



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1701039
Complainant:	voestalpine High Performance Metals Pacific Pte. Ltd.
Respondent:	Shen ZhenShi Yi Sheng Bai Mo Ju You Xian Gong Si
Disputed Domain Name(s):	<assab-gz.com> & <assab-sz.com>

1. The Parties and Contested Domain Name

The Complainant is voestalpine High Performance Metals Pacific Pte. Ltd., of 8 Cross Street, #27-04/05 PWC Building, Singapore 048424.

The Respondent is Shen ZhenShi Yi Sheng Bai Mo Ju You Xian Gong Si, of Sheng Shenzhen Shi Bao'an Qu Xi Xiang Gu Shu Tang Xi Gong Ye Qu C dong 1 lou, Shenzhen Shi, Guangdong 518510, China.

The domain names at issue are <assab-gz.com> and <assab-sz.com>, registered by Respondent with West263 International Limited and Chengdu West Dimension Digital Technology Co., Ltd., of Area C, Floor 24, Sichuan Television Building, Shun Cheng Street, Qing Yang Street, Chengdu, China.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 9 November 2017 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules). On 9 November 2017, the Hong Kong Office acknowledged receipt of the Complaint and sent an email to West263 International Limited and Chengdu West Dimension Digital Technology Co., Ltd. (the Registrars) requesting verification of information regarding the disputed domain name.

On 10 November 2017, the Registrars disclosed registrant and contact information for the disputed domain name which differed from that identified in the Complaint, and further disclosed that the language of the Registration Agreement was Chinese. On 17 November 2017, the Hong Kong Office informed the Complainant that the Complaint was

administratively deficient. On 20 November 2017, the Complainant submitted a revised Complaint. The Hong Kong Office confirmed that the revised Complaint was in administrative compliance with the Policy and the Rules.

On 22 November 2017, the Hong Kong Office sent the Respondent a written notice of complaint, informing him that it was required to submit a Response within 20 days (that is, on or before 12 December 2017). The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by that deadline. Accordingly, on 14 December 2017, the Hong Kong Office notified the Respondent's default.

In the meantime, on 23 November 2017, the Complainant forwarded to the Hong Kong Office an email dated 22 November 2017 in English that it had received from the head of the network department of the Respondent, offering to sell the disputed domain name at a price lower than the cost of arbitration.

On 15 December 2017, the Hong Kong Office appointed Prof. Matthew Kennedy as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the parties in this matter. On 15 December 2017, the Hong Kong Office transferred the case files to the Panel.

3. Factual background

The Complainant is a supplier of tool steel, steel for components and other steel products. It is headquartered in Singapore and operates close to 50 branches and sales offices in the Asia-Pacific region. The Complainant was formerly named ASSAB Pacific Pte Ltd. It uses the name “一胜百” (Yishengbai) in the greater China area and has affiliates across mainland China with corporate names in the format “一胜百模具(区域)有限公司” (Yishengbai Mould (*Place name*) Co., Ltd.). The Complainant holds multiple trademark registrations for ASSAB and related trademarks in multiple jurisdictions, including Hong Kong trademark registration no. 19570513 for ASSAB, registered from 31 July 1957, specifying “[a]ll kinds of iron, steel bars, strips, tubular products, sheets, wires and tool bits”. That trademark registration remains current. The Complainant operates official websites at <assab.com> and <assab-china.com>.

The Respondent is a company located in China. Its name may be translated as “Shenzhen City Yishengbai Mould Co., Ltd.”. The disputed domain names were both registered on 21 December 2016 and resolve to websites titled “一胜百模具(广州)有限公司” (Yi Sheng Bai Mould (Guangzhou) Co., Ltd.) and “一胜百模具(深圳)有限公司” (Yi Sheng Bai Mould (Shenzhen) Co., Ltd.). The websites prominently display the Complainant's ASSAB trademark and ASSAB logo.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's ASSAB trademark. The disputed domain name incorporates that trademark in its entirety. The initials “gz” and “sz” refer to Guangzhou and Shenzhen, respectively, and

cannot be considered distinctive. The generic Top-Level Domain (“gTLD”) suffix “.com” confers no distinctiveness.

- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant’s ASSAB trademark has significant worldwide recognition. The Complainant and the Respondent have no prior connection, and the Complainant has not been authorized the Respondent to use the mark in the disputed domain name. ASSAB is not a term commonly used in the English language. There is also no evidence that the Respondent has been commonly known by the disputed domain name. It is therefore impossible for the Respondent to logically use or register the disputed domain name, except in a deliberate attempt to take advantage of the “ASSAB” mark for commercial gain.
- iii. The disputed domain name was registered and is being used in bad faith. The Respondent must have had prior knowledge of the Complainant’s ASSAB trademarks because the registrations of those trademarks long predate the registration of the disputed domain name. The Complainant has maintained a significant presence in mainland China since the 1950s. The disputed domain names resolve to websites in Chinese for companies named “一胜百模具（广州）有限公司” (Yi Sheng Bai Mould (Guangzhou) Co., Ltd.) and “一胜百模具（深圳）有限公司” (Yi Sheng Bai Mould (Shenzhen) Co., Ltd.). Each website prominently displays the Complainant’s ASSAB trademark and ASSAB logo. Consumers may be led to believe that this website is for an entity or subsidiary affiliated with the Complainant in some way. The website also copies content from the Complainant’s official Chinese website, including an introduction of the Complainant and drawings and information on its products.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

5. Findings

The Respondent’s default does not automatically result in a decision in favour of the Complainant. 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.

Language of the Proceeding

According to Paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this proceeding, the Registration Agreement for the disputed domain name is in Chinese but the Complaint was filed in English. The Complainant requests that English be the language of the proceeding for the following reasons: the Complainant is a foreign company and it would cause tremendous cost, time and unfair prejudice if it were required to translate all the evidence from English; the disputed domain name is in English; and the disputed domain name resolves to a website in Chinese with some content in English. The Respondent did not comment on the language of the proceeding.

The Panel notes that the Respondent, despite having received notice of the Complaint in Chinese and English, has not indicated any interest in participating in this proceeding. Therefore, the Panel considers that translation of the Complaint and annexes would create an unnecessary expense to the Complainant and unduly delay the proceeding, whereas conducting the proceeding in English would not be unfair to either party.

Having regard to these circumstances, the Panel determines that the language of this proceeding is English.

Supplemental filing

The Complainant made an unsolicited supplemental filing on 23 November 2017, after the commencement of this administrative proceeding. In view of the findings below, the Panel does not consider it necessary to determine the admissibility or relevance of the evidence contained in that supplemental filing.

A) Identical / Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the ASSAB trademark.

The disputed domain names wholly incorporate the Complainant's ASSAB trademark as its initial and only distinctive element. Each disputed domain name also includes the letters "gz" or "sz" but, as mere letters separated from the Complainant's trademark by a hyphen, they do nothing to dispel the confusing similarity between the disputed domain names and the Complainant's trademark. The hyphen between the Complainant's trademark and the additional letters is mere punctuation and does not dispel confusing similarity between the disputed domain names and the Complainant's trademark either.

The only other element in the disputed domain name is the gTLD suffix ".com" but that may be disregarded as a mere technical requirement of registration.

Accordingly, the Panel finds that the disputed domain names are confusingly similar to the Complainant's trademark. The Complainant has satisfied the first element of Paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

The Panel has already found the disputed domain names confusingly similar to the Complainant's ASSAB trademark. The Complainant submits that it and the Respondent have no prior connection, and that it has not authorized the Respondent to use the ASSAB trademark in the disputed domain names.

Nothing on the record indicates that the Respondent has any relevant trademark rights, that it uses the disputed domain names in connection with a bona fide offering of goods or services, that it has been commonly known by the disputed domain names or that it is making a legitimate non-commercial or fair use of the disputed domain names.

Based on the evidence on the record and the findings in Section 5C below, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Complainant has satisfied the second element of Paragraph 4(a) of the Policy.

C) Bad Faith

As regards registration, the Complainant's ASSAB trademark was registered in Hong Kong many years before the disputed domain names. The disputed domain names wholly incorporate the Complainant's ASSAB trademark and combine it with the elements "-gz" and "-sz", which can refer to "Guangzhou" and "Shenzhen", respectively, both cities where the Complainant has an office or has had other operations. "Assab" has no dictionary meaning. The disputed domain names resolve to websites that prominently display the Complainant's ASSAB trademark and ASSAB logo. The Complainant submits that it has no prior connection to the Respondent. All this evidence gives the Panel reason to find that the Respondent deliberately targeted the Complainant's ASSAB trademark and registered the disputed domain name in bad faith.

As regards use, the disputed domain names resolve to websites that are misleadingly presented as websites of Chinese affiliates of the Complainant. The websites are titled "一胜百模具（广州）有限公司" (Yi Sheng Bai Mould (Guangzhou) Co., Ltd.) and "一胜百模具（深圳）有限公司" (Yi Sheng Bai Mould (Shenzhen) Co., Ltd.) which are in the format of the names of the Complainant's Chinese affiliates. The websites prominently display the Complainant's ASSAB trademark and ASSAB logo and the Complainant's products and are evidently operated for commercial gain. Therefore, the Panel finds that the disputed domain names are used in an attempt intentionally to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of that website within the meaning of Paragraph 4(b)(iv) of the Policy.

Accordingly, the Panel finds that the disputed domain names were registered and are being used in bad faith. The Complainant has satisfied the third element of Paragraph 4(a) of the Policy.

6. Decision

For the foregoing reasons, the Panel orders that the disputed domain names <assab-gz.com> and <assab-sz.com> be transferred to the Complainant.

Matthew Kennedy
Panelist

Dated: 21 December 2017