

# **ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE**

**(Beijing Office)**

## **ADMINISTRATIVE PANEL DECISION**

**Case No. CN-1200582**

---

---

Complainant: ABB ASEA BROWN BOVERI LTD.

Respondent: Zhanbing Wang

Domain Name: abbhkcn.net

Registrar: GoDaddy.com, Inc.

---

---

### **1. Procedural History**

On July 2, 2012, the Complainant submitted the Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) 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 Centre confirmed the receipt of the Complaint and asked ICANN and the Registrar for the confirmation of the registration information with regard to the disputed domain name on July 3, 2012.

On July 6, 2012, the Centre received from the Registrar the registration confirmation in connection to the disputed domain name.

On July 31, 2012, the Centre 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.

Until August 20, 2012, the Centre had received no Response from the Respondent; and the Centre told the Complainant on August 23, 2012 that no Response had been received, and notified the parties that the case was heard by default.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the Centre informed the disputing parties of the Confirmation of the Appointment of the sole panelist on August 28, 2012.

The sole panelist finds 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 Complainant in the submitted Complaint.

## **2. Factual Background**

### **The Complainant**

The Complainant in the proceeding is ABB ASEA BROWN BOVERI LTD., addressed at Affolternstrasse Zurich, Switzerland, and represented in the proceeding by Liu, Shen & Associates, addressed at 10F Hanhai Plaza, No. 10 Caihefang Road, Haidian District, Beijing China.

### **The Respondent**

The Respondent in the proceeding is Zhanbing Wang, addressed at No. 6 Zhangjiawan Street, Beibaixiang Yueqing, Zhejiang 325603, China. The Registrar is GoDaddy.com LLC. The disputed domain name is abbhkc.cn.net.

### **3. Parties' Contentions**

#### **The Complainant**

The Complainant alleges in its Complaint that:

The Complainant, ABB Asea Brown Boveri Ltd, is a company incorporated under the laws of Switzerland and is a global leader in the field of electricity and automated technologies including electric power generation, transmission and distribution and is dedicated to providing solutions for industrial use and in the electricity industry. The Complainant is also the owner of numerous registrations for trademarks comprising the letters "ABB" and variations thereof ("ABB trademarks") in over 100 countries worldwide including China. In China where the Respondent is domiciled according to the WHOIS database concerning the Disputed Domain Name, the Complainant registered the ABB trademarks since 1980s. Up to now, the Complainant has obtained registration of various forms of the "ABB" trademark in respect of goods and services in Classes 1, 3, 4, 5,7, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45. In addition to these Chinese national registrations, the Complainant's international registrations under Madrid Agreement and Protocol of ABB trademarks Nos. 613568, 625829, 625830, 664858 have been extended to the People's Republic of China. The aforesaid trademark registrations are all in force and enjoying protection under Chinese Trademark Law.

ABB is the most distinctive and distinguishing portion of the Complainant's trade name. The Complainant has been frequently, widely and substantially using the "ABB" trade name in its worldwide business operations. In the People's Republic of China where the Respondent is domiciled, the Complainant has made huge investment and has established many subsidiary companies and joint ventures who are authorized to use ABB in their trade names to show the relationship and connection with the Complainant, for example, "ABB Xiamen Switchgear Co Ltd.", "ABB LV Installation Materials Co., Ltd., Beijing", "ABB Shanghai Transformer Co Ltd.", "ABB Chongqing Transformer Co Ltd.", and "ABB (China) Ltd."etc., a wholly-owned subsidiary of the Complainant. Throughout the years, whenever the Complainant and the

aforesaid subsidiaries and joint ventures are referred to by the general public in China, whether in newspapers or other media, “ABB company” is used whenever the Complainant is mentioned. In the eyes and minds of the general public in China, “ABB” is and can only be associated with the Complainant. According to the related provisions of the Paris Convention for the Protection of Intellectual Property, the Complainant is entitled to the legitimate rights and interests in “ABB” trade name.

The Complainant has legitimate rights over its ABB trademarks and trade name, and such rights were all acquired far earlier than May 19, 2011 which is the date of registration of the Disputed Domain Name. The Disputed Domain Name comprises two parts of “abbhkc.cn” and “.net”, in which “.net” is suffix of this generic top-level domain name producing no civil right for the Respondent. The term “abbhkc.cn” which is the key portion of the Disputed Domain Name is apparently a combination of “abb”, “hk” and “cn” instead of a word in English or other Latin languages. Among these three terms, “abb” is completely identical with the Complainant’s trademarks and trade name which have been widely registered and substantially used throughout the world. The second part “hk” and the third part “cn” are known as abbreviations of Hong Kong and China. The term “cn” is also the country code for ccTLD used and reserved for China. Thus the combination of “hkc.cn” is normally deemed and applied as “Hong Kong, China” indicating territories other than identifying source of the goods. Hence “abb” is the only distinguishable term in the disputed domain name, which is identical with trademark and trade name enjoyed by the Complainant.

The business of the Complainant is widespread in more than 100 countries including China with as many as 1,000 subsidiaries and 115,000 employees. The Complainant is well-known internationally and in China and it is one of the Fortune 500 Companies in the world. It should therefore be concluded that the incorporation of “abb” to the Disputed Domain Name will cause confusion among the public.

The company name of the Complainant is ABB Asea Brown Boveri Ltd, in which “ABB” is the abbreviation of Asea Brown Boveri, the original company name of the Complainant. The Complainant is well known

under the abbreviation “ABB”. By virtue of extensive and substantive use of the ABB trademarks and trade name by the Complainant and its subsidiaries and joint ventures worldwide including China, the ABB trademarks and trade name have gained substantial goodwill and reputation and are synonymous with the Complainant. When the relevant public comes across with the letters “ABB”, they will immediately associate it with the famous ABB trademarks and trade name of the Complainant. The Complainant is a company with a long business history. Although the Complainant was only formed in 1988 through a merger between the Swedish Asea and the Swiss BBC Brown Boveri, Swedish Asea’s history dates back to 1883, while BBC Brown Boveri was founded in 1891. In China where the Respondent is domiciled, the trading relations between the Complainant and China dates back to 1907 when it’s the Complainant’s predecessor made its first sale of steam boilers to China. The Complainant set up its 1st Asian headquarter of ABB China in Hong Kong in 1974, within which there was a China affair department, and the Complainant set up its permanent office in Beijing in 1979. In 2002, the Complainant’s four HK subsidiaries merged into ABB (HongKong) Ltd. to provide ABB technologies and services to its client and business partners in Hong Kong. A few years later, in 1992 the Complainant set up its 1st manufacturing joint venture in China, and in 1994 the Complainant moved its Asian headquarter of ABB China from Hong Kong to Beijing, whose name was ABB (China) Investment Co. Ltd. and has now become ABB (China) Ltd. With rapid expansion of business in these years in China, the Complainant now has over 30 joint ventures, subsidiaries and affiliated companies, and sales and services branches spreading over 60 major cities in China. Up to now the Complainant has over 15 thousand employees working in these organizations in China. The Complainant has its revenue in China exceeding USD 4.5 billion for 2008, which ranked China as the 2nd largest market of the Complainant in the world. The Complainant has been contracted as supplier of equipments in many important and huge state projects in China including the Three Gorges project, the Qinghai-Tibet railway, the gigantic south-to-north water diversion project and the Beijing 2008 Olympic-related projects.

The Complainant has been making much effort in advertising its ABB

trademarks and trade name in China by publishing advertisements on dozens of professional and non-professional magazines, periodicals and newspapers, outdoor advertising. Apart from these, top level officers of the Complainant's group are frequently interviewed by well-known Chinese media.

In all these years, the Complainant and its subsidiaries, joint ventures etc. have made great contribution to the economic development of China and this contribution has been highly valued and respected by top officials of Chinese central and local governments. As far back in June of 1994, President JIANG Zemin made a visit to ABB Xiamen Switchgear Co Ltd and had made an inscription for the company. Since then, present and precedent leaders of China, such as Mr. HU Jintao, Mr. WEN Jiabao, Mr. LI Ruihuan, Mr. XI Jinping, Mr. LI Keqiang, Mr. HUANG Ju, and Ms. WU Yi, and many Ministers of the State Council and top officials of related provinces and cities visited the ABB subsidiaries and joint ventures in China, and at the same time, top level officers of the Complainant were met by top Chinese government officials.

The Complainant's "ABB" trademarks and trade name is so distinctive and distinguishing, thus it is impossible for anyone including the Respondent to choose the word "abb" as a key part of the Disputed Domain Name by his own imagination or by coincidence without making reference to the ABB trademarks. In the present case, the Respondent chose the word "abhhkc" for the Disputed Domain Name, such act of the Respondent is apparently a copying of the Complainant's well-known trademark with an ill intention to mislead the general public who are familiar with ABB groups and ABB branded goods into believing that the Disputed Domain Name has certain connection with the Complainant or its subsidiaries, joint ventures, or affiliated companies.

The Complainant's rights and interests and the reputation in the ABB trademarks and trade name has been acknowledged and confirmed by different Domain Name Dispute Resolution organizations. For example, in WIPO Case No. D2000-1714 ABB Asea Brown Boveri Ltd v. Mark Sheppard (abb.net), WIPO Case No. D2007-1466 ABB Asea Brown Boveri Ltd v A.B.B Transmission Engineering Co., Ltd. (abb-cn.com); in

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (Beijing Office) ADMINISTRATIVE PANEL DECISION Case No. CN-1100452 ABB Asea Brown Boveri Ltd v. chengmiao (abbhkcn.com); in DNDRC of CIETAC Case No. CND2008000002 ABB Asea Brown Boveri Ltd v. 潘继东 (china-abb.cn); DNDRC of CIETAC Case No. CND2008000102 ABB Asea Brown Boveri Ltd v. S.E.E.S Media Inc (abb-sales.com.cn); all held that the Complainant and its ABB trademarks enjoy a substantial reputation with regard to the Complainant's goods. Attached and marked Annexure 8 and 9 are copies of WIPO Administrative Panel Decision Nos. D2000-1714 and D2007-1466, and ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (Beijing Office) ADMINISTRATIVE PANEL DECISION Case No. CN-1100452.

In summary, the Complainant's ABB trademarks and trade name enjoy goodwill and high reputation in China and throughout the world. The key part of the Disputed Domain Name abbhkcn.net is confusingly similar to the Complainant's ABB trademarks and trade name. The Disputed Domain Name is very likely to be mistaken as the domain name of the Complainant or having connection with the Complainant, thus the registration of the Disputed Domain Name will very likely to cause confusion in the public. Therefore, the Complainant satisfies the first prerequisite as set forth in the Policy. That is, the domain name in dispute is confusingly similar with the trademark in which the Complainant has right.

The Respondent has no connection with the Complainant who never licensed or authorized the Respondent to use the ABB marks or domain name. The Disputed Domain Name is not the name of the Respondent. The Respondent has not been commonly known by the Disputed Domain Name. Furthermore, to the best knowledge of the Complainant, the Respondent owns no rights over any trademark that is identical with or similar to the Disputed Domain Name. The Respondent is not making a commercial or fair use of the Disputed Domain Name. For the reasons above, it is believed that the Respondent owns no legitimate rights or interests in the Disputed Domain Name.

The Complainant ever filed with the ASIAN DOMAIN NAME

DISPUTE RESOLUTION CENTRE (Beijing Office) a Complaint against domain name registration abbhkcn.com on March 28, 2011. An Administrative Decision (Case No. CN-1100452) was made by ADNDRC in July of 2011. The panel required that the domain name abbhkcn.com shall be transferred to ABB Asea Brown Boveri Ltd. After that, the Complainant noted that the ABB Electric Group Limited who operated former website of www.abbhkcn.com registered the disputed domain name in the name of Zhanbing Wang when it lost the domain name abbhkcn.net, and resolved the Disputed Domain Name to new website www.abbhkcn.net. When visiting this website, it is noted that the content of the webpages is completely identical with that of www.abbhkcn.com. Especially, when visiting the homepage, there is a window popped out with an announcement “Our company start to use from this date new domain name www.abbhkcn.net, while the former domain name www.abbhkcn.com will be terminated for use since the next month”. It is obvious that the one who operates the website www.abbhkcn.net shall be the one who operated the www.abbhkcn.com. Thus we can affirm that the Respondent who is the factual owner of the disputed domain name, upon losing the former disputed domain name abbhkcn.com, registered and uses intentionally the disputed domain name in order to keep on online business in the name of ABB companies.

Besides, it shall be stressed that reputation of the ABB trademarks and trade name of the Complainant shall be taken into consideration, and the disputed domain name is confusingly similar to the trademark and trade name of the Complainant, based on which we can presume that Respondent is aware of the ABB trademarks or trade name, and has good knowledge of the very high reputation of the Complainant’s ABB trademarks and trade name, and has good knowledge of the value and importance of the ABB domain names to the Complainant. With this knowledge in mind, the Respondent had copied the Complainant’s ABB trademarks and had it registered as the Disputed Domain Name in his name.

The Complainant notes that the registrant name of the disputed domain name is “Zhanbing Wang”, but the one who operates the website is ABB Electric Group Limited who makes promotion and distribution of



imitating ABB products on [www.abbhkc.cn](http://www.abbhkc.cn). On visiting the webpage [www.abbhkc.cn](http://www.abbhkc.cn), and clicking hyperlink of “honor” from the drop-down menu, it shows the following:

① Certificate of Incorporation of ABB-HKCN ELECTRIC GROUP LIMITED,

② Over ten Trademark Registration Certificates including No. 300515088 of trademark “ABB-HKCN”

The Complainant selected Certificate of Incorporation of ABB-HKCN ELECTRIC GROUP LIMITED and Trademark Registration Certificates No. 300515088 to verify the authenticity, and found that all of the Certificates are fake. As to Certificate of Incorporation of ABB-HKCN ELECTRIC GROUP LIMITED, upon checking with The Registry of Companies Hong Kong, there is not such record in file. As to trademark registration No. 300515088, it has been found that the trademark of trademark registration No. 300515088 is “ARB” which has been ordered to be declared invalid by Hong Kong Special Administrative Region Court in its HCMP No.1289-2008.

Concerning the registrant of the domain name, the Complainant never authorized an individual or legal entity named “Zhanbing Wang” to use the ABB trademark or trade name, and never authorized anyone to register and use a domain name identical or similar to its ABB trademark or trade name, such as “abbhkc.cn”. Going through the administrative and judicial proceedings, the Complainant believes that instead of the name of a legal entity, “Zhanbing Wang” should be the name of an individual who resides in Leqing city of Zhejiang Province, and the boss who is in support of business registration so-called ABB Electric Group Limited, ABB-HKCN Electric Group Ltd. and trademark registration of “ARB”, “ABBHHCN”. No matter whether or not “Zhanbing Wang” the domain name registrant connects to ABB Electric Group Limited who operates the website, the key portion of the domain name in dispute is confusingly similar to ABB trademark and trade name the Complainant has registered and being widely used for a long time, over which the Complainant has acquired very high reputation in China. It is adequate to conclude that the

Respondent has registered the Disputed Domain Name for the purpose of attracting internet users who are interested in ABB products or service to visit the website and gain improper profit in distributing infringing products, and such act of the Respondent had virtually damaged the reputation of the Complainant, disrupted the normal business operation of the Complainant, hampered the registration of the Disputed Domain Name by the Complainant, created a likelihood of confusion with the Complainant to mislead the public.

As the Complainant has obtained substantial registrations of its ABB trademarks and have made substantial use and promotion of the ABB trademarks in China and has acquired very high reputation over the ABB trademarks and trade name in China, it is submitted that the Respondent should be aware of all these, and therefore his registration of the Disputed Domain Name should be deemed as obtained in bad faith and as an infringement on the Complainant's trademark rights over the ABB trademarks. Such infringement on the part of the Respondent constitutes uncompensated possession of the investment and reputation of the Complainant.

It is submitted, for the reasons outlined above, that the Disputed Domain Name was registered and is being used in bad faith in accordance with paragraph 4(b)(iv) of the Policy: by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, internet users to Respondent's website or other on-line location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product.

In the light of the above facts, the Complainant requested that the disputed domain name be transferred to the Complainant pursuant to the Policy and Rules. .

## **The Respondent**

The Respondent makes no defense against any of the allegations by the Complainant in the whole course of the proceeding.

#### **4. 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 made 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.

The indispensable pre-condition for the Panel to find out the disputing facts is to base itself upon the allegations and defenses by the parties, which does not exist in the judgment of the present dispute due to the lack of any defense by the Respondent. In view of this, what the Panel is going to do for the fact-finding is to base itself upon the submissions and exhibits by the Complainant alone. Unless the Panel has a reason to reject any submission or evidence by the Complainant in view of the panelist's

professional sense to make judgment and personal experiences in making decisions on domain name disputes, the facts are to be held by the adoption of the Complainant's 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 back 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 copies of trademark certificates to prove that it is entitled to the trademarks "ABB" which were registered much earlier than the disputed domain name and are all currently valid. Taking the relevant exhibits by the Complainant, the Panel holds the fact.

The disputed domain name is “abbhkc.cn” and its identifying part is “abbhkc”, obviously NOT identical to the registered trademark “ABB” of the Complainant’s. Hence, what the Panel is going to hold is whether the two are confusingly similar. To those who know the Complainant’s name and trademarks used on its products or in the service, and from the Latin linguistic perspective, “abbhkc” may firstly be visually divided into three parts, i.e. “abb”, “hk” and “cn”, unless the Respondent gives explainable reason to prove the contrary. Undoubtedly, the first part “abb” is identical to that in the registered trademarks of the Complainant’s. What is “hk” and “cn”? There might be different conjectures whatsoever. Nevertheless, to an English-speaking Chinese, the very first impression is “hk” standing for Hong Kong, and “cn” for China. To the panelist at first sight, the intention by the Respondent to register the disputed domain name is to beat around the bush to take “abb” to attract web-users’ eyes by adding certain meaningful or meaningless elements. Supposing that if a web-user does not know the exact meaning of “hk” and “cn”, what attracts his eyes in the disputed domain name? The answer is absolutely “abb”. As it is, the Panel holds that in the disputed domain name, the most prominent and eye-catching part is “abb”.

With regard to the issue of “confusion”, the Panel is of the opinion that when talking on the issue, attention should be focused on the “Potentiality” instead of “Reality”, i.e. what the Complainant needs to prove is the POSSIBLE confusion by the consumers. For those buyers of the Complainant’s ABB-branded goods or service, the most eye-catching component in the identifying part of the disputed domain name is “abb”. On the other hand, when talking about the issue of “confusion”, it is imperative to identify the objective of the Respondent’s registering the disputed domain name. The reasons is that if the objective is to take a ride of other’s reputation, how could it work if the domain name cannot cause the web—users to think of the one who has the reputation while seeing the domain name? The Complainant claims and proves that the disputed domain name was badly used to create confusions by the web-users’ mistaking the user and the Complainant on internet. As it is, the Panel in a position to be HARDLY hold that the disputed domain name COULD NOT cause confusion to the web-users who are interested in the

Complainant's goods or service; and further rules that the disputed domain name is confusingly similar to the Complainant's registered trademark, and 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 rights to or legitimate interests 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 name and the Respondent has nothing to do with it 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 argues 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. Unfortunately, the Respondent makes no argument to say it does have certain right or legitimate interest in regard to the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name?

On the other side, the Complainant submitted abundant exhibits to certify that it innovated and created the distinctive mark "ABB" which meaning can hardly be identified by common folks except those who know the Complainant, though the Complainant states and the Panel believes that "ABB" is the abbreviation of Asea Brown Broveri, the trade name of the Complainant's. Since the Complainant has been extensively using the mark "ABB" in its business activities, the high-valued good-will has been cultivated with the word "ABB"; i.e. when relevant consumers see the word "ABB" or "abb", they think of nothing but the Complainant and its

products and service. On the other side, when web-users see the disputed domain name, how could they think of the Respondent as a natural person who has no historical, cultural, economic or any other linkage or heritage with the word “ABB”? Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sufficient reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets 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. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: “..... (ii)you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; .....(iv)by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.” The Complainant claims that the disputed domain name was registered in a natural person’s name but used by an entity by the name of ABB Electric Group Limited which has NOT a linkage to the Complainant. Since no evidence shows that the Respondent has used the disputed domain name after its registration, and the Complainant submitted sufficient exhibits to prove the fact that the disputed domain name was badly used, the Panel holds what the Complainant claimed. From the perspective of the registrant of the disputed domain name, register-but-no-use reveals his or her intention to prevent the Complainant from reflecting its registered trademark in a corresponding domain name; while from the perspective of the use of the disputed domain name, the misconduct of bad-use makes it clear that the user intentionally attempted to attract, for commercial gain, internet users

to the web site using the disputed domain name, by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement of the web.

Furthermore, the logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party is entitled with high market value, the intention of the registration is clear, namely taking illegal advantages by causing confusion to the consumers. On the other hand, if the registrant is NOT intentionally to take advantage of other's, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. The conduct of "register only" is sort of passive form of ill-use. That seems to be underlying the stipulation under item (ii) of Paragraph 4(b) of the Policy. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. On the other side, whether the registrant of the disputed domain name has any linkage to the actual user of the name, the fundamental truth is that the disputed domain name is being badly used to damage the reputation of the Complainant and cause harm to internet users' interests. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to the final conclusion that the Complaint fulfills each AND all of 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:

That the disputed domain name "abhkcn.net" is confusingly similar to the trademark "ABB" to which the Complainant has rights; and



That the Respondent has no rights to or legitimate interests in the disputed domain name; and

That the domain name was registered and used in bad faith.

As such, the Panel rules that the disputed domain name “abbhkc.net” shall be transferred to the Complainant, ABB ASEA BROWN BOVERI LTD.

Sole Panelist-



Dated: September 11, 2012