



## **.hk Domain Name Dispute Resolution** **ARBITRATION PANEL DECISION**

Complainant: Mead Johnson & Company, LLC

Respondent: Hong Kong Ohyeah (Group) Co Limited

Case Number: DHK-1400105

Contested Domain Name: <meizanchen.hk>

Panel Member: Sebastian Hughes

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

The Complainant is Mead Johnson & Company, LLC of 2400 West Lloyd Expressway, Evansville, Indiana 47721-0001, USA.

The Respondent is Hong Kong Ohyeah (Group) Co. Limited of Rm 1005, Commercial Crt, 216 Fr Yuen Street, Guangzhou, Guangdong, China.

The contested domain name is <meizanchen.hk>, registered by the Respondent with Web Communications Limited (the “Registrar”) of Kuala Lumpur, Malaysia.

### **2. Procedural History**

The Complaint was filed with the Hong Kong International Arbitration Center (the “Center”) on February 25, 2014. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the contested domain name, and the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant of the contested domain name, and providing the Respondent’s contact details.

The Center verified that the Complaint satisfied the formal requirements of the HKDNR Domain Name Dispute Resolution Policy (the “Policy”) and the HKDNR Domain Name Dispute Resolution Rules (the “Rules”).

In accordance with paragraphs 2(a) and 4(a) of the Rules, the Center formally notified the Respondent of the Complaint, and the proceeding commenced, on March 5, 2014. In accordance with paragraph 5(a) of the Rules, the due date for Response was March 26, 2014. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on March 28, 2014.

The Center appointed Sebastian Hughes as the sole panelist in this matter on April 4, 2014. The Panel finds that it was properly constituted. The Panel has confirmed its impartiality and independence, in accordance with paragraph 7 of the Rules.

### **3. Factual Background**

#### **A. Complainant**

The Complainant is a company incorporated in the USA and the owner of several registrations in Hong Kong and China for the trade mark 美贊臣/美贊臣 (the “Trade Mark”), the earliest dating from 1994.

#### **B. Respondent**

The Respondent is a corporation apparently incorporated in China.

#### **C. The Contested Domain Name**

The contested domain name was registered on July 20, 2013.

#### **D. Use of the Contested Domain Name**

The Respondent has made no use of the contested domain name.

### **4. Parties’ Contentions**

#### The Complainant

The Complainant was founded in America in 1905. For more than a century, the Complainant has led the way in developing safe, high quality, and innovative products to help meet the nutritional needs of infants and children. With more than 70 products in over 100 countries, the Complainant’s products are trusted by millions of parents and healthcare professionals around the world. The Complainant has become well-known worldwide, including in Hong Kong and in China.

The Complainant founded its Hong Kong subsidiary in 1968. The Complainant’s infant milk product has been the top seller in Hong Kong since 2002.

The Complainant entered into the Chinese market in 1993. Its sales network in China covers 29 provinces. The Complainant is also the market leader for infant milk products in China.

#### The Respondent

The Respondent did not respond to the Complainant's contentions.

## **5. Findings**

According to paragraph 4(a) of the Policy, the Complainant has the burden of proving that:

- (i) The contested domain name is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights; and
- (ii) The Registrant has no rights or legitimate interests in respect of the contested domain name; and
- (iii) The contested domain name has been registered and is being used in bad faith; and
- (iv) If the contested domain name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name.

### **(1). Identical/confusing similarity**

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration which predate the date of registration of the contested domain name by many years.

The contested domain name is identical to the pinyin phonetic transliteration of the Trade Mark. It is aurally identical to the Mandarin pronunciation of the Trade Mark.

The Panel therefore finds that the contested domain name is confusingly similar to the Trade Mark, and holds that the Complaint has fulfilled the first condition of paragraph 4(a) of the Policy.

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

Paragraph 4(d) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a registrant has rights or legitimate interests in a contested domain name:

- (i) Before any notice to the registrant of the dispute, the registrant's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services in Hong Kong; or
- (ii) The registrant (as an individual, business, or other organisation) has been commonly known by the domain name, even if the registrant has acquired no trade mark or service mark rights in Hong Kong; or

- (iii) The registrant has trade mark or service mark rights that are identical to the domain name the registrant is holding; or
- (iv) The registrant is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

There is no evidence that the Complainant has authorised, licensed, or permitted the Respondent to register or use the contested domain name or to use the Trade Mark. The Complainant has prior rights in the Trade Mark which precede the Respondent's registration of the contested domain name by many years. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the contested domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. D2003-0455).

The Respondent has failed to show that it has acquired any trade mark rights in respect of the contested domain name or that the contested domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the evidence suggests the contested domain name has not been used at all.

There has been no evidence adduced of any relevant trade mark rights held by the Respondent.

There has been no evidence adduced to show that the Respondent has been commonly known by the contested domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the contested domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish rights or legitimate interests in the contested domain name. The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **(3). Bad faith**

This is not a proceeding where there is evidence of any of the specific non-exclusive examples of bad faith registration and use set down in paragraph 4(b) of the Policy. However, the circumstances indicated under paragraph 4(b) of the Policy are not exclusive and exhaustive, and there are grounds under the Policy for a determination of bad faith based upon other general considerations not specifically enumerated in the Policy.

It has long been held in UDRP cases that, in certain circumstances, passive use of a domain name may amount to bad faith under the Policy (*Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000 0003).

In all the circumstances of this case, the Panel finds there are sufficient grounds for an inference of bad faith, given:

- (i) The notoriety of the Complainant and the Trade Mark, which suggests the Respondent must have known of the Complainant and of the Trade Mark at the time it registered the contested domain name;
- (ii) The contested domain name is identical to the pinyin transliteration of the Trade Mark;
- (iii) The passive use of the contested domain name; and
- (iv) The failure of the Respondent to file a Response (*Bayerische Motoren Werke AG v. (This Domain is For Sale) Joshuathan Investments, Inc.*, WIPO Case No. D2002 0787).

For all the foregoing reasons, the Panel concludes that the contested domain name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled.

- (4). If the Registrant's Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name**

The fourth limb under paragraph 4(a) of the Policy is not applicable to this proceeding, as the contested domain name has apparently not been registered by an individual person.

## **6. Conclusions**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the contested domain name <meizanchen.hk> be transferred to the Complainant.

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Sebastian Hughes  
Dated: April 29, 2014