



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2301847</b>
<b>Complainant:</b>	<b>Everiii &amp; Partners International Co. Ltd.</b>
<b>Respondent:</b>	<b>Nien Chen, Hearty Creative Inc.</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;startupislandtaiwan.com&gt;</b>

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

The Complainant is Everiii & Partners International Co. Ltd. of Rm. 805, 8F., No. 136, Sec. 3, Ren'ai Rd., Da'an Dist., Taipei City, 106465, Taiwan.

The Respondent is Nien Chen, Hearty Creative Inc., of No. 3, Lane 265, Sec 2, Heping East Road, Daan District, Taipei Cit, 106101, Taiwan.

The domain name at issue is <startupislandtaiwan.com> ("Disputed Domain Name"), registered by Respondent with Cloudflare, Inc., of 101 Townsend St, San Francisco, CA 94107, United States of America ("Registrar").

**2. Procedural History**

On 12 December 2023, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre ("ADNDRC"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), approved by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy ("Rules"), approved by ICANN Board of Directors on 28 September 2013, and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ("Supplemental Rules"), effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 13 December 2023, the ADNDRC sent to the Complainant by email an acknowledgment of the receipt of the Complaint and transmitted by email to the Registrar the request for registrar verification in connection with the Disputed Domain Name. On the same day, the Registrar transmitted by email to the ADNDRC its verification response providing, among others, the WHOIS information for the registrant.

On 20 December 2023, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 11 January 2024, the Complainant filed an amended Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceeding commenced on 15 January 2024.

On 23 January 2024, the Respondent filed its Response. On 24 January 2024, the ADNDRC sent to the Respondent by email an acknowledgement of the receipt of the Response and transmitted to the Complainant by email the Response.

On 24 January 2024, the ADNDRC appointed Ivett Paulovics as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

### 3. Factual background

The Disputed Domain Name was registered on 18 December 2019.

The Complainant is a private company in Taiwan. No further information has been provided by the Complainant on its business activities.

The Complainant relies on several registered Taiwanese device trademarks containing the terms “STARTUP ISLAND TAIWAN”, all filed with the Taiwan Intellectual Property Office on 20 December 2019 and registered on 16 August 2020. All these trademarks are owned by the National Development Council. No evidence has been provided by the Complainant on its relationship with the National Development Council.

The Complainant also relies on the domain name <startupislandtaiwan.info>, registered on 25 August 2020. No evidence has been provided by the Complainant on its ownership of such domain name or any authorization to operate the related website. The Panel, bearing in mind her powers articulated in Paragraphs 10, 12, and 15 of the Rules, has queried the publicly accessible Whois database and has found the registrant’s identity of said domain name is redacted from the publicly accessible Whois database. The only information concerning the registrant is:

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Registrant State/Province: West Yorkshire  
Registrant Country: GB
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The Respondent is a startup company in Taiwan. It has actively participated in the local startup community, fostering connections with numerous Taiwanese entrepreneurs. Additionally, the Respondent represents its brand, Hearty Journal, in five well-known startup programs in Taiwan, including InnoSquare, Social Enterprise Insights, New Taipei Social Enterprise Hub, and the incubator promoted by DBS Bank. The Respondent’s logo is also featured on the website <www.startupstadium.tw> of Taiwan Startup Stadium (“TSS”), an accelerator directly operated by the National Development Council. The Respondent collaborates with local founders to develop the website <www.startupislandtaiwan.com> which aims to “Build a database of startups and provide access for new startups in Taiwan”.

According to the Complainant, the website associated with the Disputed Domain Name displays sponsored pornographic advertisement. However, no evidence of such website content has been provided by the Complainant. To the contrary, the Respondent has provided evidence that his website is dedicated to content related to startups in Taiwan, containing also advertising banners. The Panel has visited the website linked to the Disputed Domain Name and has found that, at the time of the issuance of this decision, it lists over 50 businesses, apparently Taiwanese startups. The website also mentions that it builds a database of startups in Taiwan and provides registration for new startups. The Panel has also consulted historical resources, such as the Internet Archive Wayback Machine at the website <www.archive.org> in order to obtain an indication of how the

Disputed Domain Name had been used in the relevant past. Such consultation returned the same or very similar website content to that currently online. No record of “sponsored pornographic advertisement” has been found by the Panel.

According to the correspondence submitted by the Respondent, in August 2020, 8 months after the registration of the Disputed Domain Name, the Respondent was contacted by TSS. Acknowledging that the Respondent’s domain name coincided with the National Development Council’s trademark, TSS expressed the willingness to purchase the Disputed Domain Name.

On 1<sup>st</sup> October 2021, a post on a well-known social media (Facebook) announced that the website <www.startupislandtaiwan.info> went live.

#### **4. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

- i. The Disputed Domain Name is identical and also confusingly similar to its trademark “STARTUP ISLAND TAIWAN” and its official website url <www.startupislandtaiwan.info>.
- ii. Although the Respondent’s information has been redacted from the publicly available databases, the Disputed Domain Name’s website content consisting in sponsored pornographic advertisement shows that the Respondent has no legitimate interest in respect of the Disputed Domain Name.
- iii. The Disputed Domain Name is currently displaying sponsored pornographic advertisement which seriously opposes the purpose of the Complainant’s trademark.

##### **B. Respondent**

The Respondent’s contentions may be summarized as follows:

- i. The dispute has been initiated by the Complainant, a private entity which is not the owner of the Taiwanese trademarks “STARTUP ISLAND TAIWAN”. Accordingly, the Complainant lacks standing in the present proceeding.
- ii. The trademarks “STARTUP ISLAND TAIWAN”, owned by the National Development Council, were filed on 20 December 2019, 2 days after the registration of the Disputed Domain Name.
- iii. There is no evidence that the domain name <startupislandtaiwan.info>, registered on 25 August 2020, thus, well after the registration of the Disputed Domain Name, is owned by the Complainant or that the related website is operated by the Complainant.
- iv. Comparing the device trademark of the National Development Council and the logo present at the website linked to the Disputed Domain Name, it is apparent that they are different. Therefore, there is no likelihood of confusion between the two marks.
- v. The Disputed Domain Name consists of the generic words “STARTUP” “ISLAND” “TAIWAN”. Accordingly, the Complainant cannot claim exclusive rights to use those generic words and prohibit others from using them. Consequently, the Respondent has rights or legitimate interests in respect of the Disputed Domain Name.

- vi. The Respondent, actively engaged in the startup field, registered the Disputed Domain Name with the purpose of establishing a website aimed to support and showcase Taiwanese startups. Today, the website linked to the Disputed Domain Name contains a list of over 50 companies. Therefore, the Respondent has registered and is making a bona fide use of the Disputed Domain Name.

## 5. Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements to succeed in the administrative proceeding:

- 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.

If all three elements are met by the Complainant, the domain name registration is ordered to be cancelled or transferred to the Complainant. If one or more elements are not met, the Complaint is denied, and the domain name registration remains intact. Therefore, the burden of proof in UDRP proceedings is on the Complainant. Unsupported conclusory allegations are not sufficient to support the Complainant's case.

Paragraphs 3 and 5 of the Rules provide the parties with guidance on the content of the complaint and the response. This is, because the Rules in principle provide only for a single round of pleadings, and do not contemplate discovery as such. Accordingly, a UDRP panel's assessment will normally be made on the basis of the evidence presented in the complaint (and any filed response) (see Paragraph 15(a) of the Rules which provides that: "A Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable"). The panel shall determine the admissibility, relevance, materiality and weight of the evidence presented (see Paragraph 15(d) of the Rules). Under Paragraph 12 of the Rules, in addition to the complaint and the response, the panel may request, in its sole discretion, further statements or documents from either of the parties. Nevertheless, in all cases, the panel shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case (see Paragraph 10(b) of the Rules). Furthermore, the panel shall ensure that the administrative proceeding takes place with due expedition (see Paragraph 10(c) of the Rules).

The above provisions clearly state that it is the Parties' job, in particular of the Complainant, to make out their cases. The Panel notes that, whilst she may undertake limited factual research into matters of public record, this does not mean that she should do most of the "legwork" to establish the Parties' allegations. The Parties could have chosen to be represented in this UDRP by a counsel or any authorized representative but they were not obliged to do so. Nevertheless, as mentioned above, opting for the UDRP instead of using court or other proceedings does not mean that the self-represented Complainant automatically obtains the Disputed Domain Name or that its unsupported and untrue statements made in its extremely poorly drafted Complaint (2 sentences for the first UDRP element and one sentence each for the second and third UDRP element) may remain without consequence. To the contrary, Paragraph 15(e) of the Rules provides that: "If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to

harass the domain-name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

Accordingly, based on the following detailed reasoning provided by the Panel for each UDRP element, the Complaint shall be denied and the Disputed Domain Name shall remain with the Respondent. Furthermore, the Panel finds that the Complaint has been brought in bad faith and the Complainant is engaged in Reverse Domain Name Hijacking (RDNH) which constitutes an abuse of the UDRP.

### **A) Identical / Confusingly Similar**

The first UDRP element functions primarily as a standing requirement. Where the complainant holds a nationally or regionally registered trademark or service mark, this *prima facie* satisfies the standing requirement of having trademark rights for purposes to initiate a UDRP dispute. Once the complainant has established to have right in a trademark or service mark, the panel turns to the assessment of identity or confusing similarity of the disputed domain name to the trademark or service mark in which the complainant has rights.

In UDRP disputes the test for identity or confusing similarity involves a reasoned but relatively straightforward comparison between the complainant’s trademark and the domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of the first UDRP requirement.

In the present case, the Complaint contends to be owner of the trademark “STARTUP ISLAND TAIWAN” and the domain name <startupislandtaiwan.info>. However, it has not provided sufficient (*rectius* any) evidence to establish that it has rights in the mentioned trademark and domain name. It has only provided, within the text of its Complaint, a chart of 7 device trademarks containing the textual elements “STARTUP ISLAND TAIWAN”, all filed on 20 December 2019, thus 2 days after the Disputed Domain Name, in classes 9, 16, 35, 36, 41, 42 and 45, by the National Development Council. No statement, nor any evidence has been provided by the Complainant, a private company, on its relationship with the National Development Council, owner of the cited trademarks.

Bearing in mind her powers articulated in Paragraphs 10, 12 and 15 of the UDRP Rules, the Panel has undertaken limited factual research into matters of public record considering such information useful to assessing the case merits and reaching a decision. However, neither the searches in public trademark registration databases (Taiwan Intellectual Property Office, Global Brand Database, TMview), nor a Whois lookup performed by this Panel has shown that the Complainant would be owner of the trademark “STARTUP ISLAND TAIWAN” or any other trademark or of the domain name <startupislandtaiwan.info>. The Whois lookup performed by the Panel has shown that the domain name <startupislandtaiwan.info> was registered on 25 August 2020, 8 months after the registration of the Disputed Domain Name (18 December 2019) and, while the registrant’s identity is redacted, the registrant country results to be Great Britain.

While under the first UDRP element it is irrelevant that the trademark and the domain name invoked by the Complainant be registered prior to the registration of the Disputed

Domain Name (this has relevance under the second and third UDRP elements), it is definitely necessary that the Complainant introducing the UDRP demonstrates to have rights in such trademark.

According to the Rules, the Panel could have issued a Procedural Order inviting the Complainant to provide additional statements and documents on its relationship with and authorization granted (if any) by the trademark owner, National Development Council. However, considered that: (i) the Complainant had the opportunity and sufficient time to prepare its case and draft its Complaint accurately before introducing the present administrative proceeding, as well as (ii) the additional circumstances of the case described in detail below by this Panel under the second and third UDRP elements (i.e., the filing/registration of the invoked trademark “STARTUP ISLAND TAIWAN” and the domain name <startupislandtaiwan.info> after the registration of the Disputed Domain Name, the Disputed Domain Name consists of generic and dictionary terms, the correspondence exchanged between the Respondent and TSS regarding the possible acquisition of the Disputed Domain Name, and the registration and usage of the Disputed Domain Name by the Respondent in good faith), the Panel decided to not to give an extra possibility to the Complainant to show its trademark rights or relationship with the National Development Council. This is also in line with the Rules which requires this Panel to ensure that the Parties are treated with equality and that the administrative proceeding takes place with due expedition. Should the Complainant hold trademark rights or should any relationship with the trademark owner, National Development Council, exist, it would not change the outcome of the present proceeding, given that the Complaint is wholly ill-founded and the proceeding has been brought by the Complainant in bad faith.

Having failed the Complainant to establish that it has rights in the “STARTUP ISLAND TAIWAN”, it is not necessary that the Panel makes any identity or confusing similarity assessment between the Disputed Domain Name and such trademark.

In view of the afore-mentioned reasons, the Panel finds that the Complainant has failed to show to have rights within the meaning of paragraph 4(a)(i) of the Policy.

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

Considered the above, it would not be necessary that the Panel makes any determination regarding the second UDRP element.

However, for the sake of completeness, the Panel notes that under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. If the Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of production on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name.

By virtue of paragraph 4(c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the Disputed Domain Name:

- (i) before any notice to the Respondent, the Respondent’s use of, or demonstrable preparations to use, the Dispute Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or

- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) the Respondent 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.

Thus, if the Respondent proves any of these elements or indeed anything else that shows that it has a right or legitimate interest in the Disputed Domain Name, the Complainant will have failed to discharge its onus and the Complaint will fail. If the Respondent fails to come forward with such relevant evidence, the Complainant is deemed to have satisfied the second element.

Regarding this second UDRP requirement, the Complaint contains that: “This is hard to prove as the respondent’s information has been redacted from publicly available databases. With the displaying sponsored pornographic advertisement, it can be seen that the respondent has no legitimate interest in respect of the domain name”. No evidence at all (e.g., screenshot) has been provided by the Complainant of such assertion.

In turn, the Respondent in its Response has claimed and sufficiently demonstrated with documentary evidence that the Disputed Domain Name is used in relation to a website listing Taiwanese startups.

The Panel has visited the website linked to the Disputed Domain Name and consulted the Internet Archive Wayback Machine in order to obtain an indication of how Disputed Domain Name is being used and had been used in the relevant past, prior to any notice to the Respondent of this dispute. Such consultation confirmed the allegations of the Respondent. No record of “sponsored pornographic advertisement” has been found by the Panel.

Moreover, the Disputed Domain Name consists of the generic and commonly used terms “STARTUP” “ISLAND” “TAIWAN”. The Respondent has provided sufficiently plausible explanation of its choice to register the Disputed Domain Name, being such dictionary terms related to its activities. The Respondent has also proved that the Disputed Domain Name is genuinely used in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights.

The Panel, therefore, finds that the Respondent made out its claim to a right or legitimate interest under paragraph 4(c)(ii) of the Policy, and the Complainant has failed to establish that the Disputed Domain Name was selected by the Respondent for the purpose of targeting the Complainant or the trademark “STARTUP ISLAND TAIWAN” which, the Panel repeats, is not owned by the Complainant and was filed and registered after the Disputed Domain Name. With reference to the finding of RDNH, the Panel also takes into consideration that the Complainant has stated that the Disputed Domain Name displayed sponsored pornographic advertisement which turned out to be untrue.

### **C) Bad Faith**

In view of the Panel’s finding regarding the first and second element, it would not be necessary that the Panel makes any determination regarding the third UDRP element.

However, the Panel notes that, for the purposes of Paragraph 4(a)(iii) of the Policy, 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 the Disputed Domain Name in bad faith:

- (i) circumstances indicating that the Respondent has registered or has acquired the Disputed Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Name 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 its documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) the Respondent has 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 it has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location.

Not any of those circumstances or indeed anything else that shows bad faith registration and use of the Disputed Domain Name by the Respondent has been demonstrated by the Complainant.

First of all, the trademark invoked by the Complainant is not owned the Complainant itself, but by the National Development Council. The Complainant, a private company, has not demonstrated its relationship (if any) with the National Development Council. Hence, the Complainant has failed to establish to have right in the trademark(s) relied on in the present proceeding.

The "STARTUP ISLAND TAIWAN" trademarks owned by the National Development Council were registered after the Disputed Domain Name. Although the temporal proximity of the registration date of the Disputed Domain Name (18 December 2019) and the filing date of National Development Council's trademarks (20 December 2019), there is no evidence before this Panel showing that the Respondent had been aware of or targeted the Complainant or the National Development Council's marks with the registration of the Disputed Domain Name.

On 17 August 2020, TSS, after having learnt that the Disputed Domain Name coinciding with the National Development Council's "STARTUP ISLAND TAIWAN" trademark had been already registered by the Respondent, contacted the latter and tried to acquire the domain name without success.

On 25 August 2020, the domain name <startupislandtaiwan.info>, relied on this proceeding by the Complainant, was registered by an unidentified entity that appears to be based in the Great Britain. The related website went live on 1<sup>st</sup> October 2021, well after the registration and use of the Disputed Domain Name.

The Complainant has asserted but has not proved that the website linked to the Disputed Domain Name was displaying sponsored pornographic advertisement. As mentioned above, the Panel is persuaded by the evidence presented by the Respondent that his website is dedicated to content related to startups in Taiwan, containing also advertising banners. The Panel has visited the website linked to the Disputed Domain Name and has found that,



at the time of the issuance of this decision, it lists over 50 businesses, apparently Taiwanese startups. The website also mentions that it builds a database of startups in Taiwan and provides registration for new startups. The Panel has also consulted historical resources, such as the Internet Archive Wayback Machine at the website <www.archive.org> in order to obtain an indication of how Disputed Domain Name had been used in the relevant past. Such consultation returned the same or very similar website content to that currently in use online. No record of sponsored pornographic advertisement has been found by the Panel.

For the afore-mentioned reasons, the Panel finds that the Respondent has demonstrated that the Disputed Domain Name was registered and is being used in good faith. The Complainant has failed to establish the third UDRP element under Paragraph 4(a)(iii) of the Policy.

#### **D) Reverse Domain Name Hijacking (RDNH)**

RDNH is defined under the Rules as using the UDRP in bad faith to attempt to deprive a registered domain name holder of a domain name.

This Panel finds that the Complainant is engaged in RDNH and that the Complaint was brought in bad faith and constitutes an abuse of the UDRP, because the Complainant clearly ought to have known it could not succeed as to any of the required three elements, such as: i) the Complainant's lack of relevant trademark rights, ii) the Complainant's clear knowledge of the Respondent's rights or legitimate interests, given that the Disputed Domain Name consists of generic and dictionary terms and is being used for a website in connection with the relied-upon dictionary meaning of such generic terms, and iii) the Complainant's clear knowledge of the lack of Respondent's bad faith, given that the Disputed Domain Name was registered before the invoked trademark (the registration date is clearly resulting from and verifiable in the publicly accessible Whois database) and the domain name <startupislandtaiwan.info>, and the Disputed Domain Name is being used genuinely as mentioned before. The Complainant has also tried to mislead the Panel with affirming that the Disputed Domain Name is being used to display sponsored pornographic advertisement without providing any supporting evidence. Finally, the Complainant has filed the Complaint without a plausible legal basis after an unsuccessful attempt to acquire the Disputed Domain Name from the Respondent. The Complainant, which is a private company, seems to have tried to act on behalf of the Taiwanese National Development Council without however disclosing and proving to this Panel its relationship with such public entity.

The Complainant cannot even justify itself saying, for example, that it ignored the Policy and the well-established UDRP case law. Parties are free to self-represent themselves in UDRP disputes, but they also have to bear the consequences of not seeking appropriate legal counsel. This is particularly true considering that the Policy has been in place for 25 years and the decisions rendered by UDRP panels are publicly available.

In view of the above and in accordance with Paragraph 15(e) of the Rules, the Panel finds that the Complaint has been brought by the Complainant in abuse of the UDRP and the Complainant has attempted to deprive the Respondent of Disputed Domain Name.

#### **6. Decision**

Having not established all three elements required under the Policy, the Panel concludes that the Complaint shall be denied.

Accordingly, it is ordered that the domain name <startupislandtaiwan.com> domain name shall remain with the Respondent.

The Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.



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Ivett Paulovics  
Panelist

Dated: 8 February 2024