



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-1701094

Complainant: ABB ASEA BROWN BOVERI LTD

Respondent: RICHARD GREENWOOD

Domain Name: abbmax.com

Registrar: UNIREGISTRAR CORP

1. Procedural History

On 13 July 2017, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 26 July 2017, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, UNIREGISTRAR CORP, a request for registrar verification in connection with the disputed domain name.

On 28 July 2017, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 25 August 2017, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, UNIREGISTRAR CORP, of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the ADNDRC Beijing Office notified the parties on 27 September 2017 that the Panel in this case had been selected, with Mr. ZHAO Yun acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 27 September 2017, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 11 October 2017.

Pursuant 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. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

A. The Complainant

The Complainant in this case is ABB ASEA BROWN BOVERI LTD. The registered address is Affolternstrasse 44, CH-8050 Zurich, Switzerland. The authorized representative in this case is Beijing Janlea Trademark Agency Co., Ltd.

B. The Respondent

The Respondent in this case is RICHARD GREENWOOD. It's email addresses are DOMAINS@NTADVISORS.COM, postmaster@abbmax.com.

The Respondent is the current Registrant of the disputed domain name "abbmax.com", which was registered on 24 February 2016 according to the WHOIS information. The registrar of the disputed domain name is UNIREGISTRAR CORP.

3. Parties' Contentions

A. The Complainant

a. The disputed domain name is confusingly similar to both the Complainant's business name and its associated companies' business name in the world and China.

I. About the Complainant

The Complainant, of which full name is ABB Asea Brown Boveri Ltd. (hereinafter referred to as "ABB"), is a merger of two international companies with a history of more than 100 years —the Swedish ASEA AB and the Swiss BBC Brown Boveri under the law of Swedish in 1988, the headquarter of which is located in Zurich, Switzerland. The Complainant is a global leader in the field of electricity and automation technology, dedicating to provide transmission and distribution of electric products and solutions for industry, electric industry, office building and household. The Complainant's business has expanded to more than 100 countries, invested in over 1000 subsidiaries and employed more than 115,000 people. The Complainant is mainly providing service for the clients in the industries of electric power generation, transmission and distribution, industrial and building systems, and railway transportation.

The Complainant is a global company with quite good fame and notability. The FORTUNE magazine conducts a survey each year on the world's top 500 companies of largest scale, best returns and most respected, among which ABB is always ranked as one of the Top 500 Global Companies in the past 20 years. According to records concerning the appraisal and rank since 1996 saved in its official website, the Complainant is ranked among the first 300 every year, and the highest rank is No. 68 in 1997.

"ABB", as the core part of the Complainant's company name, is acronym of the two merged companies "Asea and Brown Boveri". "ABB" has consistently been used as trade name and notable business logo since the foundation of the Complainant, appeared in several publicity materials and every economic or social activities that the Complainant participated. It is also the most concise and powerful title called by the general public, and the symbolic name and most famous trademark of the Complainant, having been used on many kinds of goods and services provided by the Complainant and printed on employee's clothing. As the symbolic trade name of the Complainant, ABB is the Complainant's famous trademark, has become widely publicized around the world together with the Complainant's quality products and services, and has already been a 100% well-known trademark around the globe.

ABB's relationship with China could be dated back to 1907, when its predecessor delivered the first steam boiler to China. In 1974, ABB established its first office in Hong Kong, and then set up its first permanent office in Beijing in 1979. In 1992, ABB launched its first Chinese joint venture – ABB Xiamen Switchgear Co., Ltd. In 1994, ABB moved its China headquarters to Beijing. In 1995, ABB's holding company, ABB China Ltd., was formally established. After years of fast growth, ABB owned 27 large

wholly-owned enterprises and joint ventures, and established sales and services companies in 60 local cities with nearly 15,000 employees. ABB has developed a full range of business activities in China, including R&D, manufacturing, engineering, sales, and service, and as a result China has become its second-largest market with its annual sales amount reaching \$4.5 billion. ABB's wholly-owned enterprises and joint ventures across many provinces and cities in China have achieved high success in their business by adopting advanced production technology and management experience, and have also made great contribution to the development of local economy.

In decades, ABB and its Chinese institutions dedicated to the construction of China's modernization, participated in China's major engineering construction on basis of world class technology and products, further becoming one part of the development of China's economy and industry.

Chinese leaders also pay full attention on the contribution ABB made to China's modernization construction, and leaders of the CPC Central Committee and Political Bureau had visited ABB China Company many times, getting to know the latest technology and kindly greeting the staff.

In this case, the Complainant and its Chinese subsidiaries have used "ABB" as the only trademark of its products. The Complainant's business in China is mainly conducted by ABB (China) Ltd, part of joint factories and companies with independent accounting. Therefore, the business operation of ABB (China) Ltd could largely represent the operation situation of the Complainant and its "ABB" brand in China market. As a result, according to financial audit of ABB (China) Ltd. The Complainant provides related "ABB" brand products and services in the field of electricity, machinery manufacture, automation and, control product and system.

Furthermore, the Complainant established its first joint venture company in China – ABB Xiamen Switchgear Co., Ltd, as its major company to manufacture and sell medium voltage switchgear. This company operated in 1992, dedicating to manufacture and repair medium voltage switchgear, medium voltage vacuum circuit breaker, and other motor-operated switchgear, parts and equipment for the requirement of using electricity. This company used "ABB" as its only trademark and trade name of its products. Based on company financial audit in evidence 13, the market business scale of medium voltage switchgear, medium vacuum circuit breaker, and other motor-operated switchgear, parts and equipment for the requirement of using electricity marked by the Complainant's "ABB" trademark can be inferred.

It can be seen from the evidence that the annual revenue of the Complainant's China wholly-owned enterprises and one of its China joint ventures has surpassed 3 billion RMB, among which the profits have surpassed 1 billion RMB and the taxation are billions RMB. Combine the two companies, their annual revenue is almost 5 billion

RMB, and the taxation are surpassed 0.2 billion RMB. In addition, ABB Chongqing Transformer Co., Ltd. and ABB Beijing High Voltage Switchgear Co., Ltd. are the major manufacture division of core business products in China.

Above are only examples of four representative companies of the Complainant in China, though the other 30 companies are established in different times with different business situation, they are major contributors in locals. There are more than ten “ABB” subsidiaries listed in “Top 100 companies of China electrical industry” every year, playing a vital role in enhancing the whole strength of “ABB” group.

It can be seen through above contents and evidence that the Complainant’s subsidiaries under “ABB” brand are developing positively with quite large manufacture scale, the annual sales amount of which could reach more than 1 billion, and the business status in 2005-2008 of which is increased year by year.

The Complainant’s China subsidiaries conduct promotion activities for goods marked by “ABB” trademark through various kinds of commercial advertisements.

It can be seen that the Complainant’s trademark “**ABB**” has significant role in the field of electronic industries in worldwide, including China.

II. The disputed domain name is confusingly similar to the trade name of the Complainant

As above mentioned, the Complainant has been continuously using “ABB” as its trade and business name of the trade and business names of its affiliated company and subsidiaries for over 20 years since it has been merged and registered in 1988 in Switzerland. Since the establishment of ABB Xiamen Switchgear Co., Ltd., the Complainant’s first joint venture in China, all the Complainant’s 27 large-scale wholly-owned enterprises and joint ventures have been using “ABB” as their business name in China. Besides, all the public, magazines and periodicals, and the mass media in China call the Complainant or its wholly-owned enterprises or joint ventures “ABB”. In China, the public has already taken “ABB” as having a unique, specific association with the Complainant. According to relevant articles in the Paris Convention and in the General Rules of the Civil Law of China, the Complainant is entitled to trade name right of “ABB” under China’s Law and this right has come into existence much earlier than the filing date September 27, 2013, of the disputed domain name.

The disputed domain name is “abbmax.com”, among which the suffix “.com” is not the distinctive part, and is not the part with right. The main part of this disputed domain name is composed of two parts, namely “abb” and “max”, in which “max” could be interpreted as “total, complete, maximum”, having weaker distinctiveness, therefore, the distinctive part of this disputed domain name obviously is “abb”. “abb” of the disputed domain name is totally identical with both the trade name registered by the

Complainant in Switzerland and trade names of those wholly-owned enterprises of and joint ventures registered by the Complainant in China. When used as the main content of the disputed domain name, it is much likely to mislead the public to assume it is one of the series of domain names registered by the Complainant's subsidiaries, much likely causing confusion and is misleading. It is obvious that the disputed domain name is confusingly similar to the Complainant's trade name.

III. The disputed domain name constitutes confusingly approximate to the Complainant's prior-registered serial "ABB" trademarks

1. The Complainant's ABB series of trademarks have been registered and have been put into use both in China and in the world much earlier than the filing date 24 February 2016 of the disputed domain name and the Complainant holds prior trademark right to "abb"

Up to now, the Complainant has obtained registration of 8,000 "ABB" trademarks in more than 100 countries around the world, including but not limited to: African Intellectual Property Organization (AIPO), Afghanistan, Albania, Algeria, Angola, Argentina, Australia, Austria, Azerbaijan, Bahamas, Brazil, Bahrain, Bangladesh, Benelux, Cambodia, Canada, Chile, China, Colombia, Costa Rica, Cyprus, Czech Republic, Denmark, Egypt, European Union (EU), Germany, Greece, Hong Kong, Hungary, India, Indonesia, Israel, Ireland, Italy, Japan, Jordan, Kuwait, Malawi, Malta, Mauritius, Mexico, Mongolia, Monaco, Namibia, Netherlands, Nepal, New Zealand, Pakistan, Paraguay, Peru, etc. Registration dates of these trademarks can date back to the 80s of last century at the earliest and in the year of 2016 at the latest.

As early as in the 80s of last century when the Complainant just came into existence from its merger, the Complainant began to file applications for registration of as many as several hundreds of trademarks in dozens of classes in China and many of them have been approved for registration. Among them, the "ABB" portfolio, which covers the most extensive classes and the number of the trademarks, is the biggest one, boasting about 250 trademarks designated for use on goods and services in Class 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, etc., among which the trademarks registered for goods in class 9 are No. 348391, No. 349577, No. 3820215, No. 3820216, No. 3820282, No. 3820283, No. 3820284, No. 3820367, No. 3820393, No. 3820497, No. 3820500. The Complainant's trademarks No. G613568, No. G664858, No. G781684, No. G781685, No. G781902 have been approved for international registration and extended protection to China.

It can be clearly seen that, before the filing date February 24, 2016 of the disputed domain name, the Complainant holds prior trademark right to the word "ABB " in both

China and the world.

2. The disputed domain name is confusingly similar to the Complainant 's prior-registered "ABB" serial trademarks.

The main distinctive part "abbmax" in the disputed domain name contains entirely the main word "abb" of Complainant's series of trademark "ABB" to which the Complainant holds exclusive trademark right in more than 100 countries (including China) in the world. Between the domain name and the trademark, there is only slight difference of lowercase letters and uppercase letters; the other part "max" in the disputed domain name could be interpreted as "total, complete, maximum", having weaker distinctiveness; As a result, the distinctive part of the disputed domain name apparently is "bb", which is totally identical with the Complainant's trademark, as a whole, it is much likely to cause the public to assume that the website accessed through the disputed domain name is related to the Complainant, and the products or services displayed in the website is produced by the Complainant or is of the same brand from the Complainant. Therefore, the disputed domain name is confusingly similar to the Complainant's prior registered trademark.

IV. The disputed domain name is confusingly similar to the Complainant's prior-registered domain name.

- b. The Respondent does not hold any legitimate rights and benefits to the disputed domain name.

The Complainant has never licensed the Respondent by any means to use the Complainant's "ABB" series of trademarks or similar marks or logos. Nor is there any business relationship between the Complainant and the Respondent; therefore, the Respondent does not have any trademark rights to the abovementioned domain name. Additionally, all information about the Respondent such as business name, business address, etc. has nothing to do with "abb"; therefore, the Respondent does not enjoy any legitimate rights and interests to the disputed domain name.

- c. It is in bad faith for the Respondent to have the disputed domain name registered and used.

It has been found through web search that the disputed domain name has been marked for sale prominently in the homepage of the website "Uniregistry market" which is automatically linked by the domain name www.abbmax.com. It can be seen that the Respondent does not have bona fide intention to use this disputed domain name but wants to sell it for the purpose of profits. The disputed domain name containing "abb" obviously indicates association and relation between the disputed domain name and the Complainant ABB group, directly misleading the relevant public. It is obviously in bad faith for the disputed domain name registrant to make illicit use of the Complainant's substantial reputation and influence in the industry to attract

potential consumers to its website so as to obtain unfair interests. If the disputed domain name is purchased by other company or other person, it will absolutely mislead consumers to choose or purchase products, finally damaging the legal rights and interests of consumers. In addition, the Respondent's action will also have detrimental effect on the Complainant's business fame and legal rights and interests.

The Complainant holds that, the disputed domain name is mainly composed of its trademark and trade name "abb", and is confusingly similar to the Complainant's prior trademark, trade name and prior domain name, and that the website associated with the disputed domain name is used for sale of this domain name, and when considering the disputed domain name and its associated website, the relevant public are very likely to be confused and misguided and would assume that there are certain relationships or connections between the disputed domain name and the Complainant and its trademark, business name and product name, which will have detrimental effect on the Complainant's business. The circumstance of registration and use of the disputed domain name satisfies requirement in paragraph 4(b) (iii) and 4(b) (iv) for Evidence of Registration and Use in Bad Faith of the UDRP. As a result, registration and use of the disputed domain name in bad faith can be clearly ascertained.

Previous domain name dispute proceedings have repetitively acknowledged the Complainant's entitlement to civil rights to "abb". Based on decisions of these proceedings, many disputed domain names have already been judged illegitimate, and similarly, the Respondent's bad faith in this case can be clearly ascertained.

As the Complainant is one of TOP 500 Global Companies with substantial reputation and influence in the industry in the world (including China), the Complainant's main logo "ABB" has become one of the targets for many law breakers and offenders to copy, imitate and reproduce. The Domain Name Resolution Center of China International Economic and Trade Arbitration Commission had issued its adjudication decisions No.CND200800116 & No.CND2008000111 on the cases of dispute over abbchina.com.cn and chinaabb.cn in 2008, having recognized the substantial reputation and influence of the Complainant's trademark and business name "ABB". Furthermore, the adjudication decisions No.CND200900201, No.CND200900149 & No.CND200900013 on the cases of <abbchina.cn>, <abaseabrownboveri.cn> and <abb-sales.cn> issued by the Domain Name Resolution Center of China International Economic and Trade Arbitration Commission, the adjudication decision No.CND1300651 on the recent case of <abb-wx.com> issued by the Asian Domain Name Resolution Center, and the adjudication decisions issued by the WIPO Arbitration and Mediation Center on the cases of <abb.net> under Case No. D2000-1714, <abbeutech.com> <abb-eutech.com> <eutechabb.com> and <eutech-abb.com> under Case No. D2001-0538, <abbcontrol.com> under Case No. D2003-0215, <abbfund.biz> under Case No. D2007-0138, <abb-hk.com> under Case No. D2007-1459, <abb-cn.com> under Case No. D2007-1466, <abb-group.com>

under Case No. D2009-0492, <abbltd.com> under Case No. D2009 0873, <abb-robotics.com> under Case No. D2010-1635, and <imc-abb.com> under Case No. D2012-0201 have all acknowledged and recognized the Complainant's prior trademark right, prior business name right and prior domain name right to "abb", and ruled and accepted the Complainant's claims and furthermore, ascertained the Respondents' in those proceedings to have acted in bad faith and illegally.

In this case, the disputed domain name is a clearly another case of copying and reproduction of the Complainant's company trade name, trademark and domain names in bad faith, which deliberately causes confusion and is misleading to the relevant public in industries and society. The Respondent's bad faith can be definitely ascertained.

The aforesaid facts sufficiently proves that the Respondent has registered and is using the disputed domain name in bad faith as set forth in paragraph 4(b)(iii) of the Policy, which states that "the Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor"; and "(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the Respondent's website or location or of a product or service on its website or location."

The Complainant requests that the disputed domain name be transferred to the Complainant.

B. The Respondent

The Respondent failed to submit a Response within the specified time limit.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad

faith:

- (i) Circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent 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 the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

A. Identity or Confusing Similarity

The Complainant is a Swiss company in the field of electricity and automation technology. The Complainant was set up (a merger of two companies) in 1988 with the trade name "ABB". This trade name has been used widely in the promotion and advertisement of its products and services, thus the Complainant enjoys rights to the trade name "ABB". Furthermore, the Complainant has registered "ABB" as its trademark as early as of 1988 in many countries around the world, including China. This trademark is still within the protection period. The Panel has no problem in finding that the Complainant enjoys the trademark right over "ABB". The Panel further finds that the registration date of the above trademark is much earlier than the registration date of the disputed domain name (24 February 2016). The Complainant enjoys the prior rights in the trademark "ABB".

The disputed domain name "abbmax.com" ends with ".com", this suffix only indicates that the domain name is registered under this gTLD and ".com" is not distinctive. Thus, we will only need to examine the main part of the disputed domain name.

The main part ("abbmax") of the disputed domain name consists of two sub-parts, "abb" and "max". Obviously, the first sub-part ("abb") is identical to the Complainant's trademark "ABB". The second sub-part ("max") can be understood as an abbreviation for the English "maximum", which is not distinctive. The addition of "max" to the Complainant's trademark "ABB" does not differentiate the main part of the disputed domain name from the Complainant's trademark. Therefore, the disputed domain name is confusingly similar to the Complainant's trademark "ABB".

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the disputed domain name. The Complainant's assertion is sufficient to establish a prima facie case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. No evidence has shown that the Respondent is using or plans to use the disputed domain name for a bona fide offering of goods or services. The Respondent is not commonly known by the disputed domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

C. Bad Faith

The Complainant is a leading Swiss company in the field of electronic products with businesses in many countries around the world. The Complainant has been listed by the FORTUNE magazine to be the first 300 out of Top 500 Global Companies. The Complainant has established extensive business networks in China and has won a lot of awards. The evidence submitted by the Complainant sufficiently established its fame in relevant market.

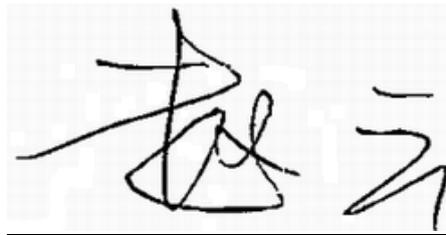
The evidence further shows that the Complainant registered the trademark "ABB" as early as of 1988 and that the trademark is still in the protection period. This registration date is much earlier than the registration date of the disputed domain name, i.e. 24 February 2016. This trademark has been registered in more than 100 countries covering wide range of products and services. Since its registration, the Complainant has put in a lot of money and efforts in promoting its products and services trademarked with "ABB". Through extensive use, advertisement and promotion, the trademark has achieved wide recognition. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The evidence submitted by the Complainant, which this

Panel will not repeat here, leads to the solid conclusion that the trademark “ABB” has achieved substantial reputation and influence in relevant market. It is also noted that the disputed domain name was marked for sale in a website at the price of USD 97, a price in excess of the Respondent’s documented out-of-pocket costs directly related to the disputed domain name. The fact that the disputed domain name contains the trademark “ABB” is obvious to all that the Respondent is aware of the existence of the Complainant and the value of its trademark. The action of registering the disputed domain name per se has constituted bad faith.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name <abbmax.com> should be TRANSFERRED to the Complainant, ABB ASEA BROWN BOVERI LTD.

A handwritten signature in black ink, consisting of stylized Chinese characters, positioned above a horizontal line.

ZHAO Yun

Dated: 11 October 2017