



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1700995</b>
<b>Complainant:</b>	<b>PRESIDENT AND FELLOWS OF HARVARD COLLEGE</b>
<b>Respondent:</b>	<b>dnsprotect</b>
<b>Disputed Domain Name(s):</b>	<b>&lt; harvard-nimix.com &gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is PRESIDENT AND FELLOWS OF HARVARD COLLEGE, of 17 QUINCY STREET, CAMBRIDGE, MASSACHUSETTS 02138, U.S.A.

The Respondent is dnsprotect of China, of an undisclosed address.

The domain name at issue is < harvard-nimix.com >, registered by the Respondent with PDR Ltd. d/b/a PublicDomainRegistry.com.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on June 26, 2017. On the same day, the Centre transmitted by email to PDR Ltd. d/b/a PublicDomainRegistry.com (the Registrar of the domain name) a request for registrar verification in connection with the domain name at issue. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”) which was adopted by the ICANN and came into effect on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) which became effective on September 28, 2013, and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”) which came into effective on July 31, 2015.

On June 29, 2017, the Centre sent the formal Notice of Complaint to the Respondent and requested the Respondent to reply within 20 days (on or prior to July 19, 2017), in accordance with the Rules, Paragraphs 2(a), 4(a) and 5(a). The procedures for this case formally commenced on June 29, 2017.

The Respondent did not submit any response. Accordingly, the Centre issued a Notice of Default on July 20, 2017 and confirmed that the Centre did not receive a Response from the Respondent within the required period of time.

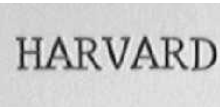


The Centre appointed Matthew Murphy as the sole panelist in this matter on July 20, 2017. The Panel finds that it was properly constituted, and agreed to deliver a decision with respect to the Disputed Domain Name on or prior to, August 3, 2017.

### 3. Factual background

#### *For the Complainant*

The Complainant claims it is commonly known as the Harvard University, one of the world's most prestigious universities. Established in 1636, the Complainant is the oldest institution of higher education in the United States. The Complainant has more than 371,000 living alumni and around 22,000 current students. A total of 48 Nobel Laureates, 32 heads of state and 48 Pulitzer Prize winners have affiliations with the Harvard University.

The Complainant also claims it is the owner of the trademark "HARVARD" worldwide, including the following marks in China:

Registration No.	Mark	Class	Date of Registration	Expiry Date	Status
605030		25	30 July 1992	29 July 2022	Registered
606215		16	10 August 1992	9 August 2022	Registered
1448849		41	21 September 2000	20 September 2020	Registered
4949948	<b>HARVARD</b>	14	14 Feb 2009	13 February 2019	Registered
4949901	<b>HARVARD</b>	21	21 Apr 2009	20 April 2019	Registered
4949902	<b>HARVARD</b>	24	28 Apr 2009	27 April 2019	Registered
4949903	<b>HARVARD</b>	25	14 May 2009	13 May 2019	Registered
4949949	<b>HARVARD</b>	18	21 May 2009	20 May 2019	Registered

4949950	<b>HARVARD</b>	20	14 Jun 2009	13 June 2019	Registered
6208278	Harvard	12	28 Mar 2010	27 March 2020	Registered

The Panel notes that the Complainant has provided details of various registrations for its trademark “HARVARD” as well as a selection of the registration certificates for the trademark.

*For the Respondent*

The Respondent did not provide any submissions or evidence.

#### 4. Parties’ Contentions

##### A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The Complainant claims it has registered numerous “HARVARD” trademarks to protect its interest around the world and has established the right to use the “HARVARD” trademarks in the USA, Mainland China and other parts of the world. The word “HARVARD” is without any dictionary meaning and is highly distinctive. Through extensive use throughout the years, the “HARVARD” trademarks have gained an exceptional level of goodwill and reputation globally. A firm association has been established between the “HARVARD” marks and the Complainant.

The Complainant also claims the Disputed Domain Name wholly incorporates the Complainant’s “HARVARD” trademarks. Ordinary consumers will focus on the most distinctive element of the Disputed Domain Name which is the word “harvard”. As such, the most distinctive part of the Disputed Domain Name is identical to the Complainant’s “HARVARD” marks.

Hence, it is likely an ordinary consumer will associate the products advertised and/or sold at the website hosted under the Disputed Domain Name with the Complainant, and may have the misconception that the said products/services are manufactured, endorsed or authorized by the Complainant.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name(s):

The Complainant asserts it has never authorised, licensed or given consent in any form, to anyone, for the use of the “HARVARD” trademarks for the registration and/or use of the Disputed Doman Name, and it also does not have any business partnership or any business arrangement with anyone which justifies the use of the “HARVARD” trademarks as the Disputed Domain Name.

The reputation of the “HARVARD” trademarks, coupled with the fact that the Complainant has not licensed, consented or otherwise authorized anyone to use the “HARVARD” trademarks as the Disputed Domain Name has the practical effect of shifting to the Registrant of the Disputed Domain Name the burden of proof in establishing that it has rights and/or legitimate interest in the Disputed Domain Name.

The webpage refers to a purported company called “Harvard-Nimix Biological Engineering Company Limited” (“Purported Company”). As stated in the webpage itself, the Purported Company “is a research and production enterprises jointly established by the Harvard University School of medicine and the Department of the Navy USA” (the “Statement”). (as shown in Attachment E). However, the Complainant claims it has never authorised the set up of the Purported Company at all and it does not have any relationship and/or association with the Purported Company as alleged or at all.

- iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith:

The Complainant asserts it has registered the “HARVARD” mark in China since 1992 and in the United States since 1990 and has used the “HARVARD” mark in commerce since 1638, all of which are much earlier than the registration date of the Disputed Domain Name which is in 2014. Being a prestigious university worldwide, the Complainant and its Harvard Trademarks are highly recognized and well-known to the public.

The website hosted by the Disputed Domain Name shows the Statement which intends to mislead the general public that the contents and/or products displayed at the said website are authorised and/or endorsed by the Complainant or that there is some relationship between the Complainant and the Purported Company. Such purported relationship does not exist at all.

In addition to the Statement, a logo, which is highly similar to the Complainant’s Harvard device/shield trademarks, is being used on the website hosted by the Disputed Domain Name as shown in Attachment F.

## B. Respondent

The Respondent has not asserted any claims, defenses or contentions.

## 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

### A) Identical / Confusingly Similar

The Complainant has established its right to the “HARVARD” trademarks in China and around the world by submitting trademark registration certificates/records.

There is no doubt that the Disputed Domain Name <harvard-nimix.com> completely incorporates the Complainant’s “HARVARD” trademark at its first part, and such incorporation makes the Disputed Domain Name confusingly similar with the Complainant’s trademark. That is because “the first and immediately striking element in the Domain Name is the Complainant’s name (as well as the Complainant’s trademark in this case). Adoption of it in the Domain Name is inherently likely to lead people to believe that the Complainant is connected with it.” See *Dixons Group Plc v Mr. Abu Abdullaah*, WIPO Case No.D2000-0146. With regard to the addition of “-nimix”, it is insufficient to distinguish the Disputed Domain Name from the “HARVARD” trademarks.

The Panel therefore concludes that the Disputed Domain Name is confusingly similar to the Complainant’s “HARVARD” trademark and accordingly the Complainant has satisfied Paragraph 4(a)(i) of the Policy.

### **B) Rights and Legitimate Interests**

As the right owner of the “HARVARD” trademarks, the Complainant has stated that it has never authorised, licensed or given consent in any form to anyone for the use of the “HARVARD” trademarks for the registration and/or use of the Disputed Domain Name, and that it also does not have any business partnership or any business arrangement with anyone which justifies the use of the “HARVARD” trademarks as the Disputed Domain Name.

Given that the Respondent has not provided any evidence to support a right or legitimate interest in the domain name, and that the contents on the webpage hosted by the Disputed Domain Name are apparently false and confusing, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

The trademark “HARVARD” is well-known enough that it is presumable that the Respondent knew about their existence when registering the Disputed Domain Name (see *Banca Sella S.p.A. v. Mr. Paolo Parente*, WIPO Case No.D2000-1157; *Expedia, Inc. v. European Travel Network*, WIPO Case No.D2000-0137). No argument has been submitted by the defaulting Respondent in order to counter these findings. The Panel concludes that the domain name has been registered in bad faith.

Regarding use of the Disputed Domain Name, the false Statement and the logo similar to the Complainant’s trademarks, as shown on the website hosted by the Disputed Domain Name, have indicated that the Respondent intends to create a likelihood of confusion and mislead the general public, as referred to in Paragraph 4(b)(iv) of the Policy. The Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name. The Panel concludes that the domain name has been used in bad faith.

The Panel therefore concludes that the Complainant has satisfied Paragraph 4(a)(iii) of the Policy.

**6. Decision**

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the Disputed Domain Name < harvard-nimix.com > be transferred to the Complainant.

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Matthew Murphy  
Sole Panelist

Dated: 25 July 2017