



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-2201592</b>
<b>Complainant:</b>	<b>Huawei Technologies Co., Ltd.</b>
<b>Respondent:</b>	<b>Cheng Xianming</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;huaweitea.com&gt;</b>

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### 1. The Parties and Contested Domain Name

The Complainant is Huawei Technologies Co., Ltd. of Administration Building Huawei Technologies Co., Ltd. Bantian, Longgang District, Shenzhen.

The Respondent is Cheng Xianming, of Wushe Wuyang village Rongshan town Sichuan Province.

The domain name at issue is huaweitea.com, registered by Respondent with NameSilo, LLC, of 8825 N. 23rd Ave Suite 100, Phoenix, Arizona, 85021, USA.

### 2. Procedural History

The present complaint (the “Complaint”) was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on 28 January 2022 in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) which was adopted by the ICANN and came into effect on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) which became effective on 28 September 2013 and the ADNDRC Supplemental Rules to ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”) which came into effect on 31 July 2015.

On 28 January 2022, the Centre transmitted by email to the Registrar, NameSilo, LLC, a request for registrar verification in connection with the domain name at issue and confirmed the receipt of the Complaint and case filing fee. On the same day, the Registrar made the verification to the Centre that the registrant of the domain name at issue is Cheng Xianming. The Registrar confirmed that the Policy applies to the Disputed Domain Name and pointed out that the language used in the Registration Agreement is English.

On 29 January 2022, the Centre communicated by email to the Complainant requesting the Complainant to make corrections to the information about the Respondent, including the name, address and telephone number in accordance with Article 4(d) of the Rules.

On 1 February 2022, the Complainant submitted an amended complaint to the Centre by email. On 4 February, the Centre confirmed to the Complainant that the amended complaint as submitted is in administrative compliance with the Policy and the Rules. On the same day, the Centre sent the formal Complaint Notice to the Respondent and requested the Respondent to reply within 20 days (on or before 24 February 2022) in accordance with the Rules and forwarded the Complaint and all the Annexes thereof. The procedures for this case formally commenced on 4 February 2022.

On 25 February 2022, the Centre issued a Default Notice and confirmed that the Respondent did not file a formal response with the Centre within the required time limit for filing a response.

On 25 February 2022, the Centre sent a Notice of Panelist Appointment to Ms. Vivien Chan as Panel candidate for the current case, and the Panel candidate considered that it was properly constituted and submitted the acceptance notice as well as a statement of impartiality and independence on 28 February 2022.

On 28 February 2022, the Centre notified both parties and the Panel Ms. Vivien Chan by email that Ms. Vivien Chan be the sole panelist for arbitrating this case. The Centre then formally transferred the case to the Panelist. The Panelist agreed to deliver her decision with respect to the Disputed Domain Name on or prior to 14 March 2022.

### **3. Factual background**

#### *Background information of the Complainant*

The Complainant is Huawei Technologies Co., Ltd., with an address at Administration Building Huawei Technologies Co., Ltd. Bantian, Longgang District, Shenzhen. The authorized representative of the Complainant is Beijing Chofn Intellectual Property Agency Co., Ltd.

#### *Background information of the Respondent*

The Respondent, Cheng Xianming, of Cheng Xianming, of Wushe Wuyang village Rongshan town Sichuan Province, registered the Disputed Domain Name on 2 July 2021. The Respondent did not file any reply or other materials with the Centre.

### **4. Parties' Contentions**

#### **A. Complainant**

Established in 1987, the Complainant claims that it is a privately-owned enterprise wholly owned by its employees (Refer to Annex 4). The complainant contends that it currently has 194,000 employees with more than 170 nationalities, serving more than one-third of the world's population. The complainant claims that it is the world's leading information and communication technology (ICT) solution provider, focusing on the ICT field, and has built end-to-end solution advantages in the fields of telecom operators, enterprises, terminals and cloud computing. The Complainant provides competitive ICT solutions, products and services for carrier customers, enterprise customers and

consumers, and is committed to enabling the future information society and building a better fully connected world.

The Complainant insisted on continuous innovation based on customer needs, increased investment in basic research, accumulated rich resources, promoted world progress, and devoted themselves to the research and development of emerging hotspots such as cloud computing, NFV/SDN, and 5G. From 1987 to the present, it is the Complainant's submissions that their achievements are obvious to all. The Claimant claims to be the world's largest telecom equipment manufacturer and the second largest mobile phone manufacturer, and is well received around the world. Especially in the field of 5G network research and development, the Complainant claims that they have become the pride of the Chinese people and is a veritable "national enterprise" (Refer to Annex 6).

With a clear strategic layout, precise market positioning, and strong product strength, the Complainant claiming to be an industry giant, has become an outstanding representative of the forefront of "Made in China", in which they have won many honors, and has extensive influence on the world stage. The Complainant is ranked in Fortune Magazine's Global 500 2017-2021 as follows (Refer to Annex 7):

Year	Huawei ranking	Operating Income (US\$ million)
2017	83	78510.8
2018	72	89311.4
2019	61	109030.4
2020	49	124316.3
2021	44	129183.5


The complainant ranks second in the 2021 EU Industrial R&D Investment Scoreboard (Refer to Annex 8).

According to Gartner's report, as of 2018, the Complainant was rated as a market leader for the third consecutive year (Refer to Annex 9). The Complainant is still Positive in Gartner's Vendor Rating despite being influenced by the US government (Refer to Annex 10).

Prior to the date of the registration of the Disputed Domain Name, the Complainant has, inter alia, registered the following marks for "HUAWEI" and "华为" and/or its formative marks in Classes 9, 30, and 32 in various jurisdictions including China, United States, Australia, Germany and France (the "Complainant's Marks") (Refer to Annex 5):-

Trademark	Application date	Registration date	Trademark number	Class	Register
<b>HUAWEI</b>	2005-09-30	2008-09-06	4924862	9	CN

 HUAWEI	2005-10-28	2008-10-13	4969112	9	CN
华为	2017-05-08	2018-11-21	24010945	30	CN
华为	2018-09-04	2019-06-14	33298870	30	CN
华为智选	2019-03-06	2019-11-14	36663042	30	CN
华为	2017-05-05	2018-04-28	23985126	32	CN
HUAWEI	2005-05-08	2008-02-21	4641004	32	CN
华为	2009-07-20	2010-09-21	7554904	32	CN
 HUAWEI	2014-03-18	2015-04-27	14195918	38	CN
HUAWEI	2015-12-22	2017-01-27	18669761	38	CN
 HUAWEI	2005-09-30	2007-10-16	78724256	9	US
 HUAWEI	2005-10-04	2005-10-04	1079026	9	AU
 HUAWEI	2005-10-05	2005-12-09	30558982	9	DE
 HUAWEI	2005-10-04	2005-10-04	3383742	9	FR

Through the Complainant's extensive, continuous and extensive publicity and actual use of the Complainant's Marks, it is the Complainant's view that the marks for "HUAWEI" and "华为" have been widely known to the relevant public around the world, including China. In 2002, the trademarks "HUAWEI", "华为" and " " were recognized as well-known trademarks by the Trademark Office of the former China Administration for Industry and Commerce (Refer to Annex 11).

The Complainant's contentions may be summarized as follows:

- i. **The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

The Disputed Domain Name is "huaweitea.com", among which ".com" belongs to a generic domain name suffix and plays no role in distinguishing the disputed domain name from the Complainant's Marks. The Complainant holds that the English word "tea" within "huaweitea" is a common adjective that lacks significance, which shall not be used for comparison with the Complainant's Marks either. Therefore, it depends on the main identifying part of the Disputed

Domain Name, i.e. "huawei", to determine whether the Disputed Domain Name is similar to the Complainant's Marks (Refer to Annex 12).

The Complainant contends that the main part of the Disputed Domain Name, "huawei", is identical to the Complainant's English mark for "HUAWEI" and is corresponding to the Complainant's Chinese mark for "华为". Accordingly, the Complainant submits that this is highly likely to cause confusion of the relevant public.

**ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:**

The Complainant puts forward that the Respondent is not affiliated with, sponsored by, endorsed by, or even known to the Complainant. Further, the Complainant has not licensed or otherwise authorized the Respondent to use the Complainant's Marks. By checking the Chinese Trademark Records, the Respondent does not own any registered trademarks.

The Complainant holds that the above evidence sufficiently constitutes prima facie evidence to prove that the Respondent has no rights or legitimate interests, therefore the burden of proof shifts to the Respondent.

**iii. The Disputed Domain Name has been registered and is being used in bad faith:**

The Complainant claims that the bad faith can be established based on the following grounds:

- (1) The Complainant has become well-known prior to the registration of the disputed domain name and its reputation has reached around the world.

From the developing history of the Complainant as stipulated above, it can be seen that after its establishment in 1987, the Complainant has registered their marks for "HUAWEI" and "华为" worldwide way earlier than the Respondent's registration of the Disputed Domain Name on 2 July 2021. The Complainant and its marks have gained sufficient visibility and fame around the world throughout the years (Refer to Annex 6-11).

In addition, the Complainant registered trademarks such as "华为", "鲜悦烘焙 FRESH FUN BAKERY" and "MOSEL" in Class 30 and 32 earlier than the registration of the Disputed Domain Name (Refer to Annex 13), and the designated goods include tea and tea beverages, etc. In particular, the Complainant's brand "鲜悦烘焙 FRESH FUN BAKERY" has been settled in the Complainant's staff canteen, and the Complainant has used the mark way earlier than the registration time of the disputed domain name. Tea is being sold in the Complainant's "Huawei MOSEL Mall". According to consumer evaluations, it is found that the evaluation time is earlier than the registration time of the Disputed Domain Name.

Therefore, the Complainant contends that the Complainant's Marks are well known before the Respondent registered the Disputed Domain Name.

- (2) The Respondent shall have already known about the Complainant before registering the Disputed Domain Name.

Firstly, as stated above, the Complainant has become well-known worldwide.

Secondly, the Complainant's Marks are highly distinctive and well-known. Given the fact that the Respondent's name is "Cheng Xianming" which is not relevant to "huawei"/"华为" at all, the Complainant contends that the Respondent's application for a domain name that is identical and/or highly similar to the Complainant's Marks is not a mere coincidence, and that the Respondent has specifically registered the Disputed Domain Name in bad faith for the purpose of commercial gain by freeriding the Complainant's goodwill and reputation.

- (3) The Respondent has used the Disputed Domain Name in bad faith.

The Respondent's webpage under the Disputed Domain Name redirects to a gambling website (Refer to Annex 15), which means the Respondent intentionally attempts to use the Disputed Domain Name to guide visitors to participate in gambling. The Respondent takes advantage of the Complainant's reputation to boost the page views and to attract internet users to the Respondent's website for commercial gain by creating confusion between the Respondent and the Complainant.

From the above, the Complainant asserts that it can be seen that the Respondent intended to cause confusion and deception amongst members of the public, using the Complainant's trade name and the Complainant's marks with a view of taking unfair advantage of the power of attraction, reputation and prestige of the Complainant's Marks. As such, the Complainant submits that the Respondent has registered/used the Disputed Domain Name in bad faith.

The Complainant requests that the disputed domain name be transferred to the Complainant.

#### B. Respondent

The Respondent did not submit any reply.

### 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

## **A) Identical / Confusingly Similar**

Pursuant to the Paragraph 4(a)(i) of the Policy, the complainant must prove that a disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

In view of the trademark registrations and certificates and records from various jurisdictions submitted by the Complainant (Refer to Annex 5), including but not limited to People's Republic of China and the United States, the official certificate of the Claimant's well-known trademarks issued as early as in 2002 (Annex 11), and taking into account the long-standing history of the Complainant since 1987 (Refer to Annex 6) and its efforts in promoting its goods and services around the world throughout the years (Refer to Annexes 7-10), the Panel accepts that the Complainant enjoys trademark rights in respect of its "HUAWEI" and "华为" and its formative marks well before the Respondent registered the Disputed Domain Name on 2 July 2021. The Panel accepts that a clear and exclusive relationship has been formed between the Complainant and the Complainant's Marks.

The Disputed Domain Name is <huaweitea.com>, the distinctive element being "huawei". Comparing the Complainant's Marks and the distinctive element of the Disputed Domain Name, the distinctive element is identical to the Complainant's "HUAWEI" mark, which is the English transliteration for the Complainant's "华为" mark. The additional term "tea" and the suffix ".com" in the Disputed Domain Name are descriptive and/or general terms which do not confer to the whole a new meaning involving the absence of risk of confusion with the Complainant's Marks.

Based on the above, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's Marks. Accordingly, the Complainant has satisfied the element required by Paragraph 4(a)(i).

## **B) Rights and Legitimate Interests**

Once the Complainant establishes a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name. (See *Edgwell Personal Care Brands LLC v. jifeifeil*, Case No. HK-1600855)

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the Disputed Domain Name and the Respondent has failed to assert any such rights or legitimate interests.

The Panel notes that the Complainant, as the legitimate right holder, indicated that the Complainant has not licensed or otherwise permitted the Respondent to use the Complainant's trademarks or a variation thereof.


The Respondent has not submitted any substantive response to the Complaint and did not provide any explanation or evidence to show any rights or legitimate interests in the Disputed Domain Name sufficient to rebut the Complainant's prima facie case. The Panel notes that the Respondent's name is "Cheng Xianming", which has no relationship with "huaweitea" or "huawei". The Respondent also did not submit any explanation for using the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

### **C) Bad Faith**

The Complainant must show that the Respondent registered and is using the Disputed Domain Name in bad faith (Paragraph 4(a)(iii) of the Policy). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy: "the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the Respondent has registered or acquired the Disputed 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 the Respondent's documented out-of-pocket costs directly related to the Disputed Domain Name; or
- (ii) the Respondent has registered the Disputed 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 the Respondent has engaged in a pattern of such conduct; or
- (iii) the Respondent has registered the Disputed Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's 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 the Respondent's web site or location or of a product or service on the Respondent's web site or location."

The Complainant has evidenced that its company and its Marks have acquired high fame and reputation through the extensive promotion of the goods and services. The Complainant's submissions are supported by various worldwide rankings such as Fortune Magazine Global 500 Rankings (Refer to Annex 7), the 2021 EU Industrial R&D Investment Scoreboard (Refer to Annex 8), the Gartner Market Share Analysis for CSP Operational Technology report (Refer to Annex 9), and the Gartner' Vendor Rating all evidencing the reputation and market position of the Complainant. The Panel further notes that the Complainant's trademarks "HUAWEI", "华为" and "" were recognized as well-known trademarks by the Trademark Office of the former China Administration for Industry and Commerce in 2002 (Refer to Annex 11).

The Complainant has submitted evidence, which shows that the Respondent registered the Disputed Domain Name long after the Complainant registered its trademark (Refer to Annex 3).

Considering the goodwill of the Complainant's brand, the Respondent is clearly aware of the Complainant before the date of registration of the Disputed Domain Name, and would have known that registering a domain name that is confusingly similar and identical to the Complainant's trademark may be beneficial to its operation.



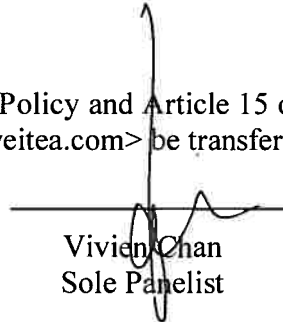
Given the fact that “HUAWEI” is the English transliteration of the Complainant’s company name (Refer to Annex 4), and the fact that the Respondent name “Cheng Xianming” is not relevant to the Disputed Domain Name at all, the Panel finds that the Respondent has registered the Disputed Domain Name in bad faith with the purpose of freeriding on the Complainant’s goodwill and reputation for obtaining commercial gains.

According to the notarized screenshots of the website hosted by the Disputed Domain Name as provided by the Complainant, the Panel notes that the webpage is redirected to a gambling site (Refer to Annex 15). The Panel finds that the Respondent’s actions therefore constitute bad faith as the registration of the Disputed Domain Name was to attract, for commercial gain, Internet users to the website hosted by the Disputed Domain Name, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the gambling website redirected by the Disputed Domain Name, satisfying Paragraph 4(b)(iv) of the Policy.

In view of the above, the Panel finds that the above evidence is sufficient to show bad faith of the Complainant and accordingly, the Complainant has met its burden to establish the element under Paragraph 4(a)(iii) of the Policy.

**6. Decision**

Pursuant to Paragraph 4 of the Policy and Article 15 of the Rules, the Panel orders that the Disputed Domain Name <huaweitea.com> be transferred to the Complainant.



Vivien Chan  
Sole Panelist

Dated: 14 March 2022