



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0500047
Case ID	CN-0500056
Disputed Domain Name	www.abb-china.com
Case Administrator	jinxi
Submitted By	Lulin Gao
Participated Panelist	

Date of Decision	18-08-2005
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The Parties Information

Claimant	ABB Asea Brown Boveri Ltd.
Respondent	yongqiang, Yu

Procedural History

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy (“UDRP”) implemented by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, and under ICANN Rules for UDRP and Asian Domain Name Dispute Resolution Center (“ADNDRC”) Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on July 1, 2004. The Beijing office of ADNDRC confirmed receipt of the Complaint on the same day and the registration information was confirmed by the Registrar on July 1, 2005. Having verified that the Complaint satisfied the formal requirements of UDRP, the Beijing office of ADNDRC issued to the Respondent on July 7, 2005, a Transmittal of Claims to email address and facsimile of the Respondent, and a Notification of the Commencement of the Case Proceedings was sent to the Respondent on July 8, 2005 by email and courier, advising the Respondent that the deadline for receipt of a response was July 28, 2005. On the same day, the Office notified the Registrar of the commencement of the case and informed the Complainant that the Complaint had been reviewed and forwarded to the Respondent and the Registrar.

No response was received by the Beijing Office of ADNDRC before or on due date.

The sole panelist, Dr. Lulin Gao, was appointed by the Beijing Office of ADNDRC on August 2, 2005. The date of submitting a decision was set on Aug. 16, 2005.

Factual Background

For Claimant

The Complainant is a leader in power and automation technologies, and its innovations make up from 50% to 92% of the products and services in the respective fields. The Complainant was established in 1988 by the merger of Asea and BBC, and thereafter named as ABB Asea Brown Boveri Ltd. Asea was one of the top ten companies in the world in power technology, and BBC’ s history can date back to the late nineteenth century. Therefore the Complainant has a long history, and it has been helping countries all over the world to build, develop and maintain their infrastructures. In 2001, the Complainant was listed in the New York Stock Exchange, and ranked number one in sustainability for three years in a row.

The Complainant first entered the People’ s Republic of China (“PRC”) market in 1907 by providing China with its first steam boiler. Currently, the PRC market has become the third largest market of the Complainant with annual revenue exceeding US\$2.6 billion in 2004. The Complainant registered the trademark “ABB” and “ABB & Stylized” in the PRC in Class 9 as early as 1989, and renewed them in 1999. The Complainant further registered other

trademarks in the PRC in Class 9, 35, 36, 37, 41, and 42 in 1995 and 1999 via Madrid International Registration.

The Complainant, via its Chinese subsidiary, has registered the domain name www.abb.com.cn, providing information about and the services of the Complainant.

The Complainant has never authorized the use of its ABB related trademarks to the Respondent.

For Respondent

The Respondent registered the domain name on March 16, 2002.

Parties' Contentions

Claimant

The Complainant, whose history goes back to the late nineteenth century, is a global leader in power and automation technologies, and operates in around 100 countries and employees around 102,000 people. The Complainant is the holder of numerous ABB trademark registrations throughout the world and also owns domain name registrations for Top Level Domains, such as abb.com, abb.org, abb.net as well as various country code Top Level Domain names. Particularly, the Complainant has owned the domain name abb.com.cn in China since 1997.

In China, the Complainant established its Operation Office in Hong Kong in 1974 and a permanent office in Beijing in 1979. In 1994, the Complainant moved its Chinese headquarters to Beijing. Currently, following increasing development over many years, the Complainant has come to own 23 subsidiary and affiliated companies, and 17 joint ventures in China. Also, the Complainant established a number of sales offices in 30 major cities of China. Over 8,000 people in China are employed by the Complainant. The Complainant is one of the most famous power and automation technologies companies in China and a number of other countries in the world.

In 1989, the Complainant was granted the “ABB” and “ABB Asea Brown Boveri” trademark registrations in Class 9 approved by the Chinese State Administration for Industry and Commerce (Registrations No. 348491 and No. 348392). In 1995, the Chinese State Administration for Industry and Commerce approved the registration in the territory of China the ABB trademark internationally registered at Madrid in Class 35, Class 36, Class 37, Class 41 and Class 42. In 1999, the Chinese State Administration for Industry and Commerce approved the registration in the territory of China the ABB trademark internationally registered at Madrid in Class 9, Class 16 and Class 37.

Yongqiang, Yu, the Respondent, with the address of Wuxi Yangshi Street 75#, Wuxi, Jiangsu Province 214154, China, registered the disputed domain name of abb-china.com on March 16, 2002 and rented the domain name to the Longyuan General Electric Company. The domain name consists of three parts: “abb”, “-” and “china”. “abb” is the trademark and company name of the complainant. “China” is the country name of China. These two parts are connected by the mark “-”. The respondent created a strong likelihood that Internet users would associate the disputed website to the Complainant or its services since the Complainant is one of the most famous companies of power and automation products in China and other countries in the world, and the disputed domain name is confusing similar to the trademark in which the Complainant has rights.

The Complainant is the only legitimate owner of the ABB trademark in the territory of China and the Complainant has never authorized the Respondent or the Longyuan General Electric Company which was displayed on the website <http://www.abb-china.com> to use the ABB trademark in any manner. The Respondent does not have any rights or legitimate interests in the domain name.

The Respondent has not been using the domain name itself, but rather rented it to the Longyuan General Electric Company which deals with switchgears, breakers and other power and automation products displayed on the website <http://www.abb-china.com>. As the Complainant is a company dealing with switchgears, breakers and other power and automation products, the Longyuan General Electric Company is one of the competitors of the Complainant. The Respondent, for valuable consideration in excess of his documented out-of-pocket costs directly related to the domain name, rented the domain name to the competitor against the Complainant in bad faith.

Respondent

The Respondent didn't file a response within the stipulated time.

Findings

Identical / Confusingly Similar

The identifying part of the domain name is composed of two parts, i.e. abb and china, and they are connected by a small dash. Obviously the first part of the domain name is exactly the same as the Complainant's prior trademark, which has been registered and used by the Complainant for more than 10 years in the PRC. The addition of the common word "china" and a dash are not sufficient to remove the very real risk of confusion from the "ABB" trademark or the Complainant's own website, including <abb.com>, <abb.org>, <abb.net> and <abb.com.cn>, and indeed in this context adds to it, because an ordinary person may associate the domain name with the Complainant, and therefore, mistreat it as the Complainant's PRC subsidiary website. Given these findings, the Panel holds that the identifying part of the domain name constitutes a confusing similarity to the Complainant's "ABB" mark.

Rights and Legitimate Interests

According to many precedents issued based on UDRP, the Respondent itself must prove its rights or legitimate interests associated with the disputed domain name, not the Complainant, and once the Complainant presents preliminary evidence with regard to this issue, the burden of proof should be reversed to the Respondent. (Reference to this conclusion can be made at *Nicole Kidman v. John Zuccarini, d/b/a Cupcake Party*, WIPO Case No. D2000-1415; *Inter-Continental Hotels Corporation v. Khaled Ali Soussi*, WIPO Case No. D2000-0252; *AOL v. Fang Yuxia*, ADNDRC Case No. CN-0500043).

The Respondent, however, provided neither a response to the Complaint nor evidence of circumstances of the type specified in paragraph 4(c) of UDRP, or of any other circumstances giving rise to a right to or legitimate interest in the domain name. In addition, not only do the Respondent's name, address, common name, or logo have no connection with the identifying part of the disputed domain name, but there is no other aspect that has any connection. In light of (i) the fact that the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to apply for or use any domain name incorporating any of those marks, and (ii) the fact that the word "abb" appears to be an invented word, and as such is not one traders would legitimately choose unless seeking to create an impression of an association with the Complainant, the Panel finds that the Respondent has no rights or legitimate interests in the domain name.

Bad Faith

In accordance with Paragraph 4 (b) of UDRP, there are four non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith:

- (i) the respondent has registered or has 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 trade mark or service mark or to a competitor of that complainant for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trade mark 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 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.

In view of the evidence presented by the Complainant, the Panel finds out that the Complainant does have many big projects in the PRC, including cooperation with the National Power Corporation, and equipment supply to the Three-Gorges Project and the Shanghai、Guangzhou and Shenzhen subway projects. All these show the fame of the Complainant and its trademarks.

Given the fame of the Complainant's mark "ABB", the Complainant's long-standing use of the mark and the existence of trademark registrations for the Complainant's mark in the PRC where the Respondent is based, the Panel finds it difficult to accept that the Respondent registered the domain name in 2002 without knowledge of the Complainant's rights in "ABB". The Respondent has not put forward any reasonable arguments to demonstrate that it has any rights or legitimate interests in the domain name. It is not possible to conceive of a plausible situation in which the Respondent would have been unaware of this fact at the time of registration. These findings, together with the finding above that the Respondent has no rights or interests in the domain name, lead the Panel to conclude that the disputed domain name has been registered by the Respondent in bad faith. Accordingly, the Panel finds that the domain name has been registered in bad faith.

As to its being used in bad faith, the evidence presented by the Complainant proves that the disputed domain name is currently being used by a direct competitor of the Complainant—Long Yuan General Electric Company (“LYGE”)—alleged to be a designated distributor of General Electric, which is also a competitor of the Complainant. Additionally, in the home page of the website associated with the disputed domain name, there is a list regarding the products sold by LYGE, which are same as the Complainant’s products. The Complainant alleges that the Respondent rents the domain name to a competitor of the Complainant, but there is no evidence presented by the Complainant that proves said point.

The current situation of the website associated with the disputed domain name seems to be that LYGE, not the Respondent, is operating the website associated with the disputed domain name, and, due to limited evidence, the Panel infers that there are two possibilities which may have resulted in such circumstance, i.e. the Respondent has allowed LYGE to use the disputed domain name or LYGE has utilized the disputed domain name without the consent of the Respondent.

If the Respondent has allowed LYGE to use the disputed domain name, then this arrangement may to some extent hurt the business of the Complainant, expand the influence of LYGE by capitalizing on the fame vested in the Complainant improperly and mislead Internet users and potential customers into mistakenly associating this domain name with the Complainant’s trademark, because LYGE engages the same business as the Complainant and the identifying part of the disputed domain name is confusingly similar to the Complainant’s trademark “ABB”. Therefore, the Panel believes that “use in bad faith” is well-established.

If LYGE utilizes the disputed domain name without the consent of the Respondent, the Panel is of the view that though the similar situation is extremely rare and difficult to be convinced, the Respondent’s action still has constituted passive holding, which has been confirmed in many cases to prove a Respondent’s bad faith (WAL-MART Stores, Inc v. Weiqiu Zhong, ADNDRC Hong Kong office, Case No. HK-0400051; Telstra Corporation Limited v. Nuclear Marshmallows, WIPO, Case No. D2000-0003). The Respondent should be in a position to watch its domain name carefully. If the disputed domain name had been used by a third party in bad faith for almost two years and the Respondent had no knowledge of it, such action cannot be taken as a kind of active use in good faith. At the same time, the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name. Given all these, the Panel believes that “use in bad faith” is well-established.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. Summarizing the above, the Complaint has met all three requirements stipulated in 4(a)(iii) of UDRP.

Status

www.abb-china.com

Domain Name Transfer

Decision

For all the forgoing reasons, the Panel has decided that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of UDRP. Accordingly, the Panel directs that the disputed domain name be transferred to the Complainant.

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