



ASIAN INTERNATIONAL ARBITRATION CENTRE

ADMINISTRATIVE PANEL DECISION

In the matter of Domain Name Dispute

Case No AIAC/DNDR-735-2019

Between

1. DART INDUSTRIES INC
 2. TUPPERWARE BRANDS MALAYSIA SDN BHD
- Complainants

And

FONG WAI SHEE
(TRADING AS ELEGANCE CONCEPT ENTERPRISE)

Respondent

Grounds of Decision

1. Parties

- 1.1 The Complainants are Dart Industries Inc, United States of America, and Tupperware Brands Malaysia Sdn Bhd, Malaysia, both represented by Hemalatha Parasa Ramulu and Gooi Yang Shuh of Messrs Skrine of Kuala Lumpur, Malaysia.
- 1.2 The Respondent is Fong Wai Shee (Trading As Elegance Concept Enterprise), Malaysia, represented by Timothy Joseph Dass A/L Melchior and Najahah Binti Rozlan of Miranda & Samuel, Malaysia.

2. The Domain Name and Registrar

The disputed domain name, <tuppercabinet.com.my> ("Disputed Domain Name"), is registered with the Malaysian Network Information Centre (MYNIC).

3. Procedural History

- 3.1 The Complaint was filed in English with the Asian International Arbitration Centre (the "**Centre**") on 8 August 2019. The Centre verified on the same day that the Respondent is listed as the registrant and that the formal requirements of the MYNIC Domain Name Dispute Resolution Policy (the "**Policy**"), the MYNIC Rules for Domain Name Dispute Resolution Policy (the "**Rules**"), and the Asian International Arbitration Centre's Supplemental Rules to the Rules (the "**Supplemental Rules**").

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- 3.2 In accordance with paragraphs 5.2 and 5.3 of the Rules, the Centre formally notified the Respondent in English of the Complaint, and the proceedings commenced on 9 August 2019. The Respondent submitted the Response on 4 September 2019. The Complainants submitted the Reply on 13 September 2019.
- 3.3 The Centre appointed a three member panel comprising Soh Kar Liang, Brian Law Yew Foo and Bahari Yeow Tien Hong, in this matter on 23 September 2019. The Panel finds that it was properly constituted. All panellists have submitted Declarations of Impartiality and Independence, as required by the Centre to ensure compliance with paragraph 9.3 of the Rules.
- 3.4 On 11 October 2019, the Centre notified the parties of the Panel's Request for Further Statements pertaining to the remedy sought by the Complainants. The Complainants clarified on the same day that the remedy sought is for either transfer or cancellation of the Disputed Domain Name as the Panel deems fit. On 18 October 2019, the Respondent submitted further statements pertaining to matters which went beyond the scope of the Panel's Request for Further Statements.
- 3.5 On 22 October 2019, the Panel granted the Complainants' request to address these matters. The Complainants submitted a response to the Respondent's further statements on 25 October 2019.

4. Parties and Factual Background

Complainants

- 4.1 The Complainants are part of the Tupperware Group which traces its origins to Earl Silas Tupper who founded The Tupperware Company in 1946 which popularised the household plastic container.
- 4.2 The 1st Complainant is a multinational direct sales company boasting a global sales force of over 2.9 million people in over 80 countries, including Malaysia. It is listed on the New York Stock Exchange.
- 4.3 The 2nd Complainant is the Malaysian arm of the Tupperware Group authorised by the 1st Complainant to import, market and sell these goods in Malaysia. The 2nd Complainant has been operating in Malaysia for over 50 years.
- 4.4 The Complainants and their products have been covered in Malaysian newspapers and magazines for decades, have an active social media presence associated with Malaysia and even have a mobile app available for download. The Complainants have also participated in various corporate social responsibility causes.

4.5 The 1st Complainant holds a large portfolio of trade mark registrations including for the word mark **"TUPPERWARE"** and marks incorporating the prefix **"TUPPER"**, for example, **"TUPPERTOYS"**, **"TUPPERCHEF"**, **"TUPPERCLEAN"**, **"TUPPERKIDS"** (collectively, the **"TUPPERWARE Marks"**).

4.6 The TUPPERWARE Marks are registered and used in relation to household or kitchen utensils and containers. Some of the TUPPERWARE Marks registered in Malaysia are:

Registration No	Registration Date	Trade Mark
M049600	11 March 1968	TUPPERWARE
M075910	9 August 1977	TUPPERWARE
M85119	25 January 1980	TUPPERCRAFT
8403510	1 August 1984	TUPPERTOYS
95002339	20 March 1995	TUPPERKIDS
00017963	13 December 2000	TUPPERWARE
01014624	8 November 2001	TUPPERCLEAN
2010011960	2 July 2010	TUPPERCHEF

4.7 Among the non-Malaysian registrations of the TUPPERWARE Marks are registrations for the mark TUPPER including:

Country	Registration No	Registration Date
Japan	5913812	24 June 2016
Switzerland	310916	17 February 1981
United Kingdom	872251	24 November 1964

4.8 The Complainants hold or control over 50 domain names, including <tupperware.com>, <tupperwarebrands.com> and <tupperware.com.my>. The domain name <tupperwarebrands.com> resolves to a website operated by the Complainants.

Respondent

4.9 The Respondent is an individual who operated under a sole proprietorship business registration. The Respondent is also a director of 2 Malaysian companies, Elegance Concept Sdn Bhd (**"ECSB"**) and Tupper Cabinet Sdn Bhd (**"TCSB"**).

- 4.10 ECSB, TCSB and the Respondent are in the business of selling household products including cabinets.

Historical dispute

- 4.11 The Complainants, the Respondent, ECSB and TCSB have been embroiled in dispute in Malaysia for some years:

- 1) By a letter dated 25 March 2015, the Complainants demanded that the Respondent cease and desist from dealing in trade marks which infringe the TUPPERWARE Marks. The Complainants further demanded the Respondent to withdraw the Respondent's trade mark application for "**TUPPER EC CABINET**" (i.e. the Malaysia trade mark application no 2013013034) and to de-register the Disputed Domain Name.
- 2) The Complainants have opposed the Respondent's trade mark application no 2013013034. Opposition proceedings are presently pending.
- 3) The Complainants have initiated action against the Respondent, ECSB and TCSB at the Kuala Lumpur High Court in Suit No WA-22IP-49-07/2019 for, among others, trade mark infringement (the "**Infringement Suit**") in relation to the unauthorised use of marks incorporating the words "**TUPPER EC CABINET**" and "**TUPPER CABINET**".
- 4) In the Infringement Suit, the Complainants have sought, among other, an order for withdrawal of TCSB's trade mark application for TUPPER CABINET (i.e. Malaysia trade mark application no 2015066479) which is currently also facing objections by the Malaysia Intellectual Property Office ("**MyIPO**").

- 4.12 The business registration was terminated on 22 April 2019. The Respondent and TCSB are parties to a Deed of Assignment dated 8 June 2015 to assign the mark, "**TUPPER EC CABINET**" (i.e. Malaysian trade mark application no 2013013034) to TCSB. The assignment is pending recordal by MyIPO.

5. Parties' Contentions

Complainants

5.1 The Complainants contend that:

- 1) The Disputed Domain Name is confusingly similar to the TUPPERWARE Marks given that it wholly incorporates "TUPPER" as a dominant and prominent element.
- 2) The 1st Complainant is the lawful registered and common law proprietor of the TUPPERWARE Marks in Malaysia and globally. As a result of long standing and extensive use of the TUPPERWARE Marks, globally and in Malaysia, consumers and the public at large have come to associate the TUPPERWARE Marks with the 1st Complainant's goods and services. It is necessary to exclude from consideration the gTLD and ccTLD as they are technical requirements that have no significance in determining similarity. While the Respondent claims to be using the Disputed Domain Name in relation to furniture and storage, the Respondent is, whether herself or through TCSB, trading in food containers.
- 3) The Respondent registered and is using the Disputed Domain Name in bad faith. The Respondent is not only aware of the TUPPERWARE brand but her entire business was inspired by the Complainants' TUPPERWARE products.
- 4) It is the responsibility of the Respondent to ensure that the registration of the Disputed Domain Name does not infringe third party rights and to make reasonable good faith efforts to avoid registering and using domain names identical or confusingly similar to marks of others.
- 5) The Disputed Domain Name resolves to a website providing goods in competition with the Complainants and the Respondent is intentionally attempting to attract users to its website by creating a likelihood of confusion with the TUPPERWARE Marks as to the source, sponsorship, affiliation or endorsement of the Respondent's website for commercial gain. The Respondent would not have chosen the Disputed Domain Name if not for the Complainant's products and reputation in the products.
- 6) The Respondent registered the Disputed Domain Name with an intention to attract or divert for commercial gain, Internet users to their website by creating a possibility of confusion or deception that the website is operated

or authorised by or otherwise connected to the Complainants and or the TUPPERWARE Marks. The Respondent has no rights or legitimate interests in the Disputed Domain Name.

Respondent

The Respondent contends that:

- 1) It is an entity that has ceased to exist. All its rights and business has been duly assigned to TCSB. The Disputed Domain Name is still in the Respondent's name because it is waiting for recordal of the assignment with MYIPO before showing to MYNIC to effect it's transfer.
- 2) TUPPER is not synonymous with the Complainants. TUPPER is a common surname which has been registered by different proprietors as trade marks and domain names.
- 3) TUPPERWARE is not distinctive as a trade mark by genericide. Numerous media print and articles identify and support this. As such, exclusive rights should not be bestowed on the TUPPERWARE Marks.
- 4) There is no confusion or deception. The 1st Complainant has no registration for the word TUPPER trade mark in Malaysia. The 1st Complainant has no registration for the TUPPERWARE Marks in Class 20 in Malaysia. The 1st Complainant's class 21 registrations do not come under the cross search list of MYIPO's Trade Mark Manual. The Respondent's business structure and methods are different from the Complainants'.
- 5) The Respondent's trading activities are confined to cabinets. The Respondent give away lunch boxes as promotional free gifts to customers who purchase the Respondent's cabinets.
- 6) The Respondent was not inspired by the Complainants' TUPPERWARE products, only plastic food containers in general.

6. Discussion and Findings

Preliminary points

- 6.1 At the outset, it is important to address some preliminary points raised by the Respondent:

Respondent's capacity

- 1) The Respondent has made an unusual submission that it is an entity that has ceased to exist. If the Respondent has in fact ceased to exist, who or what is the Panel addressing as the Respondent, and how does the representative of the Respondent represent a non-existent client or an undisclosed party who has no place in this proceeding?
- 2) It further begs the question of whether a non-existent respondent has the capacity to remain a domain name registrant. Regardless of the interesting issues, both administrative and metaphysical, that the submission raises, the Panel finds it unnecessary to pursue them. As far as the evidence shows, the Respondent is an individual trading under a business registration. There is nothing to suggest that the Respondent is other than in good health and alive. The Panel will accordingly carry on with the proceeding on this basis.

Assignment of the Disputed Domain Name

- 3) The Respondent claims that all the Respondent's rights and business have been assigned to TCSB. The only evidence offered in support of such claim is a short-form assignment of trade mark application no 2013013034 from the Respondent to TCSB. Putting aside the question of whether a trade mark application in Malaysia is assignable, the Panel is of the view that a short-form assignment of a trade mark even with goodwill associated with the trade mark is unlikely to amount to a general transfer all rights and business. More importantly, MYNIC's Agreement for Registration of Domain Name (the "Registration Agreement") states unequivocally at paragraph 2.4 that "the Registrant does not own the registered domain name".
- 4) The Respondent is also bound under the Registration Agreement to observe the rules, policies and procedures of MYNIC, which include domain name transfer procedures published at <https://www.mynic.my/en/transferringdomainname.php>.
- 5) Even if the Panel accepts that a transfer of all of the Respondent's rights and business to TCSB has taken place, such transfer cannot reasonably include a

transfer of the Disputed Domain Name to TCSB without compliance with the transfer procedure. There is no evidence that the Respondent or TCSB has complied with the MYNIC's transfer procedure. It is also noted that the transfer procedure is administrative and does not require supporting evidence of that the assignment of any trade mark application or registration has been successfully recorded with MYIPO. As such, the Respondent is and remains the registrant of the Disputed Domain Name and the Panel holds that the Respondent is the proper respondent in this proceeding.

Delay

- 6) In the Respondent's further statements on 18 October 2019, the Respondent raised a new issue that there was an unreasonable delay of 5 years from the time the Complainants discovered the Disputed Domain Name and the time of the Complaint and the doctrine of laches apply.
- 7) It is widely recognised by past panels that merely delay in filing a complaint is not a bar to the complaint and have declined to apply any concept of laches. It is unreasonable to expect trade mark owners to monitor every instance of trade mark abuse and or to enforce against each such instance, particularly when cybersquatters face almost no barrier to registering multiple domain names (see paragraph 4.17 of the WIPO Overview 3.0): **TRS Quality Inc v. Alpha Constant Sdn Bhd**, Case No. KLRCA/DNDR/2012/30 at para 8.1.
- 8) The Panel agrees with these principles and similarly declines to consider the application of laches. The evidence shows that the Complainants have been in active in enforcing the TUPPERWARE Marks against the Respondent in several jurisdictions around the world since 2015. One can only speculate at the legal costs that the parties must have incurred in this regard. The parties must have to contend with financial pressures in picking their battles. The present proceedings appear to be a small skirmish in comparison. The Panel holds that there has not been undue delay in the filing of the Complaint.

Paragraph 5.2 of the Policy

- 6.2 Pursuant to paragraph 5.2 of the Policy dictates that the Complainants must establish both of the following elements in order to succeed in this proceeding:

- 1) The Disputed Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainants have rights; and
- 2) The Respondent has registered and/or used the Disputed Domain Name in bad faith.

6.3 The Panel will now consider these elements in turn.

Identical or Confusingly Similar

- 6.4 It is clear and undisputed in the evidence that the 1st Complainant is the registered proprietor of the TUPPERWARE Marks in many countries, including Malaysia (see paragraph 4.6 above). It cannot be disputed at this stage that the 1st Complainant holds a large portfolio of trade mark registrations for the TUPPERWARE Marks, i.e. including for the word mark “TUPPERWARE” and marks incorporating the prefix “TUPPER”, for example, “TUPPERTOYS”, “TUPPERCHEF”, “TUPPERCLEAN”, “TUPPERKIDS”.
- 6.5 Undoubtedly, the 1st Claimant has a statutory right in respect of the TUPPERWARE Marks in Malaysia pursuant to the Malaysian **Trade Marks Act 1976**. (See for example, **TRS Quality Inc v. Alpha Constant Sdn Bhd**, Case No. KLRCA/DNDR/2012/30 at para 5.8; sections 35, 36 and 37 of **Trade Marks Act 1976**; **Heineken Asia Pacific Pte Ltd v. Super LA VIA Sdn Bhd** [2019] 9 CLJ 365 at para 23 and 24; **Danone Biscuits Manufacturing (M) Sdn Bhd v. HWA Tai Industries Bhd** [2010] 4 CLJ 711, para 13; **China Vanke Co. Ltd v. Evergrande Construction (M) Sdn Bhd**, Case No. AIAC/ DNDR-709-2019 at para 7.3, 7.4, 7.5 and 7.6.
- 6.6 The evidence shows that the Complainants have extensively use the TUPPERWARE Marks, globally and in Malaysia. The TUPPERWARE Marks wholly incorporates “TUPPER” as a dominant and prominent element. The Panel is satisfied that the Complainants have established rights in the words “TUPPER” : **Celcom Planet Sdn Bhd v. OC Tech**, Case No. KLRCA/DNDR-373-2016, para 6.3.
- 6.7 In view of the above, the Panel has no doubt that the 1st Complainant has rights in the TUPPERWARE Marks (including the TUPPER trade mark). The 2nd Complainant’s rights to use the TUPPERWARE Marks stems from it being a licensee of the 1st Complainant.

- 6.8 It has been established by many past panels constituted under the Policy, as well as the ICANN Uniform Dispute Resolution Policy (“UDRP”), that paragraph 5.2(i) of the Policy (which is essentially identical to paragraph 4.a.(i) of the UDRP) provides a threshold test concerning a trade mark owner’s standing to file a complaint. It prescribes a test for confusing similarity which involves a reasoned but relatively straightforward comparison between a complainant’s trade mark and the domain name. This typically involves a side-by-side comparison of textual elements. Where at least a dominant feature of the trade mark is recognisable in the domain name, the domain name will normally be considered confusingly similar (see WIPO Overview 3.0 paragraph 1.7). Broader extrinsic factors such as website content and the goods and services of the respondent are appropriate to considerations of bad faith under the second limb.
- 6.9 In making such comparison, the gTLD and ccTLD elements are disregarded unless these elements, in combination with the second level domain, contain the relevant trade mark (see WIPO Overview 3.0 paragraph 1.10). That is not the case here. The Panel agrees with the Complainants and has accordingly disregard the “.com.my” portion of the Dispute Domain Name for present purposes of comparison with the TUPPERWARE Marks: **Volkswagen Group Singapore Pte Ltd v. Webmotion Design**, Case No. RCA/DNDR/2003/01; **Celcom Planet Sdn Bhd v. O C Tech**, Case No. KLRCA/DNDR-373-2016 at para 6.4.
- 6.10 The Panel is fully aware that it is neither a court of law nor a government authority having jurisdiction over trade mark applications and registrations, including determining their validity and/or infringement. The Panel’s role and powers are circumscribed by the Policy and the Rules, primarily with the aim of determining whether to grant one of two possible reliefs under paragraph 12.1 of the Policy. It is neither the purpose nor authority of the Panel to establish whether a trade mark registration is valid or infringed. Therefore, the Panel will refrain from addressing whether the TUPPERWARE Marks are validly registered as trade marks or are entitled to remain so registered (including the Respondent’s challenge that some or all of the TUPPERWARE Marks are generic). For the purpose of paragraph 5.2(a) of the Policy, it is sufficient that the 1st Complainant is the registered proprietor of TUPPERWARE Marks in Malaysia, and has a statutory right in respect of the TUPPERWARE Marks in Malaysia pursuant to the Malaysian **Trade Marks Act 1976**.

- 6.11 Having reviewed the various registrations of the TUPPERWARE Marks, the Panel finds that the word “**TUPPER**” is a dominant feature of the TUPPERWARE Marks, and in fact is the sole feature in some of the TUPPERWARE Marks. As such, the Panel is of the view that the Disputed Domain Name incorporates a dominant feature of the TUPPERWARE Marks and meets the threshold test of confusing similarity under paragraph 5.2(i) of the Policy: **Danone Biscuits Manufacturing (M) Sdn Bhd v. HWA Tai Industries Bhd** [2010] 4 CLJ 711 at para 19; **Celcom Planet Sdn Bhd v. O C Tech**, Case No. KLRCA/DNDR-373-2016 at para 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; **China Vanke Co. Ltd v. Evergrande Construction (M) Sdn Bhd**, Case No. AIAC/ DNDR-709-2019 at para 7.7; **Tohtonku Sdn Bhd v. Superace (M) Sdn Bhd** [1992] 2 CLJ 1153; [1992] 1 CLJ (Rep) 344; **Philip Morris Brands Sarl v. Goodness for Import and Export** [2017] 10 CLJ 337 at para 31.

Registered and/or Used in Bad Faith

- 6.12 Para 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:-**

...

- (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)

- 6.13 The evidence before the Panel shows irrefutably that the TUPPERWARE brand is well-known in Malaysia at the time the Disputed Domain Name was registered. In

view of this, the Respondent must have been aware of the TUPPERWARE brand and its associated products at that time. In fact, based on the Respondent's own contention, it will be, with respect, naive to suggest that the Respondent is unaware of the TUPPERWARE brand and its associated products at the material times.

- 6.14 The account of the Respondent selection of the TUPPERCABINET brand by Thara Sofian in an article in 2014 is instructive:

"Online stores have made it possible for so many people to buy so many things online – easily. When this happens, some of us tend to run out of storage place to keep all the items bought online. This was what happened to Wai Shee, the Founder of Tuppercabinet back in 2012. She was organizing her store room and found clutters of her Tupperware collection everywhere. She needed a suitable light weight but solid cabinet to keep them all in, she needed a storage system that could fit any small space in her house. That's when the idea kicked in. That's when she started Tuppercabinet."

- 6.15 The deliberate capitalisation of the words "Tupperware" and "Tuppercabinet" can only mean that these words were intended to be read as proper nouns, as opposed to mere generic descriptions. The Panel accepts this article as corroborating the Respondent's prior knowledge and familiarity with the TUPPERWARE brands and associated products.

- 6.16 The Panel notes the 5 print media instances which the Respondent rely on to support the contention that "TUPPERWARE" is genericised. In 4 out of these 5 instances, there is obvious awareness and acknowledgement of the TUPPERWARE brand as the word "Tupperware" was consistently printed with the first letter capitalised. The Panel is not persuaded that these instances provide sufficient basis to warrant a finding that a well-known brand is no longer recognisable as a brand, or that they contradict the Panel's finding that the Respondent must have been aware of the TUPPERWARE brand at the time of registering the Disputed Domain Name.

- 6.17 It should be highlighted that paragraph 5.2(ii) of the Policy refers to "bad faith" in broad terms. It is not necessary for dishonest or illegal activities to be established for a case of bad faith registration and/or use to be made out. Of course, a respondent who registered and used a domain name for engaging in dishonest or illegal activities

would be harder pressed to avoid a finding of bad faith registration and/or use in the circumstances.

6.18 As noted above, paragraph 6.1 sets out various situations of bad faith registration and/or use. In particular, paragraph 6.1(iv) outlines a specific situation of bad faith registration and/or use as follows:

“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.”

6.19 It is evident that the website resolved from the Disputed Domain Name is intentionally commercial in nature, promoting and offering the Respondent's products to customers. It is inconceivable that the Respondent did not register the Disputed Domain Name for the purpose of and with the intention to attract Internet users to the website resolved therefrom for commercial gain.

6.20 In view of the above (ie, the TUPPERWARE brand is well-known, the Respondent's prior knowledge and familiarity with the TUPPERWARE brand, the many TUPPERWARE Marks which include for the word TUPPER as well as many TUPPER-prefixed marks forming the Complainants' trade mark portfolio, the Respondent's adoption of a confusingly similar mark and domain name that incorporates a dominant feature of the TUPPERWARE Marks), there is on a balance of probabilities a definite possibility of confusion that the website resolved from the Disputed Domain Name is in some way connected with the Complainants or the TUPPERWARE Marks. The Panel therefore concludes that the present circumstances fall squarely within the corners of paragraph 6.1(iv) of the Policy.

6.21 The Respondent is not the proprietor of any registered trade mark for TUPPERCABINET which could justify a right or legitimate interest in the Disputed

Domain Name. Based on the evidence before this Panel, the Panel is of the respectful view that the Respondent has not discharge his burden to show that it has legitimate interest in the Disputed Domain Name. In particular, the Respondent's attempts to register such a trade mark are being opposed by the Complainants. The evidence also shows that Disputed Domain Name is not being used by the Respondent for non-commercial purposes or for a non-profit intent. The Respondent's use of TUPPERCABINET is in fact the subject of the Infringement Suit.

- 6.22 As the Disputed Domain Name incorporates a dominant feature of the TUPPERWARE Marks, i.e. "TUPPER", and the Panel is of the view that the Disputed Domain Name is confusingly similar to the TUPPERWARE Marks and there is a possibility of confusion or deception whereby the public will be deceived into believing that the Respondent is either related or associated with the 1st Complainant or the 2nd Complainant, and the Disputed Domain Name will cause a possibility of confusion or deception where the web site and/or online location is operated or authorised by, or otherwise connected with the Complainants and/or the TUPPERWARE Marks: **Volkswagen Group Singapore Pte Ltd v. Webmotion Design**, Case No. RCA/DNDR/2003/01; **TRS Quality Inc v. Alpha Constant Sdn Bhd**, Case No. KLRCA/DNDR/2012/30 at para 7.7; **Playboy Enterprises International Inc. v. BEG Service KB**, WIPO Case No. D2001-0494; **China Vanke Co. Ltd v. Evergrande Construction (M) Sdn Bhd**, Case No. AIAC/ DNDR-709-2019, para 7.11. The Panel is of the view that the registration of the Disputed Domain Name is with the intention to attract internet users to the web site. This is with the intention on the part of Respondent to commercially gain 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 Complainants and/or the TUPPERWARE Marks.

- 6.23 Therefore, the Panel finds that the Complainants have established that the Disputed Domain Name is registered and/or is being used in bad faith within the meaning of paragraph 5.2 of the Policy.

7. Decision

- 7.1 For all the foregoing reasons, in accordance with paragraph 12.1 of the Policy and paragraph 17 of the Rules, the Panel orders the Disputed Domain Name, <tuppercabinet.com.my> be transferred to the 1st Complainant.

- 7.2 The parties' attention is drawn to paragraph 3.1(iii) of the Policy, wherein the Disputed Domain Name may be subsequently transferred, modified or deleted in the event of a relevant order or judgment of a Malaysian Court, including as a result of the Infringement Suit.

Dated this 7th day of November 2019



Soh Kar Liang
Presiding Panellist



Brian Law Yew Foo
Co-Panellist



Bahari Yeow Tien Hong
Co-Panellist: