



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1600857</b>
<b>Complainant:</b>	<b>China Resources Snow Brewery (Liaoning) Company Limited</b>
<b>Respondent:</b>	<b>William Coam / Germanium Inc.</b>
<b>Disputed Domain Name:</b>	<b>&lt;snowbeer.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is China Resources Snow Brewery (Liaoning) Company Limited, a limited liability company incorporated in the People’s Republic of China and having a registered business address of 159 Xielian Street, Sujiatun District, Shenyang 110101, Liaoning, China (“the Complainant”), represented by Rouse Consultancy (Shanghai) Limited.

The Respondent is William Coam / Germanium Inc. (“the Respondent”) of PO Box 313, Woodbury, New York, 11797, United States of America, represented internally by William Nah.<sup>1</sup>

The disputed domain name is <snowbeer.com>, registered with Moniker Online Services LLC, 6301 NW 5<sup>th</sup> Way Suite 4500, Fort Lauderdale, Florida 33309, United States of America (“the Registrar”).

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 1 April 2016. On 5 April 2016, the Center transmitted by email to the Registrar a request for registrar verification in connection with the domain name at issue.

On 26 April, 2016, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the

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<sup>1</sup> William Nah signed off on the Response and also made a sworn statement as supporting evidence on behalf of Germanium Inc. He describes himself as the owner of that company. The name “William Coam” does not appear again in the evidence. In earlier UDRP proceedings against the company the relevant WHOIS data listed a “Willie Coam” as the registrant name.

contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 28 April, 2016. In accordance with the Rules, the due date for Response was 18 May, 2016. A formal Response was received by the Center on 8 May, 2016.

The Center appointed Debrett G. Lyons as panelist in this matter on 19 May, 2016. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. For Complainant**

1. The Complainant<sup>2</sup> has sold beer by reference to the trademark SNOW since 1960.
2. The Complainant presently operates 95 breweries in China and sales of SNOW branded beer account for more than 23% of the beer market in China.
3. By 2002, the Complainant was the second largest beer brewer in China and by 2008, SNOW branded beer became the world’s largest beer brand, measured by volume of beer sold.
4. The Complainant is the owner of, *inter alia*, PRC Trademark Reg. No. 1316805, registered from 21 November 1997 for the mark SNOW.<sup>3</sup>
5. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register any domain name incorporating the trademark.
6. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

#### **B. For Respondent**

7. The Respondent is principally a domain name reseller which owns more than 5,800 registered names, many of which are for sale via a website at [www.domainshop.com](http://www.domainshop.com).
8. The disputed domain name was registered on 11 June 2003.
9. The disputed domain name resolves to a website at [www.snowbeer.com](http://www.snowbeer.com) where both it and other domain names are for sale.
10. There has been no other use of the domain name.

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant asserts rights in the trademark SNOW and states that the disputed domain name is confusingly similar to the trademark.

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<sup>2</sup> Either by itself or through a predecessor-in-title, not being altogether clear in the evidence.

<sup>3</sup> The registration is for a stylised version of the word SNOW. Because of the slight degree of stylisation the Panel has, for the purposes of the following discussion, treated the registration as a registration for the plain word.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

## **B. Respondent**

The Respondent argues that the Complainant has no trademark rights because it has no trademark registration in the United States where the Respondent is domiciled. It further argues that even if a United States trademark registration existed, it would not give the Complainant “a monopoly in all contexts”.

The Respondent describes itself as an “Internet entrepreneur” with numerous niche businesses. For example, the Respondent states that it has been in the business of selling organic vitamins since 1988. It also states that it operates a domain name reselling business which registers and sells names which are generic, descriptive and “brandable” terms.

The Respondent alleges that it “registered the Domain Name because [it] intends to sell beer, soda and tea items at the [www.snowbeer.com](http://www.snowbeer.com) website. The Respondent goes on to state that it “has never intended to sell SNOW beer at the Domain Name and has never represented that it is in the business of selling SNOW beer.”

Further, the Respondent states that in the time the “Domain Name has sat dormant, Complainant has displayed pay per click advertisements for products unrelated to SNOW beer.”

Furthermore, the Respondent claims rights and legitimate interests in the domain name because prior to the dispute it made preparations to use the domain name in association with a *bona fide* offering of goods, namely, the sale of beer, soda and tea, but “has not yet been able to devote the time and resources to develop the Domain Name.”

Finally, the Respondent provides a sworn statement that it was not aware of Complainant at the time it registered the domain name and so did not register the name in bad faith.

## **5. Findings**

Paragraph 4(a) of the Policy states that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name be identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- 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**

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights for the purposes of this aspect of the Policy.

The Panel finds that the Complainant has trade mark rights in SNOW acquired through registration in PRC and elsewhere. Contrary to the Respondent's submission, there is no requirement under the Policy for a complainant to hold a registration in the place of domicile of the respondent. The fact that in this case the Complainant has not shown a USPTO trademark registration is therefore irrelevant.

For the purposes of comparing the trademark with the disputed domain name, it has long been held that generic top-level domains, such as “.com” in this case, can be ignored. The terms differ then merely by addition of the word “beer” to the trademark, being the exact goods sold under the trademark. The Respondent's submission that the Complainant could not have “a monopoly in all contexts” is a further irrelevancy since the goods coincide and confusion is inevitable.

Panel finds the disputed domain name to be confusingly similar to the trademark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests.

Paragraph 4(c) of the Policy states that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The publicly available WhoIs database identifies the registrant name as “William Coam” and the registrant organization as “Germanium Inc.” Neither name supports a finding that the Respondent might be commonly known by the disputed domain name and the

Respondent has not made any submission that it is otherwise known by the domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a *bona fide* offering of goods or services. Further, the domain name has been for sale.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and so the onus shifts to the Respondent to show a right or legitimate interest in the name.

The Respondent states that it “has not yet been able to devote the time and resources to develop the Domain Name” but nonetheless claims rights and legitimate interests in the domain name because prior to the dispute it had made preparations to use the domain name in association with a *bona fide* offering of goods, namely, the sale of beer, soda and tea.

There is no supporting evidence of that claim. Despite the passage of almost 13 years since registration of the domain name, there is nothing in terms of paragraph 4(c)(i) of the Policy to show “demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services”, in this case, the sale of beer, soda and tea.

Moreover, were there evidence of use or preparation to use the domain name in respect of the sale of beer, Panel would find that use directly in conflict with the Complainant’s pre-existing trademark rights in respect of the exact same goods and accordingly there could be no *bona fide* use and no rights or legitimate interest in the domain name.

Finally, the use that has been made of the domain name, which appears to date from no earlier than 2015, is in respect of a website, still “under construction”, offering the disputed domain name and other names for sale.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

### **C) Bad Faith**

The Complainant must prove on the balance of probabilities both that the disputed domain name was registered in bad faith and that it is being used in bad faith.

Further guidance on that requirement is found in paragraph 4(b) of the Policy, which sets out four circumstances, any one of which is taken to be evidence of the registration and use of a domain name in bad faith if established.

The four specified circumstances are:

“(i) circumstances indicating that the respondent has registered or 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 the respondent’s documented out-of-pocket costs directly related to the domain name; or

(ii) the respondent has 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 Respondent has engaged in a pattern of such conduct; or

(iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, respondent has intentionally attempted to attract, for commercial gain, internet users to respondent's website 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 website or location or of a product or service on the site or location.”

Panel finds registration and use in bad faith pursuant to paragraph 4(b)(iv) above. The Panel has already found that the domain name and trademark are confusingly similar. The requisite likelihood of confusion exists. Further, the resolving website exists for commercial gain since its purpose is to sell the disputed domain name and other names for profit. The Respondent also admits that it benefits from pay per click advertising from the website.

In terms of paragraph 4(b)(iv), the Respondent has used the domain name to intentionally attract internet users to its website for commercial gain and has done so by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website. It matters only that this confusion results in likely visits to the website; whether or not the confusion persists afterwards is not relevant.

The Panel adds here for the sake of completeness that paragraph 4(b)(iv) hinges, as can be seen, on bad faith use, in contrast to paragraphs 4(b)(i)-(iii) which depend on bad faith registration. For that reason the Panel might disregard the sworn statement of William Nah to the extent that he claims that the company was unaware of the existence of the Complainant in June 2003. Nevertheless, the Panel has instead given that claim appropriate weight, measured against the renown of the Complainant's trademark by 2002 and other factors.<sup>4</sup>

Panel finds registration and use in bad faith and the third limb of the Policy established.

## 6. Decision

Having established all three elements required under the Policy, the Panel decides that relief shall be **GRANTED**. The Panel orders that the domain name be transferred from the Respondent to the Complainant.

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<sup>4</sup> Including evidence of earlier UDRP proceedings against the Complainant such as a successful complaint by the owner of K-MART Stores against the domain name, <ik-mart.com> and the Respondent's claim that it has only ever registered generic domain names for resale.



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Debrett G. Lyons

Panelist

Dated: 20 May 2016