



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1701020
<b>Complainant:</b>	Etude Corporation
<b>Respondent:</b>	putianshi youlemidianzishangwuyouxiangongsi
<b>Disputed Domain Name(s):</b>	<etudehouses.com>

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

The Complainant is Etude Corporation, of 6F Kukje Center Building 191, Hangang-ro, 2-ga, Yongsan-gu, Seoul, Republic of Korea.

The Respondent is putianshi youlemidianzishangwuyouxiangongsi, of Rhinstrasse 97, Guangzhou, Guangdong, China.

The domain name at issue is <etudehouses.com>, registered by Respondent with 1API GmbH, of Talstrasse 27, 66424 Hamburg, Germany.

**2. Procedural History**

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 14 September 2017 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules). On 14 September 2017, the Hong Kong Office acknowledged receipt of the Complaint and sent an email to 1 API GmbH (the “Registrar”) requesting verification of information regarding the disputed domain name. On 15 September 2017, the Registrar verified the registrant and contact information for the disputed domain name as identified in the Complaint.

The Hong Kong Office confirmed that the complaint was in administrative compliance with the Policy and the Rules. On 21 September 2017, the Hong Kong Office sent the Respondent a written notice of complaint, informing it that it was required to submit a Response within 20 days (that is, on or before 11 October 2017). The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by that

deadline. Accordingly, on 12 October 2017, the Hong Kong Office notified the Respondent's default.

On 24 October 2017, the Hong Kong Office appointed Prof. Matthew Kennedy as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the parties in this matter. On 24 October 2017, the Hong Kong Office transferred the case files to the Panel.

### **3. Factual background**

The Complainant is a Korean company that produces cosmetics sold in Korea and worldwide. The Complainant first used its ETUDE HOUSE brand for cosmetics in 1995. It has obtained multiple trademark registrations for ETUDE HOUSE including Chinese trademark registration number 5768886 registered from 7 October 2012, specifying cosmetics and other goods in class 3. That trademark registration remains in effect.

The Respondent appears to be a Chinese company. Its address in the Registrar's WhoIs database appears to be in China. The disputed domain name was registered on 23 May 2015. It resolves to a website in Chinese that sells ETUDE HOUSE cosmetics. It displays the words "ETUDE HOUSE 官方网站" which may be translated as "ETUDE HOUSE official website". Prices are displayed in Chinese yuan.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's ETUDE HOUSE trademark. The main part of the disputed domain name is identical to the Complainant's trademark.
- ii. The Respondent does not enjoy any rights or legitimate interests in the disputed domain name. The Respondent does not enjoy any rights in the ETUDE HOUSE trademark. The Complainant has never permitted the Respondent to use the ETUDE HOUSE trademark and never given its authorization to the Respondent to register any domain name including ETUDE HOUSE or any similar word. The Respondent uses the disputed domain name to sell products with the ETUDE HOUSE brand, thereby misleading and attracting consumers who search for the Complainant and its products.
- iii. The disputed domain name has been registered and is being used in bad faith. The disputed domain name was registered long after the Complainant registered and used its trademarks for cosmetic products and services, including in China. Due to the reputation of the Complainant's ETUDE HOUSE brand, the Respondent should have been aware of its existence at the time that it registered the disputed domain name. The Respondent's website sells the Complainant's ETUDE HOUSE brand products and a significant portion of its homepage displays the sign "ETUDE HOUSE's official website" which will seriously mislead consumers into believing that it is the Complainant's official site or a related site.

B. Respondent

The Respondent did not reply to the Complainant's 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. 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.

**A) Identical / Confusingly Similar**

Based on the evidence submitted, the Panel finds that the Complainant has rights in the ETUDE HOUSE trademark.

The disputed domain name wholly incorporates the ETUDE HOUSE trademark, omitting only the space between the two words because domain names do not include spaces. The disputed domain name includes a plural "s" but this is too minor a difference to dispel confusing similarity between the disputed domain name and the trademark. The disputed domain name also includes the generic Top-Level Domain ("gTLD") suffix ".com" but this is a mere technical requirement of registration that may be disregarded in an assessment of confusing similarity between a domain name and a trademark.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The Complainant has satisfied the first element of Paragraph 4(a) of the Policy.

**B) Rights and Legitimate Interests**

The Respondent uses the disputed domain name in connection with a website that sells ETUDE HOUSE cosmetics. It displays notices claiming to be an ETUDE HOUSE official website whereas the Complainant informs the Panel that it has never permitted the Respondent to use its ETUDE HOUSE trademark. Therefore, the Panel finds that this does not constitute a *bona fide* offering of services within the terms of Paragraph 4(c)(i) of the Policy.

Nothing on the record indicates that the Respondent has any relevant trademark rights or that it has been commonly known by the disputed domain name. The evidence shows that the Respondent does not use the disputed domain name in connection with a legitimate noncommercial or fair use.

Based on the evidence on the record, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has satisfied the second element of Paragraph 4(a) of the Policy.

### **C) Bad Faith**

As regards registration, the disputed domain name wholly incorporates the Complainant's ETUDE HOUSE trademark adding only the letter "s" and a gTLD suffix. The Complainant's trademark registration predates the registration of the disputed domain name by several years, including in China where the Respondent operates. The disputed domain name resolves to a website that sells ETUDE HOUSE cosmetics, purportedly those produced by the Complainant. This gives the Panel reason to believe that the Respondent was aware of the Complainant's ETUDE HOUSE trademark at the time that it registered the disputed domain name and deliberately registered the disputed domain name in bad faith.

As regards use, the disputed domain name resolves to a website that sells ETUDE HOUSE cosmetics and that claims to be an ETUDE HOUSE official website, whereas the Complainant informs the Panel that it has never permitted the Respondent to use its ETUDE HOUSE trademark. In these circumstances, the Panel finds that the disputed domain name is being used intentionally in an attempt to attract, for commercial gain, Internet users to the Respondent's 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 or of the products on that website, within the terms of Paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith. The Complainant has satisfied the third element of Paragraph 4(a) of the Policy.

### **6. Decision**

For the foregoing reasons, the Panel orders that the disputed domain name <etudehouses.com> be transferred to the Complainant.

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Matthew Kennedy  
Panelist

Dated: 31 October 2017