ADMINISTRATIVE PANEL DECISION  
Case No. DCN-1200501

Complainant:  
BRUICHLADDICH DISTILLERY COMPANY LIMITED

Respondent:  
郑丹

Contested Domain Name:  
<BRUICHLADDICH.COM.CN>

Panel Member:  
MR. WILLIAM LAW

1. Parties and Contested Domain Name

The Complainant is BRUICHLADDICH DISTILLERY COMPANY LIMITED, with address at in Argyll, UK. It is represented by NAMESHIELD in France.

The Respondent is 郑丹 with address in the PRC.

The domain name under disputed is <BRUICHLADDICH.COM.CN> ("Disputed Domain") which is registered with Xiamen eName Technologies Ltd (厦门易名科技有限公司) ("eName") on July 14, 2012.

2. Procedural History

On November 13, 2013, the Complainant submitted a Complaint in English language to Hong Kong International Arbitration Centre ("HKIAC") and elected the case to be dealt with by one single panelist according to the CNNIC Domain Name Dispute Resolution Policy (the "Policy" or "CNDNR"). On November 28, 2012, HKIAC transmitted the acknowledgment of receipt to the Complainant.

On November 29, 2012, eName confirmed with HKIAC that the Respondent is the registrant of the Disputed Domain and the Policy shall apply.

On December 6, 2012, HKIAC requested the Complainant to provide the Complaint in Chinese. On the same day, the Complainant provided the revised English Complaint with reasons for using English as the proceeding language.

On December 12, 2012, HKIAC transmitted the Complaint to the Respondent by email and informed the Respondent of the 20-day period to file a Response. A separate email was sent to the Respondent informing him/her the right to contest the language of this proceeding. However, no Response has been filed.

On January 3, 2013, HKIAC informed the parties of the appointment of Mr. William Law as the sole panelist and the decision would be rendered on or before January 17, 2013.
Language Issue

The Complaint enclosed a copy of the Registration Agreement of eName in Chinese. The Complainant contended that the Disputed Domain is in ASCII character, it has no significance meaning in Chinese and the Complainant’s representative is located in France and the high cost of translation. HKIAC has been candid enough such that all the correspondence to the Respondent and Complainant were sent in both Chinese and English. Had the Respondent stood up and requested the Complaint be provided in Chinese, I would have no doubt to rule that the proceedings be conducted in Chinese. However, the Respondent defaulted in filing a Response. I have also considered the language of the content on the website of the Dispute Domain to look for some direction of the underlying services or goods provided but it was in vain. The Policy does allow panelist to take a broad view in deviating the language of the proceedings from Chinese. I am satisfied that the evidence deduced by the Complainant are mainly in English and would be quite inconvenient to provide in Chinese and, at the same time, I do not see how the Respondent’s right will be detrimental or prejudiced in this situation. I therefore rule that this proceeding and the decision would be conducted in English unless it is challenged by the Respondent, notwithstanding the language of the Registration Agreement and the Policy.

3. Factual Background

The Complaint alleged the followings:

1. The Complainant is a distiller found in 1882 in the westernmost part of Rinns of Islay and has been producing whisky under the BRUICHLADDICH brand;

2. In 2002, the business of the Complainant was acquired by Remy Cointreau;

3. BRUICHLADDICH is a trademark registered in China, Registration Number G929602, registration period 24/5/2007 to 24/5/2017.

4. The Complainant owns a few top-level domain names such as BRUICHLADDICH.COM & BRUICHLADDICH.NET and BRUICHLADDICH.ORG

4. Parties' Contentions

The Complainant

The Complainant contends that the Respondent should have been aware of the brand name of BRUICHLADDICH at the time of registration and rely on the fame of the mark in China and worldwide by relying on Telstra v Nuclear Marshmallows.

The Respondent

The respondent defaulted in filing any Response.

5. Findings

Article 8 of CNDRP provides that a complaint against a registered domain name shall be supported if the following conditions are fulfilled:
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 CNDRP states that the complainant and the respondent shall bear the burden of proof for their own claims.

(1). Identical/confusing similarity

The distinctive part of <BRUICHLADDICH.COM,CN> is "BRUICHLADDICH", which is identical to the registered trademark of the Complainant in China and worldwide. The trademark registration pre-dates the date of registration of the Dispute Domain. I am also satisfied that it is part of the company name of the Complainant and the name has enjoyed high reputation in China and the rest of the world.

(2). Rights or Legitimate Interests of Respondent

The burden of proof shifted to the Respondent. The Complainant submitted that it has never licensed or granted any rights to the Respondent. I am therefore satisfied that the Respondent has no rights or legitimate interest to register and use the Dispute Domain.

(3). Bad faith

The Disputed Domain has not been put in use since the registration. I accept that the Complainant and the BRUICHLADDICH whisky are famous in some part of the world. In the case where the name is a distinctive name with no ordinary or dictionary meaning in Chinese or English, other than in Scottish native Gaelic, and is famous for a few decades, I have no hesitation to rule that the Respondent has registered or used the Dispute Domain with the view either to deny the access of the Internet users to the Complainant or disrupt the business of the Complainant.

6. Decision

The Complainant has satisfied all the 3 grounds laid down in Article 8. I therefore order that the Dispute Domain be transferred to the Complainant.

Sole Panelist: William Law

Date: January 14, 2013 in Hong Kong