



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

Decision ID	DE-0800169
Case ID	CN-0800195
Disputed Domain Name	www.biamp.net
Case Administrator	Xinmin Cui
Submitted By	Hong Xue
Participated Panelist	

Date of Decision	13-06-2008
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The Parties Information

Claimant	Biamp Systems Corporation, Rauland-Borg Corporation
Respondent	Shanghai Bipai Dianzi (上海比派电子有限公司)

Procedural History

On 1 April 2008, the Complainants submitted their Complaint 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 Disputes (the “Rules”), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the “ADNDRC Supplemental Rules”).

On 1 April 2008, the Centre confirmed the receipt of the Complaint and forwarded a copy of the Complaint to the Registrar of the domain name in dispute, Web Commerce Communications Limited DBA Webnic.cc..

On 1 April 2008, the Centre received the Registrar’s confirmation of registration information of the domain name in dispute.

On 17 April 2008, the Centre sent the Transmittal of Complaint to the Respondent.

On 22 April 2008, the Centre notified the Complainants 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 10 May 2008, the Center received the Respondent’s application for extension of the period of submission of the Response. On 12 May 2008, the Center decided that the Respondent submit the Response by 19 May 2008.

On 20 May 2008, the Centre confirmed the receipt of the Response in Chinese. On 20 May 2008, the Centre sent the Transmittal of Response to the Complainants and Notification of Selection of the Panelist to the Parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 23 May 2008, the Centre informed the Complainants and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist.

On 23 May 2008, the Centre notified the Respondent of the order of the Panel that it should, by 28 May 2008, submit the Response in English, as being the language of the proceeding. On 28 May, the Centre transferred to the Panel the Response in English.

On 30 May 2008, the Centre decided, according to the Article 10.2 of the Supplemental Rules and the Panel's request, to extend the deadline for submission of the decision to June 11, 2008.

On 3 June 2008, the Centre Enclosed transferred the supplementary arguments submitted by the Complainants to the Respondent and the Panel and notified the Respondent of the decision of the Panel that it should submit supplement Response, if any, on and before June 6, 2008.

On 5 June 2008, the Centre transferred to the Complainants and the Panel of the supplementary arguments submitted by the Respondent.

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

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 Complainants, Biamp Systems Corporation and Rauland-Borg Corporation, own the trademark registrations for “biamp & device” in USA, Canada and other countries.

For Respondent

According to the record in the Whois database, the Respondent’s domain name “biamp.net” was registered on 19 April 2006.

Parties' Contentions

Claimant

(i) The respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights

The complainants have the exclusive right to use the registered trademark BIAMP and prior domain name of biamp.com: as early as 1987, the complainant 2 Rauland-Borg Corporation (the parent company and exclusive shareholder of the complainant 1) registered two trademarks of “BIAMP” in the United States (see attachments 9 and 10). Meanwhile, the complainant 1 possesses Canada registered trademark No.415798 registered in 1993 by company merger and civil rights assignment (see attachment 11). The complainant 2 possesses European Union registered trademark No.002431112, and international registration trademark No.869288 in Int’ 1 Class 9 under the Madrid Agreement and Protocol, which has obtained protection declaration from Australia, European Union, Japan, Korea, Norway, Singapore and Turkey., wherein the goods approved for use are: audio equipment, namely, amplifiers, mixers, filters, equalizers; gain and noise control units, namely, electronic and microprocessor controllers for audio equipment; networked digital signal processing system consisting of computer hardware and software used to capture, condition, and transmit audio signals. (see attachment 17: the certificate of registration for European Union registered trademark No.002431112 and the international registration trademark No.869288 in Int’ 1 Class 9 which has obtained successively protection declaration from Australia, European Union, Japan, Korea, Norway, Singapore and Turkey etc.). The complainants attach official certificates of registration and brief translations thereof for the above trademarks, and the complainants’ applications for trademark registration in other countries including China are under proceeding. As early as in March 7, 1996, the complainant 1 registered the domain name www. biamp.com (see attachment 12) and established the website, through which, customers worldwide can gain the latest news about the complainants and enjoy online services provided by the same, while the complainants also further propagandize their business and service and spread reputation of their trade name and trademark in global market successfully.

The complainant legally possesses the right of trade name Biamp: the complainant Biamp Systems Corporation is a worldwide famous company for providing digital audio devices and services. “Biamp”, as the trade name of the complainant, was registered legally in Delaware, United States in 1997. In the name of the company, “BIAMP” is its trade name, “SYSTEMS” represents the industry that the company belongs to, and “CORPORATION” represents the nature of the company (see attachments 3 and 4). Currently, the principal business site of the company is located in Oregon (see attachment 5). The complainant 1 Biamp Systems Corporation, since its establishment, obtained the right of trade name BIAMP and relevant rights and interests as of 1989 by succession of right from its previous company BIAMP SYSTEMS LIMITED PARTNERSHIP (see attachments 2 and 6).The complainant 1 always uses “Biamp” as its trade name in its global business operation and makes its trade name “Biamp” enjoy high reputation around the world.

Particularly, the complainant 1 actively cooperates with Chinese franchiser for years, sales BIAMP products to Chinese enterprises, participates in various exhibitions in China and launches a lot of propaganda in Chinese market, such that the complainant has gained high reputation among the relevant industry of global market including China (see attachments 7, 8, 19 and 20). For global customers including Chinese customers, “Biamp”, as the trade name of the complainant 1, has become a distinct symbol for customers to differentiate the complainant from other companies of like products. The legal possession of the right of trade name Biamp by complainant 1 has been authorized in the domain name www.biamp.com.cn dispute resolution of May 28, 2006 (see attachment 13: page 10 of domain name www.biamp.com.cn dispute resolution).

Therefore, the establishment of the trade name “Biamp”, the registration of trademark “Biamp” and the registration of domain name www.biamp.com.cn, as well as the time when the Biamp products start to sale and then become famous in the global market are all farther earlier than the respondent’s time for registering the dispute domain name, i.e. April, 2006. Therefore, the complainants 1 and 2 have the legal civil rights of “Biamp”.

The disputed domain name is identical or confusingly similar to the trademark in which the complainants have legal civil rights: the main part of domain name biamp.net registered by the respondent is identical to the recognition part of the trade name, registered trademark and priorly registered .com domain name of the complainants, sufficiently causing the customers’ misunderstanding of the website of the respondent’s domain name as the website of the complainants; particularly, under the condition that the complainant 1 has had the domain name biamp.com prior registered and widely and continuously used, the probability that the public think the disputed domain name stems from or closely relates to biamp.com is very high, which will cause customers’ mistake or mispurchase of goods. Therefore, the disputed domain name is identical or confusingly similar to the trademark in which the complainants have legal civil rights.

(ii) The respondent has no rights or legitimate interests in respect of the dispute domain name;

The enterprise name of the respondent does not contain the logo of biamp and has no relationship with biamp. According to the information known by the complainants, there is no evidence to prove that the respondent has ever tried to register the trade name “biamp”; the respondent also did not obtain the exclusive right to use the trademark “biamp”.

Therefore, the respondent does not have any rights or legitimate interests in respect of the disputed domain name.

(iii) The respondent’s domain name has been registered and is being used in bad faith

The respondent registers the domain name in order to destroy the normal business activities of the complainants and mislead the public so as to achieve its illegal purpose for reaping unfair gains. The respondent registers the domain name www.biamp.net in bad faith and influences the complainants’ exercising own legal rights justly despite that the respondent obviously knows that biamp is the trade name and known trademark owned by the complainants, which has high reputation in global markets; and the respondent has been ruled as registering disputed domain name

“biamp.com.cn” in bad faith during the prior domain name dispute with the complainants (see attachment 13: domain name “biamp.com.cn” dispute resolution).

A. The respondent registers the domain name for the main purpose of destroying the normal business of the complainants;

The shareholder of the respondent once had domain name dispute with complainant 1 of the present case, and registered domain name biamp in bad faith for several times.

In 2006, the complainant 1 of the present case BIAMP Systems Corporation once had a domain name dispute with an enterprise named “Dingya Electronics (China) Co., Ltd.” (see attachment 22) with contactors for sale and payment being “Li Youquan” and “Feng Guanghuan” (notes: in accordance with the information recorded in Whois database, the registrant of domain name www.biamp.com.cn is “Enping Dingya Electronics co., Ltd”, while the enterprise propagandized in this website is “Dingya Electronics (China) Co., Ltd.”. Please see attachment 21: website notarized certificate and attachment 22: Whois database record relating to www.biamp.com.cn). The CIETAC expert panel made decision for the case of www.biamp.com.cn to support the complainant’s assertion that the respondent registers the dispute domain name in bad faith (see attachment 13: “biamp.com.cn” domain name decision), thus the complainant 1 of the present case successfully obtains the possessory right and right of using said domain name. The complainant legally transacted the transfer of the domain name after winning the complaint.

Through investigating official Industry & Commerce files, it is found that “Li Youquan” and “Feng Guanghuan” related to the domain name www.biamp.com.cn are precisely shareholders of the registrant of the present dispute domain name, namely, Shanghai Bipai Electrics Co., Ltd.: after regaining the domain name www.biamp.com.cn, the complainant 1 of the present case discovers the existence of the present dispute domain name “www.biamp.net”, in which website the audio products with trademark BIAMP are sold, the products as well as the pattern and style of the website are nearly the same as that of the initial domain name “www.biamp.com.cn” (see attachment 14: website save from damage certificate). The complainant knows from the registration information of the domain name “www.biamp.net” (see attachment 15) that its registrant is “Shanghai Bipai Electrics Co., Ltd.”; the opponent gets the registration archives related to this registrant from Shanghai Administration for Industry & Commerce and knows that the shareholders of Shanghai Bipai Electrics Co., Ltd. is “Li Youquan” and “Feng Guanghuan” (see attachment 16), whereas in the previous domain name dispute for www.biamp.com.cn, the names of “Li Youquan” and “Feng Guanghuan” appear for several times as sales contactors (see attachment 21: biamp.com.cn website notarized certificate; attachment 22: Whois database; and attachment 23: the name “Feng Guanghuan” appearing for several times in the network propaganda by Dingya Electronics (China) Co., Ltd. relating to the previous dispute domain name www.biamp.com.cn). Moreover, the information such as the contact phone number for sale of imitated products in the two websites www.biamp.com.cn and www.biamp.net are the same. Thus, it can be seen that Li Youquan and Feng Guanghuan who once registered the domain name biamp.com.cn in bad faith, have again registered in bad faith the domain name relative to

biamp after the domain name biamp.com.cn is ruled to return to the complainants, and are selling the imitated products with trademark BIAMP. They refuse to amend their way despite of repeated admonition, subjectively in bad faith. Although the respondent completely know the reputation of the trade name and trademark priorly used by the complainants, it still has registered domain names relative to BIAMP for several times: the trade name biamp and the trademark BIAMP of the complainants have high reputation among the related customers in global market (see attachments 7, 8, 19 and 20). The detailed narration will not be repeated here, please see portion (1) in Part 11 Facts and Reasons. Additionally, in light of the prior domain name dispute for biamp.com.cn, the shareholders of the respondent, i.e. “Li Youquan” and “Feng Guanghuan” know or should know the reputation of the trade name and trademark priorly used by the complainants in global market including China.

“Li Youquan”, one shareholder of the registrant of the disputed domain name of the present case, has registered the domain name in bad faith in the name of different companies, and also registered the trademark “BIAMP”, which the complainant 1 uses for a long time and gains considerable influence in global market including China, in individual name. The complainant has filed opposition application against the trademark, which is under examination by China Trademark Office (see attachment 18: Notification of Receipt of Opposition Application).

Therefore, before the registration of the disputed domain name of the present case, the respondent has already known the existence of the complainants and further the high reputation of their biamp products and trademark in global market including China. The respondent registered the disputed domain name for the purpose of destroying the normal business activities of the complainants so as to reap unfair gains from the confusion.

B、 For business interests, the respondent deliberately allures the network users to visit its registrant’s website or other links by fabricating confusion of source between its website or products and services sold in the website and the trademark of the complainants.

The respondent, under the condition of completely knowing the complainants and their trade name and trademark, registered www.biamp.net in bad faith and sells like products in the website directed by the above domain name to seek unfair interests by making use of the reputation of the complainants’ trade name and trademark.

The respondent, under the condition of completely knowing the existence of complainants and their trade name and trademark, successively registered the domain name “biamp.com.cn” and the disputed domain name of the present case “biamp.net” in different names, and sells products similar with that of the complainants in the websites directed by aforesaid domain names (see attachment 14: “www.biamp.net” website save from damage notarial certificate from Beijing International Prestige Notary Public Office), which causes confusion about products source and provider among customers, so as to achieve the illegal purpose of gaining unfair interests by making use of the reputation of the complainants’ trade name and trademark; therefore, the respondent is obviously difficult to purge its suspicion of bad faith.

To sum up, the respondent breaks the principle of faithfulness, making bold to use the logo which is identical with the complainants’ trade name “Biamp”, trademark “Biamp”, and domain names “Biamp.com” and “Biamp.com.cn”, registering the domain name “Biamp.net” in bad faith, and selling similar products of the complainant with trademark BIAMP in the website directed by aforesaid domain name. The respondent makes use of the reputation of the complainants’ enterprises and brand in bad faith, which damages the reputation and interests of the complainants obtained in global market including China, destroys the normal business activities of the complainants and misleads customers, causing the public easily consider that the website with the disputed domain name is established and operated by the complainants. The above behaviors of the respondent unfairly take advantage of the complainants’ investment on the brand of biamp as well as the complainants’ reputation so that the respondent gains unfair interests whereas damages the interests of the complainants and the public. Therefore, the respondent has bad faith in the registration of the disputed domain name.

Complainants request that the domain name be transferred from Respondent to the Complainants.

Respondent

The domain name used by our company (Shanghai BIPAI Electronics Co., Ltd) : www.biamp.net, is the registered domain name based on the registered trademark BIAMP applied by our company in China National Trademark Office in Nov. 2004. This domain name is not infringed upon the domain name registered in the United States by the Complainant in that they are merely two companies and two company domain names in two different territories. As the company and the products of the Complainant have neither been registered in China nor been heard of in China, it is unneeded and unnecessary for our company to copy his products. Our company has our own independently developed audio-visual conference system and conference microphones. Since Jan. 2005 China National Trademark Office replied to handle our trademark BIAMP, our company has already launched large quantities of financial, material and labor resources to promote our products, as testified by advertisements in the zhongsou.com, hc360.com, Siqi Commercials Information etc. What is promoted by our company has no infringement at all upon the products mentioned by the Complainant. Therefore, the complaint, lodged by the Complainant that our company is maliciously capitalizing on the influence of other companies, is essentially groundless. The trademark registered in the United States does not necessarily mean it is global. As a matter of fact, it is nothing but regional. With regard to a company legally registered in China, the Complainant is not authorized to slander or plunder. In China, the rule issued by the information center is that those who first register will first be served. In 2004 when our company registered the trademark in China National Trademark Office, the trademark was unique without infringing upon any other trademark at home. Therefore, our company started to register our domain name with our own registered trademark, and our company thus is acquitted of any asserted suspicion of maliciously capitalizing upon the Complainant’s influence. Moreover, when our company was promoting

in the market, the Complainant had not yet promoted himself in any of the advertising company or any of the magazines of the field in China. Then how could come his influence by capitalized on? Accordingly, the Complainant has no other motive but to capitalize on his capital to maliciously assault his counterpart in China. Our company sincerely hopes the panel shall fairly ignore the ungrounded claim of the Complainant.

The Respondent requests the Complaint be rejected.

Supplements filed by Complainants

(i) The Chinese trademark BIAMP with application number 4369887 has not been approved for registration by the China Trademark Office yet

Pursuant to the Article 30 of the Trademark Law of the People's Republic of China, any person may, within three months from the date of the publication, file an opposition against the trademark that has, after examination, been preliminarily approved. If no opposition has been filed after the expiration of the time limit from the publication, the registration shall be approved, a certificate of trademark registration shall be issued and the trademark shall be published.

Pursuant to the Article 37 of the Trademark Law of the People's Republic of China, the period of validity of a registered trademark shall be ten years, counted from the date of approval of the registration.

From the above regulations we learned that, if some one has lodged opposition against the preliminarily publication of a trademark, the trademark will not be registered until the opposition is overcome. The exclusive right for a trademark registration is from the publication date for registration, not the preliminarily publication of a trademark.

For the Chinese trademark BIAMP with application number 4369887, from the latest database of the CTO, we can see that it's still being in the opposition procedure. The status of this application is listed as follows:

From the above information printed out from the website of CTO, an opposition against the preliminarily publication for the Chinese trademark BIAMP with application number 4369887 has been lodged on November 27, 2007 and at present, the opposition is still under examination by the CTO.

Regarding the printed-out page from the CTO filed by the Respondent which showing the exclusive right term for the Chinese trademark BIAMP with application number 4369887 is from November 28, 2007 to November 27, 2017, please be advised that this is a prior-announced term. In the trademark registration procedure, before the preliminarily publication for a trademark application is published by the CTO, the exclusive right term has been prior calculated. The regulation on this matter is listed as followed for your reference:

Article 23 of the Implementing Regulations of the Trademark Law of the People's Republic of China: Where an opposed trademark has, prior to the coming into effect of the adjudication on the opposition, been announced as a registered trademark in the Trademark Gazette, the registration announcement shall be cancelled. The trademark that has been approved for registration upon the adjudication on the opposition shall be re-published.

Therefore, the Chinese trademark BIAMP with application number 4369887 has not been approved for registration by the China Trademark Office yet.

(ii) The applicant for the Chinese trademark BIAMP with application number 4369887 is a natural person, instead of the Respondent itself. Therefore, this trademark application shall not be used to prove the potential trademark right owned by the Respondent

From the printed-out page for the Chinese trademark BIAMP with application number 4369887 from the CTO filed by the Respondent, you may notice that the applicant of this mark is a natural person, i.e. Youquan Li, instead of the Respondent itself.

In such situation, this trademark application is only related with Youquan Li and shall not be used to prove the potential trademark right owned by the Respondent.

Supplements filed by Respondent

The Complainant said that the registrant of our company's trademark was individual, inconsistent with the response of our company. Hereby, we make the following clarifications, in response to the Complainant's statement:

1. Shanghai BIPAI Electronics Co., Ltd is a company jointly funded and registered by Li Youquan and Feng Guanghuan. When the trademark was registered, the company was at the beginning of its preparation and no business license was accessible to registration of the trademark. Therefore, the trademark was first registered in the name of the individual (Li Youquan), and the expense for trademark registration was also taken from the fund of the company in preparation, and after the trademark got approved the expense was returned to the company. Such operation pattern is commonplace during the running of business. Furthermore, it is not in conflict with the Company Law and the Trademark Law currently valid in China.

2. The trademark BIAMP registered in the name of Li Youquan, one of the shareholders of Shanghai BIPAI Electronics Co., Ltd, in accordance with the Trademark Law of P.R.C, is authorized to utilize legally in the territory of China from the day that China National Trademark Office replied to handle the application of its registration. During its announcement period in the China National Trademark Office, any opposition to the trademark does not necessarily mean illegitimacy of the trademark. The Trademark Law is destined to protect the legitimate rights, and not to justify his legitimacy just due to opposition of the Complainant, which turns out to be nothing but his own wishful thinking. We are convinced that National Trademark Office shall make a fair and just adjudication. As required by the Trademark Law of P.R.C, during the period of review of adjudication on opposition, the registrant has the right to continue use of the registered trademark. Therefore, it is legal and justifiable for our company to utilize the domain name registered with the trademark BIAMP in the name of Li Youquan, one of the shareholders of our company. Therefore, our company once again pleads the panel to ignore the ungrounded claim of the Complainant.

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 Complainants, Biamp Systems Corporation and Rauland-Borg Corporation, present two trademark registration certificates issued by the US Trademark and Patent Office. One certificate proves that the mark “biamp & device” (the characters “biamp” visually recognizable) with registration number 1470494 was registered on 29 December 1987 under the name of Northwest Audio Systems, Inc. DBA Biamp Systems. Another certificate proves that the mark “BIAMP & device” (the characters “BIAMP” visually recognizable) with registration number 2799731 was registered on 30 December 2003 under the name of Rauland-Borg Corporation. According to the statement provided by the Complainants, Rauland-Borg Corporation is now the owner of both registrations in USA. The Complainants also provide the trademark registration certificates for the “biamp & device” issued by other countries. Since the Respondent did not dispute the truthfulness of the above evidence presented by the Complainants, the Panel acknowledges that the Complainants manage to prove that they have the rights in the mark “biamp”. According to a commonly-accepted interpretation of the Policy, Paragraph 4(a) (i), if the Complainant owns a registered trademark then it satisfies the threshold requirement of having trademark rights. The location of the registered trademark and the goods and/or services it is registered for are irrelevant when finding rights in a mark. The relevant decisions may be found at *Uniroyal Engineered Products, Inc. v. Nauga Network Services* (WIPO Case No. D2000-0503) or *Conorzio del Formaggio Parmigiano Reggiano v. La casa del Latte di Bibulic Adriano* (WIPO Case No. D2003-0661).

In addition, the Complainants claim the rights in the trade name “Biamp”. The Panel, however, holds that the claim on the trade name is not within the proceeding defined by the Policy and thus should not be considered.

The domain name in dispute is <biamp.net>. When assessing confusing similarity, it is generally accepted to apply an objective test that looks only to the mark and the alleged approximation of the mark. The relevant decisions may be found at *Arthur Guinness Son & Co. (Dublin) Limited v. Dejan Macesic* (WIPO Case No. D2000-1698) or *Dixons Group Plc v. Mr. Abu Abdullaah* (WIPO Case No. D2001-0843). Therefore, the test for confusing similarity should be a comparison between the trademark and the domain name to determine whether they are confusingly similar. Through applying such a test, the Panel finds that the disputed domain name, apart from the gTLD suffix “.net” that has no relevant distinguishing function, is identical with the Complainants’ registered trademark.

The Panel in any event finds that the Complainants have proven paragraph 4(a)(i) of the Policy.

Rights and Legitimate Interests

The Complainants assert that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent, however, claims its legitimate right and interest primarily based on a trademark application for “BIAMP & device” with the Chinese State Trademark Office filed in November 2004.

The Panel, after reviewing the evidence presented by the both Parties, finds that the trademark application for “BIAMP & device” was filed with the China State Trademark Office by an individual named “Li Youquan” on 18 November 2004. According to the business registration record provided by the Complainants, Li Youquan and Feng Guanghuan are the two shareholders of the Respondent. The Respondent concedes that Li Youquan applied for the trademark registration on behalf of the Respondent and provides an agreement between Li Youquan and Feng Guanghuan on the future joint ownership of the trademark registration once it is approved. If Li Youquan had successfully obtained the trademark registration, the Respondent could, of course, become the licensee of the registered trademark under the agreement between Li and Feng. However, the Panel discovers that Li Youquan’s application, since its publication, has been opposed by a third party and thus subject to the further decision of the China State Trademark Office. Until now, the opposition case is still pending at the China State Trademark Office and Li Youquan’s trademark application has not been approved. According to the Chinese Trademark Law, an unregistered trademark is allowed to be used but the user cannot claim right and legitimate interests in the mark.

Therefore, the Respondent fails to show its right or legitimate interest in the disputed domain name. The Panel finds that the Complainants have proven paragraph 4(a)(ii) of the Policy.

Bad Faith

The Complainants claim the bad faith of the Respondent. The Respondent, however, contends that it started using the mark “biamp” when “the Complainant had not yet promoted himself in any of the advertising company or any of the magazines of the field in China.”

The Panel examines the Parties’ contentions from two intertwined elements, i.e. the Respondent’s knowledge of the Complainants’ trademark and direct competition between the Parties’ products/services and businesses.

The Respondent contends for the prior use of the mark “biamp” in the Chinese market but does not identify when it started the use. The only clue provided by the Response is that Li Youquan, one of the shareholders, applied for the

trademark registration for “biamp” in November 2004. However, based on the transaction and promotion documents provided by the Complainants, the Panel discovers that the Complainants entered into the Chinese market and started the business activities under the trademark of “biamp” long before November 2004. As early as 1998, the Complainants’ products marked with “biamp” had been sold to the Chinese market. The Complainants also provide sufficient promotional materials for their products/services dated before November 2004.

The fact that the Respondent is the same field of business with the Complainants confirms the Panel’ s finding that the Respondent had the knowledge when it registered the disputed domain name in April 2006. The Respondent itself concedes in the Response that it is the “counterpart” in China to the Complainants (“the Complainant has no other motive but to capitalize on his capital to maliciously assault his counterpart in China.”). It proves that the Respondent knowingly registered the disputed domain name that is confusingly similar to the Complainants’ trademark.

The notarized evidence provided by the Complainants shows that the Respondent is merchandizing through the website of the disputed domain name the products/services that are similar to the Complainants’ . Given the similarity between the disputed domain name and the Complainants’ trademark, the Respondent’ s use of the domain name is highly likely to cause the confusion to the Internet users who access the website and mislead them to believe that the Respondent and its products/services are related to the Complainants. Upon examination of Respondent’ s website at the disputed domain name, the Internet users would become aware that the website is not sponsored by Complainants. 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 Complainants if the 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. Complainants have 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.biamp.net

Domain Name Transfer

Decision

The Complainants have established each of the three requirements set forth in the Policy paragraph 4(a) – the disputed domain name is confusingly similar to the Complainants “biamp” 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 “biamp.net” be transferred from the Respondent to the Complainants.

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