1. Procedural History

The Complainants in this case are Chopard International SA, Chopard Holding SA and Chopard & Cie SA, all of which are registered in Switzerland. Their contact details are as follows:

Chopard International SA: Route de Promenthoux, CH-1197 Prangins, Switzerland

Chopard Holding SA: 55 Boulevard de Pérolles, CH-1700 Fribourg, Switzerland

Chopard & Cie SA: Rue de Veyrot 8, CH-1217 Meyrin 2, Genève, Switzerland

Their authorized representative in these proceedings is Cedric G. Lam of Perkins Coie, Solicitors & International Lawyers in Hong Kong.

The Respondent is Shenyang Zhongxu Economic and Trade Co Ltd. Its address is No. 76, Nan Dong Jiao Lu, Shenhe District, Shenyang City, Liaoning Province, PRC.

The domain name in dispute is <chopard.cn> (the “Disputed Domain Name”). The Registrar of the domain name is HiChina Web Solutions (Beijing) Limited (“HiChina”) and its address is 3/F, Hichina Mansion, No. 27 Gulouwai Avenue, Dongcheng District, Beijing 100011, China.
On 21 October 2004, pursuant to the CNNIC Domain Name Dispute Resolution Policy (the “CNDRP”) of 30 September 2002 of the China Internet Network Information Centre (“CNNIC”), the Rules for CNNIC Domain Name Dispute Resolution Policy (“the Rules”) and Hong Kong International Arbitration Centre Supplemental Rules to China Internet Network Information Centre Domain Name Dispute Resolution Policy (the “HKIAC Supplemental Rules”), the Complainant submitted a complaint in the English language to the Hong Kong International Arbitration Centre (“HKIAC”) and elected this case to be dealt with by a single-member panel. On the same day, the HKIAC also received a sum of Hong Kong Dollars 3000.00 as the Domain Name Dispute Complaint fee in connection with the present case.

On 23 October 2004, the HKIAC notified the Respondent by email that a Complaint had been filed against it.

On 23 October 2004, the HKIAC sent to the Complainant by email an acknowledgement of receipt of the Complaint and the Domain Name Dispute Complaint fee. On the same day, the HKIAC also requested HiChina to confirm that the Disputed Domain Name is registered with HiChina and if so, to provide the registrant’s contact information, administrative contact and the billing contact of the Dispute Domain Name.

On 26 October 2004, HiChina confirmed that the Disputed Domain Name was registered with it and that the registrant is the Shenyang Zhongxu Economic and Trade Co. Ltd.

On 1 November 2004, the HKIAC served a Notification of Commencement of Proceedings on the Respondent. The Notification stated that the Respondent had twenty (20) calendar days from 1 November 2004 to submit a response to the complaint.

On 22 November 2004, the HKIAC informed the Respondent that a response from it had not been submitted within the time specified in the Rules, and that stated in the Notification of Commencement of Proceedings. Since the Respondent did not file a response in accordance with the time specified, the HKIAC appointed a Panel to proceed to render the decision.

On 3 December 2004, the HKIAC informed the single-member Panel, Michael Hwang of his appointment in this case. The Panel determines that the appointment was made in accordance with Article 26(i) of the Rules.

On 6 December 2004, the HKIAC transferred the files of this case to the Panel.

2. Factual Background

For the Complainant

The Complainants are members of a renowned manufacturing group in Switzerland, founded by Mr Louis-Ulysse Chopard in 1860 and which specialises in watches and jewellery. The Complainants and their predecessors have, for almost 150 years, been
trading under the name “CHOPARD” and have been using “CHOPARD” as their primary trade name and trademark in their chronograph, jewellery and accessories businesses worldwide.

The Complainants have also registered the “CHOPARD” trademark in many countries for a variety of luxury goods but principally for watches. Further, the Complainant had, as early as 1989, registered the “CHOPARD” trademark in China.

The Complainants’ claim that the brand name “CHOPARD” is one of the well-known brands of watches in China, and is regarded as one of the best-known brands of watches in the world. The Complainants’ claim that the “CHOPARD” brand of watches is widely recognized in China as a brand of high quality watches. The Complainants have spent a large amount of resources in promoting the “CHOPARD” brand using various advertising channels in China, including magazines for high-end watches. The Complainants therefore claim that the “CHOPARD” name and trademark is undeniably a famous trademark in China.

For the Respondent

The Respondent registered the Disputed Domain Name on 17 March 2003.

3. Parties’ Contention

The Complainant

The Complainants claim that they have civil rights and interests in “Chopard” and that the Respondent has no legitimate rights and interests in the Disputed Domain Name which is identical to the Complainants’ trade name and trademarks.

The Complainants claim that they have widely used and registered the “CHOPARD” trademark around the world, including China.

The Complainants claim that since 1989, they have registered the “CHOPARD” trademark with the PRC Trademark office in seven different classes of goods (Classes 3, 9, 14, 16, 18, 25 and 34 of the International Classification of Goods) and have obtained five trademark registrations incorporating the word “CHOPARD” and registered two [xiao bang] “CHOPARD” trademarks in simplified Chinese characters.

The Complainants claim that they had, as early as 22 November 1995, registered <chopard.com>, and has been using <chopard.com> as the domain name for its official worldwide website to promote its businesses. The Complainants also assert that they have registered many country-specific domain names around the world, for example <chopard.at>, <chopard.ch>, <chopard.de>, <chopard.hk> and <chopard.jp>.

The Complainants claim that the country-specific domain names have become very important on-line addresses for its consumers around the world to reach the Complainants.
The Complainants assert that the operative part of the Disputed Domain Name is identical to its trade name and the “CHOPARD” trademarks registered by the Complainants in China and other jurisdictions.

The Complainants assert that the Respondent registered the Disputed Domain Name to divert on-line traffic of consumers who wished to gain access to information regarding the CHOPARD brand of products in China. The Complainants argue that the Respondent has thereby created confusion among consumers worldwide and infringed the proprietary rights and interests of the Complainants.

The Complainants assert that the Respondent has no legitimate rights and interests in the Disputed Domain Name. The Complainants argue that the Respondent registered the Disputed Domain Name only on 17 March 2003, more than 14 years after the Complainants had registered and been using the “CHOPARD” trademark in China. The Complainants claim that the corporate name of the Respondent is “Shenyang Zhongxu Economic and Trade Co Ltd”, which is unrelated to the operative part of the Disputed Domain Name. The Complainants also assert that the Respondent does not have any relevant trademark registrations in China, and has not been given any licence to use any of the “CHOPARD” trademarks. The Complainants further argue that the Disputed Domain Name has not been put to use.

The Complainants assert that the Respondent has been abusing the “.cn” domain name registration system by repeatedly applying to register the trade names or trademarks of others as its own “.cn” domain names. The Complainants claim that the Respondent had previously registered the following domain names:

<patekphilippe.cn>;  
vacheronconstantin.com.cn>;  
longines.cn>;  
longines.com.cn>;  
oris.cn>; and  
oris.com.cn>

The Complainants argue that the Respondent’s acts of registering “.cn” domain names of the trade names or trademarks of others, including that of the Complainants’, has prevented the Complainants and other owners of trade names and trademarks from adopting and using names and trademarks in which the Complainants and others have legitimate rights and interests as their domain names.

The Complainants refer to case no. DCN - 0400015 in which the Respondent was complained against for registering the domain names <patekphilippe.cn> and <patekphilippe.com.cn> (the “Patek Philippe Decision”). The Respondent was found guilty of engaging in the deliberate practice of registering “.cn” domain names which are identical or similar to the famous names and/or trademarks of watch manufacturers which amounts to bad faith calculated to prevent the relevant well-known watch manufacturers
from using, in the form of domain names on the Internet, their names and trademarks in which they have legitimate rights and interests, conduct which the Panel found amounts to bad faith.

The Complainants further assert that the Respondent registered the Disputed Domain Name for the purpose of selling, renting or otherwise transferring the same to obtain unjustified benefits. The Complainants claim that it is almost certain from the facts of the Patek Philippe Decision that the Respondent registered the Disputed Domain Name with the intention of selling it to the Complainants for unjustified benefits. In the Patek Philippe Decision, the complainant stated that the Respondent’s representative had informed the complainant’s lawyer that the Respondent registered the domain names of <patekphilippe.cn> and <patekphilippe.com.cn> for the purpose of selling them to the complainant. The Respondent also offered to sell the domain names of <patekphilippe.cn> and <patekphilippe.com.cn> to the complainant for US$1,000,000.

The Respondent

The Respondent did not file a Response within the stipulated time.

4. Findings

A. Respondent in Default

Article 31 of the Rules states that:

“If a Respondent does not submit a response, the Panel shall, in absence of exceptional circumstances, decide the dispute based upon the complaint”

Further, Article 34 of the Rules states that:

“In the event that a party, in the absence of exceptional circumstances, does not comply with any of the provisions established by these Rules or any of the time periods fixed by the Panel, the Panel shall proceed to a decision on the complaint.”

The Panel finds no exceptional circumstances existing, and it will proceed to determine the dispute based upon the Complaint.

B. The Language of the Proceedings

Article 6 of the CNDRP states that:

“The language of the domain name dispute resolution proceeding shall be Chinese, unless otherwise agreed by the parties or determined by the Panel.”

Article 8 of the Rules states 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.”

In the present case, the Disputed Domain Name is in the English language, the communications between the HKIAC and the Panel, Complainant and Respondent were all in the English language. The Complaint was also in the English language. The Panel finds that the above facts constitute a sufficiently exceptional case, and the Panel determines that the language of the proceedings shall be English.

C. The Merits

Article 8 of the CNDRP states that:

Support of a Complaint against a registered domain name is subject to the following conditions:

i. the disputed domain name is identical with or confusingly similar to the Complainant’s name or mark in which the Complaint 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 is using the domain name in bad faith.

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

Article 31 of the Rules provides that:

“The Panel shall conduct the proceedings in such manner as it considers appropriate according to these Rules, and decide a complaint on the basis of the statements and documents submitted and in accordance with CNNIC DRP, as well as any rules and principles of law which it deems applicable.”

Based on the Complaint and the supporting documents submitted by the Complainants, the CNDRP and the Rules, this Panel finds as follows:

1) Identical or Confusing Similarity

The Respondent registered the Disputed Domain Name on 17 March 2003. However, the Complainants have been using the “CHOPARD” trade name and trademark for over 144 years. The Complainants have also registered the “CHOPARD” trademark around the world and have, since 1989, registered the “CHOPARD” trademark with the PRC Trademark Office in seven different classes of goods. The Complainants have also registered five other trademarks incorporating the word “CHOPARD” (“CHOPARD GENEVE”, “CHOPARD MADNESS”, “CHOPARD HAPPY BRIDE”, “CHOPARD GRAN TURISMO” and “CHOPARD HEAVEN”) and registered two other trademarks
of the CHOPARD trademark in simplified Chinese characters. In addition, the Complainants have registered <chopard.com> as its official worldwide website as well as many country-specific domain names (e.g. <chopard.at>, <chopard.fr>, <chopard.ch>, <chopard.jp>, <chopard.hk>) for its consumers around the world to gain access to information about CHOPARD and its brand of products.

The Respondent has failed to submit a response objecting that the Complainant has civil rights or interests in the “CHOPARD” trade name or trademark as required under Article 8(i) of the CNDRP.

In the Disputed Domain Name, the “.cn” is the country code domain name. The Panel finds that the remaining part of the Disputed Domain Name “chopard” is identical to the Complainants’ trade name and trademarks.

Accordingly, the Panel finds that the Complainants have satisfied the first condition under Article 8 of the CNDRP.

2) Rights or Legitimate Interests of the Respondent

The Respondent only registered the Disputed Domain Name on 17 March 2003. In contrast, the Complainants have been using the “CHOPARD” trademark in China for more than 14 years before the Respondent registered the Disputed Domain Name.

The Respondent is a company named “Shenyang Zhongxu Economic and Trade Co. Ltd”, a name which has no connection with the operative part of the Disputed Domain Name. The Complainants claim that the Respondent has no relevant trademark registrations in China and has not been given any licence to use any of the “CHOPARD” trademarks in China. The Complainants also claim that the Respondent has not been using the Disputed Domain Name, as it is not linked to any webpage.

To these assertions, the Respondent has failed to submit a Response to deny them, or adduced any evidence to show that it has legitimate rights and interests in the Disputed Domain Name.

Accordingly, the Panel finds that the Complainants have satisfied the second condition under Article 8 of the CNDRP.

3) Bad Faith

Article 9 of the CNDRP states that:

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


i. the disputed domain name holder has registered or acquired the domain name for the purpose of selling, renting or otherwise transferring the domain name to obtain unjustified benefits; 

ii. the disputed domain name holder registered the domain name in order to prevent the owners of the name or mark from reflecting the name or the mark in a corresponding domain name, provided that the domain name holder has been engaged in a pattern of such conduct; 

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; 

iv. other circumstances which may prove the bad faith.

The Complainants make two assertions in support of the third condition under Article 8 of the CNDRP. First, the Complainants assert that the Respondent registered the Disputed Domain Name in order to prevent the Complainants from reflecting the “CHOPARD” trade name or trademark in a corresponding domain name, and the Complainants claim that the Respondent has been engaged in a pattern of such conduct. The Complainants have referred the Panel to the decision in case no. DCN-0400015 involving the domain names <patekphilippe.cn> and <patekphilippe.com.cn>. In that case, the Respondent was found to have registered the domain names <patekphilippe.cn> and <patekphilippe.com.cn> for the purpose of preventing the complainant in that case from using, in the form of domain names on the Internet, the complainant’s name and trademark. The Respondent was also found guilty of engaging in a pattern of such conduct when the Respondent registered other domain names containing well-known trade names and trademarks, such as <vacheronconstantin.com.cn>, <longines.cn>, <longines.com.cn>, <oris.cn> and <oris.com.cn>.

Second, the Complainants argue that it is almost certain, from the past conduct of the Respondent, namely in the Patek Philippe Decision where the Respondent had admitted that it registered the domain names <patekphilippe.cn> and <patekphilippe.com.cn> for the purpose of selling those domain names to the owners of the “Patek Philippe” trademark for a profit, that the Respondent was seeking to sell the Disputed Domain Name to the Complainants for unjustified benefits.

The Panel finds that there is sufficient evidence to show that the Respondent registered the Disputed Domain Name in order to prevent the Complainants from reflecting the “CHOPARD” trade name or trademark in a corresponding domain name, and that the Respondent has engaged in a pattern of such conduct. The Complainants have adduced evidence from a WHOIS search which shows that the Respondent is the registrant of several other domain names, all of which contain famous trade names or trademarks of watchmakers. In fact, the Respondent’s registration of the domain names <patekphilippe.cn> and <patekphilippe.com.cn> was made the subject of a complaint and the Respondent was found to have registered those domain names in order to prevent the complainant in that case from reflecting its trade name or trademark in a corresponding domain name and that the Respondent had engaged in a pattern of such conduct.
Although the Complainants have not adduced evidence showing that the Respondent had in fact made an offer or attempted to sell the Disputed Domain Name to the Complainants, the Panel finds that it is highly possible that the Respondent registered the Disputed Domain Name for the purpose of selling the Disputed Domain Name to the Complainants for unjustified benefits, since previous conduct in the Patek Philippe Decision shows that the Respondent has, at least once, tried to sell its domain names to the owners of famous trade names or trademarks, and the Disputed Domain Name is in fact not being used for any websites linked to the Respondent’s business.

Accordingly, the Panel finds that the Complainants have satisfied the third condition under Article 8 and Article 9(ii) of the CNDRP.

5. Decision

Based on the above analysis, the Panel finds that:

(1) the Disputed Domain Name is identical to the Complainants’ trade name or trademarks in which the Complainants have civil rights or interests;
(2) the Respondent has no right or legitimate interest in respect of the Disputed Domain Name or major part of the domain name;
(3) the Respondent has registered the Disputed Domain Name in bad faith.

Accordingly, pursuant to Article 13 of the CNDRP, the Panel decides that the Disputed Domain Name <chopard.cn> should be transferred to Chopard International SA (Complainant 1) as requested by the Complainants.

3 January 2005          Sole Panelist: Michael Hwang