



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

English Print

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| Decision ID | DE-0900251 |
| Case ID | CN-0900270 |
| Disputed Domain Name | www.solarsuntech.com |
| Case Administrator | lvyang |
| Submitted By | Hong Xue |
| Participated Panelist | |
| Date of Decision | 04-09-2009 |

The Parties Information

| | |
|-------------------|------------------------------|
| Claimant | Wu Xi Suntech Power Co., Ltd |
| Respondent | Sun Tech Solar Co Ltd |

Procedural History

On 19 May 2009, the Complainant submitted its 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 22 May 2009, the Centre confirmed the receipt of the Complaint and forwarded a copy of the Complaint to the Registrar of the domain name in dispute, 0101 Internet, Inc.

On 4 June 2009, the Centre received the Registrar’ s confirmation of registration information of the domain name in dispute.

On 22 June 2009, the Centre sent the Transmittal of Complaint to the Respondent.

On 6 July 2009, 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 27 July 2009, the Centre confirmed the receipt of the Response. On 5 August 2009, the Centre sent the Transmittal of Response to the Complainant.

On 11 August 2009, the Centre transferred the supplement submissions from the Complainant to the Respondent. On 17 August 2009, the Centre transferred the additional supplements to both parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 18 August 2009.

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 Complainant, Wu Xi Suntech Power Co. Ltd., established in 2001, produces and sells solar power products. The Complainants' marks "SuntechPower" and "suntech" have been registered in China and many other countries.

For Respondent

According to the record in the Whois database, the Respondent's domain name "solarsuntech.com" was registered on 26 June 2003.

Parties' Contentions

Claimant

Since both Parties' submissions contain the inappropriate and arrogant contents and are expressed in barely readable English, the Panel decides to summarize their primary arguments as below, instead of showing their full-text submissions. Both Parties are obliged to duly respect the dispute resolution proceeding under the Policy and Rules. The Complainant

The Complainant states that "SuntechPower" and "Suntech" are its registered trademarks in China and a number of other countries. The Complainant contends that the disputed domain name is confusingly similar to its marks.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The Complainant requested that the disputed domain name <solarsuntech.com> be transferred to it.

Respondent

The Respondent

The Respondent contends that the disputed domain name is not confusingly similar to the Complainant's marks.

The Respondent states that it has right and legitimate interests in the disputed domain name.

The Respondent contends that it does not have any bad faith in registration or use of the disputed domain name.

The Respondent requests the Complaint be rejected.

Findings

Timing of the Response

Under the Rules, paragraph 5(a), within twenty (20) days of the date of commencement of the administrative proceeding the Respondent shall submit a response to the Provider. Since the Centre notified the commencement of the case proceeding on 6 July 2009, the Response should have been submitted to the Centre by 26 July 2009. However, the Centre did not receive the Response until 27 July 2009. The Respondent states that submission was made before the due date but was not sent through because of its email system failure. The Complainant contends that the belated Response shall not be accepted as the case material. The Panel notes that the Respondent should observe the designated period of submission and contemplate the uncertainty of online communications by submitting the Response sufficiently before the deadline. Nonetheless the Panel is willing to give the Respondent an extraordinary opportunity to present its case under the Rules, paragraph 10.

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 Complainant has the trademark registrations of "Suntech". The domain name in dispute is <solarsuntech.com>.

According to a commonly-accepted interpretation of the Policy, Paragraph 4(a)(i), the test for confusing similarity should be a comparison between the trademark and the domain name to determine the likelihood of confusion. The relevant decision may be found at Ansell Healthcare Products Inc. v. Australian Therapeutics Supplies Pty, Ltd., WIPO Case No.

D2001-0110. Through objectively comparing the disputed domain name with the Complainant's mark, the Panel finds that the disputed domain name, apart from the gTLD suffix ".com" that has no relevant distinguishing function, comprises "solarsuntech", which incorporates the Complainant's mark "suntech" entirely. The addition of the generic name "solar" does not avoid confusion. In fact, since the term is relevant to the Complainant's products, the addition of "solar" to the Complainant's mark "suntech" is more likely to increase confusion.

The Panel in any event finds that the disputed domain name is confusingly similar to the Complainant's registered mark and the Complaint 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. The Panel believes that the Complainant has made a prima facie showing that Respondent has no rights or legitimate interests and the burden of proof shall be shifted to the Respondent. The Respondent sets out a number of contentions against the Complainant's assertion. The Panel read through both Parties' submissions and has the following discoveries.

The Respondent contends that it "registered the company's domain name accordance with international law for the Internet." (Response, p. 6) The Panel finds that mere registration of a domain name is not sufficient to confer rights or legitimate interests to the registrant. The relevant decision can be found at *N.C.P. Marketing Group, Inc. v. Entredomains*, WIPO Case No. D2000-0387.

The Respondent contends that "sun tech is a general vocabulary-based in solar industry." (Response, p. 6) However, "Suntech" as one word is the Complainant's registered trademark. The Respondent admits that "the word 'suntech' has no meaning in the dictionary." (Response, p. 5) Even though "Sun Tech" could be commonly used in the relevant industry, the Respondent's disputed domain name that incorporates "suntech" and has no space or hyphen between "sun" and "tech" should be deemed the Complainant's registered trademark.

The Respondent contends that "suntech" is being used by many other enterprises as either names or brands. However, such use by any third party cannot prove the Respondent's right or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complaint has proven paragraph 4(a)(ii) of the Policy.

Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent makes rebuttals against it.

The Panel finds that the disputed domain name is being used by a company named "Shenzhen Xintian Sun Tech Co., Ltd." The Response shows that both the Respondent and Shenzhen Xintian Sun Tech Co., Ltd. are affiliated companies. Shenzhen Xintian Sun Tech Co., Ltd. uses the disputed domain name for its website under the full authorization of the Respondent. The notarized evidence provided by the Complainant shows that Shenzhen Xintian Sun Tech Co., Ltd.'s website established at the disputed domain name, which is primarily in Chinese simplified characters, promotes the company's products, including solar lighting applications. It seems that the solar products of Shenzhen Xintian Sun Tech Co. are primarily targeting the market of China Mainland.

It is proved that the Complainant was established in 2001 and acquired the Chinese trademark registrations for "SuntechPower" and "Suntech" in April 2003 and July 2004 respectively. The disputed domain name was registered in June 2003, when the Complainant has used the mark "Suntech" (as one word) for almost two years and has acquired the registration of a similar mark "SuntechPower." The Respondent, which, as stated in the Response, has always been in the solar industry since its establishment in 2003, should know the existence of the Complainant's mark "Suntech" in the same field of business when registering the disputed domain name that incorporates the "suntech" (as one word) entirely. In addition, the Response licenses its affiliated company Shenzhen Xintian Sun Tech Co., which is director competitor to the Complainant in the China Mainland's market, to use the disputed domain name to promote the similar solar applications, irrespective that the Complainant has the exclusive right over the mark "Suntech" on solar products. The fact that a website at the disputed domain name resolves to the Complainant's competitor's website is a typical circumstance of bad faith under the Policy, paragraph 4(b)(iii). The relevant decision can be found at *Tuxedos By Rose v. Hector Nunez*, NAF Claim Number: FA0007000095248.

The Panel therefore determines that the Complaint has 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.solarsuntech.com

Domain Name Transfer

Decision

Since the Complaint establishes each of the three requirements set forth in the Policy paragraph 4(a), in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel therefore rules the domain name “solarsuntech.com” be transfer to the Complainant.

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