Complainant (投诉人)：VICENTE GANDIA PLA, S.A.

Respondent (被投诉人)：XIAMEN ENAME NETWORK CO., LTD /
厦门易名网络有限公司 / 严伟

Disputed Domain Name (争议域名)：<VICENTEGANDIA.COM.CN>

Registrar (注册服务机构)：XIAMEN ENAME TECHNOLOGY CO., LTD. (formerly,
XIAMEN ENAME NETWORK TECHNOLOGY CO., LTD.)
(厦门易名科技有限公司
(原厦门易名网络科技有限公司))

The Parties

1. The Complainant is VICENTE GANDIA PLA, S.A. of Ctra. Cheste a Godelleta, s/n,
CHIVA, 46370 VALENCIA, SPAIN and its authorised representative is Jorge Oria Sousa-
Montes (Attorney at Law of the Madrid Bar in Spain) of C/ Amador de los Ríos, 1 1º 28010
Madrid, SPAIN.

2. The Respondent is XIAMEN ENAME NETWORK CO., LTD (厦门易名网络有限公司)
and its registered contact person (注册联系人) is 严伟 (Yan Wei) whose registered email
address (注册邮箱) is 61357168@qq.com.
3. The Complainant and the Respondent are collectively referred to as the “Parties” and either of them as the “Party”.

The Disputed Domain Names and Registrar

4. The disputed domain name is `<VICENTEGANDIA.COM.CN>`.

5. The Registrar for the disputed domain name is Xiamen Ename Technology Co., Ltd. (formerly, Xiamen Ename Network Technology Co., Ltd.) (厦门易名科技有限公司（原厦门易名网络科技有限公司）) of Fujian Province, Xiamen Software Park Wanghai 19 603, China (email: 1001@ename.com).

6. According to the WHOIS information of the disputed domain names provided by the Registrar, the Respondent, XIAMEN ENAME NETWORK CO., LTD (厦门易名网络有限公司), is the registrant but not the holder of the disputed domain name and its registered contact person (注册联系人) is Yan Wei whose registered email address is 61357168@qq.com.

Procedural History

7. On 19 February 2013 a Complaint in English was filed by the Complainant with the Hong Kong International Arbitration Centre (the “Centre”) by email together with a statement of the Complainant’s request that English be used as the language of the proceedings (the “Statement of Request”).

8. On 20 February 2013, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. The Registrar transmitted by email to the Centre on 20 February 2013 its verification response confirming that the Respondent, XIAMEN ENAME NETWORK CO., LTD (厦门易名网络有限公司), a domain name registration enterprise “域名注册商”, is listed on its records as the registrant but not the holder of the disputed domain name. The Registrar also provided the Centre with the WHOIS information of the disputed domain name, including its registered contact person “注册联系人” Yan Wei (Yan Wei) whose registered email address is 61357168@qq.com.
9. As the Complaint was submitted in English, on 5 March 2013 the Center forwarded a notice to the Complainant’s authorized representative advising him that under Article 6 of the China Internet Network Information Center ("CNNIC") Domain Name Dispute Resolution Policy (the “Policy”) the language of the proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the panel; and that the Complaint’s request that English be used as the language of the proceedings would in due course be submitted to the panel for its determination.

10. In accordance with the Policy issued by CNNIC that became effective on 28 June 2012, the Rules for CNNIC Domain Name Dispute Resolution Policy (the "Administrative Rules") issued by the CNNIC, and the HKIAC Supplemental Rules for the Policy and Administrative Rules (the "Supplemental Rules") issued by the Centre, both effective on 28 June 2012, the Centre formally notified the Respondent of the Complaint on 5 March 2013, and the proceedings commenced on the same date. In accordance with the Administrative Rules and the Supplemental Rules, the due date for response by the Respondent was 25 March 2013.

11. By a further email also dated 5 March 2013, the Centre notified the Respondent that under the Policy, the language of the domain name dispute resolution proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the panel; and that the Complainant had requested that English be used as the language of the proceedings and provided the Respondent with the Statement of Request.

12. On 8 March 2013, the Respondent’s registered contact person, 严伟 (Yan Wei), filed with the Centre an objection to the Statement of Request by email in Chinese (the “Reply to the Request”). Relying on Article 6 of the Policy, the Respondent submitted that Chinese should be used as the language of the proceedings; and that a Chinese translation of the Complaint and the documentary evidence should be provided by the Complainant in order to facilitate the Respondent to respond to the Complaint. In the Reply to the Request, the Respondent declared himself as the owner and holder of the disputed domain name and he addressed in Chinese each of the four reasons advanced by the Complainant in the Statement of Request.

13. On 15 March 2013, the Centre notified the Complainant of the Reply to the Request and advised the Parties that in the absence of any agreement, the language issue would be determined by the panel on appointment and requested the Complainant to submit the Complaint on the
prescribed Form C-CN in Chinese by 2 April 2013; and accordingly, the Centre notified the Parties that due date for submission of a response by the Respondent was thereafter extended to 22 April 2013. All the explanatory emails accompanying the notifications of the Centre were in both Chinese and English.

14. On 15 March 2013, the Complainant through its authorized representative emailed to the Centre with a copy to the Respondent expressing the view that by requiring the Complainant to file the Complaint in Chinese at this stage would leave it with no defence when the language issue was ultimately determined by the panel; and reiterating what had been said in the Statement of Request. In addition the Complainant asked the Centre to issue an interlocutory decision on the question of language of the proceedings pending determination by the panel; and submitted that the case could be managed bilingually with the Complaint in English and the Respondent’s response in Chinese as done in many WIPO cases, such as WIPO Case No. D2006-1613 (adimpo.com) where the complaint in that case was filed in English and the answer by the respondent and the decision of the panel were in Korean.

15. On 21 March 2013, the Centre notified the Parties advising them that the Centre would reconsider its earlier decision in the view of the Complainant’s new submissions; and invited the Respondent to comment on these submissions by 25 Mar 2013. The Respondent did not respond to this notification nor give any further comments on the language issue. Accordingly, on 27 March 2013 the Centre notified the Parties that after reconsideration, the Centre took note of the following circumstances relevant to the language issue:

(a) All emails sent by the Centre to the Parties were in both English and Chinese.

(b) The Respondent’s registered contact person had demonstrated his ability to read and understand English well by responding individually to each of the four reasons advanced by the Complainant in the Statement of Request.

(c) According to the Policy, in the absence of mutual agreement by the Parties, the language issue should be referred to the panel for decision and the Centre has no jurisdiction to rule on this issue.

Therefore, in the circumstances, the Centre decided to proceed further with the proceedings in the following manner:
(1) The language issue will be referred to the panel for a decision on appointment. At this stage, it is not necessary for the Complainant to provide with a Chinese translation of the Complaint already filed on 19 February 2013 in English.
(2) The Respondent may use Chinese to respond to the Complaint; and the due date for the Respondent to file its response is 16 April 2013.
(3) The Centre will continue to administer the case bilingually in both Chinese and English.

16. The Respondent has not submitted its response to the Complaint by the due date on 16 April 2013; and according on 17 April 2013, the Centre notified the Parties of the Respondent’s default.

17. On 22 April 2013, the Centre appointed Raymond HO (何志强) as the sole panelist in this matter (the “Panel”) who having first submitted to the Centre, in accordance with Article 29 of the Administrative Rules, his statement of acceptance and declaration of impartiality and independence. On the same date the Centre transferred the matter to the Panel for its consideration and decision.

Preliminary Procedural Issue - Language

18. Before dealing with the substance of the Complaint, it is necessary first to address the question of the language applicable to this matter. Article 6 of the Policy provides that the language of the domain name dispute resolution proceedings shall be Chinese, unless otherwise agreed by the parties or determined by the panel.

19. No agreement has been reached by the Parties on the language of the present proceedings.

20. As succinctly stated in **Groupe Auchan v. xmxzl**, WIPO Case No. DCC2006-0004,

“**The panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the panel for the proceeding is not prejudicial to either one of the parties in his or her abilities to articulate the arguments for the case.”**
In exercising its discretion, the panel must ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case, give out its reasons and provide the evidence; and the panel must also ensure that the proceedings take place with due expedition under Article 31 of the Administrative Rules.

21. In an appropriate case, there is no bar to requesting for a bilingual proceeding, also known as dual-language proceeding, where it is fair and expedient to do so to both parties having regard to all the relevant circumstances of the case (see Giochi Preziosi v. He Chongge, WIPO Case No. D2009-0472; and Educational Testing Service v. aaa, WIPO Case No. D2010-0022).

22. In the Statement of Request, the Complainant gave four reasons in support of its request that English be used as the language of the proceedings:

(1) The Complainant is a Spanish company based in Valencia. It is well-known worldwide. It usually conducts its activities in Spanish and English, the latter is the language of international business (see DCN-1200500, a case reported by the Centre). In addition, the domain name is registered in ASCII characters using the Roman alphabet.

(2) The use of Chinese language would mean additional costs to the Complainant and would impose a disproportionate burden on the Complainant in the circumstances of the case. There is flexibility for a panel to conduct the proceedings under Articles 8 and 31 of the Administrative Rules (see also DCN-1200500) but it is the duty of the panel to avoid any unneeded or excessive burden on the Parties taking into account of all relevant circumstances of a case (see Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd., WIPO Case No. D2008-0293; Solvay S.A. v. Hyun-Jun Shin, WIPO Case No. D2006-0593). The use of Chinese in the circumstances of the present case would not only impose a disproportionate burden on the Parties and would have the effect of permitting a domain name registration holder to use it as an argument to discourage recourse to the domain name dispute resolution procedure even though such procedure was designed in the interest of speed and low cost (see DCN-0300004 (accor.cn), another case reported by the Centre).
(3) The Respondent has only made passive use of the disputed domain name. In the circumstances it is not believable that the Respondent could reasonably justify why the domain name at issue includes a well-known Spanish brand, and that the proceedings should be conducted in Chinese rather than English.

(4) Chances that the Respondent will answer the Complaint are very low. As far as the Complainant is aware, the Respondent was named as a respondent in at least another recent case, DCN-12000502 (metaxa.cn & metaxa.com.cn), and the Respondent never filed an answer.

23. In the Reply to the Request, the Respondent’s registered contact person, 严伟 (Yan Wei), responded to the Statement of Request and addressed each of the aforesaid reasons in the following terms in Chinese:

“(a) 争议域名注册商为厦门易名科技有限公司，注册商为中国企业且所在地为中国，注册商使用语言及提供的域名注册协议均为中文。
(b) 针对投诉人主张使用英文为仲裁程序语言的原因一和原因二我方域名所有人为中国公民，中文为我方母语。若使用英文作为程序语言，对我方极为不利，且必将造成巨大的时间和费用损失。
(c) 针对原因三和原因四纯属投诉人的臆测，针对本程序我方必将积极应诉认真答辩维护我方的合法权益。”

As this decision is written in English, the Panel considers it necessary to repeat the key points of the Reply to the Request in English. It says:

First, the Respondent is a Chinese enterprise whose place of business is in China. The Respondent uses Chinese in its business dealings and the registration agreement of the domain name is also in Chinese.

Second, in addressing the first and the second reasons advanced by the Complainant in the Statement of Request, that Respondent pointed out that the domain name owner and holder is a Chinese national; and Chinese is his mother tongue. If English is used in the
proceedings, it would be prejudicial to him and would impose substantial time and expenses on the Respondent.

Third, the Respondent considers the third and fourth reasons in the Statement of Request purely speculative. The Respondent will definitely respond to the Complaint and protect its legitimate rights and interests.

24. The Complainant gives as its first reason why the proceedings should be conducted in English, that it is based in Valencia and conducts its businesses and activities in Spanish and English but not Chinese. The Panel finds this fact alone would not be enough to justify a determination that the proceedings should be in English. This is particularly so here where the Complainant is an established company well-known in the world with presence in China. The Panel, on the other hand, finds the fact that the Respondent and the owner/holder of the dispute domain name are respectively Chinese company and Chinese national whose business language and mother tongue are all in the Chinese language would by itself justify a refusal of the request by the Complainant.

25. The Panel finds that the second reason advanced by the Complainant is not entirely convincing. Given that a Spanish lawyer has been retained by the Complainant to act as its authorized representative in the present proceedings, the Panel does not accept that the use of Chinese language would impose a disproportionate burden on the Complainant in term of cost and expenses. In fact, the documentary evidence showing the brochure of the Complainant’s business and operation in Wenzhou, China is not in Spanish nor in English but in Chinese. Nevertheless, the Panel accepts that it must act fairly between the Parties and must also ensure the proceedings take place with due expedition; and with due regard to all the relevant circumstances of the case when making a determination on the Complainant's language request.

26. Although there are some merits in the third reason that based on evidence the Respondent has only made passive use of the disputed domain name since its registration and that the Respondent could not reasonably justify why it has registered the dispute domain name using a well-known Spanish brand, that would not be sufficient to justify a denial of the right of the Respondent to a fair opportunity to present its case, give out its reasons and provide the evidence to rebut the case against it in a language that the Respondent is competent to use. The Panel therefore rejects the third reason.
27. The Panel agrees with the Respondent that the fourth reason is purely speculative. The case quoted by the Complainant in support thereof has nothing to do with the Respondent or the registered contact person of the disputed domain name. The Panel rejects this reason in its entirety.

28. Having regard to all the relevant circumstances of the case, there are, however, merits in the Complainant’s further submissions made on 15 March 2013 and in the request for bilingual proceedings which the Respondent has not submitted any comments. The Panel agrees with the Centre that based on the Reply to the Request, the Respondent is able to read and understand English. The Panel also finds support of this finding based on the evidence produced by the Complainant that the webpage of the disputed domain name is written bilingually in English and Chinese. The Panel agrees with the decision of the Centre made on 27 March 2013 after reconsideration of the case to proceed further with the proceedings in the following manner:

(1) The language issue will be referred to the panel for a decision. At this stage, it is not necessary for the Complainant to provide with a Chinese translation of the Complaint already filed on 19 February 2013 in English.

(2) The Respondent may use Chinese to respond to the Complaint; and the due date for the Respondent to file its response is 16 April 2013.

(3) The Centre will continue to administer the case bilingually in both Chinese and English.

29. In the circumstances, the Panel is of the view that it is fair and just to the Parties that the present proceedings be conducted in the dual-language of English and Chinese; and that such an arrangement would not be prejudicial to the Party in its abilities to articulate the arguments for the case. Pursuant to Article 6 of the Policy, the Panel determines that the dual-language of English and Chinese be the languages of the proceedings, including the communications by the Centre with the Parties.

30. The Panel has decided to proceed in line with the Center's decision on 27 March 2013 and accepts the Complaint filed in English (and because the Panel can read it without requiring Chinese translation). The Panel would have accepted a Response in Chinese if it were filed by the Respondent by the due date on 16 April 2013. As the only pleading is in English and the
Panel is satisfied that the Respondent can understand English, the Panel issues its decision in English.

Factual Background

31. The Complainant, VICENTE GANDÍA PLA, S.A., is a Valencian wine producing company founded in 1885. It is currently the largest winery in Valencia and is ranking in the top 15 Spanish wineries and the top 100 European wineries. It has a presence in 85 international markets and is the ambassador of Spanish wines to the world. Its sole distributor and agent in China is 温州甘迪亚酒业有限公司.

32. The Complainant is the owner of several trademark registrations in force China protecting the word “GANDIA” and the expression “V.GANDÍA”. It conducts its business in the internet by several websites including the website www.vincentegandia.com.

33. The Respondent, XIAMEN ENAME NETWORK CO., LTD (厦门易名网络有限公司), is a domain name registration enterprise “域名注册商”, is listed on its records as the registrant but not the holder of the dispute domain name. The registered contact person “注册联系人” and holder of the disputes domain name is 严伟 (Yan Wei) whose registered email address is 61357168@qq.com.

34. The disputed domain name <VICENTEGANDIA.COM.CN> has been registered by the Respondent for a two-year term from 5 September 2011.

Parties’ Contentions

A. Complainant

35. The Complainant submits that it has met all the conditions stipulated in Article 8 of the Policy in support of its application that the disputed domain name be transferred to the Complainant on the grounds set out below.

(1) Prior rights over and identity with the term “VICENTEGANDIA”:
The Complainant and her trademarks, notably “V. GANDÍA”, are well-known in China. The complainant has prior rights in China on the term “GANDIA” by the registered trademark. Besides the company name of the Complainant is “VICENTE GANDIA” which shows identity with the disputed domain name.

Since level indicators “.cn” and “.com.cn” are not considered to be part of a domain name, the term at conflict is “VICENTEGANDIA” (see Hewlett-Packard Company v Mohammad Hossein Erfani and the Kotobi Group, HKIAC Case No. DCN-0300005 and HKIAC Case No. DCN-0700140 “ferrovial.cn” which follows Croatia Airlines d.d. - v- Modern Empire Internet Ltd., WIPO’s case D2003-0455).

Based on the foregoing, it is clear that first requirement of the Article 8 of the Policy is fully satisfied.

(2) Lack of right or interest of the Respondent in respect of the disputed domain name:

The Respondent is not doing business by the name of, or known as, VICENTE GANDÍA. The Complainant has not granted any license to the Respondent on its registered trademarks in China. The combination of words “VICENTE GANDÍA” is thus exclusive and has no meaning in Chinese language. The Complainant has to show a prima facie case that the Respondent has no rights or interests in the disputed domain name in order to succeed.

(3) Bad faith registration or use of the domain name:

The disputed domain name is not being used. This fact per se would lead one to conclude that there is not a bona fide offer of goods or services and that there is only passive holding which is indication of bad faith (see Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003). Moreover, the disputed domain name is publicly offered on sale for US$14,132, an amount clearly higher than the administrative costs for registration of the domain name. All this is a clear finding that the Respondent is not engaged in serious preparations of future use of the domain name but merely to obtain illicit revenue by taking advantage of a third party’s registered trademark.
In *Rhodes Financial Services, Inc. v. Matt Moran*, National Arbitration Forum Decision Claim Number: FA1212001474885, the complainant contends that “the <taxslayer.org> domain name is being held by respondent with an ultimate goal of selling it for a profit, as indicated at the top of the resolving website which displays the message: ‘*This domain name could be for sale.*’ This statement contains a link to a domain store allowing Internet users to make an offer for purchase of the <taxslayer.org> domain name.” In that case, “the panel finds that the information contained in the <taxslayer.org> website according to which the domain could be for sale, together with the link to a domain store allowing potential interested parties to make an offer to buy the domain name is a clear indication of the fact that the domain name was not registered with a bona fide purpose of offering goods or services, but to obtain a benefit from the sale thereof.”

In the present case, the website of an online service domain tools, www.domaintools.com, shows that the Respondent has registered more than 76000 domain names. More importantly, the disputed domain name is listed for sale at 14132 US dollars (see http://whois.domaintools.com/vicentegandia.com.cn).

36. The Complainant has provided relevant documentary evidence in support of the above contentions in the Complaint.

37. In accordance with Article 8 of the Policy, on the basis of the reasons stated above, the Complainant contends that the disputed domain name should be transferred to the Complainant.

B. Respondent

38. The Respondent did not respond to the Complaint.

Discussion and Findings

39. Under Article 8 of the Policy, support of a complaint against a registered domain name is subject to three conditions, namely:
(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 or interests;
(b) the disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name; and
(c) the disputed domain name holder has registered or has been using the domain name in bad faith.

40. Under Article 7 of the Policy, the complainant and the respondent shall bear the burden of proof for their own claims. As stated in paragraph 2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview 2.0”),

“While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a 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 burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name.”

41. A respondent's default to file its response in accordance with the Administrative Rules and the Supplemental Rules does not automatically result in a decision in favour of the complainant. Subject to the principles stated in paragraph 2.1 of WIPO Overview 2.0, the complainant must establish each of the three conditions stipulated in Article 8 of the Policy. Although a panel may draw appropriate inferences from a respondent's default, Article 8 of the Policy requires the complainant to support its assertions with actual evidence in order to succeed (see paragraph 4.6 of WIPO Overview 2.0).

42. Article 35 of the Administrative Rules provides that if a party, in the absence of exceptional circumstances, does not comply with any provisions of the Administrative Rules or any request from the panel, the panel shall draw such inferences therefrom as it considers appropriate. The Panel finds there are no exceptional circumstances for the failure of the Respondent to submit a response to the Complaint. The Panel draws from this failure the following two inferences: (i) the Respondent does not deny the facts which the Complainant asserts, and (ii) the Respondent does not deny the conclusions which the Complainant asserts can be drawn from these facts. Nevertheless, the Panel still has the responsibility of determining which of the Complainant's
assertions are established as facts, and whether the conclusions asserted by the Complainant can be drawn from the established facts. See *Reuters Limited v. Global Net 2000, Inc.*, WIPO Case No.D2000-0441.

43. Now, the Panel considers if the Complainant has established in evidence that it has satisfied all the conditions provided in Article 8 of the Policy.

**A. Identical or Confusingly Similar**

According to the evidence provided in the Complaint, the Complainant as a well-known Spanish winery and owns amongst others the trademark “V. GANDIA” under the International Classification of Goods and Services for the Purposes of the Registration of Marks (Nice Classification 33) for “wines, spirits and liqueurs”. Particulars of the registration of the trademark “V. GANDIA” are as follows:

**“Registration No.**: 470951

**Date of the registration**: 02.09.1982

**Expected expiration date of the registration/renewal**: 02.09.2022

**Language of the application**: French

**Current Status**

**Name and address of the holder of the registration**: VICENTE GANDIA PLA, S.A. Ctra. Cheste a Godelleta, s/n E-46370 CHIVA - VALENCIA Spain

**Contracting State of which the holder is a national**: ES (Spain)

**Basic registration**: ES (Spain), 20.04.1977, 709 749

**Designation(s) under the Madrid Agreement**: DZ (Algeria)

**Designation(s) under the Madrid Protocol**: JP (Japan), NO (Norway), TR (Turkey)

**Designation(s) under the Madrid Protocol by virtue of Article 9sexies**: BY (Belarus), CH (Switzerland), CN (China), CU (Cuba), HR (Croatia), KE (Kenya), MA (Morocco), MC (Monaco), ME (Montenegro), RS (Serbia), RU (Russian Federation)
Registration:

**Publication number and date:** 1982/9 LMi, 01.11.1982

**Designation(s) under the Madrid Agreement:** AT (Austria), BX (Benelux), CH (Switzerland), CS (Czechoslovakia), DD (Germany (without the territory that prior to October 3, 1990, constituted the Federal Republic of Germany)), DE (Germany), DT (Germany (without the territory that prior to October 3, 1990, constituted the German Democratic Republic)), DZ (Algeria), FR (France), HU (Hungary), IT (Italy), MA (Morocco), MC (Monaco), TN (Tunisia), YU (Serbia and Montenegro)

**Date of recording (date of notification from which the time limit to notify the refusal starts):** 30.09.1982

The refusal period has expired and no notification

**Statement indicating that the mark is protected for all the goods and services requested:** CN (China)

**Publication number and date:** 2008/3 Gaz, 21.02.2008

**Date of notification:** 21.01.2008

**Date of receipt by the International Bureau:** 18.12.2007

The Panel notes that it is widely accepted that the Madrid Protocol provides a cost-effective and efficient way for trademark holders to ensure protection for their marks in multiple countries through the filing of one application with a single office, in one language. Once the trademark office in a designated country grants protection, the mark is protected in that country as if that office had registered it. The International Bureau administers the Madrid System and coordinates the transmittal of requests for protection, renewals and other relevant documentation to all members.

The Panel finds that by the above statement indicating that the mark “V. GANDIA” is protected for all the goods and services requested in China, the Complainant’s trademark “V. GANDIA” is protected in China under the Madrid Protocol as if the Trade Mark Office in China had registered it.

Based on the evidence adduced by the Complainant, the Panel considers that the disputed domain name <VICENTEGANDIA.COM.CN > is confusingly similar to the trademark “V.
GANDIA”; and that it has incorporated the said trademark and the business name of the Complainant which is well-known in the wine industry. The Panel accepts the submission that the mere addition of the top level country code “.cn” does not alter such identity. The Panel therefore finds that the disputed domain name is identical with or confusingly similar to the Complainant's name or trademark in which the Complainant has civil rights and interests protected by the laws of the People’s Republic of China; and accordingly, the Complainant has satisfied the first condition of Article 8 of the Policy.

B. Rights or Legitimate Interests

Based on the documentary evidence tendered in the Complaint, the Panel finds that the Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. Once such prima facie case is made out, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, a complainant is deemed to have satisfied the second condition under Article 8 of the Policy (see Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Case No. D2003-0455). Moreover, prior panels of WIPO have accepted that the silence of the respondent might support a finding, based on other relevant circumstances that he has no rights or legitimate interests in respect of the disputed domain name (see, for example, Singapore Airlines limited v. European Travel Network, WIPO Case No. D2000-0641). It is established in evidence that the trademark “V. GANDIA” is well known in Spain, and worldwide, including China, which the Complainant promotes its goods and communicates on the internet through various websites, including the website of the domain name <VICENTEGANDIA.COM> registered by the Complainant. It is also established in evidence that (a) the Respondent has no relationship with the Complainant's business and is not authorized or licensed to use any of the Complainant’s trademarks; (b) the Respondent is not known by the disputed domain name; (c) the Respondent has not put the disputed domain name into any bona fide use such as offering of goods or services or any legitimate noncommercial or fair use, without intent of or commercial gain to misleadingly divert consumers, except displaying the webpage of the disputed domain name a message in Chinese and English: “VicenteGandia.com.cn
您正在访问的域名可以转让! This domain name is for sale. If you would like to purchase this domain name, please click here to make an offer.” (based on the record of an internet search done on 31 January 2013; and also an internet search conducted by the
Panel on 27 April 2013); (d) the disputed domain name has been listed on the online domain tools, www.domaintools.com, for sale at US$14,132.

In the circumstances, the Panel finds that the Respondent has no right or legitimate interest in respect of the disputed domain name; and accordingly, the Complainant has satisfied the second condition of Article 8 of the Policy.

C. Registered and Used in Bad Faith

Article 9 of the Policy provides that any of the following circumstances may be the evidence of the registration and use of a domain name in bad faith:

(a) 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;

(b) 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;

(c) 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; and

(d) Other circumstances which may prove the bad faith.

As mentioned above, there is clear evidence adduced by the Complainant that the Respondent registered the disputed domain names with intent and for the purpose of sale to obtain unjustified profits. This fact by itself is bad faith on the part of the Respondent. The record shows that the disputed domain name was registered for just a two-year term. It is established in evidence that the Complainant’s business in China is operated through its sole distributor and agent, 温州甘迪亚酒业有限公司, in Wenzhou. It is an irresistible inference in the circumstances of this case that at the time of registration, the Respondent was aware of Complainant’s business name “VICENTE GANDIA” and its distinctive trademark “V. GANDIA”. The Respondent has provided no evidence of, nor alleged, any actual or contemplated good faith use. The Panel finds that the Respondent has registered
and used the disputed domain names in bad faith; and accordingly, the Complainant has satisfied the third condition of Article 8 of the Policy.

**Decision**

44. For all the foregoing reasons, in accordance with Article 14 of the Policy, the Panel orders that the disputed domain name < VICENTEGANDIA.COM.CN > be transferred to the Complainant.

Raymond Ho (何志强)

Sole Panelist

29 April 2013, Hong Kong.