



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-18010151</b>
<b>Complainant:</b>	<b>BASF SE</b>
<b>Respondent:</b>	<b>ouyangbing ouyangbing</b>
<b>Disputed Domain Name(s):</b>	<b>&lt; basfs.com &gt;</b>

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### 1. The Parties and Contested Domain Name

The Complainant is BASF SE, a company incorporated in Ludwigshafen, Germany.

The Respondent is ouyangbing ouyangbing.

The domain name at issue is < basfs.com > ("Disputed Domain Names").

### 2. Procedural History

On July 13, 2018, the Complainant's representative submitted a Complaint in English language to the Hong Kong Office of Asian Domain Name Dispute Resolution Centre ("ADNDRC").

On July 17, 2018, ADNDRC transmitted by email to the Registrar, Instra Corporation Pty, Ltd., a request for registrar verification in connection with the Disputed Domain Names. On July 28, 2018, the Registrar transmitted by email to ADNDRC confirming that the Respondent is the registrant of the Disputed Domain Names.

On August 1, 2018, ADNDRC transmitted the Notification of Deficiency to the Complainant.

On August 1, 2018, ADNDRC transmitted the Complaint to the Respondent by email and informed the Respondent of the 20-day period to file a Response. However, no Response has been filed.

On September 21, 2018, ADNDRC informed the parties of the appointment of Mr. William Law as the sole panelist and the decision would be rendered on or before October 5, 2018.

### 3. Factual background

The Complainant BASF SE is one of the largest chemical companies in the world and is listed on the Frankfurt Stock Exchange, London Stock Exchange, and Zurich Stock Exchange. The BASF Group comprises subsidiaries and joint ventures in more than 80 countries, and operates six integrated production sites and 390 other production sites in Europe, Asia, Australia, Americas and Africa. The Complainant has customers in over 200 countries and supplies products to a wide variety of industries, employing more than 112,000 people around the world.

Moreover, the Complainant holds numerous domain names incorporating the BASF trademark, both within generic TLDs and geographical ones, particularly in Asia and China: <basf.com>, <basf.asia>, <basf.in>, <basf.org> and many others

The Complainant also owns more than 1500 trademark rights for "BASF" worldwide. Moreover, the trademarks were registered years before the contested domain names in a very large number of jurisdictions, including USA where the disputed domain name is registered; and China as the website is in Chinese.

The disputed domain name was registered by the Respondent on April 6, 2018.

### 4. Parties' Contentions

#### A. Complainant

The Complainant's contentions may be summarized as follows:

**(i) The identifiable portion of the Disputed Domain Name is identical with the trademarks and service marks in which the Complainant has rights**

The Complainant contents that BASF is a famous trademark, as this has previously been stated by UDRP panelists

The Complainant contents that the disputed domain name <basfs.com> is confusingly similar to the Complainant's trademark.

The Complainant submits that previous UDRP panelists have confirmed that the additional element of 's' in the disputed domain name can't avoid the confusion between the Complainant's trademark and the contested domain name.

The Complainant also submits that the confusion is increased by the fact of that the Complainant and his trademark "BASF" are well-known world widely particular in USA and China. For USA, BASF Corporation, headquartered in Florham Park, New Jersey, is the North American affiliate of BASF SE, Ludwigshafen, Germany. BASF has more than 18,200 employees in North America, and had sales of \$17.9 billion in 2017. BASF Corporation operates more than 100 production and research and development sites throughout North America and operates Verbund sites in Geismar, Louisiana and Freeport, Texas; For China BASF has been a committed partner to Greater

China since 1885. With major investments in Nanjing, Shanghai and Chongqing, BASF is the largest foreign investor in China's chemical industry, and maintains the BASF Asia Pacific Innovation Campus (Shanghai) as a global and regional research and development hub.

The Complainant posted sales of over €7.3billion in 2017 to customers in Greater China and employed 8,982 people as of the end of the year. Greater China is currently BASF's third largest market after Germany and the United States (attached Annex 13-1-2 -printout the presentation of BASF in USA and China).

**(ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name or the major portion of it**

The Complainant contents that the Respondent reproduces the Complainant's trademark without any license or authorization from the Complainant's company.

The Complainant also content that the Respondent's use of the disputed domain name or preparation to use the domain name demonstrate no intent to use it in connection with a bona fide offering of goods or services. On the contrary, the domain name resolves to a website which is unrelated to the Complainant. The website is lottery website which is made to generate revenue.

The Complainant submits that it has never granted authorization, license or any right whatsoever to register the domain name basfs.com which is almost identical to his trademark. Therefore, the Respondent of this domain name is neither affiliated nor commercially linked to the Complainant.

The Complainant submits that since the adoption and extensive use by the Complainant of the trademark BASF predates the first entry of the disputed domain name, the burden is on the Respondent to establish the Respondent's rights or legitimate interests the Respondent may have or have had in the domain names.

**(iii) The Disputed Domain Name has been registered and is being used in bad faith**

In relation to the element of bad faith, the Complainant contents that the disputed domain name is almost identical to the Complainant's mark. The Complainant's mark is distinctive and well-known. The Respondent was undoubtedly aware of it when it registered the disputed domain name.

The Complainant also content that it is inconceivable that the Respondent ignored the Complainant's earlier rights on the term BASF. It is clear that the Respondent had the Complainant's name and trademark in mind when registering the domain name. The Respondent's choice of domain name cannot be a coincidence and must have been influenced by the fame of the Complainant's trademark. This has been supported by the search results from Google and Baidu, a popular search engine in China.

The Complainant also contends that it sees no possible way whatsoever that the Respondent would use the domain name in connection with a bona fide offer of products or services. Indeed, any use of the BASF trademark would amount to trademark infringement and damage to the reputation of the trademark. The sole detention of the contested domain name by the Respondent, in an attempt to prevent the Complainant from reflecting its trademark and company name in a domain name, is a strong evidence of bad faith. Furthermore, any actual use of the domain name by the Respondent would de facto amount to bad faith active use.

Indeed, the Complainant's trademark is arbitrary and has no common or general meaning in any language, and the disputed domain name is not generic or descriptive, which the Respondent is most likely unable to put forward any use that legitimizes its act.

The Complainant contends that the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website by creating a likelihood of confusion with the complainant's well-known trademark and domain name "basf.com".

#### B. Respondent

The Respondent has not filed any submission within the prescribed time.

### 5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

#### A) Identical / Confusingly Similar

The distinctive part of the Disputed Domain Names are "basfs", which is almost identical, and in fact only adding a letter 's' to the registered trademarks of the Complainant's. The addition of the "s" to the Complainant's trade mark does not dispel the overall impression of similarity. The generic Top-Level Domain ("gTLD") ".com" is typically disregarded when considering the similarity, since it is a technical registration requirement.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's proven trademarks.

## **B) Rights and Legitimate Interests**

The Complainant, as the registrant of various trademark registrations, submitted that it has never licensed or granted any rights to the Respondent. The Respondent has the burden of proof to establish that it has rights or legitimate interests in the Disputed Domain. However, since the Respondent defaulted in contesting the Complainant's allegations, with no evidence to the contrary, I accept the Complainant's submissions that:

- (1) the Respondent's use of the Disputed Domain is not in connection with a bona fide offering of goods or services;
- (2) the Respondent has not been commonly known by the Disputed Domain Name, but the Complainant; Further there has been no evidence to show that the Respondent has acquired any trademark or service mark rights and/or reputations in connection with the mark.

I am therefore satisfied that the Respondent has no rights or legitimate interest to register and use the Dispute Domain Names.

## **C) Bad Faith**

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Domain Name the Respondent was or should have been aware of the Trade Marks, since the top search result of "basf" in the Baidu and Google search engine is the Complainant's official website. As the Respondent has not provide reasons to show the otherwise, the Panel is deemed to draw the conclusion that the Respondent was aware of the Complainant and its BASF trademark at the time that he registered the disputed domain name and deliberately chose to register it as part of the disputed domain name in bad faith.


The disputed domain name is used as an unrelated gambling website (see below), which the Panel is satisfied that Paragraph 4(b) of the Uniform Domain Name Dispute Resolution Policy (the Policy) is met, which, by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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 its web site or location or of a product or service on its web site or location.



Thus, I am satisfied that the disputed domain name has been registered and is being used in bad faith.

## 6. Decision

In conclusion, the Complainant has satisfied all the 3 grounds laid down in Article 4(a) of the ICANN Policy. I therefore order that the Dispute Domain Names < **basfs.com** > be transferred to the Complainant.

  
 William Law  
 Sole Panelist  
 Date: October 1, 2018