



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Dr Stanley Lai, SC (Sole Panelist)

Case No.	HK-2101567
Complainant:	Gear Up International Limited; Evisu Group Limited c/o M/s Benny Kong & Tsai
Respondent:	Huxiang / Hu Yang
Disputed Domain Name(s):	<evisu-taiwan.com>

1. The Parties and Contested Domain Name

The Complainants are (1) Gear Up International Limited, of P.O. Box 957 Offshore Incorporations Centre, Road Town, Tortola, British Virgin Islands (the “**First Complainant**”) and (2) Evisu Group Limited, of 1st Floor, International Industrial Building, No. 175 Hoi Bun Road, Kwun Tong, Kowloon, Hong Kong SAR (the “**Second Complainant**”), c/o M/s Benny Kong & Tsai (collectively, the “**Complainant**”).

The Respondent is Huxiang / Hu Yang, of beijieshichaoyangquyangjingjie42hao, beijing, China (the “**Respondent**”).

The domain name at issue is <evisu-taiwan.com> (the “**Disputed Domain Name**”), registered by Respondent with 1API GmbH, of abuse@1api.net / +49 68949396850.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “**ADNDRC**”) on 26 October 2021. The ADNDRC acknowledged receipt of the Complaint on 27 October 2021. The ADNDRC duly submitted a request for registrar verification in connection with the Disputed Domain Name on 27 October 2021. On 28 October 2021, the Registrar of the Disputed Domain Name responded to the ADNDRC, confirming that (i) the Disputed Domain Name is registered with it, (ii) the Respondent is the registrant, (iii) the ICANN Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) (adopted by the ADNDRC) applied to the present dispute, and (v) the language of the registration agreement for the Disputed Domain Name was English.

The ADNDRC informed the Complainant of a deficiency in the Complaint relating to the Respondent’s information on 1 November 2021 and requested that the Complainant file an amended Complaint Form. The Complainant submitted an amended Complaint Form on 3 November 2021. The Complainant duly verified that the amended Complaint was in

administrative compliance with the Policy and the Rules for the Policy (the “**Rules**”). Formal notification of the Complaint was sent to the Respondent on 4 November 2021. This proceeding commenced on 4 November 2021.

According to Article 5 of the Rules, the Respondent was required to file its response on or before 24 November 2021. The Respondent did not file a response within the required time period. On 25 November 2021, the ADNDRC notified the parties that the UDRP proceeding will proceed.


The ADNDRC appointed Dr. Stanley Lai, SC as the sole panelist for this matter on 29 November 2021. Dr. Stanley Lai, SC confirmed his availability to act as panelist and his ability to discharge his duties independently and impartially between the parties to this dispute.

The Panel has accordingly been properly constituted in accordance with the Rules and the Supplemental Rules.

3. Factual background

The First Complainant is a company incorporated under the laws of the British Virgin Islands on 9 January 2006, and was and is, at all material times, incorporated for the purpose of, *inter alia*, holding various forms of intellectual property, including trade marks.

The Second Complainant is a company incorporated under the laws of Hong Kong SAR on 9 March 2001, and is engaged in the business of, *inter alia*, designing, manufacturing, selling and distributing fashion items, including *inter alia*, jeans and denim jackets (the “**Complainant’s Products**”) throughout the world under the trade name and/or trade mark “EVISU”. The Second Complainant was and is at all material times the exclusive licensee of the First Complainant to use worldwide, among others, the following “EVISU” trade marks:

- (i) “EVISU”;
- (ii)  (the “**EVISU**” Trade Mark”);

- (iii)  ; and

- (iv) 

(collectively, the “**EVISU TMs**”)

The First Complainant owns a substantial number of registrations in respect of the EVISU TMs worldwide, and has annexed to the Complaint particulars of these registrations as well as copies of the trademark registration certificates (as Exhibit 2 and Exhibit 3 respectively).

The Disputed Domain Name was registered on 29 October 2018 in the name of the Respondent. According to the Complaint, the Respondent operates the website www.evisu-taiwan.com bearing the Disputed Domain Name (the “**Respondent’s Website**”), which offers for sale clothing products and accessories (the “**Infringing Products**”) with or by

reference to marks which are allegedly identical and/or confusingly similar to the EVISU TMs (the “**Infringing Marks**”). The Complaint also states that the Respondent’s Website is substantively similar to the Complainant’s official website <www.evisu.com>. The Complainant has annexed to the Complaint screenshots of the Respondent’s Website and the Complainant’s official website as Exhibit 5 and 6 respectively.

The Complainant also claims that, around 27 July 2021, the Complainant placed an online order on the Respondent’s Website and was told by Customer Service that the products which were ordered would be shipped from their warehouse in Hong Kong. The Complainant received a parcel containing the purchased products on around 7 August 2021, which reflected the following sender information:

董生新市天水圍天恩邨恩澤 3 路 2 段

English translation: Mr Tung, Lot II, No. 3, Yan Chak House, Tin Yan Estate, Tin Shui Wai, New Town

The Complainant further claims that, upon the Complainant’s examination of the products purchased from the Respondent’s Website, it was determined that they were counterfeit products.

Based on what has been submitted to the Panel, the Respondent has not refuted any of the above claims.

4. The 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.

Should the complainant prove that each of these three elements are present, the remedies available to the complainant (at paragraph 4(i) of the Policy) are (i) the cancellation of the domain name in dispute, or (ii) the transfer of the domain name registration to the complainant. In the present case, the Complainant has sought an order that the Disputed Domain Name be transferred to the First Complainant.

5. The Complainant’s Contentions














The Complainant’s contentions may be summarized as follows:

A. **The Disputed Domain Name is identical or confusingly similar to trade marks in which the Complainant has rights**

- i. Trade marks in which the Complainant has rights

The Complaint made reference to a substantial suite of trade marks (comprising a total of 242 registrations) that are owned by the Complainant worldwide in jurisdictions including Argentina, Australia, Bahrain, Bangladesh, Brazil, Cambodia, Canada, Chile, China, the European Union, Hong Kong, India, Indonesia, Israel, Kazakhstan,

Kuwait, Macau, Malaysia, Mexico, Mongolia, Morocco, Myanmar, New Zealand, Norway, Pakistan, Peru, the Philippines, Qatar, Russia, Saudi Arabia, Singapore, South Africa, Sri Lanka, Switzerland, Taiwan, Thailand, Turkey, the United Kingdom, the United Arab Emirates, the United States of America, and Vietnam. In particular, the Complainant is the registered proprietor of the following trade marks registered in Hong Kong:

S/N	Registration No.	Trade Mark	Classes	Registration Date
1	301170648	EVISU	9	29 July 2008
2	302876202	EVISU	9	23 January 2014
3	301220002	EVISU	14	14 October 2008
4	303695383	EVISU	34	25 February 2016
5	200011818AA	EVISU	18, 25	21 October 1999
6	303206141	EVISU	3, 5, 9, 16, 24, 26, 35, 41	19 November 2014
7	303386250	EVISU	8, 43	24 April 2015
8	302876211		9	23 January 2014
9	304669903		25	14 September 2018
10	303695392		34	25 February 2016
11	200011819AA	(A)  (B) 	18, 25	21 October 1999
12	304531725		28, 35	18 May 2018
13	303386269	A  B  C  D 	3, 5, 8, 16, 24, 26, 28, 35, 41, 43	24 April 2015
14	301220011	(A)  (B) 	9, 14	14 October 2008
15	302876220		9, 18, 25	23 January 2014

A table setting out the particulars of the trade mark registrations owned by the Complainant was annexed to the Complaint as Exhibit 2. Copies of registration/extracts from official trade mark databases were similarly annexed to the Complaint as Exhibit 3.

The Complainant also claimed that, by reason of the substantial sales and extensive advertising of goods under the EVISU TMs, the EVISU TMs have become well known and distinctive throughout the world as goods of the Complainant. As a result, the

Complainant asserts that members of the trade and public throughout the world recognize and understand and have recognized and understood that goods sold under or by reference to one or more of the EVISU TMs are those of the Complainant and none other. However, the Panel was not furnished with information such as sales figures and advertising or marketing expenditure which would substantiate these claims. Nevertheless, the Panel finds it appropriate to take notice of this assertion (with due weight accorded to the paucity of evidence filed in support of the same), in light of the absence of any response from the Respondent.

The Panel was also referred to various UDRP decisions (HKIAC Case Nos. HK-18010177 and HK-18010178) which upheld the Complainant's rights in relation to the "EVISU" Trade Mark. The Complainant provided copies of the aforesaid decisions as Exhibit 4 to the Complaint.

ii. The Disputed Domain Name is identical or confusingly similar to the Complainant's trade marks

The Complainant submitted that the Disputed Domain Name contains the word component "*evisu*", and that "*evisu*" is the most distinctive component in the Disputed Domain Name. The Complainant also submitted that "*evisu*" is identical to the "EVISU" Trade Mark which the Complainant has acquired and in which the Complainant enjoys legitimate rights and interests. Finally, the Complainant submits that the inclusion of the word "*taiwan*" in the Disputed Domain Name can be comprehended as "Evisu in Taiwan" to ordinary internet users or customers.

B. The Respondent has no rights or legitimate interest in the Disputed Domain Name

The Complainant's submissions in support of its assertion that the Respondent has no rights or legitimate interest in the Disputed Domain Name may be summarized as follows:

- (a) The Respondent has not made any legitimate or active use of the Disputed Domain Name except the allegedly infringing activities described at section 3 above i.e. the provision of counterfeit goods under the Infringing Marks. The Respondent is therefore not commonly known by the Disputed Domain Name, as is instead using the Disputed Domain Name for unlawful commercial use to misleadingly divert consumers, as evidenced by the imitation of the Complainant's website;
- (b) The Respondent does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Name, and has not made any legitimate non-commercial or fair use of the Disputed Domain Name anywhere in the world; and
- (c) The Respondent has no connection or affiliation with the Complainant and has received no authorization, license or consent from the Complainant to use the "EVISU" Trade Mark or any other trade marks of the Complainant.

C. No bona fide offering of services / use of the Disputed Domain Name is in bad faith

The Complainant contended that the Disputed Domain Name has been registered and is being used by the Respondent in bad faith. In support of this contention, the following arguments were made:

- (a) The purpose of the website operated by the Respondent is to offer for sale counterfeit goods under the Infringing Marks. The Complainant submits that this indicates that the Respondent clearly has registered and used the Disputed Domain Name in bad faith in order to mislead the public into the mistaken belief that its services or goods are in some way related to or associated with the Complainant;
- (b) Further or in the alternative, the Complainant submits that the Respondent's purpose in hosting a website under the Disputed Domain Name is to attract Internet users for commercial profit through the sale of goods. The Complainant argues that the sale of counterfeit goods on such a website (whereby "evisu-taiwan.com" can be confused by ordinary internet users or customers with "evisu.com") severely damaged the business of the Complainant, and violates the principle of honesty and credibility, causing severe damage to the legitimate rights and interests of ordinary customers and for that matter the general public and that of the Complainant.

6. Findings

No response having been received from the Respondent within the time specified (24 November 2021) or at all, the Panel has proceeded to consider the merits of the Complaint as filed.

The Panel concludes that the Complainant has sufficiently made its case to warrant a transfer of the Disputed Domain Name from the Respondent to the Complainant.

A) Identical / Confusingly Similar

The Panel recognizes the plethora of trade mark registrations that are owned by the Complainant apropos the EVISU TMs. The evidence that was tendered in support of the Complaint is also recognized insofar as it establishes, for the purpose of this proceeding, the well-known status of the EVISU TMs.

The Panel also recognizes that the Disputed Domain Name is confusingly similar to the Complainant's "EVISU" Trade Mark. In reaching this finding, the Panel notes that the Disputed Domain Name contains "evisu" in its entirety. The Panel agrees with the Complainant that "evisu" is the dominant and distinctive component of the Disputed Domain Name, and that the insertion of the word "taiwan" in the Disputed Domain Name is descriptive of geographical origin (albeit untrue in fact) and does not contribute any distinctiveness to sufficiently distinguish the Disputed Domain Name from the "EVISU" Trade Mark that is owned by the Complainant.

The Panel is fortified in its conclusion by the fact that other UDRP panels have consistently held that domain names are identical or confusingly similar to a trade mark for purposes of the Policy "*when the domain name includes the trademark, or a confusingly similar*

approximation, regardless of the other terms in the domain name”: *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. D2000-0662.

It is also established that the addition of generic terms to a disputed domain name has little, if any, effect on a determination of confusing similarity between the domain name and the mark: *Quixtar Investments, Inc. v. Dennis Hoffman*, WIPO Case No. D2000-0253. Similarly, the mere addition of a generic or descriptive term does generally not exclude the likelihood of confusion: *PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. D2006-0189.

Finally, the Panel notes that suffixes which are country or city names (“paris”, “japan”, “korea”, “taiwan”, “china”) are non-distinctive and do not serve to distinguish a domain name in any significant way: *L’Oréal, Laboratoire Garnier et Compagnie, Lancôme Parfums et Beauté et Compagnie v. Zhao Ke, Zeng Wei, Zhu Tao, Yang Yong, Ma Yun, Ye Genrong, Ye Li, ChinaDNS Inc., DomainJet, Inc., Hao Domains Services*, WIPO Case No. D2011-1608.

For completeness, the Panel also notes that in making an enquiry as to whether or not a trade mark is identical or confusingly similar, the suffix “.com” is to be disregarded: *Rohde & Schwarz GmbH & Co KG v Pertshire Marketing Ltd* WIPO Case No. D2006-0762.

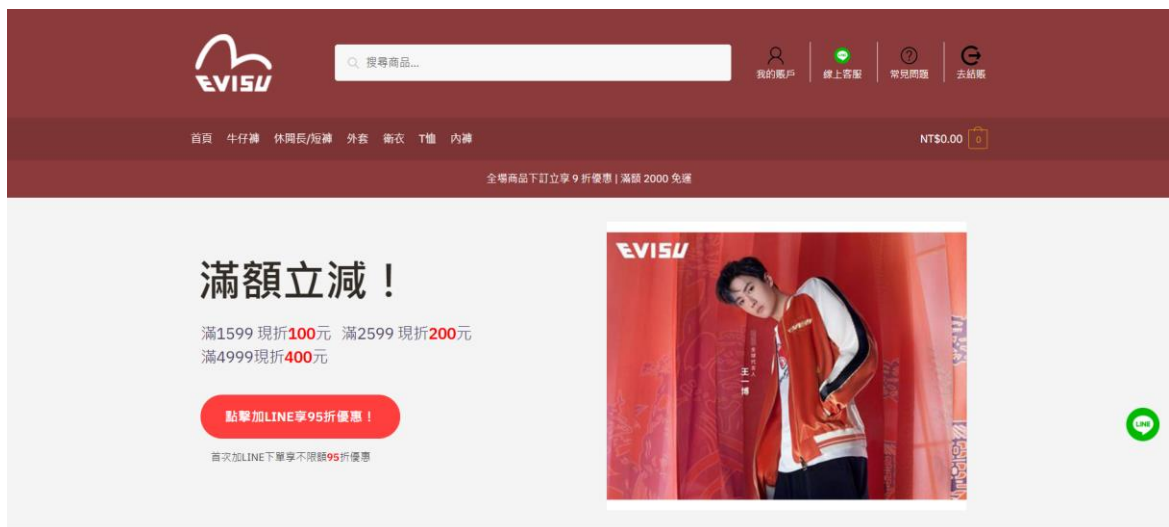
The Disputed Domain Name comprises the “EVISU” Trade Mark in its entirety, together with a non-distinctive suffix is a country names (“taiwan”). The Panel therefore finds that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights i.e. the “EVISU” Trade Mark.

B) Rights and Legitimate Interests

Given the extensive and comprehensive portfolio of EVISU TMs owned by the Complainants, and their relatively long duration of registration dating back to 1999, which predates the first entry of the Disputed Domain Name, the onus is on the Respondent to establish the latter’s rights and/or legitimate interests in the Disputed Domain Name: *PepsiCo Inc v Amilcar Perez Lista d/b/a Cybersor*, WIPO case No D2003-0174. No response having been filed by the Respondent, the Panel finds that the Respondent can claim no rights and/or legitimate interest in the Disputed Domain Name. The Respondent was given due opportunity to file evidence of its own rights to the Disputed Domain Name, whether in the form of registered trade marks or otherwise, but elected not to do so.

The Complainant made other assertions, which in the view of the Panel further reinforce the absence of any legitimate claim to rights or interest that can be made by the Respondent (going beyond the fact that it did not file a case).

The Disputed Domain Name resolves to a website purportedly selling EVISU products that are produced by the Complainant. Screenshots of the website as at 8 December 2021 are reproduced as follows:



The Panel agrees with the Complainant that the following observations can be made:

- (a) The website operated by the Respondent incorporates extensive use of the EVISU TMs without the Complainant’s authorization or consent;
- (b) The website claims to deal with EVISU products which are produced by the Complainant, and contains sections which provide an introduction to the EVISU brand, which states (in Chinese) “*EVISU is a popular street denim brand created by the designer Hidehiko Yamane in Tokyo, Japan. Evis was founded in 1991*”;
- (c) The website claims to be the “*official website of EVISU in Taiwan*” (in Chinese);
- (d) On the Complainant’s evidence, the website appears to offer for sale counterfeit goods bearing marks which are identical or confusingly similar to the EVISU TMs.

The Respondent was therefore clearly maintained an e-commerce platform through its website which was involved in the sales of products that are purportedly related to the Complainant’s brand.

The Respondent did not refute the Complainant's assertion that the Disputed Domain Name was registered and used in bad faith in order to mislead the public into the mistaken belief that its services or goods are in some way related to or associated with the Complainant. The Panel agrees with the Complainant that this would have the effect of severely damaging the business of the Complainant by diverting business away from the Complainant (as potentially evidenced by the purchase conducted by the Complainant). In the absence of any credible explanation by the Respondent, this cannot provide the Respondent with a right or legitimate interest in the Disputed Domain Name: *Cummins Inc. v DG Lanshan Mechanical Electrical Equipment Co Ltd*, ADNDRC Case No. HK-1000286.

Similarly, an illegal use of another proprietor's trade marks would not constitute a bona fide offering of goods or services: *Viacom International, Inc., Paramount Pictures Corporation, and Blockbuster Inc. v. TVdot.net, Inc. f/k/a Affinity Multimedia* WIPO Case No. D2000-1253. In the premises, and again without credible explanation or claimed defence (such as parallel importation), the Respondent is unable to claim to any rights or legitimate interest in the Disputed Domain Name.

C) Bad Faith

The Panel also finds that the Domain Name has been registered and is being used by the Respondent in bad faith.

The absence of a credible response meant that the absence of any rights and/or legitimate interests that the Respondent could lay claim to was itself evidence of bad faith.

The Panel also notes that the Respondent's own name bears no resemblance to the Disputed Domain Name. In the absence of any credible explanation to the contrary, the Panel finds that the website which operated under the Disputed Domain Name was directed at users intending to purchase the Complainant's products, who would perceive some form of business relationship such as a partnership or authorized distributorship. It is reasonable to infer, in the absence of any credible or any other explanation provided by the Respondent, that the registration and continued use of the Disputed Domain Name was intended to mislead internet users to perceive a legitimate business association: *Croatia Airlines d.d. v Modern Empire Internet Ltd*, WIPO Case No. D2003-0455.

In *Cummins Inc. v ning lee*, ADNDRC CN-1200540, the Panel held that the use of words such as "Service Centre" implied that the respondent had a relationship with the complainant, which was false and misleading and therefore amounted to bad faith registration and use. In the present case, the Panel notes that the website operated under the Disputed Domain Name claims to be the "*official website of EVISU in Taiwan*". This is clearly intended to indicate a relationship between the Respondent and Complainant which is similarly false and misleading, and therefore amounts to bad faith.

No response having been received from the Respondent by the stipulated deadline, or at all, the Panel finds that the Complainant has satisfied all 3 grounds of paragraph 4(a) of the Policy.

7. Decision

For the reasons stated above, the Panel is duly satisfied that the Complainant has sufficiently fulfilled the trinity of requirements as stated in paragraph 4(a) of the Policy.

The Disputed Domain Name <evisu-taiwan.com> is ordered to be transferred to the First Complainant.



Dr. Stanley Lai, SC
Sole Panelist

Dated: 13 December 2021