

**Asian Domain Name Dispute Resolution Centre
(Hong Kong Office)**

Uniform Domain Name Dispute Resolution Policy

Panelist Decision

Complainant : **Marriott Worldwide Corporation**

Respondent : **beijingshengzhiquanxintiyanguoji
yuyanwenhuaajiaoliuyouxiangongsi**

Case Number : **HK-1100372**

Contested Domain Names : **necourtyard.com and courtyard888.com**

Panel Member : **Christopher To**

1. Parties and Contested Domain Names

The Complainant is **Marriott Worldwide Corporation** of 10400 Fernwood Road, Bethesda, Maryland 20817, United States of America.

The Respondent is **beijingshengzhiquanxintiyanguojiyuyanwenhuaajiaoliuyouxiangongsi** wang foquan (xiaoquan221@163.com) Beijing CN 100044, People's Republic of China.

The contested domain names are "**necourtyard.com**" and "**courtyard888.com**" ("***Disputed Domains***")

2. Procedural History

On 7 July 2011, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“*ADNDRC-HK*”).

On 11 July 2011, the ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to “*Please submit the case filing fees in accordance with article 15 of the Supplemental Rules*”.

On 11 July 2011, ADNDRC-HK notified WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC (“*Registrar*”) of the Disputed Domains of the proceedings by email.

On 11 July 2011, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domains are registered with the Registrar, that

“*beijingshengzhiquanxintiyanguojiyuyanwenhuaajiaoliuyouxiangongsi*”

is the holder of the Disputed Domains, that the Internet Corporation For Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domains, the language of the Registration Agreement of the Disputed Domains is English as provided by the WHOIS (<http://www.who.is>) information in relation to the Disputed Domains and confirmed that the Disputed Domains are under Registrar lock status.

On 12 July 2011, the ADNDRC-HK sent a Notification of Commencement of Proceedings (“*Notification*”), together with the Complaint [including 12 emails attaching evidence and documentation relating to the Complaint as filed by the Complainant], to the email address of the Respondent’s nominated registrant

contact for the Disputed Domains (as recorded in the WHOIS database) as well as copying the Complainant, Registrar and the Internet Corporation for Assigned Names and Numbers. The Notification gave the Respondent twenty (20) calendar days to file a Response (i.e. on or before 1st August, 2011).

On 12 and 13 July 2011, the Registrar informed ADNDRC-HK that it will “*notify our [“Respondent”] customer accordingly*” of the Notification.

On 12 July 2011, the ADNDRC-HK also sent the Notification together with the Complaint, to the fax number of the Respondent’s nominated administrative contact for the Disputed Domains (as recorded in the WHOIS database) – “*Nihao.Net Ltd – Daniel Wu (domain@nihao.net) of Room 406, Zhaojunmiao, 14 Xueyuan Nan Lu Haidian District, Beijing, CN100081*”.

On 4 August 2011 ADNDRC-HK sent an email to the Complainant copying the Respondent informing the Complainant that the Respondent did not file a Response to the Disputed Domains within the required time period (i.e. on or before 1st August 2011) and that a Panelist for the Disputed Domains will be appointed shortly by the ADNDRC-HK.

On 4 August 2011, the Complainant acknowledged ADNDRC-HK email of 4 August 2011 notifying that the Respondent did not file a Response.

The Panel comprising of Christopher To as a single panelist was appointed by the ADNDRC-HK on 9 August 2011. The papers pertaining to the case were delivered to the Panel by email on 12 August 2011, followed by a hard copy on 15 August 2011.

3. Factual Background

For the Complainant

The Complainant (*Marriott Worldwide Corporation*) is a wholly-owned subsidiary company of the publicly held corporation, *Marriott International Inc.* (a Delaware Corporation incorporated under the laws of the State of Maryland, and is headquartered in Bethesda, Maryland, of the United States of America), specialized in, among other things, management of Marriott's intellectual property, especially its trademarks.

With approximately 151,000 employees, *Marriott International Inc.* operates as one of the world's most well-known and extensive hotel, restaurant, hospitality, and timesharing companies, with about 3,000 lodging properties in the United States of America and 67 other countries and territories.

Since 1996, *Marriott International Inc.* has been listed as a Fortune 500 company. It has been ranked as a top business hotel for 11 consecutive years and has been recognized as the "most admired company in the lodging industry", one of the "Best Companies to Work For" for 12 years in a row, and by *Newsweek* as one of the greenest big companies in United States of America.

In the fiscal year of 2007 and 2008, around the time when the Disputed Domains were created, *Marriott International Inc.* reported sales from continuing operations of about US\$13 billion. While in the fiscal year of 2009, the company reported sales from continuing operations of nearly US\$11 billion.

The Complainant and its affiliated companies have obtained multiple registrations for "COURTYARD" and trademarks consisting of, or translated from, "COURTYARD" (collectively, the "COURTYARD Marks") in numerous jurisdictions throughout the world. In particular eight trademarks are registered in

the Mainland of China, the country in which the Respondent is alleged to be domiciled and is operating from as a business entity.

With a history dating back to 1927, the Complainant operates hotels in the United States of America and around the world, including China, under a variety of brand names, among which the Complainant has continuously used the COURTYARD Marks since the establishment of its first Courtyard Hotel in 1983.

Today, the Complainant operates over 900 COURTYARD hotels in North America, Asia, Europe, the Middle East, Central America, and the Caribbean. In China, the Complainant operates 10 hotels in which the Respondent is alleged to be domiciled and is functioning as a business entity.

Millions of the Complainant's customers obtain services offered under the COURTYARD Marks each year and the majority of these customers do have a favourable impression of such services. As a result, sales of services offered under the COURTYARD Marks have amounted to many billions of dollars.

The Complainant invests millions of dollars annually in advertising and promoting services offered under the COURTYARD Marks.

In China, the Complainant promotes COURTYARD Marks through various media channels and outlets, ranging from press coverages in Chinese, English and Japanese languages to various outdoor advertising platforms, large display screens at airports, to the most comprehensive periodicals and professional magazines for tourism and hospitality industries, as well as establishing the official customer-oriented website in the Chinese language to attending professional conventions, exhibitions and commercial sponsorship activities, which have made the COURTYARD Marks a well-known international hotel brand among the Chinese community.

The Complainant also uses the COURTYARD Marks extensively on the World Wide Web through the Complainant's official websites, such as <Courtyard.com>, <Marriott.com>, and <MarriottHotels.com>. According to ALEXA China [www.alexa.com], the average daily visits to Marriott's English website, www.marriott.com, are 3,294,000 times (1.5% of them are from China), from 600,000 different Internet Protocol addresses, ranked 1,335st among thousands of millions of websites in the world. Marriott also established 16 websites using different languages, giving native speakers from different countries the convenience of communicating online services and introductions through their own language.

The website www.marriott.com.cn targeting Chinese customers, receives 10080 visits on average each day, ranking 222,254th among thousands of millions of websites in the world.

The public can learn about COURTYARD Marks not only from advertisements through Marriott, but also through a large number of third party media reports.

In China, media reports have reported the history of the COURTYARD Marks, the company culture and concepts of Marriott, and its progress within China, thus helping to deepen the Chinese people's understanding and knowledge of COURTYARD Marks and Marriott.

As a result of the Complainant's longstanding and extensive use, advertising, and marketing of the COURTYARD Marks through a wide variety of media, these marks have acquired tremendous commercial strength and goodwill which have come to immediately identify the source of the Complainant's services in China as well as in the global market place.

For the Respondent

The Respondent resides in the PRC. The Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 1st August, 2011) as set out in an email dated 4 August 2011 from ADNDRC-HK to the Complainant copying the Respondent. As such the Respondent has not contested the allegations of the Complaint and is in default.

4. Parties' Contentions

The Complainant

The Complainant submits that, through its representative [*“agent”*], the Complainant sent the Respondent cease and desist letters [*“Warning Letters”*] on 16 December 2008, 25 September 2009 and 10 August 2010 respectively, demanding that the Respondent stop using its trade mark “COURTYARD”.

The Complainant submits that the Respondent eventually acknowledged the Complainant's rights in its well-known COURTYARD Marks and changed the English name of its hotel to “N.E. Hotel”. Nevertheless, the Respondent continued to use the Disputed Domains and email addresses involving “COURTYARD” with the knowledge that its activities and the usage of such Disputed Domains were not proper. As such, the Complainant submits that the Respondent has been using the Disputed Domains in bad faith and with a full knowledge of the infringing nature of its activities,

The Complainant submits that the Disputed Domains are identical to the trade marks, which the Complainant has rights in.

The Complainant submits that although the Respondent previously used the Disputed Domains in business activities, such use, far from being a kind of use in

good faith, is an illegal activity. According to Article 1(3) of Chinese Supreme Court's *"Interpretation of the Supreme People's Court of Several Issues Concerning the Application of the Law to the Trial of Civil Dispute Cases Involving Trademarks"* promulgated on 12 October 2002, which became effective on 16 October 2002, where any party registers a domain name by using words identical with or similar to the registered trademark owned by others, and transacts electronic commerce business of relevant goods by use of the domain name so as to easily cause mistaken recognition on the part of the relevant public, this kind of action falls into actions of causing other damages to the exclusive right of registered trademark owned by someone else as stipulated in Article 52(5) of the Trademark Law of the People's Republic of China. Therefore, the Respondent's use of the Disputed Domains is illegal in itself due to violation of the applicable laws.

The Complainant further submits that according to the general legal principle, i.e. illegal actions can not bring about legitimate interest, there is no legitimate interest arising from the Respondent's use of the Disputed Domains. As such the Complainant submits that the Respondent who is the holder of the Disputed Domains has no rights or legitimate interests in respect of the Disputed Domain.

Further, the Complainant submits that, to the best of the Complainant's knowledge and information, the Respondent is not the owner of any trade mark registrations reflecting or corresponding to the Disputed Domains in Hong Kong or the PRC.

(i) Disputed Domain - "*necourtyard.com*"

The Complainant submits that the word "COURTYARD", being the dominant part of the Disputed Domain, does not in any way reflect the Respondent's name or hotel. ("beijingshengzhiquanxintiyanguojiyuyanwenhuajiaoliuyouxiangongsi or Beijing Wangjia Inn Ltd or N.E. Hotel"). In fact it is further submitted that

there is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain and the Respondent's name.

The Complainant submits that the Disputed Domain incorporates the Complainant's "courtyard" trade mark in its entirety. The only difference between the Disputed Domain and the Complainant's "courtyard" trade mark is the inclusion of the word "ne" as a suffix.

The Complainant submits that "courtyard" is clearly the distinctive and prominent component of the Disputed Domain and the addition of the word "ne" does nothing to distinguish it from the "courtyard" trade mark.

The Complainant submits that the fame of the Complainant's "courtyard" trade mark (particularly in the PRC where the Respondent is located) is such that the use of the words "ne" in connection with the word "courtyard" does nothing to dispel confusion as to an association with the Complainant within the context of operating a global hospitality business.

The connection between "courtyard" with the word "ne" as a suffix to the Complainant's "courtyard" trade mark is such that the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant's business, brand or some affiliation or cooperation with it.

The Complainant submits that this kind of likelihood of confusion is acknowledged by Chinese Trademark Office (CTMO) and Trademark Review and Adjudication Board of CTMO.

The Complainant submits that according to Article 4.1 (16) of Part III of the Trademark Examination Standard enacted by CTMO, "*if a word trademark fully includes another person's prior registered word trademark, which has a certain*

degree of famousness or distinctiveness so that the relevant public is apt to believe that the two word trademarks are series trademarks and therefore generate a confusion as to the source of the goods or service, the two words trademarks shall be regarded as similar trademarks”.

The Complainant submits that the Respondent used the Disputed Domain as the official website of its hotel (business registration records show that the name of the hotel as “Beijing Wangjia Inn Ltd”, and the name of its legal representative as the Respondent.) for promotion and reservation services. Although the Respondent’s hotel had previously used “N.E. Courtyard” as its English name, it subsequently removed Marriott’s COURTYARD Mark from its hotel name and ceased the use of Marriott’s COURTYARD Mark other than the domain names that are currently at issue upon Complainant’s request,

The Complainant submits that the Respondent’s other website, www.ne-institute.com, in which the Respondent created includes four segments: N.E. International Language Centre, N. E. Global Internship, N. E. International Affairs and N. E. Courtyard Hotel. As such, N.E is actually the common name of the several commercial departments of the Respondent and “necourtyard” could easily mislead Internet users in believing that the Respondent’s hotel is jointly operated by the brands of “N.E. International” and Marriott’s “COURTYARD”.

The Complainant submits that there is clear evidence that the Respondent is aware of the Courtyard brand and is using the Disputed Domain to mislead consumers into believing that the Respondent’s website is somehow associated with the Complainant’s business, thereby attracting Internet traffic and profiting from such activities.

The Complainant submits that the Disputed Domain has been registered and is being used by the Respondent in bad faith. Further the Complainant submits that the Respondent does not have any legitimate right or interest in the Disputed

Domain. The fact that the Respondent has registered the Disputed Domain without having any legitimate right or interest in it is itself evident of bad faith on the part of the Respondent in registering the Disputed Domain.

The Complainant submits that, the Respondent, being an individual domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain by virtue of the Complainant's reputation in the mark "COURTYARD" in the PRC and internationally.

The Complainant submits that the Respondent's registration and use of the Disputed Domain must involve mala fides in circumstances where the registration and use of the Disputed Domain was and continues to be made in the full knowledge of the Complainant's prior rights in the "courtyard" 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 further submits that the Respondent registered the Disputed Domain to blatantly misappropriate the Complainant's goodwill in the "courtyard" trade marks. There can be no possible grounds on which to find that the Respondent's registration and use of the Disputed Domain have been otherwise done in bad faith and for the sole purpose of misappropriating the Complainant's goodwill and disrupting the Complainant's business in the PRC.

The Complainant accordingly submits that the Respondent's use of the Disputed Domain is identical and/or confusingly similar to the registered trade marks in which the Complainant has rights or interests, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain and that the Respondent has registered and used the Disputed Domain in bad faith. On this basis the Complainant requests that the Disputed Domain be transferred to the Complainant.

(ii) Disputed Domain - “courtyard888.com”

The Complainant submits that the distinctive part of Disputed Domain, “courtyard888”, is also highly similar to the Complainant’s registered trademark “COURTYARD”.

The Complainant submits that the word “COURTYARD”, being the dominant part of the Disputed Domain, does not in any way reflect the Respondent’s name or hotel. (“beijingshengzhiquanxintiyanguojiyuyanwenhuaajiaoliuyouxiangongsi or Beijing Wangjia Inn Ltd or N.E. Hotel”). In fact it is further submitted that there is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain and the Respondent’s name.

The Complainant submits that the Disputed Domain incorporates the Complainant’s “courtyard” trade mark in its entirety. The only difference between the Disputed Domain and the Complainant’s “courtyard” trade mark is the inclusion of the numbers “888” as a suffix at the end of “courtyard”.

The Complainant submits that “COURTYARD” is clearly the distinctive and prominent component of the Disputed Domain and the addition of the numbers “888” does nothing to distinguish it from the “courtyard” trade marks.

The Complainant submits that the fame of the Complainant’s “courtyard” trade mark (particularly in the PRC where the Respondent is located) is such that the use of the number “888” in connection with the word “courtyard” does nothing to dispel confusion as to an association with the Complainant within the context of operating a global hospitality business.

The connection between “courtyard” with the numbers “888” as a suffix to the Complainant’s “courtyard” trade mark is such that the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of

the Complainant as a reference to the Complainant's business, brand or some affiliation or cooperation with it.

The Complainant submits that the Disputed Domain is used as a website for the Respondent's hotel, thus providing the same services as that of the Complainant which further creates a likelihood of confusion with the Complainant's trade mark.

The Complainant submits that there is clear evidence that the Respondent is aware of the Courtyard brand and is using the Disputed Domain to mislead consumers into believing that the Respondent's website is somehow associated with the Complainant's business, thereby attracting Internet traffic and profiting from such activities.

The Complainant submits that the Disputed Domain has been registered and is being used by the Respondent in bad faith. Further the Complainant submits that the Respondent does not have any legitimate right or interest in the Disputed Domain. The fact that the Respondent has registered the Disputed Domain without having any legitimate right or interest in it is itself evident of bad faith on the part of the Respondent in registering the Disputed Domain.

The Complainant submits that, the Respondent, being an individual domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain by virtue of the Complainant's reputation in the mark "COURTYARD" in the PRC and internationally.

The Complainant submits that the Respondent's registration and use of the Disputed Domain must involve mala fides in circumstances where the registration and use of the Disputed Domain was and continues to be made in the full knowledge of the Complainant's prior rights in the "courtyard" 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 further submits that the Respondent registered the Disputed Domain to blatantly misappropriate the Complainant's goodwill in the "courtyard" trade marks. There can be no possible grounds on which to find that the Respondent's registration and use of the Disputed Domain have been otherwise done in bad faith and for the sole purpose of misappropriating the Complainant's goodwill and disrupting the Complainant's business in the PRC.

The Complainant accordingly submits that the Respondent's use of the Disputed Domain is identical and/or confusingly similar to the registered trade marks in which the Complainant has rights or interests, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain and that the Respondent has registered and used the Disputed Domain in bad faith. On this basis the Complainant requests that the Disputed Domain be transferred to the Complainant.

The Respondent

The Respondent did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK in its email of 12 July 2011 and as such has not contested the allegations of the Complaint and is in default.

5. Findings

A. The Language of the Proceedings

The Internet Corporation For Assigned Names and Numbers Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") Paragraph 11 (a) provides that:

"Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement,

subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its email of 11 July 2011 then in accordance with Article 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint is drafted in the English language which is in line with the Registration Agreement and that the Respondent has failed to communicate on the matter, 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.

B. Discussions 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 14 of the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) the Panel is of the view that it should proceed to decide on the Disputed Domains (“necourtyard.com” and “courtyard888.com”) based upon the Complaint and evidence submitted by the Complainant.

Paragraph 14(a) of the Rules provides that:

“In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint.”

According to Paragraph 4a Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”), which is applicable hereto, the Complainant has the burden of providing that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark 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.

(1) **Identical/confusing similar**

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domains are identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

The Disputed Domains incorporates the Complainant’s “courtyard” trade mark in its entirety. The difference between the Disputed Domains and the Complainant’s “courtyard” trade mark is the inclusion of the word “ne” and numbers “888” as suffixes. It is well-established that in cases where the distinctive and prominent element of a Disputed Domain are the Complainant’s mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain and the mark. See, for example *LEGO Juris A/S v. Huangderong*, WIPO Case No. D2009-1325; *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com*, WIPO Case No. D2009-0121; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064.

“Courtyard” is clearly the distinctive and prominent component of the Disputed Domains and the addition of the word “ne” and numbers “888” do nothing to distinguish it from the “courtyard” trade marks.

The prominence of the Complainant's Courtyard trade mark (particularly in the PRC where the Respondent is alleged to be located) is such that the use of the words "ne" or numbers "888" in connection with the word "courtyard" does nothing to dispel confusion as to an association with the Complainant and, in particular, in the context of operating a global hospitality business.

It is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded. See, for example the WIPO decision of *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd* (Case No. D2006-0762), and the WIPO decision of *Aurora Foods Inc v. David Paul Jaros* (Case No. D2000-0274).

Further the Disputed Domains are identical to the registered trademark except that the Disputed Domains are in the lower case letters whereas the registered trade marks in Upper case letters, these should also be disregarded as these are not significant legal differences. See, for example the WIPO decision of *Educational Testing Service v. TOEFL* (Case No. D2000-0044).

In light of the prominence of the Marriott and the COURTYARD Marks, it may be inferred that the Respondent elected to incorporate "courtyard" trade marks in order to misappropriate the Complainant's goodwill and leverage off the Complainant's reputation in "COURTYARD" by creating confusion among consumers as to some affiliation with, or endorsement by, the Complainant.

Apparently, the trademark "COURTYARD" is the same as the distinctive part of the Disputed Domains in question. It is the view of this Panel that the Complainant has discharged its burden of proof to establish the element of identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

(2) **Rights or Legitimate Interests of Respondent**

The Complainant's "COURTYARD" brand has been in use since at least 1983. According to the WHOIS search result, the Disputed Domains were registered in 2007 and 2008 respectively; some 24/25 years after the Complainant had begun using the "courtyard" trade marks.

The Respondent enjoys no exclusive registered trademark right or trade name right related to Disputed Domains.

The Complainant has never authorized the Respondent to use the relevant trademark or trade name, or authorize the Respondent to register any domain name or commercial logos with respect to the Complainant's trademarks or trade name.

Furthermore, "COURTYARD" has acquired meanings through their extensive use by the Complainant in commerce, so that "COURTYARD" is immediately recognisable to consumers as being associated with the Complainant and its business.

The fact that the Complainant's adoption and first use of the "COURTYARD" name and marks significantly (i.e. 1983) predates the Respondent's registration and use of the Disputed Domains has the practical effect of shifting to the Respondent the burden to proof in establishing that it has legitimate rights and/or interest in the Disputed Domains. See, for example the WIPO decision of *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS) (Case No. D 2003-0696)*, as a reference to this principle.

There is no connection, either in appearance, in meaning or phonetically, between the Disputed Domains and the Respondent's name.

Given the fame and notoriety of the Complainant and the “courtyard” trade marks, particularly in the PRC where the Respondent resides, the Respondent must have known of the existence of the “courtyard” trade marks when registering the Disputed Domains.

The Respondent used the Disputed Domain “necourtyard.com” as the official website of its hotel (business registration records show that the name of the hotel as “Beijing Wangjia Inn Ltd”, and the name of its legal representative as the Respondent.) for promotion and reservation services. Although the Respondent’s hotel had previously used “N.E. Courtyard” as its English name, it subsequently removed Marriott’s COURTYARD Mark from its hotel name and ceased the use of Marriott’s COURTYARD Mark other than the domain names that are currently at issue.

There is clear evidence that the Respondent is aware of the COURTYARD brand and is using the Disputed Domains to mislead consumers into believing that the Respondent’s website is somehow associated with the Complainant’s business, thereby attracting Internet traffic and profiting from such activities.

Internet users are likely to assume that the Respondent’s website is associated with Marriott/Courtyard. Such use cannot be deemed to be (i) “use in connection with any bona fide offering of goods or services” or (ii) “legitimate non-commercial use” which, in the absence of the trade mark rights or lawfully acquired reputation in COURTYARD, may otherwise have served to confer upon the Respondent a legitimate right or interest in the Disputed Domains.

Given that there is no evidence from the Respondent (notably the absence of a Response) on its right and/or interest in the Disputed Domains, this Panel concludes that the Respondent has no rights and/or legitimate interests in respect of the Disputed Domains.

(3) **Bad faith**

Paragraph 4(b) of the Policy sets down four (4) factors in which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domains in bad faith. The 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 the 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.”

The Respondent, domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domains by virtue of the Complainant's reputation in the mark "COURTYARD" in China and internationally as of the date that the Respondent registered the Disputed Domains. Furthermore, the Complainant in 1998 opened the first COURTYARD Hotel in China, Beijing Courtyard Hotel, in the city where the Respondent was located. This had been widely reported by the media.

The fact that the Respondent's website features the "courtyard" trade mark prominently on its websites clearly has the intention to cause confusion and misunderstanding, evidences the fact that the Respondent knew of the Complainant's trade mark and registered the Disputed Domains in a dishonest attempt to attract Internet traffic to the website on the mistaken belief that it was in some way associated with the Complainant's business, and to make undue profits from such an association.

The Respondent's registration and use of the Disputed Domains must involve mala fides in circumstances where the registration and use of the Disputed Domains was and continues to be made in the full knowledge of the Complainant's prior rights in the "courtyard" 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. See, for example the WIPO decision of *Venve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.* (Case No. D2000-0613) in which 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 circumstances indicate that the Respondent has used the Complainant's COURTYARD Marks as part of the Disputed Domains in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of

confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

For these reasons, the Panel is of the view that the Respondent registered and used the contested domain names in bad faith.

6. Conclusions

The Complainant has proved its case. It has a registered trademark in the name "COURTYARD" to which the contested domain names are confusingly similar.

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

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

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and do hereby order that the Disputed Domains "necourtyard.com and courtyard888.com" be transferred to the Complainant **Marriott Worldwide Corporation**.

Dated 13 October 2011

A handwritten signature in black ink, appearing to read 'Christopher To', written over a horizontal line.

Christopher To