



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

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Decision ID	DE-0700095
Case ID	HK-0600109
Disputed Domain Name	www.百威啤酒.com
Case Administrator	Dennis CAI
Submitted By	Arthur Chang
Participated Panelist	Arthur Chang
Date of Decision	13-02-2007

### The Parties Information

<b>Claimant</b>	Anheuser-Busch, Inc
<b>Respondent</b>	Mr Ji Jian

### Procedural History

The Complainant of this case is Anheuser-Busch, Inc Its address is at One Busch Place, St Louis, Missouri 63118, United States of America. Its authorized representative is Lovells.

The Respondent of this case is Mr Ji Jian with addresses at 和兴花 8-404, Postcode 226000, People's Republic of China.

The domain name in dispute is 百威啤酒.com. The Registrar of the dispute domain name is Melbourne IT Ltd.

On November 18, 2006, the Complainant has submitted Complaint to the Hong Kong International Arbitration Centre (the “Centre” ), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy” ) adopted by the Internet Corporation for Assigned Names and Numbers ( “ICANN” ) on 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “Rules” ), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules” )

The Complainant has sought a one-person Panel.

On November 18, 2006, the Centre has forwarded a request to Melbourne IT Ltd to verify the registration information of disputed domain name and on November 20, 2006, Melbourne IT Ltd confirmed with registrant details as shown above.

On December 22, 2006, the Centre forwarded a copy to the Respondent by on-line notification. The 20 day deadline for the Respondent to respond calculated from December 22, 2006 expired and the Respondent did not file a Response with the Centre, as confirmed by the Centre.

On January 30, 2007, Arthur Chang has been appointed as the sole Panelist for this case and all parties have been informed by email.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

### Factual Background

#### For Claimant

The following are asserted by the Complainant in the Complaint:

Established in 1876, the Complainant is one of the largest breweries in the world and the company behind the famous international "BUDWEISER" brand of beer.

Having expended billions of dollars advertising and promoting its "BUDWEISER" trade mark in numerous countries around the world in virtually all forms of media including print publications, billboards, television, radio, the Internet and even airships, "BUDWEISER" has now become the second largest selling beer in the world according to volume. (The largest selling beer in the world according to volume is the Complainant's "BUD LIGHT" brand of beer). A table published on the Complainant's website, located at <www.anheuser-busch.com>, setting out the top 20 beer brands worldwide is annexed at Annexure 4. The Complainant's worldwide brands of beer, including "BUDWEISER" and "BUD LIGHT", brought international sales of 63.1 million barrels in the first half of this year alone, translating into gross sales of USD9,150,000,000. A copy of the Complainant's financial releases for the first and second quarters of 2006, as published on the Complainant's website, is attached at Annexure 5. In light of the extent of the sales, and against the background of the Complainant's continuous worldwide advertising and promotional efforts for the past few decades, the trade mark "BUDWEISER" has achieved universal recognition in relation to beers and related products and has acquired such a high degree of fame and goodwill that it has attained the status of "famous" trade marks.

For Chinese speaking beer drinkers all over the world, 百威 is synonymous with "BUDWEISER" and 百威啤酒 is synonymous with "BUDWEISER BEER".

"BUDWEISER" branded beer was first introduced to the PRC in 1995 under the Chinese trade marks 百威 and 百威啤酒. 百威, the pinyin translation for which is "baiwei", was selected as the Chinese trade mark for "BUDWEISER" on the basis of its close phonetic resemblance. The 百威 trade mark is often used together with the word 啤酒, being the descriptor of the product to which the trade mark is most commonly applied, i.e. beer.

The Complainant, through its subsidiary Anheuser Busch International, Ind, operates 14 breweries in China, the largest and fastest growing beer market in the world according to volume. The Complainant has a significant presence in China. In addition to its main brewery in Wuhan, it has headquarters in each of Beijing, Chengdu, Guuangzhou, Harbin, Qingdao and Shanghai and a further 33 representative offices throughout China, which employ more than 8,800 employees, most of whom are Chinese nationals. The Wuhan brewery has capacity for 3.4 million barrels, which of itself demonstrates the demand for, and popularity of, 百威 beer in China. A copy of an extract from the Complainant's website detailing its PRC operations is attached as Annexure 6.

In the PRC, 百威 and 百威啤酒 have been the subject of long running advertising and marketing campaigns carried out through city and provincial cable television, through large outdoor billboards in China's key cities, as well as through high-quality signs outside key restaurants and bars. 百威 is also a major supporter of sports events in the PRC, both through local extensions of the brand's global sports sponsorships and through local, market-specific events and programs.

Such advertising, promotional and sponsorship efforts have ensured the immense popularity of 百威 beer amongst the Chinese beer drinking population and its status as the leading premium international beer sold in the PRC. In fact, the Complainant's 百威 branded beers collectively brought sales in the PRC of 1.7 million barrels in the first half of this year alone, translating into gross sales of USD217 million.

Having acquired enormous popularity and an extensive reputation in the PRC amongst the country's vast and steadily growing beer drinking population, 百威 branded beer was introduced to other countries having a significant Chinese speaking population, including Hong Kong and Taiwan. The 百威 trade mark has now also acquired an extensive reputation in these countries. Copies of a newspaper clipping from the Hong Kong Takungpao and a Taiwanese website are attached as Annexure 7.

The Complainant has expended significant resources in registering and enforcing its 百威 and 百威啤酒 trade marks in the PRC, Hong Kong and Taiwan, which together make up almost 95% of the world's Chinese speaking population. Copies of statistics extracted from reference materials detailing the world's total Chinese speaking population and a country by country breakdown of the world's Chinese speaking population are attached at Annexure 8.

The Complainant has secured in excess of 50 trade marks registrations comprising of 百威 and 百威啤酒 in these countries, the first dating back to 1995 and most of the others in fact predating the Respondent's registration of the Disputed Domain Name. Some of the trademarks are listed below:

百威啤酒 (PRC trade mark registration no. 1331878)

百威 (PRC trade mark registration nos. 895091, 4584758, 4584759, 921015, 3778261, 1316822, 1221628, 930680, 944327, 953607, 935364, 950545, 935330, 175283, 931991, 1317546, 136007, 1022842, 1663055, 953607, 921015, 944347, 1494649, 927305, 930450, 938956, 930966, 938826, 930401, 940759, 928530, 960410, 932922, 935692, 928068, 934250, 947958, 937886, 943832, 955646, 945694, 935802, 941791, 941877, 951557, 922691, 937875, 941819, 947942; Singapore trade mark registration no. T81038841; Taiwan registration nos. 0063133, 00178202)

A complete list of these trade mark registrations is attached at Annexure 2. Due to the volume of trade mark registrations,

it is impracticable for the Complainant to provide copies of all of the registration certificates. However, the registration certificates for a selection of these trade marks is attached at Annexure 3. The Complainant would be happy to provide copies of the registration certificates for any of the other trade marks included in the list on request by the Panel and/or the Respondent.

### For Respondent

The Centre confirmed that documents have been sent and received by the Respondent. Nothing has been received by the Centre regarding response of the Respondent related to this case. The disputed domain name was registered on November 16, 2005.

### Parties' Contentions

#### Claimant

The Disputed Domain Name is identical and/or confusingly similar to trade marks or service marks in which the Complainant has rights

The Complainant submits that the Disputed Domain Name is identical and/or confusingly similar to marks in which the Complainant has rights on the following grounds:

- (a) the Complainant is the registered owner numerous trade marks in the PRC, Hong Kong and Taiwan which are identical and/or confusingly similar to the Disputed Domain Name;
- (b) the Complainant has acquired an extensive reputation and goodwill in trade marks in PRC, Hong Kong and Taiwan which are identical and/or confusingly similar to the Disputed Domain Name.

The Disputed Domain Name is identical to the Complainant's registered trade mark 百威啤酒. The main part of the Disputed Domain Name, i.e. 百威, is also identical to the Complainant's registered trade mark 百威. It is submitted 百威 is the main part of the Disputed Domain Name on the basis that the component of the Disputed Domain Name comprising 啤酒 is descriptive and does not serve to distinguish the Disputed Domain Name from the trade mark 百威. In any case, by virtue of the Complainant's reputation in 百威 for beer, the 百威 trade mark and the Disputed Domain Name are confusingly similar if they are not, contrary to the Complainant's submission, considered by the panel to be identical.

It is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded. The Complainant refers the panel to the WIPO Arbitration and Mediation Center's decision of Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd (Case No. D2006-0762), a copy of which is attached as Annexure 9.

The Complainant also has civil rights in the 百威 and 百威啤酒 trade marks in the PRC, Hong Kong and Taiwan by virtue of the extensive reputation and goodwill that the Complainant has acquired in these marks amongst Chinese speakers through its use and the marketing, promotional and sponsorship efforts detailed above.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to both registered and unregistered trade marks in which the Complainant has rights or interests for the purposes of Article 4(a)(i) of the ICANN UDRP.

The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The Complainant submits that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name on the following grounds:

- (a) The Disputed Domain Name does not reflect the Respondent's name or the name of the Respondent's company;
- (b) Neither the Respondent nor the Respondent's company has any registered trade mark rights in the PRC, Hong Kong and Taiwan which reflect the Disputed Domain Name;
- (c) The website to which the Disputed Domain Name points <www.ntjj.ce.net.cn> (Respondent's Website) does not contain any reference to, or otherwise have any objective connection with, the Disputed Domain Name or the content of the Respondent's Website;
- (d) The Disputed Domain Name does not reflect the trade mark under which the Respondent's Website is operated;
- (e) None of the Respondent, the Respondent's company or the Respondent's Website, has acquired any reputation in the Disputed Domain Name in the PRC, Hong Kong and Taiwan.

The Disputed Domain name neither reflects the Respondent's name or the name of the Respondent's company, nor any other name trade mark in which the Respondent or the Respondent's company has any registered right or interest in PRC, Hong Kong and Taiwan. The Complainant's legal representative has conducted proprietor trade mark searches in the names of "Ji Jian" (the Respondent) and "南通房产交易有限公司" (the Respondent's company), which reveal that neither is the owner of any registered trade marks in these countries. Copies of the trade mark search results are attached at Annexure 10.

The Respondent's Website appears to be operated under the trade mark 中企動力, and contains no content other than the details for the company 南通房产交易有限公司, which appears to be a PRC based property trading company. The Respondent's Website does not contain any reference to 百威 or 啤酒 and is therefore completely unrelated to the

Disputed Domain Name. A copy of the only webpage found on the Respondent's Website is attached at Annexure 11. The use of a domain name for an unrelated website was held to constitute bad faith in using the domain name in *Backstreet Productions, Inc. v John Zuccarini, Cupcake Party & Ors* (Case No. D2001-0654), a copy of which is attached at Annexure 12.

Internet Searches were conducted on popular Chinese language search engines Baidu, Sohu, Yahoo! and Google using the following search terms:

南通房产交易有限公司 和 百威

Ji Jian and 百威

中企動力 和 百威

to determine whether there is any objective link between any of the Respondent, the Respondent's company or the trade mark appearing on the Respondent's Website and 百威. The results of the searches revealed no such connection to exist. Copies of the top 20 search results of searches conducted on the localised Chinese, Hong Kong and Taiwan versions of each of Baidu, Sohu, Yahoo! and Google are attached at Annexure 13.

In the absence of any other evidence of use, none of the Respondent, the Respondent's Company or the Respondent's Website can therefore be said to have acquired any reputation in 百威, and certainly not a reputation in any of those countries sufficient to confer upon the Respondent any legitimate right or interest in the Disputed Domain Name. The Complainant accordingly submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Name for the purposes of Article 4(a)(ii) of the ICANN UDRP.

The Disputed Domain Name has been registered by the Respondent in Bad Faith

The Complainant submits that Disputed Domain Name has been registered by the Respondent in bad faith on the following grounds:

(f) The Respondent does not have any legitimate right or interest in the Disputed Domain Name;

(g) The Respondent, as a Chinese individual and also most probably a PRC based individual, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name by virtue of the Complainant's reputation in 百威 和 百威啤酒, at least in the PRC;

(h) The Respondent's knowledge of the Complainant's reputation and goodwill in 百威 和 百威啤酒 (at least in the PRC) gives rise to a presumption that the Respondent registered the Disputed Domain Name for the purpose of trading the Disputed Domain for financial gain and/or otherwise taking a free ride on, and leveraging off, the Complainant's reputation; and

(i) The Disputed Domain Name points to an unrelated website; and

The fact that the Respondent has registered the Disputed Domain Name without having any legitimate right or interest in it, is of itself evidence of bad faith on the part of the Respondent in registering the Disputed Domain Name.

The Complainant also submits that, in light of its extensive worldwide reputation in "百威" and 百威啤酒, the Respondent must have known about the Complainant's rights in these trade marks at the time of registering the Disputed Domain Name. The Respondent's registration and use of the Disputed Domain Name cannot be bona fide in circumstances where the registration and use was made in the full knowledge of the Complainant's prior rights in these trade marks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trade marks, to such registration and use.

The Complainant refers the panel to the case of *JSC Baltikums Bankas Grupa and Insurance JSC Baltikums v Masayoshi Hotta* (Case No. D2005-0735), a copy of which is attached at Annexure 14. In that case, in deciding that the registrant had used and registered the domain name in bad faith, the panel took into account the fact that the respondent registered the domain name with knowledge of the Complainant's longstanding prior rights.

Furthermore, 百威 is a 'made up' word and in fact has no common meaning in the Chinese language independent of the Complainant's trade mark. Therefore, there can be no objective justification for the Respondent to have elected to base the Disputed Domain Name on this word. Copies of the "百" entries contained in the *Xiandai Hanyu Cidian* (現代漢語辭典), as well as copies of Internet searches carried out using the search term "百威" are attached at Annexure 15.

In the absence of any connection between 百威 or 啤酒 and the Respondent, the Respondent's company or the Respondent's Website, and in the absence of any objective justification for basing the Disputed Domain Name on 百威/百威啤酒, there is a very strong presumption that the Respondent selected the domain name motivated by the desire to leverage off the Complainant's extensive reputation in and 百威 和 百威啤酒 in the PRC and elsewhere, and thereby divert traffic to this website that it otherwise would not attract.

The Complainant believes that, by virtue of this blatant abuse of its trade mark for and reputation in 百威 和 百威啤酒, the Respondent's Website would be receiving countless hits from Internet users throughout the PRC and elsewhere who are customers of the Complainant and who enter into the window browsers of their computer what they believe reasonably, but mistakenly, to be one of the Complainant's websites. This constitutes illegitimate and unfair use of the Complainant's trade marks, and the deliberate manipulation of the TLD registration system.

The Complainant accordingly submits that it has proved that the Respondent has registered the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the ICANN UDRP.

## Respondent

Save as outlined above, the Respondent did not respond to any of the claim as submitted by the Complainant.

## Findings

The Policy requires a Complainant to establish that:

- (i) the domain name which is the subject of the dispute is identical or confusingly similar to a trade mark or service mark in Hong Kong in which the Complainant has rights;
- (ii) the registered holder of the disputed domain name has no rights or legitimate interests in respect of the domain name;
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel is bound by the Policy to make a decision based on the information provided to the Panel during the course of the proceedings.

## Identical / Confusingly Similar

Established in 1876, the Complainant is one of the largest breweries in the world and the company behind the international "BUDWEISER" brand of beer. The Complainant's worldwide brands of beer, including "BUDWEISER" and "BUD LIGHT", brought international sales of 63.1 million barrels in the first half of this year alone, translating into gross sales of USD9,150,000,000.

For Chinese speaking beer drinkers all over the world, 百威 is synonymous with "BUDWEISER" and 百威啤酒 is synonymous with "BUDWEISER BEER". "BUDWEISER" branded beer was first introduced to the PRC in 1995 under the Chinese trade marks 百威 and 百威啤酒. 百威, the pinyin translation for which is "baiwei", was selected as the Chinese trade mark for "BUDWEISER" on the basis of its close phonetic resemblance. The 百威 trade mark is often used together with the word 啤酒, being the descriptor of the product to which the trade mark is most commonly applied, i.e. beer.

The Complainant, through its subsidiary Anheuser Busch International, Ind, operates 14 breweries in China. In the PRC, 百威 and 百威啤酒 have been the subject of long running advertising and marketing campaigns. 百威 branded beer was introduced to other countries having a significant Chinese speaking population, including Hong Kong and Taiwan.

The Complainant has expended significant resources in registering and enforcing its 百威 and 百威啤酒 trade marks in the PRC, Hong Kong and Taiwan, which together make up almost 95% of the world's Chinese speaking population.

The Complainant has secured in excess of 50 trade marks registrations comprising of 百威 and 百威啤酒 in these countries, the first dating back to 1995 and most of the others in fact predating the Respondent's registration of the Disputed Domain Name. Some of the trademarks are listed below:

百威啤酒 (PRC trade mark registration no. 1331878)

百威 (PRC trade mark registration nos. 895091, 4584758, 4584759, 921015, 3778261, 1316822, 1221628, 930680, 944327, 953607, 935364, 950545, 935330, 175283, 931991, 1317546, 136007, 1022842, 1663055, 953607, 921015, 944347, 1494649, 927305, 930450, 938956, 930966, 938826, 930401, 940759, 928530, 960410, 932922, 935692, 928068, 934250, 947958, 937886, 943832, 955646, 945694, 935802, 941791, 941877, 951557, 922691, 937875, 941819, 947942; Singapore trade mark registration no. T81038841; Taiwan registration nos. 0063133, 00178202)

In the disputed domain name 百威啤酒.com, ".com" is the top level domain. Taking away ".com", the disputed domain name "百威啤酒" is identical to the trade mark of the Complainant. The main part of the Disputed Domain Name, i.e. 百威, is also identical to the Complainant's registered trade mark 百威.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(a)(i) and the disputed domain name is identical or confusingly similar to the trademark that the Complainant holds.

## Rights and Legitimate Interests

The Panel is satisfied that the Complainant has met the requirements of Policy 4(a)(ii) regarding Respondent's rights and legitimate interests in the disputed domain name because:

- The Disputed Domain Name (or in any reasonable variation derived from the name) does not reflect the Respondent's name or the name of the Respondent's company;
- Neither the Respondent nor the Respondent's company has any registered trade mark rights in the PRC, Hong Kong and Taiwan which reflect the Disputed Domain Name. The Complainant's legal representative has conducted proprietor trade mark searches in the names of "Ji Jian" (the Respondent) and "南通房产交易有限公司" (the Respondent's company), which reveal that neither is the owner of any registered trade marks in these countries;
- The website to which the Disputed Domain Name points <www.ntjj.ce.net.cn> (Respondent's Website) does not reflect the trade mark under which the Respondent's Website is operated. The Respondent's Website contains no content other than the details for the company 南通房产交易有限公司, which appears to be a PRC based property trading company.

The Respondent's Website does not contain any reference to 百威 或 啤酒 and is therefore completely unrelated to the Disputed Domain Name. There is no sign that the Respondent is making use of the disputed domain name to offer bona fide service relating to the domain name;

- The Complainant has not authorized the Respondent to use the “百威 啤酒” trademark for any form of use;
- None of the Respondent, the Respondent's company or the Respondent's Website, has acquired any reputation in the Disputed Domain Name in the PRC, Hong Kong and Taiwan.

As such, the Panel agrees the Respondent has no right or legitimate interests in respect of the disputed domain name.

### Bad Faith

According to the Policy 4b, the following circumstances, in particular but without limitation, if found by an Arbitration Panel to be present, shall be evidence of the registration and use of a Domain Name in bad faith:

- (i) circumstances indicating that you have registered or you have acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the Domain Name; or
- (ii) you have registered the Domain Name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

When the Panelist attempted to access the web site of the disputed domain name on Feb 9, 2007, it was re-directed to a page consistent with the Complainant's submission.

The Respondent does not have any legitimate right or interest in the Disputed Domain Name as judged above. It is also very likely that the Respondent is well aware of the reputation in "百威" and “百威啤酒” (as described in the reasoning paragraph of “Disputed Domain Name identical/confusingly similar to trademark” that Complainant has established certain worldwide and Chinese community reputation), but registered the domain name for use in a web site that does not review any reasonable connection with the disputed domain name. This act itself prevents the original trademark owner, ie. the Complainant, from using the disputed domain name for operating their own business on the web. This is an act of preventing the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Name and disrupting the normal business of trademark owner.

As such, The Panel is satisfied that the Complainant has met the requirements of paragraph 4(b)(ii) of the Policy in showing bad faith registration and use of the Disputed Domain Names.

### Appropriate Remedy

The Complainant asks for the Panelist's decision to transfer of the disputed domain name. In view of the above reasoning, the Panelist decides that transfer of the disputed domain name to the complainant is an appropriate remedy.

### Status

www.百威啤酒.com

Domain Name Transfer

### Decision

Based on the above analysis, the Panelist decides that: (1) the disputed domain name 百威啤酒.com is confusingly similar to the Complainant's name or mark in which the complaint has civil rights or interests; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names or major part of that domain name; (3) the Respondent has registered or is using the domain name in bad faith. Accordingly, the Panelist decides that the disputed domain name 百威啤酒.com should be transferred to the Complainant.

Panelist :

Arthur Chang

12 February 2007  
Hong Kong

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