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亚洲域名争议解决中心

（北京秘书处）

行政专家组裁决

案件编号：CN-1200542

投诉人：深圳市宝业恒实业发展有限公司

被投诉人：美国 Paul Audio 有限公司

争议域名：c-mark.com

注册商：Network Solutions 公司

1、案件程序

2012年03月26日，投诉人根据互联网络名称及数码分配公司（ICANN）于1999年10月24日施行的《统一域名争议解决政策》（以下简称《政策》）以及于2009年10月30日施行的《统一域名争议解决政策之规则》（以下简称《规则》）和亚洲域名争议解决中心（ADNDRC）于2002年02月28日施行的《统一域名争议解决政策之补充规则》（以下简称《ADNDRC补充规则》），向亚洲域名争议解决中心北京秘书处（以下简称“中心北京秘书处”）提交了英文投诉书。同日，中心北京秘书处确认收到投诉书，并要求注册商就争议域名确认其注册信息。

2012年04月14日，中心北京秘书处收到注册商回复，确认争议域名系在该公司注册。

2012年04月19日，中心北京秘书处按规定向被投诉人转送投诉人的投诉书，并要求被投诉人提交答辩。

2012年04月24日，中心北京秘书处向双方当事人发送程序开始、收到的投诉书经

审查合格并送达被投诉人的通知，并向 ICANN 及注册商传送程序开始通知。

2012 年 05 月 02 日，中心北京秘书处收到被投诉人提交的答辩书，将被投诉人的答辩书转递给投诉人，并通知双方当事人指定专家，但双方当事人均未提交专家名单。

2012 年 05 月 10 日和 14 日，中心北京秘书处收到被投诉人的补充资料，并转递给投诉人。2012 年 05 月 15 日，中心北京秘书处指示双方，投诉人应于 2012 年 05 月 18 日以前提交补充意见或证据；除非双方当事人协商一致或专家组认为必要，2012 年 05 月 18 日之后双方当事人提交的补充证据材料，专家组将不再接收。

2012 年 05 月 18 日，投诉人提交了事实陈述。同日，被投诉人提交了答辩。

2012 年 05 月 14 日，在收到迟少杰先生保证独立、公正地审理案件的声明和同意接受指定的回复后，中心北京秘书处通知争议双方，确认指定独任专家审理本案。

独任专家确认，专家组的组成符合《规则》和《ADNDRC 补充规则》。

鉴于本案《域名注册和服务协议》所使用的语言为英语，根据《规则》第 11(a) 款的规定，案件程序语言为英语。这也与当事人的投诉书和答辩书所使用的语言相一致。

2、事实背景

关于投诉人

本案投诉人为深圳市宝业恒实业发展有限公司，住所地中国广东省深圳市福田区莲花北村吉莲大厦 4 栋 301 室，委托代理人李伟相 (Weixiang Li)、孙春桥 (Chunqiao Sun)，联系地址广东省深圳市福田区联合广场 A 座 1305 室。

关于被投诉人

本案被投诉人为美国 Paul Audio 有限公司，住所地为 5157 Cliffwood Dr., Montclair, 加州，邮编 91763。本案争议域名通过注册商网络解决方案有限责任公司 (Network Solutions, LLC) 于 1997 年 03 月 11 日注册。

3、双方当张

投诉人

投诉人在投诉书中主张：

“c-mark” 商标经深圳环球琴行申请，1995 年 06 月 28 日被核准注册，商标注册证号为第 452764 号，核定使用商品为第 9 类音响。1998 年，深圳市中级人民法院出具民事裁定书，裁定深圳环球琴行所持有的“c-mark” 商标归深圳市宏大发展公司所有。2000 年 03 月 28 日，本案投诉人深圳市宝业恒实业发展有限公司自深圳市宏大发展公司受让

“C-MARK”注册商标。经续展注册，该商标有效期至2015年06月27日。因此，投诉人对“C-MARK”商标享有在先使用的民事权益，换言之，享有商标权。经不懈努力，投诉人所拥有的“C-MARK”商标现已在国内外音响界享有很高知名度，且用户广泛。

争议域名于1997年03月11日注册，其识别部分为“c-mark”，就其所用的字母及字母的顺序而言，该部分与投诉人享有在先民事权益的“c-mark”商标完全一致！争议域名的使用会引起公众的混淆，令公众误认为该域名与投诉人使用“c-mark”商标的产品有关。因此，争议域名与投诉人享有民事权益的“c-mark”商标已构成混淆型相同。

争议域名组成部分“c-mark”并未体现被投诉人的名称，被投诉人也并不拥有可以体现争议域名主要组成部分的公司或企业名称，也不拥有任何可以体现争议域名主要组成部分的注册商标，同时也不享有基于争议域名主要组成部分而产生的任何声誉。因此，被投诉人对争议域名不享有任何合法权益。

投诉人的“c-mark”商标及使用该商标的商品在相关公众中有很高的知名度。其次，“c-mark”商标经深圳环球琴行申请，1995年06月28日被核准注册，投诉人深圳市宝业恒实业发展有限公司于2000年08月28日从深圳市宏大发展公司受让了“C-MARK”注册商标，经续展，该商标有效期至2015年06月27日。所以，投诉人对“C-MARK”享有在先商标权。而争议域名注册于1997年03月11日，其注册时间发生在商标核准之后。该注册及使用已然侵犯了投诉人享有的在先商标权。第三，从被投诉人基于争议域名而建立的网站“www.c-mark.com”上可以看到，被投诉人从事音响产品经营，与投诉人所拥有的“c-mark”商标属于同一业务领域。而被投诉人在该网站上不仅使用了投诉人的商标“c-mark”，还虚构“美国C-MARK公司”名称大肆宣扬其音响产品。被投诉人主观上具有误导消费者，使消费者混淆市场主体和商品来源的恶意，客观上也足以使相关消费者产生误认。其恶意使用争议域名的行为已严重侵犯投诉人合法权益。

鉴于投诉人的“c-mark”商标注册在先，且享有较高的知名度，可以推断被投诉人注册、使用争议域名的目的是借用投诉人的声誉，故意制造与投诉人所持有的商品或者服务标记的混淆，以诱使互联网络用户访问域名持有人的网站或者其他联机地址，并从中牟利。而从被投诉人实际使用争议域名的方式以及其在网站上同时使用“c-mark”商标的事实则可以证实以上推断。因此，被投诉人对争议域名的注册与使用是出于恶意。

综上所述，争议域名的识别部分与投诉人所持有的商标“c-mark”构成混淆性相同。

被投诉人对争议域名不享权利或合法利益，其对于争议域名的注册和使用均为恶意。

基于上述理由，投诉人请求本案专家组裁决：本案争议域名应转移给投诉人。

被投诉人

被投诉人辩称：

深圳环球琴行从未使用过（包括生产、代理、销售，等等）该商标，因为该琴行在当时已名存实亡。关于此点，可以从 1998 年深圳市中级人民法院的民事裁定中看出端倪。因为当时深圳环球琴行并没有签收过仲裁裁决书。

1999 年以前，中国市场上所有“C-MARK”品牌产品均为美国 C-MARK 公司生产，并通过代理商和中国经销商在中国销售。关于此点，1994 年中央电视台春节联欢晚会就是最好的例证。

投诉人制造了大量假冒产品，并通过虚假广告误导消费者，声称自己是美国品牌、“美国制造”、国际品牌，如此等等，而无视其 100%为中国品牌、中国制造的事实。（补充一句，无论是在美国举行的 C-MARK 商标听证会上，还是在中国上海的商标争议审理过程中，投诉人都明白无误的承认，它是 100%的中国品牌、中国制造）。

被投诉人的争议域名与投诉人的商标发生混淆

早在 1997 年，该争议域名即在美国获得注册，而被投诉人迟至 2000 年才通过受让取得商标权。而在同年，争议域名拥有人 Paul Audio 有限公司即已按照美国法律持有了该商标，并于此后对其专业音响技术和美国 C-MARK 品牌做了大量的推广宣传。就在同时，美国 C-MARK 品牌产品大量销往中国，并被广大中国消费者接受。从那时起，该品牌在中国成为家喻户晓的知名品牌。在 1999 年之前，我们看不到任何由深圳环球琴行举办的与“C-MARK”品牌有关的宣传或经销活动，更不用说投诉人举办过什么活动了（因为当时投诉人公司压根儿还未成立）。

被投诉人对争议域名不享有合法权益

1993 年，美国 C-MARK 公司在美国申请注册“C-MARK”商标，并正式取得第 1,906,390 号美国联邦注册商标证书。同年，美国 C-MARK 公司赞助中国中央电视台春节联欢晚会。因为晚会中音响的出色表现，美国 C-MARK 品牌音响一时间名声大噪，并成为美国专业音响系统的代名词。1996 年，美国 Paul Audio 有限公司通过合法购并，取得 C-MARK 公司的所有商誉、技术和商标。2010 年，因为业务需要，Paul Audio 有限公司在美国正式注册“C-MARK”商业名称，并一直使用至今。因此，C-MARK 既是

被投诉人公司的名称，也是被投诉人的商标。其拥有的“C-MARK.com”域名，是其商誉的自然延伸。在进入网络时代的今天，这既是合理性的，也是必然的。

被投诉人注册与使用争议域名具有恶意

首先，我们必须弄清楚一件事情，即在中国市场上，是美国的 C-MARK 还是中国的 C-MARK 更为有名？通过多年的不懈斗争和努力，尤其通过互联网上的坚定宣传，美国 C-MARK 得以克服重重困扰，并在全球市场上建立起良好的声誉。自 1994 年在中央电视台崭露头角，我们从来不吝气力，以使公众知晓美国的 C-MARK 的良好声誉，并帮助消费者远离任何假冒伪劣产品。如果通过百度搜索“C-Mark”，您可以轻松地发现，美国的 C-MARK 的声名和公众认可度远在中国的 C-MARK 之上，这对我们又意味着什么？是谁在利用他人品牌的影响？遗憾的是，搜索的结果表明，投诉人所谓的“冒牌货”恰恰是美国的 C-MARK。我们不得不说，投诉人试图将其品牌伪装成正宗的美国 C-MARK 品牌的事实，铁证如山！

深圳环球琴行既然已名存实亡，C-MARK 又怎会仍然属于它？显然，这不过是那个时代的中国所独有的蠢笑话。然而，美国 C-MARK 公司已经充分证明，它拥有美国商标 C-MARK 和域名“c-mark.com”，这既合理又合法，并受美国联邦法律的保护。

美国 C-MARK 合法存在而非凭空杜撰。自其成立，美国 C-MARK 就致力于专业音响事业。被投诉人所出示的商标证书清楚地表明，其所注册的类别为第 9 类。假如投诉人不宣称自己是美国的 C-MARK，市场原本不会被混淆。但事实上却是，投诉人因多年的虚假宣传而混淆了市场，因此应受谴责并对此负责，并且应被逐出市场。

投诉人所谓的商标知名度，完全是建立在其多年虚假宣传的基础上。既然美国 C-MARK 回归中国市场，现在是还中国消费知情权的时候了。“c-mark.com”将持之以恒地提醒消费者，美国的 C-MARK 与中国的 C-MARK 毫不相干。在您购买之前请务必看清两者的区别。

基于上述理由，被投诉人请求专家组驳回投诉人的全部请求。

4、专家组意见

当事人明了本案程序的法律性质完全不同于仲裁或诉讼程序，具有重要意义。虽然本案程序被认为是一种行政程序，但并非是一种由行政机关主导的程序。专家组对本案被投诉人注册域名所生争议的管辖权，来自于域名注册和维护行政管理机构的授权。任何人如果要注册域名，需要与该行政管理机构签署注册协议。该机构虽然对注册申请不

作实质性审查，但注册协议规定，对于该注册的异议无论于何时提出，注册商均有义务当作程序当事人而对该异议享有陈述辩解的权利，同时，需要服从依规定程序组成的专家组的裁决。在事实上，本案程序是整个域名管理与维护程序的一个组成部分。从而，专家组为解决域名争议所作裁决的主要内容，是决定争议域名应归何方合法所有。该裁决应与《政策》所规定的基本要求相一致，并有助于保持互联网运行的良好秩序和有利于保护互联网用户的共同利益。双方当事人均力陈其对本案所涉商标“C-MARK”享有合法权利，并要求专家组作为有利于该方的裁决。因此，专家组认为，本案的核心问题是根据双方当事人所提交的证据，就争议域名权利人问题做出何方据于优势地位的決定。

被投诉人通过注册商注册域名的前提条件之一，是接受《政策》对该注册的约束。如前所述，适用于本案争议的《政策》是作出是否支持或驳回投诉人投诉决定的实体依据。根据《政策》第4(a)款的规定，主张对被投诉人所注册的域名享有权利的投诉人，必须证明以下三个条件均已获得满足：

- (i) 争议域名与投诉人拥有权利的商品商标或服务商标相同或混淆性地相似；且
- (ii) 被投诉人对争议域名不享有权利或合法利益；且
- (iii) 被投诉人对争议域名的注册和使用均为恶意。

根据《政策》的上述规定，本案专家组需要查明的是，该三项基本事实是否均获投诉人证明。如果已获证明，则根据《政策》、《规则》和《ADNDRC 补充规则》的相关规定，专家组将作出有利于投诉人的裁决。反之，投诉人的投诉将被驳回。

关于完全相同或混淆性相似

根据《政策》第4(a)(i)项的规定，投诉人必须证明，争议域名与其享有权利的商品商标或服务商标相同或混淆性地相似。按照《政策》规定，投诉人需要对完全相同或者混淆性相似作出证明。为达到该要求，投诉人提交了商标证书和商标转让证书等文件，以证明其对注册于1995年06月28日并由其受让于2000年08月28日目前仍处于有效期的“C-MARK”商标享有权利。对投诉人出示的证据专家组予以采信，并认定投诉人是于1995年06月28日在中国注册的“C-MARK”商标的所有人。

但是，被投诉人提交了证据，以证明同一“C-MARK”商标由一名中国人于1995年07月18日注册于美国，并且相关权利（可能是**注册商标申请权**）已于1995年03月14日转让给一家名为“C-MARK Light & Sound”的美国公司。在被投诉人于1996年



06月19日成立后不久，同年11月07日，美国“C-MARK”商标转让给被投诉人。根据被投诉人提交的相关证据，专家组认定，被投诉人对于美国商标“C-MARK”享有权利。该商标在中国商标“C-MARK”注册后不久即具有法律效力。

既然被用来与争议域名作比较的是投诉人的商标，并且已获专家组认定的被投诉人在美国对同一商标享有权利的事实与解决本案域名争议的第二个要求或多或少存在关联，专家组初步认定，争议域名“c-mark”的识别部分与投诉人享有权利的“C-MARK”商标完全相同。因此，投诉人满足了《政策》第4(a)(i)项的要求。

关于被投诉人的权利或合法利益

根据《政策》第4(a)(ii)项的规定，对投诉人的第二个要求是，就其要求争议域名转移的主张，投诉人需要证明被投诉人对争议域名不享有任何权利或合法利益。从本项规定的文意来看，对于被投诉人对争议域名不享有权利或合法利益的事实，投诉人似乎应负举证责任。既然投诉人主张其对争议域名享有权利，并且主张被投诉人除注册并恶意使用了该域名之外，对该争议域名并无任何关系，那么对于他认为不存在的事实要提供任何证据，几乎是不可能实现的。多少是出于这一原因，专家组将更多注意力转向了被投诉人辩称的对争议域名享有权利或合法利益的主张上去。《政策》通过在相关条款中对几种“可能情形”的规定，提供给被投诉人就相关争议进行申辩的机会。

投诉人称：“争议域名组成部分‘c-mark’并未体现被投诉人的名称，被投诉人并未拥有体现争议域名主要组成部分的公司或企业名称，也不拥有任何体现争议域名主要组成部分的注册商标，同时也不享有基于争议域名主要组成部分的任何声誉。”看起来，为解决本案争议的第二个标准，投诉人将其主张建立在两个基本理由之上，即被投诉人并不拥有名为“C-MARK”的商业名称，并且对注册商标“C-MARK”也不享有权利。显而易见，被投诉人的商业名称中并不包括“c-mark”字样，因此，被投诉人无法通过借助商业名称来证明他对争议域名享有权利或合法利益。然而，被投诉人声称并证明，自1996年11月07日以来，他即是美国注册商标“C-MARK”的合法所有人，这比投诉人成为中国商标“C-MARK”所有人的时间要早。众所周知，地域性特征是注册商标法律效力的一个方面，也就是说，在不同的司法辖区内，投诉人和被投诉人可以并行而合法地拥有同一注册商标。但是，依据《政策》第4(a)(ii)项基本文义的要求，专家组更为关注的事实，即被投诉人是否对“C-MARK”这一语词享有商标权。

《政策》第4(a)(ii)项规定：“……针对第4(a)(ii)项，尤其是如下情形但并不限于如

下情形，如由专家组在对所提交的证据进行全面认定基础上得以证实，则表明你方对该域名拥有权利或合法利益：(i)在接到有关争议通知之前，你方在提供商品或服务的过程中已善意地使用或可证明准备善意地使用该域名或与该域名相对应的名称；……”正如专家组所认定的事实显示的那样，被投诉人在 1997 年注册了与其美国商标“C-MARK”相一致的争议域名，而当时投诉人尚未成为中国商标“C-MARK”的所有人，显然，就对争议域名所享有的权利或合法利益而言，前者具有优先地位。进而言之，“在接到有关争议通知之前”，被投诉人注册并开始“在提供商品或服务的过程中已善意地使用或该域名”，而投诉人并未能证明被投诉人对该域名的使用是出于恶意，比如，试图误导消费者将被投诉人的产品与投诉人的产品相混淆，或者试图利用投诉人，等等。更为重要的是，被投诉人有权对争议域名主张权利和合法利益的时间，远早于投诉人获得对争议域名主张权利和合法利益的资格的时间。

综上所述，专家组认为，被投诉人对争议域享有权利和合法利益；并进一步认为，投诉人未能满足《政策》4 (a)(ii)项的要求。

关于恶意

此外，投诉人还以本政策第 4 条 (a) (iii) 款规定为据提出被投诉人存在恶意情况。在对争议双方所提交的全部证据进行全面分析后，专家组认为，被投诉人并未出于恶意而注册和使用争议域名。主要理由如下：

(1) 被投诉人证明，“C-MARK”标识在中国的首次使用，是在 1994 年中央电视台举办的春节联欢晚会，而当时，“C-MARK”商标在中国并未被注册。这一事实使专家组确信，“C-MARK”一词源自于美国。在语言学层面上，要说“C-MARK”与中国的文化存在什么渊源关系，这几乎是不可能的。在投诉人作为证据提交的判决书中，人民法院认定，在被投诉人的商标注册文件中，存在着另外一个“C-MARK”。也就是说，被投诉人与“C-MARK”的关系，要比投诉人紧密的多。进而言之，当争议域名注册之时，投诉人并非中国商标“C-MARK”的权利人；并且也没有证据证明，中国商标的最初注册人曾使用或者甚至曾宣传过“C-MARK”。既然如此，专家组又如何能认定，被投诉人是出于恶意注册了争议域名？

(2) 投诉人声称，被投诉人曾经并继续恶意使用争议域名。事实上，正如投诉人提交的证据所显示的那样，投诉人曾以此为理由对抗被投诉人的代理人，并试图说服原审法院以获其支持，但被法院驳回。原审法院认定，原告（即投诉人）在 2007-2009 年间，

曾作过大量的广告宣传。根据法院认定该项事实，自那以后，投诉人才为公众所知晓。

但是，在此以前，被投诉人早已开始使用争议域名。并且，投诉人未能证明，被投诉人以故意引起消费者对争议双方产品的混淆为目的，而使用并继续使用争议域名。恰恰相反，被投诉人为了将其与投诉人相区别，以避免引起公众的混淆，作了大量的努力。

(3) 需要指出的是，无论被投诉人是否曾在中国的范围之内承担过商标侵权责任，都与本专家组对投诉人使用争议域名意图的认定不相干。如前所述，争议域名出现于美国，并建立在注册人对其后以同一名称注册的美国商标所享有的权利之上。与之相关的一个逻辑思考是，该注册人恶意使用该域名的原因，究竟在哪里？在深入研究由投诉人作为证据提交的人民法院判决书所载内容之后，专家组认定，被投诉人曾为使消费者知晓美国产品与中国产品并不相同，即使它们使用同一“C-MARK”商标，而付出了大量努力。

基于以上认定，专家组认为，投诉人未能满足《政策》第4(a)(i)(ii)(iii)项规定的任何一项条件。

5、裁决

根据以上认定，并按照《政策》第4(a)款、第8(a)款和《规则》第5(e)款的规定，专家组裁定如下：

由于投诉人未能满足《政策》第4(a)(i)(ii)(iii)项所规定的全部三项条件，因此不具有要求转移争议域名的资格。专家组决定：驳回投诉人的投诉请求。

独任专家：迟少杰（签名）

日期：2012年05月28日



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN –1200542

Complainant: Shenzhen Bao Ye Heng Industrial Development Co., Ltd.

Respondent: Paul Audio Inc.

Domain Name: c-mark.com

Registrar: Network Solutions, LLC.

1. Procedural History

On March 26, 2012, the Complainant submitted the Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Beijing Office”) pursuant to the Uniform Policy for Domain Name Dispute Resolution (the “Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”) approved by ICANN on October 30, 2009, and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “ADNDRC Supplemental Rules”) being effected on February 28, 2002. The Beijing Office confirmed the receipt of the Complaint on the same day and asked the Registrar for the confirmation of the registration information with regard to the disputed domain name.

On April 14, 2012, the Beijing Office received from the Registrar the registration confirmation in connection to the disputed domain name.

On April 19, 2012, the Beijing Office made the transmittal of the claims to the Respondent and asked for the Response as regulated.

On April 24, 2012, the Beijing Office sent to the parties the notification of the commencement of the proceeding, and of the matter the claims have been confirmed and forwarded; and notified ICANN and the Registrar of the commencement of the proceeding.

On May 2, 2012, the Beijing Office received Response by the Respondent,

transmitted the document to the Claimant and notified the parties of the selection of Panelist; but neither party submitted a selection list of Panelist.

On May 10 and 14, 2012, the Beijing Office received from the Respondent the supplementary documents which were transmitted to the Claimant, and indicated, on May 15, 2012, to the parties that, the Complainant should submit supplementary comment or evidence, if any, on and before 18 May, 2012, and unless both the two parties make agreement or the Panel deem it necessary, any supplementary documents submitted by either of the two parties after 18 May, 2012 will not be accepted by the Panel.

On May 18, 2012, the Complainant submitted its representation. On the same day, the Respondent submitted its response.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the Beijing Office informed the disputing parties of the Confirmation of the Appointment of the sole panelist on May 14, 2012.

The sole panelist found that the Panel was properly constituted in accordance with the Rules and the ADNDRC Supplemental Rules.

The procedural language is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in conformity with the language used by the parties in the Complaint and Response.

2. Factual Background

For the Complainant

The Complainant is Shenzhen Bao Ye Heng Industrial Development Co., Ltd., domiciled in Room 301, 3rd Floor, Jilian Building #4, Lianhua Village, Futian District, Shenzhen, China; represented by Weixiang Li & Chunqiao Sun, with the address of No. 1305, Tower A, Union Plaza, Futian District, Shenzhen, Guangdong Province.

For the Respondent

The Respondent is Paul Audio Inc., domiciled in 5157 Cliffwood Dr., Montclair, CA 91763. The disputed domain name was registered on March 11, 1997 through the registrar, Network Solutions, LLC.

3. Parties' Contentions

The Complainant

The Complainant alleges in its Complaint that:

"c-mark" trademark was applied by Shenzhen Global Piano Shop and was approved for registration on June 28, 1995, with Registered Trademark No. 752764, and the scope of use approved was audio goods under Class Nine. In 1998, the Civil Order made by Shenzhen Municipal Intermediate People's Court ruled that the "c-mark" trademark held by Shenzhen Global Piano Shop should be owned by Shenzhen Hongda Development Co., Ltd. The Complainant, Shenzhen Bao Ye Heng Industrial Development Co., Ltd. acquired the registered trademark "C-MARK" from Shenzhen Hongda Development Co., Ltd. on August 28, 2000, and upon extension, such trademark will be valid until June 27, 2015. Therefore, the Complainant has existing prior civil interests in the "C-MARK" trademark, namely trademark rights. Upon persistent efforts, the "C-MARK" trademark held by the Complainant is well-known in domestic and abroad audio industry, and has a wide range of users.

The Disputed Domain Name was registered on March 11, 1997, the identification part of the Disputed Domain Name is "c-mark", and in terms of letters and order of letters such part is totally identical to the "c-mark" trademark in which the Complainant has existing prior civil interests! Use of the Disputed Domain Name will lead to confusion among the public, and make the public misleadingly believe such Domain Name is related to the c-mark products of the Complainant. Therefore, the Disputed Domain Name is confusingly identical to the "c-mark" trademark in which the Complainant has civil interests.

The constituent part "c-mark" of the Disputed Domain Name does not reflect the name of the Respondent, the Respondent does not have any company or enterprise name that can reflect the main constituent part of the Disputed Domain Name and does not have any registered trademark that can reflect the main constituent part of the Disputed Domain Name, and meanwhile does not enjoy any reputation based on the main constituent part of the Disputed Domain Name. Therefore, the Respondent does not have any

legitimate interests in the Disputed Domain Name.

The Complainant's "c-mark" trademark and commodities under such trademark are well-known among relevant public. Secondly, "c-mark" trademark was applied by Shenzhen Global Piano Shop and was approved for registration on June 28, 1995. The Complainant, Shenzhen Bao Ye Heng Industrial Development Co., Ltd. acquired the registered trademark "C-MARK" from Shenzhen Hongda Development Co., Ltd. on August 28, 2000, and upon extension, such trademark will be valid until June 27, 2015. Therefore, the Complainant has had existing prior trademark rights to "C-MARK" from the beginning. However, the Disputed Domain Name was registered on March 11, 1997, which was later than registration of the trademark, its registration has already infringed upon the existing prior trademark rights of the Complainant. Thirdly, we can see from the website www.c-mark.com built based on the Disputed Domain Name, the Respondent does audio products business, which is in the same business field as that of the "c-mark" trademark of the Complainant. The Respondent not only uses the "c-mark" of the Complainant, but has also fabricated the name "U.S. C-MARK Company" in wantonly advocating its audio products. The Respondent subjectively misleads consumers and makes consumers confuse the market subjects and sources in bad faith; and objectively, it is sufficient for the relevant consumers to be misled. Its using of the Disputed Domain Name has seriously infringed upon the legitimate interests of the Complainant.

Whereas, the Complainant has previously registered the "c-mark" trademark, and the trademark is well-known, it can be inferred that the Respondent has registered and used the Disputed Domain Name for the purpose of using the reputation of the Complainant, by knowingly creating confusion with the commodity and service mark of the Complainant, so as to attract Internet users to the web site or other on-line location of the owner for commercial gain. And from the method for actual using of the Disputed Domain Name by the Respondent and such fact that the Respondent meanwhile uses the "c-mark" trademark in its web site, the above inference can be proved. Therefore, the Respondent has registered and used the Disputed Domain Name in bad faith.

In sum, the identification part of the Disputed Domain Name is confusingly identical to the “c-mark” trademark held by the Complainant. The Respondent does not have legal rights to and legitimate interests in the Disputed Domain Name and it has registered and used the Disputed Domain Name in bad faith.

On the basis of the reasons stated above, the Panel on this case is requested to decide that the Disputed Domain Name in this case shall be transferred to the Complainant.

The Respondent

The Respondent argues that

Shenzhen Huanqiu Piano Shop has never made use of (including manufacturing, acting on behalf of, selling, etc) it, therefore, it only exists in name and have no legal effect, which can be told from the civil judgment of Shenzhen Intermediate People's Court in 1998, for the reason that arbitral award wasn't signed and accepted by the Shenzhen Huanqiu Piano Shop.

Before the year of 1999, all the C-MARK branded products on Chinese market were manufactured by US C-MARK Company, and traded through agencies and Chinese dealers. The 1994 CCTV Spring Festival Gala is the best evidence on this point.

The complainant has been making numbers of counterfeit products, misleading customers by falsely advertising that it is original American brand, “made in USA”, international brand and so on, disregarding the fact that it is 100% Chinese brand and made in China. (in addition, the complainant clearly stated both during the hearing of American C-MARK trademark and Shanghai trademark dispute trial that it was 100% Chinese brand and made in China) .

The disputed domain name of the Respondent confuses with the trademark of the complainant

The disputed domain name c-mark.com had already been registered in USA in 1997 long time before the complainant obtained the transfer right of trademark in 2000. Paul Audio Inc., the owner of the disputed domain name obtained the trademark in accordance with the law of US in that year,

and publicized its professional audio technology and American C-MARK brand thereafter. In the meantime, the American C-MARK products were sold to China in great quantities and widely accepted by Chinese customers, hence it has become a household name in China from then on. Before the year of 1999, we had never seen any advertising or sales activity in relation to C-MARK brand of Shenzhen Huanqiu Piano Shop, let alone that of the Complainant (the company of the Complainant had not yet been established at that time).

The Respondent has no legal right to the disputed domain name

In 1993, American C-MARK Company applied for the registration of the trademark C-MARK, and duly obtained the federal trademark license of Reg. No. 1,906,390, and it sponsored the CCTV Spring Festival Gala of the same year. Due to its excellent audio performance in the Gala, the American C-MARK audio system successfully rose to fame and became the representative of American professional audio system. In 1996, Paul Audio Inc. acquired all the goodwill, technology, trademarks of C-MARK Company by legal acquisition process, including the trade name "MARK". In 2010, due to business needs, Paul Audio Inc. officially registered and has begun to use the trade name "C-MARK" since then. Therefore, C-MARK is the company name as well as the trademark of the Respondent. Its domain name C-MARK.com is a natural outgrowth of its goodwill, which is reasonable and necessary in the network age today.

The registration and use of the disputed domain name by the Respondent is malicious.

Firstly, we have to make it clear that which one is more well-known on Chinese market, The American C-MARK, or Chinese C-MARK? After years of continuous struggle and efforts, with persistent advertisement via World Wide Web, American C-MARK has managed to overcome numerous difficulties and well established its good reputation on global market. We've been sparing no effort in making the public aware of the brand reputation of American C-MARK ever since its debut in 1994 CCTV Spring Festival Gala and helping customers stay away from any counterfeits and unqualified product. If you search for "C-Mark" through Baidu, you can easily find that

American C-MARK is far more well-known and widely recognized than Chinese C-MARK, so what does it mean to us? Who is taking advantage of the other's brand influence? Regrettably, the searching result is that it is American C-MARK that the Complainant alleged as the counterfeit brand. We must say it is an incontestable evidence that the Complaint attempts to disguise itself as the original American C-MARK brand!

How come the brand still belongs to Shenzhen Huanqiu Piano Shop while it no longer takes any legal effect? Obviously it is a silly joke that only could exist in the past Chinese society. However, American C-MARK Company has been sufficiently proved to own the American trademark C-MARK and the domain name: c-mark.com, which is reasonable and legitimate and protected by American federal law.

American C-MARK is with its legal existence and not fabricated. Since its establishment, American C-MARK has been deeply committed to the promotion of professional audio industry. The trademark license presented by the Respondent is clearly classified as Class 9. There would be no confusion on markets provided that the Complainant had not claimed itself as American C-MARK, but the fact is that the Complaint is the one to blame and be accountable for the market confusion because of its years of false advertisement and should be eliminated from the market.

The so-called brand awareness is completely built upon its years of false advertisements. Now that American C-MARK has returned onto Chinese market, it is high time that Chinese customers have the right to know the truth. c-mark.com will consistently keep customers well informed that there are two C-MARK respectively in China and America. Please recognize it before your purchase.

Based upon all the above-mentioned reasons, the Respondent requests the Panel to reject all the claims by the Claimant.

4. Panel's Findings

It is significant for the parties to understand the legal nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel

over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to an award by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users. Either of the disputing parties made a lot of say on the right to the related trademark "C-MARK" and asked the Panel to make a decision in its favor. Thus, the essential issue in the current proceeding identified by the Panel is to make judgment on which party prevails in terms of the entitlement to the disputed domain name in view of the submitted evidences.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. As stipulated in the Paragraph 4(a) of the Policy, when claiming the entitlement to a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- (i) That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) That the Respondent has no rights or legitimate interests in respect of the domain name; and

(iii) That the domain name has been registered and used in bad faith.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether EACH AND ALL of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes an award in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected.

Identity or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or service mark to which it has rights. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant submits trademark certificate and document of assignment, etc. to prove that it is entitled to the trademark "C-MARK" which was registered on June 28, 1995 and was assigned to the Complainant on August 28, 2000, and is currently valid. Taking the relevant exhibits by the Complainant, the Panel holds that the Complainant is the owner of the trademark "C-MARK" registered in China in June 28, 1995.

Nevertheless, the Respondent submitted exhibits to prove that the same "C-MARK" was registered in the United States by a Chinese individual in July 18, 1995, and the related entitlement (probably the TM application) was assigned to a US-based entity by the name of C-MARK Light & Sound, Inc. on March 14, 1995. The US "C-MARK" was assigned to the Respondent on November 7, 1996, not long after its establishment in June 19, 1996. Based upon the relevant exhibits submitted by the Respondent, the Panel holds that the Respondent is entitled to a US trademark "C-MARK" which was coming into force soon after the date on which the Chinese mark "C-MARK" being registered.

Since the subject matter to be used to compare with the disputed domain name is Complainant's trademark, and the fact held by the Panel on the entitlement by the Respondent to the same mark in US relates more or less to the second issue in this domain name dispute, the Panel makes a simple

conclusion that the identifying part of the disputed domain name “c-mark” is identical to the trademark “C-MARK” to which the Complainant is entitled; thus, the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does NOT have any right to or legitimate interest in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant claims that it is entitled to the disputed domain names and the Respondent has nothing to do with the name except registered and used it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Panel pays more attention to whatever the Respondent claims with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy.

The Complainant says: “The constituent part ‘c-mark’ of the Disputed Domain Name does not reflect the name of the Respondent, the Respondent does not have any company or enterprise name that can reflect the main constituent part of the Disputed Domain Name and does not have any registered trademark that can reflect the main constituent part of the Disputed Domain Name, and meanwhile does not enjoy any reputation based on the main constituent part of the Disputed Domain Name.” It seems that the Complainant bases itself on two fundamental reasons in connection to the second issue in this dispute, i.e. the Respondent does not have a trade name bearing “c-mark” and is not entitled to a registered trademark of “C-MARK”. It is obvious that the Respondent’s business name does not include the words “c-mark”, thus it can hardly claim rights or legitimate interests in the disputed domain name by resorting to a trade name. Nevertheless, the Respondent claims and proves to be the legitimate owner

of a US-registered trademark “C-MAK” ever since November 7, 1996, earlier than the Complainant became the owner of the Chinese trademark “C-MARK”. As is known, the territoriality is one of the features with regard to the enforceability of a registered trademark, i.e. the Complainant and the Respondent can be parallel legitimate owners of the same mark registered under different jurisdictions. Nevertheless, pursuant to the essential meaning in Paragraph 4(a)(ii) of the Policy, the Panel pays more attention to the fact whether the Respondent enjoys trademark right in connection to the words “C-MARK”.

As stipulated in Article 4(c), “ 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 your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii): (1) before any notice to you of the dispute, your use of, or demonstrable preparation to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;” As shown by the held facts, the Respondent registered in 1997 the disputed domain name in conformity with its US trademark “C-MARK”, when the Complainant did not become the owner of the Chinese mark “C-MARK”, thus apparently the former prevailing in terms of the rights to and legitimate interests in the disputed domain name. What is more, “before any notice to you of the dispute”, the Respondent registered and started to “use the disputed domain name in connection with a bona fide offering of goods or services”, and the Complainant fails to prove that the Respondent’s use of the domain name was in bad faith, e.g. trying to mislead consumers to confuse the Respondent’s products with those of the Complainant’s; or trying to take any advantage from the Complainant; etc. What is more important is that the time when the Respondent was entitled to claim the rights to and legitimate interests in the disputed domain name was much earlier than the Complainant became qualified to claim rights to and legitimate interests in the domain name at issue.

All in all, the Panel holds that the Respondent does have rights to and legitimate interests in the disputed domain name; and further holds that the Complainant fails to meet the second requirement set forth under Paragraph

4(a)(ii).

Bad Faith

The Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. Upon the comprehensive analyzing of all the evidences provided by the disputing parties, the Panel holds the fact that the Respondent did NOT register and use the disputed domain name in bad faith. The principal reasons are.

- (1) The Respondent proves that the logo C-MARK was firstly used in China in 1994 at the year's CCTV Lunar New Year Eve Show, when the trademark "C-MARK" was NOT registered by anyone in China, which makes the Panel firmly believe that the origin of the word "C-MARK" is in the United States. Linguistically speaking, people can hardly say that the word "C-MARK" has any heritage from Chinese culture. As held by the court in the judgment provided by the Complainant as evidence, in the registration documents of the Respondent's there is another name "C-MARK". That is to say, the Respondent has more relations to the word "C-MARK" than the Complainant does. What is more, when the disputed domain name was registered, the Complainant was NOT the righter of the Chinese mark "C-MARK", and there is NO evidence to prove that the original register of the Chinese mark used or even publicized "C-MARK". As it is, how the Panel makes conclusion that the Respondent registered the domain name at issue in bad faith.
- (2) The Complainant submits that the Respondent used and continues to use the disputed domain name in bad faith. As a matter of fact, the Complainant tried to convince the trial court to sustain the same argument against the legal representative of the Respondent, but was rejected, as revealed in the Complainant's exhibit. The trial court holds that the Plaintiff (namely the Complainant) made extensive ads in the period of 2007 – 2009. Based on this fact-finding by the court, the Complainant became known to the public after the period. However, the Respondent started to use the domain name at issue long before the period. Furthermore, the Complainant fails to prove that the Respondent used and continue to use the disputed domain name for

deliberate purpose of misleading consumers to make a confusion of the products by the disputing parties. Quite to the contrary, the Respondent tries very hard to distinguish itself from the Complainant to avoid confusion by the public.

- (3) It is essential to point out that, whether the Respondent was liable to trademark infringement under the Chinese jurisdiction has nothing to do with the judgment by the Panel on the Complainant's intention to use the disputed domain name. As indicated in the foregoing paragraphs, the disputed domain name came into being in USA based upon the register's entitlements to the then-being US trademark. The relevant logical thinking is why such a register uses the domain name in bad faith? Pondering over what are said in the judgments provided by the Complaint as evidences, the Panel concludes that the Respondent endeavored to make it known to the consumers that the US makes are different from the Chinese products, even by the same name of "C-MARK".

Based upon all the above findings, the Panel rules that the Complaint fails to fulfill ALL the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy.

5. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

Since the Complainant fails to establish ALL THE THREE conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, thus NOT being qualified to request the transfer the disputed domain name, the Panel rules that the claim by the Complainant shall be rejected.

Sole Panelist: 

Dated: May 28, 2012