



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0700141
Case ID	CN-0700153
Disputed Domain Name	www.epson-paper.com
Case Administrator	lihu
Submitted By	Hong Xue
Participated Panelist	
Date of Decision	15-12-2007

The Parties Information

Claimant	精工爱普生株式会社
Respondent	wuxi tenw information tec. co. ltd.

Procedural History

On 9 July 2007, the Complainant submitted its Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “Centre”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “ADNDRC Supplemental Rules”).

The Centre confirmed the receipt of the Complaint and forwarded a copy of the Complaint to the Registrar of the domain name in dispute, Network Solutions, LLC. On 30 July 2007, the Centre received the Registrar’s confirmation of registration information of the domain name in dispute.

On 3 & 17 September 2007, the Centre sent the Transmittal of Complaint to the Respondent.

On 21 October 2007, the Center notified the Complainant to submit the Complaint in English.

On 23 October 2007, the Center received the Complaint in English.

On 3 November 2007, the Centre notified the Complainant that the Complaint had been confirmed and forwarded, and; the Centre notified the Respondent, the Registrar and the ICANN of the commencement of the case proceeding.

On 1 December 2007, the Centre notified the parties that the Respondent did not submit the Response within the required period and the case should be decided by default.

On 30 November 2007, the Centre sent the notice to the candidate panelist. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 1 December 2007, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist by email as well as by post.

The Panelist finds that the Panel was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The Panel does not receive any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines.

The language of the proceeding 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 consideration of the fact that there is no express agreement to the contrary by the Parties.

Factual Background

For Claimant

The Complainant was established in 1942 in Japan. Its main products include information products such as printers,

projectors and consuming electronics. The Complainant is the register and owner of the trademark “EPSON” and has used “EPSON” as trademark in business field over 25 years. The Complainant’s trademark “EPSON” has been registered in China on many classes of goods.

For Respondent

The Respondent registered the domain name in dispute “epson-paper.com” on 20 May 2004.

Parties' Contentions

Claimant

(1) The disputed domain name is confusingly similar to the trademark “EPSON” of complainant.

The complainant is a well-known multi-national company that was established in 1942 in Japan. Its main products include information products such as printers, projectors, consuming materials and so on; the electronic equipment products such as semi-conduct, LCD, Quartz Crystal Oscillator and so on; high precision products such as watch and so on. In 2003, the complainant had 84,889 employees and the sale reached JP ¥1.4132 billion.

The complainant is the register and owner of the trademark “EPSON” and has used “EPSON” as trademark in business field over 25 years. Owing to excellent management and extensive promotion, products and services, the “EPSON” brand is in the front rank around the globe.

In Japan, trademark “EPSON” was registered in 1975 at first and has been registered in all 1~45 classes. And in America, the trademark “EPSON” was registered in 1980 at first and has been registered in class 2, class 7, class 9, class 16, class 37 and class 42. Furthermore, the complainant also has registered the trademark “EPSON” in all 1~45 classes in WIPO and in different classes in China, UK, Germany and many other countries.

In all, the complainant has registered “EPSON” trademark for 1,157 times (in various classes) in 273 countries in the world. In all 273 countries, the “EPSON” trademark is registered in Class 9. This class of commodity is: LINE PRINTERS, PRINTERS, MAGNETIC DRUMS, MARKED CARD READERS, PAPER TAPE PUNCHERS, PAPER TAPE READERS, CASH REGISTERS AND PARTS THEREOF.

To sum up, the validity and fame of complainant and its style and trademark “EPSON” are beyond dispute.

The copies of registration certificates are attached to this complain (See the attached Annex 2).

It is well-known that “EPSON” is a worldwide famous trademark which is owned by complainant. The validity and fame of its trademark are beyond dispute. The complainant also registered over 70 domain names containing “EPSON”. The list of these domain names is attached to this complaint (See the attached Annex 3). It can be said that “EPSON” logo just refers to complainant and its products to most people in the world.

The disputed domain name consists of “EPSON” and “PAPER”, including the complainant’s trademark and the name of a material with Chinese meaning “纸” in the domain name. As paper is closely relevant to the complainant’s products, printer, internet users may easily understand the domain name is in connection with the complainant.

Accordingly, the domain name is confusingly similar to the trademark “EPSON” owned by complainant.

(2) The registrant has no rights or legitimate interests in respect of the domain name.

“EPSON” is a trademark and style originally created by complainant. The complainant has registered the trademark EPSON in a lot of countries. And its corporation name includes “EPSON”. It is beyond question that the complainant has the formerly right on “EPSON”.

The registrant has nothing to do with complainant. And there was no association between the trademark and his activities, before registering the domain name. The complainant has never authorized the registrant to use “EPSON” by any means. Besides these, the registrant registered the disputed domain name in 2004, much later than the date when complainant registered the trademark or its style.

So the registrant should be considered as having no rights or legitimate interests in respect of the domain name.

(3) The domain name has been registered in bad faith.

Since the trademark “EPSON” is so well-known in the world, it is impossible that the registrant has no idea about its existence when registering the domain name. That is to say, the registrant intentionally used other’s trademark without permission in the domain name.

After finding that the domain name is registered preemptively, the complaint sent warning letter to the registrant on 9th April, 2007 by email to express our opinion that the domain name infringing the trademark right of complainant and required that the domain name should be transferred to us. (About the email of warning letter, please see the attached Annex 4). But till now we have not received any response.

Accordingly, the disputed domain name “EPSON” should be considered as having been registered in bad faith.

The Complainant requests that the domain name be transferred from Respondent to Complainant.

Respondent

The Respondent did not submit the Response.

Findings

Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, a complainant must prove that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The domain name in dispute is <epson-paper.com>. The Complainant has the trademark registrations of the mark “EPSON”. The domain name in dispute and the Complainant’s trademark are not identical, and the issue is therefore whether the domain name and the mark are confusingly similar. The domain name consists of “epson-paper” and “.com”. Apart from the gTLD suffix “.com”, what the Respondent chose to register is “epson-paper”. “Epson” is the registered trademark of the Complainant and “paper” is a generic word. Complainant’s trademark “EPSON” is registered, inter alia, on printers and paper tape readers. The word “paper” is closely related to the Complainant’s goods and services on which the mark “EPSON” is used. It has been established that adding a word that related to the Complainant’s business to Complainant’s mark will usually not preclude a finding of confusing similarity (see *L.F.P., Inc v. Hotpics International*, NAF Case No. FA0204000109576, “use of the generic term ‘video’ does not defeat a confusing similarity claim, because the generic term directly relates to Complainant’s business, which increases the likelihood of confusion”). The Panel in any event finds that the disputed domain name “epson-paper.com” is confusingly similar to the Complainant’s “EPSON” trade mark and that the Complainant has proven paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Complaint asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent has provided no information to the Panel asserting any right or legitimate interest it has in the disputed domain name.

A number of panels have held that the burden on a complainant regarding the second element is necessarily light, because the nature of the registrant’s rights or interests, if any, in the domain name lies most directly within the registrant’s knowledge (see *Packaging World Inc. v. Zynpak Packaging Products Inc.*, NAF Case No. AF-023; *Education Testing Service v. TOEFL*, WIPO Case No. D2000-0044; *Grove Broadcasting Co. Ltd. v. Telesystems Communications Ltd.*, WIPO Case No. D2000-0158). Other panels have held that once the complainant makes a prima facie showing that the registrant does not have rights or legitimate interest in the domain name, the evidentiary burden shifts to the registrant to rebut the showing by providing evidence of its rights or interests in the domain name (see *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; *Electronic Commerce Media Inc. v. Taos Mountain*, NAF Case No. AF0008000095344).

It is apparent from the Complaint that there is no connection between the Respondent and the Complainant or its business. Paragraph 4(c) of the Policy lists a number of circumstances which, if proven to exist by the Respondent, can be taken to demonstrate a Respondent’s rights or legitimate interests in the domain name. However, there is no evidence whatsoever before the Panel that any of the situations described in paragraph 4(c) of the Policy apply in the case of the Respondent.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has proven paragraph 4(a)(ii) of the Policy.

Bad Faith

The Complainant, apart from asserting its trademark right and reputation, hardly submitted any concrete evidence to prove the Respondent’s bad faith in registering and using the domain name in dispute. The Complainant did send a warning letter to the Respondent. However, the letter, per se, is not able to act as automatic proof of the Respondent’s bad faith.

The Panel, in according with the Rules, took the liberty of accessing the Respondent’s website set up at the disputed domain name and discovered that “http://www.epson-paper.com” was used as a website of “无锡市千彩纸业有限公司”, which was primarily advertising the printing paper it produced. The Panel also discovered on that website that the address of “无锡市千彩纸业有限公司” was “无锡市人民西路金惠大厦5楼”, which coincides with the address of the Respondent (“jinhuidasha 45#west people road city wuxi Jiangsu 214000 CN”).

In the Panel’s belief, the Respondent that is a producer of printing paper is using the disputed domain name that contains a reputable mark of a printer manufacture to attract Internet users to its website by creating a likelihood of confusion with Complainant’s mark and it is doing so for direct or indirect commercial gain. Upon examination of Respondent’s “epson-paper.com”, Internet users would become aware that the website is not sponsored by Complainant (see *AT&T Corp. v. Yong Li*, WIPO Case No. D2002-0960). However, commercial benefit may well accrue to Respondent if the products/services it offers for sale (directly and indirectly) are purchased by those visiting its

website, and commercial harm may well be suffered by Complainant if Internet users abandon their efforts to reach its website (see Yahoo! Inc. v. M & A Enterprises, WIPO Case No. D2000-0748).

The Panel therefore determines that Respondent acted in bad faith in registering and using the disputed domain name. The Complainant has thus established the third and final element stipulated in paragraph 4(a)(iii) of the Policy, which is necessary for a finding that the Respondent has engaged in abusive domain name registration.

Status

www.epson-paper.com Domain Name Transfer

Decision

The Complainant has established each of the three requirements set forth in the Policy paragraph 4(a) – the disputed domain name is confusingly similar to the Complainant’s EPSON trademark, the Respondent does not have any rights or legitimate interests in the disputed domain name, and the Respondent registered and is using the disputed domain name in bad faith. In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore directs that the registration of the disputed domain name “epson-paper.com” be transferred from the Respondent to the Complainant.

Sole Panelist: Xue Hong

Dated: 15 December 2007

[Back](#) [Print](#)