Inc" which revealed that neither the Respondent nor the Respondent's Company is the owner of any registered trade marks in the PRC, Hong Kong or Taiwan (being the world's predominant Chinese speaking countries), or in Canada (being country in which the Respondent's Company is incorporated and operates its business) comprising of or incorporating the word "BAIWEI".;

4. The Complainant has demonstrated and proved the registration of the "baiwei" trademark, adoption of and extensive use in the PRC, Hong Kong and Taiwan of its Chinese brand 百威/BAIWEI pre-dates the Respondent's registration and first use of the Disputed Domain Name. In such case, the burden of proof in establishing that Respondent has the legitimate rights and/or interests in the Disputed Domain Name is now the responsibility of Respondent. However, there is no submission from Respondent to sustain this point

5. The fact that the Respondent is using the Disputed Domain Name to operate a website under the name "百威酿酒" (Pinyin transliteration: "baiwei-liang-jiu"; translation "baiwei wine") does not of itself confer upon the Respondent any legitimate right or interest in the Disputed Domain Name unless the Respondent submit proof of its legitimate rights in the names or any reasonable explanation of the association of the names with the Respondent's use in the web site

As such, the Panel agrees the Respondent has no right or legitimate interests in respect of the disputed domain name.

Bad Faith

According to the Policy 4b, 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 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.

When Panelist attempted to access the web site of the disputed domain name on December 12, 2007, it was directed to a page that is consistent with the description of Complainant's submission.

Judging from the web site, the Panel is satisfied that the Respondent selected the Disputed Domain Name in order to attract, for financial gain, Internet users to the Baiwei Website by creating a likelihood of confusion with the Complainant's 百威 and BAIWEI trade marks as to the source, sponsorship, affiliation and/or endorsement of the Baiwei Website and the products advertised, promoted and/or sold on Baiwei Website. This is due to the followings:

(a) The Respondent does not have any legitimate right or interest in the Disputed Domain Name but registered the dispute domain name to offer service or information which is highly related or associated with the Complainant's main business activity;

(b) The Respondent, as a Chinese Canadian individual who lived in China up to 2003, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name by virtue of the Complainant's reputation in 百威 and BAIWEI at least in China;

(c) The Respondent is using the Complainant's registered trade mark 百威 prominently on the Baiwei Website;

(d) The Respondent is using the Disputed Domain Name and the Baiwei Website to sell beer and wine, being the very products in respect of which the Complainant has acquired a substantial reputation in 百威/BAIWEI among the world's Chinese population.

The "baiwei" component of the "百威酿酒" is comprised of the same Chinese characters as the Complainant's Chinese brand and registered trade mark "百威". The Complainant submits that the adoption by the Respondent of "百威酿酒" as the name of the Baiwei Website and, in turn, the Respondent's registration and use of the Disputed Domain Name, were very likely to capitalize on the goodwill associated with the Complainant's 百威/BAIWEI trade marks by confusing Internet users and diverting Internet traffic to the Baiwei Website which it otherwise would not have attracted.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(iii) of the Policy in showing bad faith registration and use of the Disputed Domain Name.

Appropriate Remedy

The Complainant asks for the Panelist's decision to transfer of the disputed domain name. In view of the above reasoning, the Panelist decides that transfer of the disputed domain name to the complainant is an appropriate remedy.

Status

www.baiweiwine.com

Domain Name Transfer

Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name baiweiwine.com is confusingly similar to the Complainant's name or mark in which the complaint has civil rights or interests; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names or major part of that domain name; (3) the Respondent has registered or is using the domain name in bad faith. Accordingly, the Panelist decides that the disputed domain name baiweiwine.com should be transferred to the Complainant.

Panelist:

Arthur Chang

12 December 2007

Hong Kong