



ADMINISTRATIVE PANEL DECISION

Case No. DCN-1700746

Complainant	: Hermès International
Respondent	: “徐彩云”
Disputed Domain Name	: <爱马仕.cn>
Registrar	: 浙江贰贰网络科技有限公司

1. Procedure History

On 2 June 2017, the Complainant filed a Complaint concerning the disputed domain name <爱马仕.cn> (hereafter referred to as “Disputed Domain Name”) in the English language with the Hong Kong International Arbitration Centre (hereafter referred to as “the HKIAC”).

The Disputed Domain Name is registered by the Respondent “徐彩云” with 22net, Inc., [浙江贰贰网络科技有限公司] whose address is 11th Floor, Building Number 2, Hangzhou Internet Innovation Pioneer Park, No. 176 Zixia Street, West Lake District, Hangzhou, Zhejiang 310030, China [浙江省杭州市西湖区紫霞街 176 号杭州互联网创新创业园 2 号楼 11 楼(310030)].

The HKIAC having considered the matter decided to appoint a single-member panel in accordance with the China Internet Network Information Center (hereinafter referred to as “CNNIC”) ccTLD Dispute Resolution Policy (hereafter referred to as “Policy”), which took became effective from 21st November 2014 and the CNNIC ccTLD Dispute Resolution Policy Rules (hereafter referred to as “Rules”) which took effective from 21st November 2014 and the HKIAC Supplemental Rules to CNNIC ccTLD Dispute Resolution Policy (hereafter

referred to as “Supplemental Rules”), issued by the HKIAC which took effective from 21st November 2014.

On 23 June 2017, the HKIAC served a written notice of the Complaint to the Respondent stating that the due date for the submission of Response by the Respondent was 17 July 2017.

On 3 July 2017, the HKIAC wrote to Dr. Christopher To enquiring from Dr. Christopher To as to whether he is available to act as the Panelist and if so whether he is in a position to act independently and impartially between the Complainant and the Respondent (hereinafter collectively called the “Parties”).

On 6 July 2017, Dr. Christopher To wrote to the HKIAC confirming his ability to act.

On 6 July 2017, the HKIAC wrote to the Parties informing the Parties that Dr. Christopher To (hereinafter called the “Panelist”) has been appointed in accordance with the Policy, the Rules and the Supplemental Rules in respect of the Disputed Domain Name.

The Panelist is of the view that the Panel was properly constituted and that the Panelist has acted impartially in reaching its conclusion.

In accordance with Article 8 of the Rules, unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese.

The Complainant requested the Panel to consider using English as the language of the proceedings.

On 10 July 2017, the HKIAC received Administrative Panel Order No.1 from the Panelist, stating that the Panelist shall conduct the matter in both Chinese and

English provided the Respondent submits a response in accordance with Chapter IV – The Response of the Rules, failing which the Panelist shall conduct the matter in English. In the meantime, the Panelist emphasized that the Complainant did not need to translate the Complaint and its annexes into Chinese.

On 11 July 2017, the HKIAC sent the Administrative Panel Order No.1 to the Respondent [copying the Complainant] by E-mail, requesting the Respondent to file its response in Chinese with the HKIAC within 20 days, i.e., on or before 31 July 2017.

On 31 July 2017, the Respondent did not submit a reply in accordance with the Rules (Chapter IV “The Response”), nor did the Respondent express disagreement to the Complainant’s request that English be the language of proceedings.

On 1 August 2017, the HKIAC notified the Panelist and the Complainant that the Respondent did not file a response within the stipulated timeframe. In accordance with the Administrative Panel Order No.1, the Panelist shall conduct the matter in the English language. The Panelist was also invited to announce the date for rendering a decision for the matter.

On 2 August 2017, the Panelist wrote to the HKIAC informing the HKIAC that it shall render its decision on 16 August 2017.

On 2 August 2017, the HKIAC wrote to the Parties informing them that the Panelist shall render its decision on 16 August 2017.

2. Factual Background

The Complainant

The Complainant, Hermès International with its registered address at 34 rue du Faubourg St. Honore, F-75800 Paris, France is a high fashion luxury goods

manufacturer established in 1837. The company specializes in leather goods, lifestyle accessories, home furnishings, perfumery, jewelry, watches, ready-to-wear clothing and is listed as number 32 in the world of most innovative companies and listed as number 48 as the world's most valuable brands. In China, the Complainant has a store in Shanghai which operates under their Chinese site https://www.hermes.com/index_cn.html.

The Complainant's authorized representative in these proceedings is SILKA Law AB located at 114 56 Stockholm, Sweden.

The Respondent

The Respondent is an individual “徐彩云” whose address, telephone number, fax number, place of registration are unavailable. The Respondent's E-mail address is caimei.xu@foxmail.com.

The Disputed Domain Name <爱马仕.cn> (Puny Name: xn—7mqw57f1s1a.cn) was registered by the Respondent on 18 January 2017.

The Registrar

The Registrar for the Disputed Domain Name is 浙江贰贰网络科技有限公司, located at 22 net, Inc, 11/F, Bldg No.2, Hangzhou Internet Innovation Pioneer Park, No.176 Zixia Street, West Lake District, Hangzhou, Zhejiang 310030, China. The Registrar's telephone number is (+86) 4006602522 and its E-mail address is service@22.cn.

3. Parties' Contentions

The Complainant

The Complainant opened its first exclusive store in Beijing in 1996. “爱马仕” is

the Chinese word for the brand. Today, the Complainant sales are composed of about 30% leather goods, 15% clothes, 12% scarves and 43% other wares. The Complainant is also active in marketing its eye wear across multiple social media sites such as YouTube, Twitter, Facebook, Google+ as follows:

Platform	Direct link
Facebook	https://www.facebook.com/hermes
Instagram	https://www.instagram.com/hermes
Twitter	https://twitter.com/hermes_paris
YouTube	https://www.youtube.com/user/hermes/home
Google+	https://plus.google.com/+hermes

The Complainant owns several trademarks consisting or containing the word “HERMES” both at an international level, including China where the Respondent likely resides. An overview of the relevant registered trademarks is provided as follows:

Trademark	Date of Registration	Registration number	Type of registration
HERMES	12/02/2009	1000404A	International
爱马仕	12/10/1998	1214392	Chinese national
爱马仕	07/07/2015	14580985	Chinese national

The Complainant owns various domain names registrations that include its registered trademark such as: “www.hermes.com”, “www.hermes.com.cn”, “www.hermes.cn”, “www.hermes.asia”. The Complainant uses these domain names to connect to websites through which it informs potential customers about its products. The Complainant has previously successfully challenged several HERMES disputed domain names through the UDRP process and the Panelists in those decisions rendered decisions in favor of the Complainant as the Complainant owns Chinese trademarks for the word mark “爱马仕”. Cases in point include but not limited to the following:

"<hermes.clothing>" (WIPO decision No. D2014-1760);

"<hermesbyhaircutjp.org>" (WIPO decision No. D2013-1407);

"<discounthermeshandbags.net>" (WIPO decision No. D2011-1125);

"<hermes-birkins.net>" (WIPO decision No. D2011-0514);

"<hermes-online-store.com>" (WIPO decision No. D2011-0542).

A. The Disputed Domain Name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights and interests (Article 8 of the Policy)

The Complainant advocates that the domain name <爱马仕.cn> is an internationalized domain name ("IDN") with the Punycode translation of xn—7mqw57f1s1a.cn which directly and entirely incorporates the Complainant's trademark "爱马仕".

The Complainant is of the view that the Disputed Domain Name would be perceived by internet users as a website where they could find information about the Complainant's well-recognized products. The Complainant elaborates such further by drawing to the Panelist's attention the WIPO Overview on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 1.2., as well as the recent *International Business Machines Corporation v. Sledge, Inc. / Frank Sledge* WIPO Case No. D2014-0581 where the Panel in that case stated that "*In addition, it is generally accepted that the addition of country code top-level suffix in the domain name (e.g., ".cn" and ".com.cn") are to be disregarded under the confusing similarity test*".

The Complainant also drew to the Panelist attention the HKIAC Case [Case. No. DCN-1500631] *Bayer AG v. HUO Gai Zben* where the Panel in that case did not elaborate further on the actual .com.cn extension and regarded the disputed domain name to be identical to Complainant's mark.

Based on the above contentions, the Complainant considers that the Disputed Domain Name is identical to Complainant's registered trademark.

B. Holder of the Disputed Domain Name has no legitimate right or interest over the domain name or the major part of the domain name (Article 8 of the Policy)

The Complainant has not found that the Respondent is commonly known by the Disputed Domain Name. The WHOIS information is the only evidence in the WHOIS record which relates the Respondent in relation to the Disputed Domain Name. It identifies the registrant as “徐彩云” which is not similar in nature to the Disputed Domain Name.

The Respondent has not provided the Complainant with any evidence of its use, or demonstrated its preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services consistent with having rights or legitimate interest in the name “Hermes” or “爱马仕”.

The Complainant contends that when using search engines such as Google and Baidu to search for information on the Disputed Domain Name, the returned results point to the Complainant’s official website and news articles about the Complainant’s business activity globally including the Chinese market. The Complainant believes that if the Respondent performs a similar search before registering the Disputed Domain Name, the Respondent would have quickly learnt that the trademark is owned by the Complainant and that the Complainant has been using its trademark in China and other countries around the world.

The Complainant finds that there is no evidence as to the Respondent’s history of using, or preparing to use the Disputed Domain Name in connection with a bona fide offering of goods and services.

The Complainant believes that it has become a distinctive identifier associated with the term “爱马仕” and that the intention of the Respondent in registering the Disputed Domain Name is to take advantage of the Complainant’s business and goodwill.

The Complainant stated that the statute of limitations imposed by the CNNIC favors the Respondent, as the Disputed Domain Name was registered on 18 January 2017 and it can be assumed that the Respondent will continue to passively hold the Disputed Domain Name until 18 January 2019 when the Complainant will be barred from bringing a Complaint under the Policy. Once this deadline expires, the Respondent will be in a position to attempt to sell the Disputed Domain Name on the open market, leaving the Complainant with no other means but to purchase the Disputed Domain Name at a relatively high cost and to pursue lengthy formalities associated with litigating the matter in the courts in China.

The Complainant contends that circumstances stated above suggest that the Respondent has no legitimate interest in the Dispute Domain Name. The registrant's name “徐彩云” does not reflect or resemble the Disputed Domain Name in any way or form. Research undertaken in various search engines and databases does not show that the Respondent has any registered trademark rights or business affiliations in the name “爱马仕”.

C. The holder of Disputed Domain Name registers or uses the Disputed Domain Name in bad faith (Article 8 and 9 of the Policy)

The Complainant contends that the Disputed Domain Name currently resolves to an inactive website. The Complainant draws to the Panelist's attention of the case of *Telstra Corporation Limited v. Nuclear Marshmallows* WIPO Case No. D2000-0003, where the Panel in that case established that the registration and passive holding of a disputed domain name which has no other legitimate use and references a complainant's trademark constitutes registration and use of the disputed domain name in bad faith. In relation to the current case, the Complainant advocates that it is clear that the Respondent has registered the Disputed Domain Names in bad faith by intentionally adopting Complainant's widely known marks in violation of the Complainant's rights. The Complainant further advocates that Panels in other disputed domain names have found that the apparent lack of so-called active use (e.g., to resolve to a website) of the disputed domain name without

any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith, but all circumstances of the case must be examined to determinate whether the Respondent is acting in bad faith.

The Complainant states that a well-known trademark that predates the registration of the Disputed Domain Name, which is being ‘actively used’ to cause significant damage to the Complainant’s brand is an example of a bad faith use requirement.

The Complainant avers that regardless of the fact that the Disputed Domain Name is currently not in use, the circumstances surrounding this inaction passive holding constitutes use of the Disputed Domain Name in bad faith.

The Complainant summarises it’s stance by stating that the confusingly similar nature of the Disputed Domain Name to Complainant’s trademarks as well as preventing the Complainant from reflecting its mark in the corresponding Disputed Domain Name under the ccTLD.cn further demonstrates a lack of good faith. In addition, the Complainant states that the Respondent has had ample time and opportunity to activate the Disputed Domain Name to demonstrate that the use would not constitute bad faith use, however as of the filing of the Complaint the Respondent has not activated the Disputed Domain Name. The Complainant’s international and Chinese trademark registrations predates the Respondent’s Disputed Domain Name registration and it is highly unlikely that the Respondent was not aware of the rights the Complainant had in the trademarks and the value of said trademarks, at the time of the registration. As a result, the Complainant strongly believes that the Respondent registered and is using the Disputed Domain Name in bad faith and requests the Panelist to transfer the Disputed Domain Name <爱马仕.cn> to the Complainant.

The Respondent

The Respondent did not reply to the Complainant’s contentions.

4. Discussion

Language of proceedings

Article 8 of the Rules provides that:

“Unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese.”

The Complainant requested that the language of the proceeding be in the English language on the basis that: (1) there is substantial proof to demonstrate that the Respondent is acquainted with the English language and the Disputed Domain Name is exclusively composed of the International trademark “爱马仕” which is translated into the words HERMES and “爱马仕” has no literal meaning in the Chinese language; (2) the website is not active and does not target a particular sector of the Chinese audience and the Complainant is not in a position to conduct proceedings in the Chinese language without a great deal of additional expense and undo delay as a result of having to translate the Complaint and the supporting Annexes; (3) similar to the WIPO case No. D2016-0759 *Mou Limited v. Zeng Xiang / Debra Nelis / Privacy Protection Service Inc. d/b/a PrivacyProtect.org*, [similar in nature to the current case, in which the trademark “爱马仕” is involved, in which a Chinese registrar was involved and where the registration agreement was in the Chinese language] where the WIPO in that case accepted a response in either the English or Chinese language, whereas the Complainant was granted permission by the Panel to submit the Complaint and its supporting evidence in the English language, as the Panel in that case stated that “...*the fact that to require the Complaint and all supporting documents to be re-filed in Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.*”.

The HKIAC wrote to the Respondent in relation to the language of the proceedings.

The Respondent, however, did not reply to the HKIAC's request.

The final determination of the language of the proceeding lies with this Panel. Article 31 of the Rules gives the Panel a broad discretion with regard to the conduct of the proceedings, bearing in mind that the proceedings shall take place with due expedition and reasonable expense. The Panel notes that the Respondent is fully aware of the Complainant's contentions against the Respondent and was invited to make submissions by the HKIAC through various E-mails in which HKIAC conveyed such in both the Chinese and English language. The Respondent did not make any objections to the Complainant's request to have the proceedings be wholly conducted in the English language.

This Panel finds that the Disputed Domain Name is composed exclusively of the Chinese words “爱马仕”, the combination of which is distinctive and it does not mean anything in the Chinese language other than to refer such to the Complainant's international trademark.

This Panel also notes that it may lead to significant additional cost for the Complainant to have to translate all documents submitted from the English language into the Chinese language. As such this Panel notes that the grounds advanced by the Complainant are only partially satisfactory as there is no cogent evidence to prove that the Respondent has competency in understanding the English language, other than that advanced by the Complainant. It is the Complainant who has the burden of proof to advance such a contention, nevertheless this Panel believes that there is no need for the Complainant to conduct such investigation. Moreover, it is highly likely that Chinese customers rather than non-Chinese may search the Chinese term “爱马仕” if they would like to look for related information of well-recognized products.

This Panel shall balance the questions of fairness to both parties with due consideration to cost and expedition. The fact that the Respondent's continuous

silence throughout the entire proceedings, even though given every opportunity to respond is a factor which this Panel will take into consideration in its determination.

This Panel notes, that the fact the Complainant does not understand Chinese is also not of great relevance. Nevertheless, given the Respondent has not responded to the case on its merits or in relation to the language of the proceedings, it would be unfair on the Complainant to request the Complainant to translate the Complaint into Chinese. As the only documents before this Panel are in English, the decision will be issued in English.

In the circumstances of this case, the Panel determines that English shall be the language of the proceeding. The Panel is of the opinion that it is appropriate to render the definitive text of its decision in English, and provide the Parties with a translated Chinese version of the Panel's decision included herewith for convenience as per Appendix 1 (Chinese Translation). In the event of any inconsistencies between the English and Chinese texts of the Panel's published decision, the decision in English shall be the definitive text of the decision.

Findings of substantive issues

The burden for the Complainant under Article 8 of the Policy is to prove that:

- i. *The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;*
- ii. *The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;*
- iii. *The disputed domain name holder has registered or has been using the domain name in bad faith.*

Article 7 of the Policy states that the Complainant and the Respondent shall each bear the burden of proof for their own claims.

Article 31 of the Rules states that if the Respondent does not submit a response, the Panel shall, in absence of exceptional circumstances, decide the dispute based upon the Complaint.

Identical or Confusing Similarity

The ownership of a trademark is generally considered to be a threshold standing issue. The location of the trademark, its date of registration (or first use) and the goods and/or services for which it is registered, are all irrelevant for the purpose of finding rights in a trademark under the first element of the Policy. Such factors may, however, bear on a Panel's determination whether the Respondent has registered and used the Disputed Domain Name in bad faith under the third element of the Policy. (See Paragraph 1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")).

This Panel finds that Complainant has a widespread reputation and a significant goodwill in the high fashion industry in the Chinese market after years of extensive marketing, promoting and advertising.

The distinctive part of the disputed Domain Name <爱马仕.cn> is “爱马仕”, other than the suffix which does not alter the fact that it is identical to Complainant's registered trademark, thus internet users encountering the Respondent's domain name is likely to be confused into believing that there is some relationship, connection, approval or association between the Respondent and the Complainant, when, in fact, no such affiliation exists.

This Panel finds that the Respondent's name “徐彩云” is not similar to the Disputed Domain Name in appearance and pronunciation. “爱马仕” does not have any literature or semantic or syntactic meaning in Chinese from a linguistic perspective. The combination of three Chinese words “爱”, “马” and “仕” is against

Chinese language habits and is not idiomatic. It is highly likely that the said compound word is a made-up word or a transliterated word.

The first part of Article 8 of the Policy is therefore satisfied.

Rights or Legitimate Interests of the Respondent

The Complainant is required to make out a *prima facie* case that the Respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied the second condition under Article 8 of the Policy (See paragraph 2.1 of WIPO Overview 3.0).

The Complainant has rights in the HERMÈS and 爱马仕 trademarks [since 1998] which predates the Respondent's registration of the Disputed Domain Name [of 18 January 2017].

This Panel finds that the Complainant has established a *prima facie* case on the ground that the Complainant has not authorized, licensed or permitted the Respondent to use its trademark “爱马仕” and has alleged that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby the burden of proof shifts to the Respondent to produce evidence to rebut this presumption (see *The Argento Wine Company Limited v. Argento Beijing Trading Company, supra*; *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455). The Respondent did not submit a response and did not provide any evidence to show any rights or legitimate interests over the Disputed Domain Name.

Further, this Panel finds that the Disputed Domain Name is pointing to an inactive page and the Respondent does not have a history of using, or preparing to use the

Disputed Domain Name in connection with a bona fide offering of goods or services. There is no evidence to show that the Respondent is known by the Disputed Domain Name.

This Panel finds that the Complainant has made out a *prima facie* case that the Respondent lacks rights or legitimate interests in respect of the Disputed Domain Name, because (i) the Respondent is not commonly known by the Disputed Domain Name; (ii) the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use the trademark 爱马仕.

The second part of Article 8 of the Policy is therefore satisfied.

Registered or Used in Bad Faith

Article 9 of the Policy provides circumstances where evidence of the registration and use of a domain name in bad faith:

Any of the following circumstances may be the evidence of the registration and use of a domain name in bad faith:

- i. *The purpose for registering or acquiring the domain name is to sell, rent or otherwise transfer the domain name registration to the complainant who is the owner of the name or mark or to a competitor of that complainant, and to obtain unjustified benefits;*
- ii. *The disputed domain name holder, on many occasions, registers domain names in order to prevent owners of the names or marks from reflecting the names or the marks in corresponding domain names;*
- iii. *The disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public.*

This Panel is of the view that the Respondent must have known of the Complainant's trademark before registering the Disputed Domain Name.

The fact that the Respondent registered the Disputed Domain Name would reveal no more than the Respondent's intention to prevent the Complainant from registering the relevant Disputed Domain Name that correspond to the Complainant's trademarks. Moreover, the Respondent used the Disputed Domain Name to resolve to an inactive website which proves that the Respondent has deliberately prevented the Complainant from reflecting its trademark in a domain name thus creating confusion to the Complainant's customers as well as damaging the Complainant's image and reputation.

The third part of Article 8 of the Policy is, therefore, satisfied.

5. Decision

For the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, this Panel orders that the Disputed Domain Name <爱马仕.cn> be transferred to the Complainant.



Dr. Christopher To

Sole Panelist

Date: 16th August 2017

Attachment: Appendix 1 (Chinese Translation of the decision)

In the event of any inconsistencies between the English and Chinese texts of the Panel's published decision, the decision in English shall be the definitive text of the decision

行政专家组裁决

案件编号 DCN-1700746

投诉人	: Hermès International
被投诉人	: “徐彩云”
争议域名	: <爱马仕.cn>
注册服务机构	: 浙江贰贰网络科技有限公司

6. 案件程序

2017年6月2日, 投诉人就争议域名<爱马仕.cn> (下称“争议域名”) 一事向香港国际仲裁中心(下称“仲裁中心”) 提交英文投诉书。

争议域名由被投诉人“徐彩云”在域名注册机构浙江贰贰网络科技有限公司进行注册, 机构地址为中国浙江省杭州市西湖区紫霞街176号杭州互联网创新创业园2号楼11楼(310030)。

根据中国互联网络信息中心2014年11月21日生效的《中国互联网络信息中心国家顶级域名争议解决办法》(下称“《解决办法》”)和《中国互联网络信息中心国家顶级域名争议解决程序规则》(下称“《程序规则》”), 以及香港国际仲裁中心2014年11月21日生效的《香港国

际仲裁仲裁中心关于中国互联网络信息仲裁中心国家顶级域名争议解决办法补充规则》(下称“《补充规则》”),仲裁中心选择由一人独任专家组审理本案。

2017年6月23日,仲裁中心”向被投诉人发送投诉通知,并指出提交答辩期限为2017年7月17日。

2017年7月3日,“仲裁中心”向陶荣博士发出专家组指定通知,请其确认是否出任本案专家组,如是,在双方当事人之间能否独立公正地审理投诉人和被投诉人(下称“双方当事人”)的案件。

2017年7月6日,陶荣博士回复“仲裁中心”同意接受指定,并保证案件审理的独立性和公正性。

2017年7月6日,“仲裁中心”以电子邮件方式向双方当事人传送专家指定通知,根据《解决办法》《程序规则》以及《补充规则》,已指定陶荣博士(下称“专家组”)处理当前争议域名案件。

专家组成员认为专家组已经合理成立,能公正审理本案。

根据《程序规则》第八条,除非当事人另有约定或者专家组在特殊情形下另有决定,域名争议解决程序所使用的语言应为中文。

投诉人向专家组提出申请将程序语言更改为英文。

在 2017 年 7 月 10 日，“仲裁中心”收到专家组行政专家组程序指令第一号，只要被投诉人根据《程序规则》(第四章“答辩”)提交答辩书，专家组应以中英双语管理本案相关事宜，否则专家组应以英文管理。同时，专家组强调投诉人不需要将投诉书以及附件材料翻译为中文。

2017 年 7 月 11 日，“仲裁中心”将行政专家组程序指令第一号以电子邮件方式发送至被投诉人(同时抄送予投诉人)，要求被投诉人在二十天内(即 2017 年 7 月 31 日或之前)提交中文答辩书。

2017 年 7 月 31 日，被投诉人并未按照《程序规则》(第四章“答辩”)提交答辩或提出任何意见，也未对投诉人将程序语言更改为英文的申请表示异议。

2017 年 8 月 1 日，“仲裁中心”通知专家组以及投诉人，被投诉人没有在规定时间内提交答辩或提出任何意见。根据行政专家组程序指令第一号，专家组应使用英文管理本案相关事宜。“仲裁中心”亦提请专家组通知裁决提交日期。

2017 年 8 月 2 日，专家组以电子邮件方式通知“仲裁中心”将于 2017 年 8 月 16 日或之前作出裁决。

2017 年 8 月 2 日，“仲裁中心”以电子邮件的形式通知双方当事人，专家组将在 2017 年 8 月 16 日或之前作出裁决。

7. 事实背景

投诉人

本案的投诉人为 Hermès International，其注册地址为法国巴黎圣奥诺雷郊区街 34 号(34 rue du Faubourg St. Honore, F-75800 Paris, France)。爱马仕国际 (Hermès International) 公司创立于 1837 年，是法国著名的高档时尚奢侈品生产商，专注于皮革制品、生活用品配件、香水、珠宝、手表以及成衣类制品。爱马仕位列全球最具创新力企业百强排行榜第 32 名以及世界最具价值品牌排行榜第 48 名。投诉人在中国上海开设了门店，并运营其中文网站 https://www.hermes.com/index_cn.html。

投诉人授权代理人是 SILKA Law AB，联络地址为瑞典斯德哥尔摩 114 56 号 (114 56 Stockholm, Sweden)。

被投诉人

本案被投诉人为徐彩云，其地址、电话、传真、注册办事处等数据均不详，联系邮箱为 caimei.xu@foxmail.com。

被投诉人于 2017 年 1 月 18 日注册本案争议域名 <爱马仕.cn > (域名代码: xn—7mqw57f1s1a.cn)。

注册服务机构

争议域名的注册机构是浙江贰贰网络有限公司，地址为中国浙江杭州西湖区紫霞街 176 号杭州互联网创新创业园 2 号楼 11 楼，联系电话为 (+86) 4006602522，联系邮箱为 service@22.cn。

8. 当事人主张

投诉人

投诉人于 1996 年在北京开设了第一间专卖店。“爱马仕”是品牌的中文官方名称。如今，投诉人的销售比例由 30%左右皮革制品，15%衣服，12%围巾和 43%其他商品组成。爱马仕活跃在 Facebook Instagram Twitter Youtube、Google+ 等各大社交平台宣传其旗下眼镜产品，详情如下：

平台	网站链接
Facebook	https://www.facebook.com/hermes
Instagram	https://www.instagram.com/hermes
Twitter	https://twitter.com/hermes_paris
YouTube	https://www.youtube.com/user/hermes/home
Google+	https://plus.google.com/+hermes

投诉人在国际上（包括被投诉人可能居住的中国）拥有多个包括或含有

“HERMES”一词的商标，相关注册商标概述如下：

商标	注册时间	注册号	注册类型
HERMES	12/02/2009	1000404A	国际
爱马仕	12/10/1998	1214392	中国国内
爱马仕	07/07/2015	14580985	中国国内

投诉人为一系列包含其注册商标的注册域名的所有人，通过这些域名接触更多的潜在消费者进行产品网络宣传，注册域名包括：“www.hermes.com”，“www.hermes.com.cn”，“www.hermes.cn”，“www.hermes.asia”。此前投诉人多次通过 UDRP 程序就其“爱马仕”商标提出域名争议且获胜，是因为投诉人为“爱马仕”中文商标所有人，这些域名争议案件的专家组都一致认定投诉人对“爱马仕”商标享有合法商标权利。相关域名案件包括但不限于：

- "<hermes.clothing>" (世界知识产权组织 D2014-1760 号案件)；
- "<hermesbyhaircutjp.org>" (世界知识产权组织 D2013-1407 号案件)；
- "<discounthermeshandbags.net>" (世界知识产权组织 D2011-1125 号案件)；
- "<hermes-birkins.net>" (世界知识产权组织 D2011-0514 号案件)；
- "<hermes-online-store.com>" (世界知识产权组织 D2011-0542 号案件)。

一、投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的近似性（“《解决办法》”第八条）

投诉人主张，国际化域名<爱马仕.cn>（域名代码：xn—7mqw57f1s1a.cn）

直接完整得包含了投诉人商标“爱马仕”。

投诉人认为，互联网用户将争议域名视为一个可以找到投诉人认可产品信息的网站。投诉人进一步向专家组阐述 WIPO 概述中关于 UDRP 部分选取问题第 1.2 段，第二版（“WIPO 概述 2.0”），以及 International Business Machines Corporation 诉 Sledge, Inc. / Frank Sledge（WIPO 案件号码 D2014-0581）一案。此案专家组认为“此外，在混淆相似性测试中，忽略域名中添加国家代码顶级后缀（如“.cn”和“.com.cn”）一般是可接受的”。

投诉人也提请专家组关注“仲裁中心”Bayer AG 诉 HUO Gai Zben（案件号码 DCN-1500631）一案，此案专家组没有进一步阐述 .com.cn 的实际延展，裁定争议域名与投诉人商标相同。

基于以上事由，投诉人主张争议域名与投诉人注册商标相同。

二、被投诉的域名持有人对域名或者其主要部分不享有合法权益（“《解决办法》”第八条）

投诉人不认为被投诉人通过使用争议域名而获得高知名度。WHOIS 信息是 WHOIS 记录中唯一将被投诉人与争议域名联系起来的证据。它明确了注册人“徐彩云”在本质上与争议域名并不相同这一事实。

被投诉人没有向投诉人提供任何证据，证明其曾使用、或准备使用争议域名在真正意义上提供享有名称合法权益的名称“Hermes”或“爱马仕”的货

物或服务。

投诉人主张，使用谷歌或百度这类搜索引擎检索争议域名，返回结果指向投诉人的官网以及有关投诉人全球范围(包括中国市场)商业活动的新闻报道。投诉人认为，如果被投诉人在注册争议域名前进行类似检索，被投诉人会迅速了解到商标已为投诉人所有，且投诉人已在中国乃至世界各地广泛使用此商标。

投诉人认为没有证据证明被投诉人曾使用或准备使用争议域名在真正意义上提供货物或服务。

投诉人认为它已成为与“爱马仕”相关联的独特标识，被投诉人意图利用投诉人的市场影响力以及商誉。

投诉人认为中国互联网络信息仲裁中心提出的时效限制对被投诉人有利。争议域名于2017年1月18日注册，假设被投诉人将持续被动持有域名直至2019年1月18日，根据《解决办法》，在这段时间内投诉人被禁止递交投诉书。一旦限期届满，被投诉人就能将域名放到领域售后市场销售，将投诉人置于一种尴尬的境地，这样投诉人没有其他办法，只能高价购回争议域名，继而在中国就此事开始耗时冗长的诉讼程序。

投诉人主张，上述情形证明被投诉人对争议域名不享有合法权益。注册人姓名“徐彩云”无论在哪一方面都不能反映争议域名，也与争议域名不相似。通过不同搜索引擎和数据库进行的研究不能证明被投诉人对“爱马仕”一

名享有任何注册商标权或者有商业隶属关系。

三、被投诉的域名持有人对域名的注册或者使用具有恶意（“《解决办法》” 第八条和第九条）

投诉人主张，现有争议域名解析为非活动页面。投诉人提请专家组关注 Telstra Corporation Limited 诉 Nuclear Marshmallows (WIPO 案件编号 D2000-0003)，此案专家组认为如果对域名不享有合法权益并参考了投诉人的商标，注册或被动持有该争议域名的行为便会构成恶意注册或使用争议域名。投诉人认为在本案被投诉人明显恶意注册争议域名，意图采用投诉人高知名度商标，侵犯投诉人的权利。投诉人进一步表明，其它争议域名案件专家组认为，任何没有主动销售或主动联系商标所有人（被动持有）等明显缺乏所谓“主动使用”（如解析网站）争议域名的行为，可能会被视为恶意行为。但是，所有情况都应经验证后再决定被投诉人是否不真诚。

投诉人认为，被“主动使用”的争议域名注册时间晚于投诉人具有广泛知名度商标注册时间，这会对投诉人品牌造成重大损失，这是典型的恶意使用域名行为。投诉人认为尽管目前争议域名没有被使用，这种被动持有域名不作为的情形已构成恶意使用争议域名。

投诉人总结道，争议域名在本质上具有足以导致与投诉人商标混淆的近似性，阻止投诉人根据顶级域名(ccTLD.cn) 将其商标反映在相应争议域名中，这些情形进一步证明被投诉人缺乏诚信。此外，投诉人认为被投诉人具有足够的时间和机会激活争议域名，以证明其使用行为不会构成恶意使用。然而，在投诉人提交投诉书时，被投诉人仍未激活争议域名。投诉人国际域名和中文

域名注册时间早于被投诉人争议域名注册时间。被投诉人在注册域名的时候，很可能不了解商标背后投诉人的权利以及所述商标的价值。因此，投诉人坚信被投诉人恶意注册和使用争议域名，提请专家组将争议域名<爱马仕.cn>转移给投诉人。

被投诉人

被投诉人没有提交答辩意见。

9. 专家组意见

程序语言

《程序规则》第八条规定：

“除非当事人另有约定或者专家组在特殊情形下另有决定，域名争议解决程序所使用的语言应为中文。专家组对任何非以中文制作的文件可以要求当事人提交全部或部分中文译文。”

投诉人申请将程序语言更改为英文基于以下原因：(1) 大量证据表明被投诉人通晓英文。争议域名完全包含国际商标“爱马仕”(英文译为 HERMES)，
“爱马仕”在中文没有任何字面含义；(2) 网站为非活动页，没有以某一中国消费者特定群体为目标。此外，投诉人无法以中文开展进行整个程序，如果投诉人要翻译投诉书以及支持附件材料，将会导致大量的额外费用支出，程序延迟延期；(3) 本案与 Mou Limited 诉 Zeng Xiang / Debra Nelis /

Privacy Protection Service Inc. d/b/a PrivacyProtect.org (WIPO 案件编号 D2016-0759) 情况相似 (争议域名都包含商标 “爱马仕”、中国注册服务机构以及以中文拟定的注册协议)，上述援引案件中的专家组收到以英文或中文为程序语言的答辩，但是专家组允许投诉人提交英文辅助证据，他们认为，“...就本案情况而言，要求投诉人重新提交中文支持文件材料会对投诉人造成不必要的成本负担以及导致不必要的程序延误。”。

“仲裁中心”向被投诉人发送电子邮件就相关程序语言问题询问意见。然而，被投诉人没有答复“仲裁中心”请求。

由专家组决定最终程序语言。《程序规则》第三十一条给予专家组广泛裁量权开展程序，专家组应确保争议解决程序快速进行，费用支出合理。专家组认为被投诉人完全了解投诉人反对被投诉人的主张。“仲裁中心”向被投诉人发送数封电子邮件，请被投诉人提交答辩意见。被投诉人并未对投诉人申请全程以英文开展程序的主张表示异议。

本专家组认为，争议域名完全由中文汉字“爱马仕”组合而成，这个组合独一无二，在汉语中除了指向投诉人的国际商标外，不具有任何含义。

本专家组也注意到，如果投诉人不得不将所有已经提交的英文材料翻译为中文，可能会产生额外的费用。专家组认为投诉人提出的原因并不完全让人满意，除了投诉人提交的证据外，没有其它有力的证据可以证明被投诉人通晓英文。投诉人身负举证责任，提出论点，然而专家组认为投诉人无需进行这样的调查。此外，如果消费者想通过搜索中文名词“爱马仕”获得广泛认

可产品相关信息，这些消费者更有可能是中国人而非非华语人士。

本专家组应该考虑公平问题，适当平衡双方当事人费用和时间。即使双方当事人被给予平等答辩的机会，在专家组作裁定时，被投诉人在整个程序中持续保持沉默这一事实会被纳入考虑范围。

本专家组认为投诉人不通晓中文并不重要。不过，鉴于被投诉人既未提交与其利益相关答辩书，也未答复程序语言邮件，要求投诉人将投诉书翻译为中文对投诉人不公平。因为专家组手中持有的文件都是英文文件，所以专家组裁定裁决书语言应为英文。

就本案事实而言，专家组裁定程序语言应为英文。专家组认为以英文裁决书为最终文本并在后文附上裁决书中文译本——附件 1(中文译本)较为合适。如发布的专家组裁决书英文、中文文本相冲突，应以英文裁决文本为最终解释文本。

实质性问题

根据《解决办法》第八条，投诉人有责任证明：

- (一) 被投诉的域名与投诉人享有民事权益的名称或者标志相同，或者具有足以导致混淆的近似性；
- (二) 被投诉的域名持有人对域名或者其主要部分不享有合法权益；
- (三) 被投诉的域名持有人对域名的注册或者使用具有恶意。

《解决办法》第七条规定，投诉人和被投诉人应当对各自的主张承担举证责任。

《程序规则》第三十一条规定，如果被投诉人未提交答辩，如无特殊情形，专家组应当依据投诉书裁决争议。

关于相同或混淆性相似

商标的所有权一般会被视为一个常见的门槛问题。商标的地址、注册（或初次使用）日期以及所注册的商品和/或服务，都与《解决办法》第一项规定提及的在商标权利无关。然而，这些因素会影响专家组根据《解决办法》第三项被投诉人是否恶意注册和使用争议域名所作出的裁决。（援引自专家组意见 WIPO 概述中关于 UDRP 部分选取问题第 1.1 段，第三版（“WIPO 概述 3.0”））。

本专家组认为，投诉人在中国市场经多年营销、推广和做广告，在高级时装界享有广泛的盛誉和极高的知名度。

争议域名<爱马仕.cn>中，唯一具有识别性和显着性的部分是“爱马仕”，其后缀部分不会对争议域名与投诉人商标混淆性近似造成任何实质影响。因此，访问被投诉人域名的互联网用户可能会误认为被投诉人和投诉人之间存在某些关系、连接、许可或关联，而事实上，二者间并无关联。

本专家组认为被投诉人姓名“徐彩云”无论在外观或读音皆与争议域名不同。从语言学的角度看，中文“爱马仕”一词没有任何字面、语义或句法含

义。“爱”、“马”和“仕”三个中文汉字的组合不符合中文语言习惯。上述复合词很可能是合成词或音译词。

因此，专家组裁定投诉人满足了《解决办法》第八条第一项之条件。

关于被投诉人的合法权益

投诉人必须提供确凿的表面证据证明被投诉人缺乏合法权益。一旦上述表面证据成立，被投诉人有责任证明域名中含有的合法权益，否则投诉人的主张满足《解决办法》第八条第二项。（援引自 WIPO 概述 3.0 第 2.1 段）

投诉人（自 1998 年起）为 HERMÈS 和爱马仕商标所有人，注册时间早于被投诉人注册争议域名的时间（2017 年 1 月 18 日）。

专家组接纳投诉人提供的表面证据，证明投诉人对被投诉人使用商标“爱马仕”不存在任何授权、许可或允许，并主张被投诉人对争议域名不享有合法权益，举证责任继而转移到被投诉人，被投诉人需举证反驳这一假设。投诉人援引 The Argento Wine Company Limited 诉 Argento Beijing Trading Company, supra; Do The Hustle, LLC 诉 Tropic Web (WIPO 案件编号 D2000-0624) 以及 Croatia Airlines d.d. 诉 Modern Empire Internet Ltd. (WIPO 案件编号 D2003-0455)。被投诉人并未提交答辩书，也未提供任何能证明其对争议域名享有合法权益的证据。

其次，本专家组发现争议域名指向一个非活动页面，被投诉人未曾使用或准备使用争议域名在真正意义上提供货物或服务。也没有证据显示被投诉人因通过

使用争议域名而获得很高的知名度。

专家组认为，投诉人提交的证明被投诉人对争议域名没有合法权益的表面证据为：（1）被投诉人并未通过使用争议域名而获得很高的知名度；（2）被投诉人与投诉人没有任何关系，未被授权或得到许可使用“爱马仕”商标。

因此，专家组裁定投诉人满足了《解决办法》第八条第二项之条件。

关于恶意或使用

《解决办法》第九条提供了恶意注册或使用域名的情形：

被投诉的域名持有人具有下列情形之一的，其行为构成恶意注册或者使用域名：

（一）注册或受让域名的目的是为了向作为民事权益所有人的投诉人或其竞争对手出售、出租或者以其他方式转让该域名，以获取不正当利益；

（二）多次将他人享有合法权益的名称或者标志注册为自己的域名，以阻止他人以域名的形式在互联网上使用其享有合法权益的名称或者标志；

（三）注册或者受让域名是为了损害投诉人的声誉，破坏投诉人正常的业务活动，或者混淆与投诉人之间的区别，误导公众。

专家组认为，被投诉人在注册争议域名前一定已对投诉人商标有所了解。

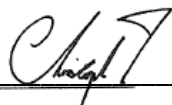
被投诉人注册争议域名最多只能表明被投诉人意图想要阻止投诉人注册与投诉人商标相应的相关争议域名。此外，被投诉人将争议域名解析为非活动页面

这一行为，证明被投诉人故意阻止投诉人将其商标反映于域名中，从而给投诉人客户造成混淆，损害投诉人的形象和声誉。

因此，专家组裁定投诉人满足了《解决办法》第八条第三项之条件。

10. 裁决

基于上述理由，根据《解决办法》第十四条和《程序规则》第三十七条，专家组裁定本案投诉人投诉成立，并按投诉人请求，将争议域名转移给投诉人。



Dr. Christopher To 陶荣博士

一人独任专家组

日期: 2017 年 8 月 16 日