

ADMINISTRATIVE PANEL DECISION

In the matter of a Domain Name Dispute

AIAC/ DNDR Case Number: AIAC/DNDR-709-2019

Between

China Vanke Co. Ltd

Complainant

And

Evergrande Construction (M) Sdn Bhd

Respondent

GROUND OF DECISION

1. Parties

Complainant

- 1.1 China Vanke Co. Ltd, the Complainant (“**China Vanke**”), a private company incorporated under the laws of China. It has a place of business in Malaysia at Level 34C, Suite C, Manara Maxis, Kuala Lumpur City Centre, Jalan Ampang, 50088 Kuala Lumpur. China Vanke is represented by Mr. Sri Sarguna Raj of Christopher & Lee Ong.

Respondent

- 1.2 Evergrande Construction (M) Sdn Bhd, the Respondent (“**Evergrande**”), a company incorporated in Malaysia, having its registered address at 56-01, Jalan Kempas Utama 2/2, Taman Kempas Utama, 81200 Johor Bahru and business address at 22-01, Jalan Bestari 4/2, Taman Nusa Bestari, Nusajaya, Johor.

2. Impugned Domain Name

2.1 The disputed Domain Name in this proceedings is www.vanke.com.my (“**impugned Domain Name**”). Evergrande registered the impugned Domain Name on 18.12.2017 with the Malaysian Network Information Centre (“**MYNIC**”).

3. Procedural History

3.1 China Vanke filed this Complaint with the Asian International Arbitration Centre (“**AIAC**”) pursuant to the MYNIC’s (.my) Domain Name Dispute Resolution Policy (“**Policy**”) against Evergrande in respect of the impugned Domain Name.

3.2 The Policy is included by reference into Evergrande’s Registration Agreement with MYNIC Berhad (“**MYNIC**”), pursuant to which Evergrande is required to submit to and participate in this proceeding should a third party files a complaint to the AIAC.

3.3 The Complaint submitted by China Vanke was received by e-mail on 28.5.2019 and in hardcopy on 27.5.2019 by AIAC.

3.4 In accordance with rule 5 of the Rules of the MYNIC’s (.my) Domain Name Dispute Resolution Policy (“**Rules**”) and paragraph 4(e) of the Supplemental Rules of the Centre (“**Supplemental Rules**”), AIAC has verified that China Vanke the Complaint satisfies the formal requirements of the Policy, Rules and Supplemental Rules.

3.5 Based on rule 5.6 of the Rules and paragraph 5 of the Supplemental Rules, the formal date of the commencement of this Proceeding is 29.5.2019.

3.6 AIAC has duly notified Evergrande of the Complaint. Evergrande was given 15 working days from the date of the commencement to submit a Response to the Complaint. The due date for Evergrande to submit its Response is 21.6.2019. There was simply no Response, information or reason forthcoming.

3.7 AIAC appointed Bahari Yeow as the sole panellist on 29.6.2019. The Declaration of Impartiality and Independence has been duly executed.

4. **Factual background**

4.1 China Vanke contends as follows:

- (a) China Vanke was established in China in 1984. It is a developer and living service provider in China. China Vanke is active in commercial property management service industry, including property development, property service and renting housing.
- (b) China Vanke has expanded its business into retail and commercial, office buildings, logistics, hotels and resorts, ski resorts, long-term rental apartments and elderly care and education. It has expanded its business into 7 cities in various jurisdictions, namely London, Moscow, Seattle, San Francisco, New York and Kuala Lumpur. Its business has since been expanded into Malaysia in June 2017.
- (c) China Vanke has conceptualised the use of the following Marks for its services -

- (i)  i.e. VANKE (in Chinese Characters);

- (ii) **vanke**
vanke (in series); and
- (iii) **vanke**万科
vanke万科

(collectively refer to as the “Marks”).

- (d) China Vanke has filed trade mark applications for registration of the Marks highlighted in the preceding sub-paragraph on 12.9.2017, 13.9.2017, 14.9.2017 and 15.9.2017 in Malaysia in Classes 6, 16, 17, 19, 27, 35, 36, 37, 41, 42 and 43 respectively. The applications are allowed by the Intellectual Property Corporation of Malaysia and have since been registered in Malaysia.
- (e) China Vanke has used and promoted the Marks extensively for its goods and services, and has acquired substantial goodwill and reputation in connection with the Marks for the goods and services. Accordingly, the public is likely to associate and identify the Marks with China Vanke’s goodwill and business.

4.2 In respect of Evergrande and the impugned Domain Name, China Vanke further contends as follows:

- (a) Evergrande is a company involved in construction and engineering.
- (b) China Vanke or its able representative conducted a MYNIC search on the impugned Domain Name and discovered that Evergrande had registered the impugned Domain Name on 18.12.2017 (after China Vanke filed the trade mark applications in Malaysia).

- (c) Evergrande uses the impugned Domain Name for its furniture business in Malaysia.
- (d) China Vanke had through its former solicitors, CY Ng & Barry issued a cease and desist letter of 13.4.2018 to Evergrande claiming that Evergrande's use of "VANKE" marks and the impugned Domain Name amount to a tort of passing off. Notwithstanding the serious nature of the claim made by China Vanke in its' solicitors letter, no response whatsoever was forthcoming.
- (e) This lead to China Vanke instructing its solicitors, Christopher & Lee Ong to engage a firm of private investigators to conduct a thorough investigation on Evergrande's business and its furniture business in relation to the impugned Domain Name.
- (f) The private investigators conducted investigations from 9.4.2019 to 23.4.2019. Based on the Private Investigation Report produced by China Vanke -
 - (i) The private investigators spoke to one Liu Chong Lin (also spelt as Liu Conglin) ("Liu").
 - (ii) Liu conceded that the impugned Domain Name was registered and 'belonged' to Evergrande.
 - (iii) Liu informed the private investigators that "Vanke" is a well-known company in China which was involved in the properties, and he ended up using "Vanke" for the furniture business.

5. Parties contentions

China Vanke

- 5.1 China Vanke's representatives meticulously produced all the supporting documents to advance its case in this proceedings.
- 5.2 The remedies sought by China Vanke in this proceeding that the impugned Domain Name be transferred to China Vanke.
- 5.3 In brief, China Vanke argues as follows:
- (a) Evergrande does not have any rights or legitimate interests in the impugned Domain Name. At no point in time did China Vanke ever authorise Evergrande to use the word "VANKE" in the impugned Domain Name. Similarly, China Vanke did not authorise Evergrande to use "VANKE" for Evergrande's goods or services.
 - (b) Evergrande does not use the word "VANKE" in relation to any of its goods or services provided by Evergrande. Evergrande is also not commonly or widely known by the name "VANKE" in Malaysia or elsewhere.
 - (c) The registration of the impugned Domain Name, and the use thereof is likely to lead internet users and the public into believing that Evergrande is associated with China Vanke or its business.

- 5.4 China Vanke further argues that:

- (a) The impugned Domain Name is identical or confusingly similar to the Marks in which China Vanke has rights;
- (b) The impugned Domain Name is registered and/or used by Evergrande, if any, in bad faith; and
- (c) Evergrande does not have any right or legitimate interest in the impugned Domain Name.

Evergrande

5.5 As noted above, Evergrande did not file any response to China Vanke's Complaint.

Discussion and Findings

6. Preliminary and Observation

6.1 Rule 17.1 of the Rules provides:

“The Panel will decide a Proceeding **based on the documents and evidence submitted by the Parties, the Policy and Rules** as well as any other rules and **principles of law which are applied in Malaysia**. For the avoidance of doubt, the decisions of other Panels in previous Proceedings or other domain name dispute cases are not binding precedent and should not be treated as such.”
(Emphasis added)

6.2 The Panel will now proceed to decide based on the documents and evidence before this Panel in accordance with the Rules, Supplemental Rules, Policy and principles of law applicable in Malaysia.

- 6.3 As noted above, Evergrande did not respond to China Vanke's former solicitors letter dated 13.4.2018 and did not file any Response in this proceedings. Evergrande remained silent throughout. A reasonable man similarly circumstanced as Evergrande would have post haste sent an immediate reply to respond to the allegations made against it. Unfortunately, this is not what happened. It would be a travesty of justice for Evergrande to deny China Vanke's claim in this proceedings. It would be plainly inequitable to do so.
- 6.4 In the absence of respond from Evergrande, it would be logical in this case to deem that Evergrande admit to China Vanke's contentions in the Complaint and has no challenge to the relief sought by China Vanke in this proceedings.
- 6.5 Based on the contemporaneous documents produced by China Vanke, and Evergrande's silence coupled with the other circumstances of the case, the Panel accepts as true all factual contentions of China Vanke: *Millennium & Copthorne International Limited and another v. Everise Sales Sdn Bhd*, KLRCA/D/PFC-568-2018 (6 April 2018); *Elan Pharmaceuticals, Inc. v. Haag*, WIPO Case No. D2001-0755 (25 July 2001); *Talk City, Inc. v. Robertson*, WIPO Case No. D2000-0009 (29 February 2000); *Alibaba Group Holding Limited v. Microit Technology (M) Sdn Bhd*, RCA/DNDR/2012/28; *Paypal Inc v. Webpod.com*, KLRCA/DNDR/2011/24.

7. China Vanke's burden

- 7.1 Paragraph 5.2 of the Policy provides as follows:

“The **Complainant must establish BOTH** of the following elements in the Complaint:-

- (i) the **Domain Name is identical or confusingly similar to a trade mark** or service mark to which the **Complainant has rights**; and
- (ii) you have **registered and/or used the Domain Name in bad faith.**”
(Emphasis added)

7.2 The issues in this proceeding are whether China Vanke has discharged its burden to show:

- (a) The impugned Domain Name is identical or confusingly similar to the Marks;
- (b) China Vanke has rights over the Marks; and
- (c) Evergrande has registered and/or used the impugned Domain Name in bad faith.

The Panel will consider the issues set out in paragraph 7.2 in turn in this manner – paragraph 7.2 (b), paragraph 7.2 (a) and paragraph 7.2 (c).

China Vanke has rights over the Marks

7.3 Based on the documents produced in this proceeding, including the Certificates of Registration of the Marks, China Vanke is the registered proprietor of the Marks, particulars of which are set out herein:


	Marks	Registration No.	Specification and Class	Registration Period
1.		2017067580	Advertisement columns of metal; bird baths [structures of metal]; building materials of metal; buildings of metal; buildings, transportable, of metal; chrome ores; containers of metal [storage, transport]; fittings of metal for building; fittings of metal for furniture; handcuffs; ironmongery; memorial plates of metal; monuments of metal; mooring bollards of metal; padlocks; poles of metal; posts of metal; railway material of metal; rings of metal; safes [strong boxes]; silver solder; stair treads [steps] of metal; steel wire; transport pallets of metal; traps for wild animals; tree protectors of metal; works of art of common metal; all included in class 6.	12.9.2017 to 12.9.2027
2.		2017067591	Architects' models; bags [envelopes, pouches] of paper or plastics, for packaging; stationery; books; carbon paper; cardboard; drawing boards; drawing instruments; figurines [statuettes] of papier mâché; gums [adhesives] for stationery or household purposes; Indian inks; paper; periodicals; pictures; printed matter; printed publications; rosaries; stamps [seals]; tailors' chalk; teaching materials [except apparatus]; toilet paper; typewriters, electric or non-electric; writing instruments; all included in class 16.	13.9.2017 to 13.9.2027
3.		2017067595	Flexible tubes, not of metal; gum, raw or partly processed; insulating buildings against moisture (substances for -); insulating materials; pipe muffs, not of metal; plastic film other than for wrapping; soundproofing materials; synthetic resins [semi-finished products]; waterproof packings; all included in class 17.	13.9.2017 to 13.9.2027
4.		2017067596	Advertisement columns [not of metal]; binding agents for making briquettes; bricks; building glass; building materials, not of metal; buildings, transportable, not of metal; cement; coatings [building materials]; concrete; building elements; concrete; drain pipes, not of metal; foundry molds [moulds], not of metal; gravestone slabs, not of metal; gypsum; partitions, not of metal; refractory materials; reinforcing materials, not of metal, for building; road coating materials; sandstone for building; works of art of stone, concrete or marble; all included in class 19.	13.9.2017 to 13.9.2027
5.		2017067597	Artificial turf; bath mats; carpet; carpets for automobiles; floor coverings; mats; non-slip mats; wallpaper; all included in class 27.	13.9.2017 to 13.9.2027

6.	万科	2017067606	Advertising; book-keeping; employment agencies; import-export agencies; relocation services for businesses; rental of vending machines; systemization of information into computer databases; all included in class 35.	13.9.2017 to 13.9.2027
7.		2017067615	Appraisal (Art -); brokerage; capital investments; charitable fund raising; factoring; financing services; insurance underwriting; fund investments; leasing of real estate; lending against security; real estate agencies; real estate appraisal; real estate brokers; real estate management; surety services; all included in class 36.	13.9.2017 to 13.9.2027
8.		2017067624	Airplane maintenance and repair; artificial snow-making services; burglar alarm installation and repair; clock and watch repair; construction information; construction; disinfecting; electric appliance installation and repair; elevator installation and repair; fire alarm installation and repair; furniture maintenance; heating equipment installation and repair; interference suppression in electrical apparatus; knife sharpening; mining extraction; motor vehicle maintenance and repair; photographic apparatus repair; pump repair; renovation of clothing; retreading of tires [tyres]; rustproofing; safe maintenance and repair; shipbuilding; shoe repair; telephone installation and repair; umbrella repair; upholstery repair; all included in class 37.	13.9.2017 to 13.9.2027
9.		2017067626	Animal training; arranging and conducting of conferences; club services [entertainment or education]; mobile library services; modelling for artists; operating lotteries; production of radio and television programmes; recreation facilities (Providing -); providing sports facilities; publication of texts [other than publicity texts]; teaching; all included in class 41.	13.9.2017 to 13.9.2027
10.		2017067628	Authenticating works of art; biological research; chemical research; cloud seeding; computer software design; design of interior decor; dress designing; graphic arts designing; land surveying; material testing; meteorological information; packaging design; quality control; conducting technical project studies; urban planning; all included in class 42.	13.9.2017 to 13.9.2027
11.		2017067630	Accommodation bureaux [hotels, boarding houses]; boarding for animals; canteens; day-nurseries [crèches]; rental of chairs, tables, table linen, glassware; rental of transportable buildings; retirement homes; all included in class 43.	13.9.2017 to 13.9.2027
12.		2017067661	Advertisement columns of metal; bird baths [structures of metal]; building materials of metal; buildings of metal; buildings, transportable, of metal; chrome ores; containers of metal [storage, transport]; fittings of metal for building; fittings	13.9.2017 to 13.9.2027

	<p>vanke vanke vanke vanke</p>		of metal for furniture; handcuffs; ironmongery; memorial plates of metal; monuments of metal; mooring bollards of metal; padlocks; poles of metal; posts of metal; railway material of metal; rings of metal; safes [strong boxes]; silver solder; stair treads [steps] of metal; steel wire; transport pallets of metal; traps for wild animals; tree protectors of metal; works of art of common metal; all included in class 6.	
13.		2017067664	Architects' models; bags [envelopes, pouches] of paper or plastics, for packaging; stationery; books; carbon paper; cardboard; drawing boards; drawing instruments; figurines [statuettes] of papier mâché; gums [adhesives] for stationery or household purposes; Indian inks; paper; periodicals; pictures; printed matter; printed publications; rosaries; stamps [seals]; tailors' chalk; teaching materials [except apparatus]; toilet paper; typewriters, electric or non-electric; writing instruments; all included in class 16.	13.9.2017 to 13.9.2027
14.		2017067748	Flexible tubes, not of metal; gum, raw or partly processed; insulating buildings against moisture (substances for -); insulating materials; pipe muffs, not of metal; plastic film other than for wrapping; soundproofing materials; synthetic resins [semi-finished products]; waterproof packings; all included in class 17.	14.9.2017 to 14.9.2027
15.		2017067751	Advertisement columns [not of metal]; binding agents for making briquettes; bricks; building glass; building materials, not of metal; buildings, transportable, not of metal; cement; coatings [building materials]; concrete; building elements; concrete; drain pipes, not of metal; foundry molds [moulds], not of metal; gravestone slabs, not of metal; gypsum; partitions, not of metal; refractory materials; reinforcing materials, not of metal, for building; road coating materials; sandstone for building; works of art of stone, concrete or marble; all included in class 19.	14.9.2017 to 14.9.2027
16.		2017067780	Artificial turf; bath mats; carpet; carpets for automobiles; floor coverings; mats; non-slip mats; wallpaper; all included in class 27.	15.9.2017 to 15.9.2027
17.		2017067785	Advertising; book-keeping; employment agencies; import-export agencies; relocation services for businesses; rental of vending machines; systemization of information into computer databases; all included in class 35.	15.9.2017 to 15.9.2027
18.		2017067787	Appraisal (Art -); brokerage; capital investments; charitable fund raising; factoring; financing services; insurance underwriting; fund investments; leasing of real estate; lending against security; real estate agencies; real estate appraisal; real estate brokers; real estate management; surety services; all included in class 36.	15.9.2017 to 15.9.2027

19.	vanke vanke	2017067789	Airplane maintenance and repair; artificial snow-making services; burglar alarm installation and repair; clock and watch repair; construction information; construction; disinfecting; electric appliance installation and repair; elevator installation and repair; fire alarm installation and repair; furniture maintenance; heating equipment installation and repair; interference suppression in electrical apparatus; knife sharpening; mining extraction; motor vehicle maintenance and repair; photographic apparatus repair; pump repair; renovation of clothing; retreading of tires [tyres]; rustproofing; safe maintenance and repair; shipbuilding; shoe repair; telephone installation and repair; umbrella repair; upholstery repair; all included in class 37.	15.9.2017 to 15.9.2027
20.		2017067791	Animal training; arranging and conducting of conferences; club services [entertainment or education]; mobile library services; modelling for artists; operating lotteries; production of radio and television programmes; recreation facilities (Providing -); providing sports facilities; publication of texts [other than publicity texts]; teaching; all included in class 41.	15.9.2017 to 15.9.2027
21.		2017067797	Authenticating works of art; biological research; chemical research; cloud seeding; computer software design; design of interior decor; dress designing; graphic arts designing; land surveying; material testing; meteorological information; packaging design; quality control; conducting technical project studies; urban planning; all included in class 42.	15.9.2017 to 15.9.2027
22.		2017067798	Accommodation bureaux [hotels, boarding houses]; boarding for animals; canteens; day-nurseries [crèches]; rental of chairs, tables, table linen, glassware; rental of transportable buildings; retirement homes; all included in class 43.	15.9.2017 to 15.9.2027 (or 14.9.2027)
23.		vanke万科 vanke万科	2017067815	Advertisement columns of metal; bird baths [structures of metal]; building materials of metal; buildings of metal; buildings, transportable, of metal; chrome ores; containers of metal [storage, transport]; fittings of metal for building; fittings of metal for furniture; handcuffs; ironmongery; memorial plates of metal; monuments of metal; mooring bollards of metal; padlocks; poles of metal; posts of metal; railway material of metal; rings of metal; safes [strong boxes]; silver solder; stair treads [steps] of metal; steel wire; transport pallets of metal; traps for wild animals; tree protectors of metal; works of art of common metal; all included in class 6.
24.	2017067818		Architects' models; bags [envelopes, pouches] of paper or plastics, for	15.9.2017 to

	vanke 万科 vanke 万科		packaging; stationery; books; carbon paper; cardboard; drawing boards; drawing instruments; figurines [statuettes] of papier mâché; gums [adhesives] for stationery or household purposes; Indian inks; paper; periodicals; pictures; printed matter; printed publications; rosaries; stamps [seals]; tailors' chalk; teaching materials [except apparatus]; toilet paper; typewriters, electric or non-electric; writing instruments; all included in class 16.	15.9.2027
25.		2017067819	Flexible tubes, not of metal; gum, raw or partly processed; insulating buildings against moisture (substances for -); insulating materials; pipe muffs, not of metal; plastic film other than for wrapping; soundproofing materials; synthetic resins [semi-finished products]; waterproof packings; all included in class 17.	15.9.2017 to 15.9.2027
26.		2017067820	Advertisement columns [not of metal]; binding agents for making briquettes; bricks; building glass; building materials, not of metal; buildings, transportable, not of metal; cement; coatings [building materials]; concrete; building elements; concrete; drain pipes, not of metal; foundry molds [moulds], not of metal; gravestone slabs, not of metal; gypsum; partitions, not of metal; refractory materials; reinforcing materials, not of metal, for building; road coating materials; sandstone for building; works of art of stone, concrete or marble; all included in class 19.	15.9.2017 to 15.9.2027
27.		2017067824	Artificial turf; bath mats; carpet; carpets for automobiles; floor coverings; mats; non-slip mats; wallpaper; all included in class 27.	15.9.2017 to 15.9.2027
28.		2017067827	Advertising; book-keeping; employment agencies; import-export agencies; relocation services for businesses; rental of vending machines; systemization of information into computer databases; all included in class 35.	15.9.2017 to 15.9.2027
29.		2017067834	Appraisal (Art -); brokerage; capital investments; charitable fund raising; factoring; financing services; insurance underwriting; fund investments; leasing of real estate; lending against security; real estate agencies; real estate appraisal; real estate brokers; real estate management; surety services; all included in class 36.	15.9.2017 to 15.9.2027
30.		2017067838	Airplane maintenance and repair; artificial snow-making services; burglar alarm installation and repair; clock and watch repair; construction information; construction; disinfecting; electric appliance installation and repair; elevator installation and repair; fire alarm installation and repair; furniture maintenance; heating equipment installation and repair; interference suppression in electrical apparatus; knife sharpening; mining extraction; motor vehicle maintenance and repair; photographic	15.9.2017 to 15.9.2027

			apparatus repair; pump repair; renovation of clothing; retreading of tires [tyres]; rustproofing; safe maintenance and repair; shipbuilding; shoe repair; telephone installation and repair; umbrella repair; upholstery repair; all included in class 37.	
31.		2017067856	Animal training; arranging and conducting of conferences; club services [entertainment or education]; mobile library services; modelling for artists; operating lotteries; production of radio and television programmes; recreation facilities (Providing –); providing sports facilities; publication of texts [other than publicity texts]; teaching; all included in class 41.	15.9.2017 to 15.9.2027
32.		2017067868	Authenticating works of art; biological research; chemical research; cloud seeding; computer software design; design of interior decor; dress designing; graphic arts designing; land surveying; material testing; meteorological information; packaging design; quality control; project studies (Technical –); urban planning; all included in Class 42.	15.9.2017 to 15.9.2027
33.		2017067877	Accommodation bureaux [hotels, boarding houses]; boarding for animals; canteens; day-nurseries [crèches]; rental of chairs, tables, table linen, glassware; rental of transportable buildings; retirement homes; all included in class 43.	15.9.2017 to 15.9.2027

(collectively referred to as the “**registered Marks**”).

7.4 The registration of the registered Marks are valid and subsisting.

7.5 Section 35 of the **Malaysian Trade Marks Act 1976** provides:

“Subject to the provisions of this Act, the registration of a person as registered proprietor of a trade mark (other than a certification trade mark) in respect of any goods or services shall, if valid, give or be deemed to have been given to that person the exclusive right to the use of the trade mark in relation to those goods or services subject to any conditions, amendments, modifications or limitations entered in the Register.”

7.6 With the registration of the registered Marks under the **Malaysian Trade Marks Act 1976** coupled with the used of the Marks by China Vanke, the Panel is satisfied that

China Vanke has rights over the Marks: *Low Chi Yong v. Low Chi Hong* [2018] 1 CLJ 287, Federal Court, para 33 and 34; *30 Maple Sdn Bhd v. Siti Safiyah Mohd Firdaus Chew* [2019] 1 LNS 404, para 14; *Celcom Planet Sdn Bhd v. O C Tech*, KLRCA/DNDR-373-2016 at 6.3; *United Way of America v. Alex Zingaus*, FA 1036202; *Prada S.A v. Oleg Filipov-Guevreyan*, DLA2004-0001; *Google Inc v. Googles Entertainment*, SDRP-2002-0003.

The impugned Domain Name is identical or confusingly similar to the Marks

- 7.7 The impugned Domain Name has incorporated the Marks, namely “VANKE”. Without hesitation, the Panel finds that the impugned Domain Name is identical or confusingly similar to the Marks: *Celcom Planet Sdn Bhd v. O C Tech*, KLRCA/DNDR-373-2016 at 6.4; *Google Inc v. Digiattack*, RCA/ DNDR/2009/17; *Rollerblade Inc. v. McCrady*, D2000-0429; *U Mobile Sdn Bhd v. Web ID Management*, AIAC/D-602-2018 at para 6.2, page 5 .

Evergrande has registered and/or used the impugned Domain Name in bad faith.

- 7.8 Paragraph 6.1 of the Policy provides:

“For the purposes of paragraph 5.2(ii), **evidence of your registration and/or use of the Domain Name being in bad faith may include**, among others, the following circumstances:-

- (i) you **registered and/or are using the Domain Name mainly to sell, rent or transfer the Domain Name for profit to the Complainant,** its competitor or the owner of the trade mark or service mark; or

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- (ii) you registered and/or are using the Domain Name **to prevent the owner of a trade mark or service mark from using the domain name which is identical with its trade mark or service mark; or**
- (iii) you registered and/or are using the Domain Name to disrupt the business of the Complainant; **or**
- (iv) you registered and/or are using the Domain Name for the purposes of and with **the intention to attract or divert, for commercial gain, Internet users to:-**
- (a) your web site;
 - (b) a web site of the Complainant's competitor; or
 - (c) any other web site and/or online location,

by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its trade mark or service mark.”
(Emphasis added)

7.9 China Vanke has produced evidence to show that Evergrande or its representatives, through WeChat communication made an offer to sell the impugned Domain Name at the price of RM2 million. The Panel agrees with China Vanke’s contention that such conduct to be clear and uncontroverted evidence of an intention to exploit China Vanke’s Marks for unlawful financial gain, which in itself is evidence of bad faith: *Celcom Planet Sdn Bhd v. O C Tech*, KLRCA/DNDR-373-2016 at 6.6; *FlyFirefly Sdn Bhd v. Nikabina IT MSC Sdn Bhd*, RCA/ DNDR/2007/11.

7.10 Taking into account of the evidence produced by China Vanke, including the Private Investigators’ Report and the business name of the Evergrande, it is apparent and

clear that Evergrande is aware of the existence of China Vanke and that Evergrande does not carry on business (or intend) using any of “VANKE” as an *indicia* for its goods and services. The reason for Evergrande’s registration of the impugned Domain Name is wanting. The Panel is convinced that it would be naïve to suggest that its registration of the impugned Domain Name, incorporating the word “VANKE” is a pure coincident. Thus, taking into account of the entire circumstances of this case, the Panel agrees with China Vanke that the registration of the impugned Domain Name, with respect, is to attract or divert, for commercial gain, Internet users to Evergrande’s web site and is tainted with bad faith.

7.11 As the impugned Domain Name consist of the registered Marks, i.e. “VANKE”, the public will be deceived into believing that Evergrande is either related or associated with China Vanke and the impugned Domain Name will cause confusion as regards the source of goods or services provided by China Vanke: *Celcom Planet Sdn Bhd v. O C Tech*, KLRCA/DNDR-373-2016 at 6.7; *Volkswagen Group Singapore Pte Ltd v. Webmotion Design*, RCA/DNDR/2003/01 (INT); *Playboy Enterprises International Inc. v. BEG Service KB*, WIPO Case No. D2001-0494.

8. Rights and legitimate interest

8.1 Paragraphs 7.1 and 7.2 of the Policy provides:

“7.1 In answer to Paragraph 6, **you may prove that your registration and/or use of the Domain Name was not in bad faith** by establishing, among others, that you have rights and legitimate interests in the Domain Name.

7.2 **Evidence of your rights and legitimate interests in the Domain Name** may include, among others, the following circumstances:-

- (i) before the date of your being informed of the Complainant's dispute, **you had used or made preparations to use the Domain Name or a name corresponding to the Domain name in relation to a genuine offering of goods or services;**
or
- (ii) **you are commonly known by the Domain Name even though you have acquired no trade mark or service mark rights in the same;** or

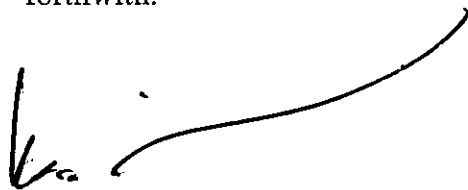
you are using the Domain Name for legitimate, non-commercial and/or fair purposes and have no intention of using the same for profits or to deceive the public.” (Emphasis added)

8.2 The burden is on Evergrande to establish that it has rights and legitimate interest in the impugned Domain Name.

8.3 In the current proceeding, it was indisputable that Evergrande had failed to respond to China Vanke's Complaint and/or produce that all important documents or evidence to prove that its registration and/or use of the impugned Domain Name (if any) was not in bad faith. Without them, the Panel is without any option but to find again for China Vanke. In the absence of any evidence, the Evergrande has failed to establish any right or legitimate interest in the impugned Domain Name.

9. Conclusion and Decision

9.1 In accordance with the findings under the Policy, Rules and principles of law which are applied in Malaysia, the Panel orders that the impugned Domain Name, <www.vanke.com.my> be transferred to the Complainant, **China Vanke Co. Ltd.** forthwith.



Bahari Yeow Tien Hong
Single Panellist
Dated this 2nd day of July 2019