

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN1000405

Complainant: ROBERT BOSCH GMBH

Respondent: Zhejiang Yana Textile Co., Ltd.

Domain Name: cn-bosch.com

Registrar: MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE

1. Procedural History

On 15 November 2010, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the “ADNDRC Beijing Office”), 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 23 November 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the Registrar of the domain name in dispute, MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE.

On 25 November 2010, the ADNDRC Beijing Office received the Registrar’s confirmation of registration information of the domain name in dispute.

On 12 January 2011, the ADNDRC Beijing Office sent the Transmittal of Complaint to the Respondent.

On 17 January 2011, the ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded, and the ADNDRC Beijing Office notified the Respondent, the Registrar and the ICANN of the

commencement of the case proceeding.

On 12 February 2011, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 12 February 2011, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 14 February 2011.

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.

2. Factual Background

For the Complainant

The Complainant is ROBERT BOSCH GMBH. It's address is Robert-Bosch-Platz 1, 70839 Gerlingen, Germany. Complainant has been using on electronic car components, electric power tools, household appliances and security systems the trademark "BOSCH", which is registered in China.

In this case, the Complainant's authorized Bosch (China) Investment Ltd as it's agent.

For the Respondent

The Respondent is Zhejiang Yana Textile Co.,Ltd. It's address is Qianjiang Industrial Park, Haining City, Zhejiang Province, China. According to the record in the Whois database, the domain name in dispute "cn-bosch.com" was

registered on 25 February 2009.

3. Parties' Contentions

The Complainant

a) The domain name "cn-bosch.com" is confusingly similar to the trademark (BOSCH) of the Complainant.

(1) The domain name "cn-bosch.com" consists of the elements "cn", "bosch" and "com". The characteristic element of the domain "cn-bosch.com" is the element "bosch".

(2) The element "com" is irrelevant when comparing domain names to trademarks.

(3) The element "cn" is merely descriptive and therefore irrelevant.

(4) The element "bosch" is phonetically identical and orthographically very similar to the trademark "BOSCH". The element "bosch" only uses a different capitalization. However, this does not make a real difference as the Internet Domain Name System (DNS) does not allow for capitalization of domain names for technical reasons.

b) The Respondent has neither rights nor legitimate interests in respect of the domain name.

(1) The address "cn-bosch.com" creates as a kind of searching machine a selection of several "BOSCH"-products from different dealers and creates the impression of an authorized selection tool of our company Robert Bosch GmbH doing business under our trademark "BOSCH". This kind of searching machine creates traffic and advertising attention in favor of the Respondent and, therefore, has a business character.

(2) As our trademark BOSCH is a well-known trademark, Respondent which had

no connection to “BOSCH” nor to “CN-BOSCH”, is using our trademark “BOSCH” within the domain “cn-bosch.com” intentional for his searching machine specialized to “BOSCH”- products without having any own rights in our trademark “BOSCH”. The Respondent tries to raise the impression of a business relation between the Respondent and the Complainant and to give a legitimate appearance to its website. In fact, there was no business relation between the Complainant and the Respondent. Until recently, the Complainant did not even know about the Respondent. The Complainant never instructed or authorized the Respondent to register the domain name or to advertise goods or services on the Internet.

(3) A search through the trademark register of the China Trademark Office, the German Patent and Trademark Office, the European Office for Harmonization in the Internal Market, the World Intellectual Property Organization produced no rights into the trademark “BOSCH” in favor of the Respondent. The fact allows the prima facie conclusion that the Respondent had no right or legitimate interests in the domain name.

c) The Respondent acted in bad faith when registering and using the domain name.

(1) The Respondent has, by using the domain name, attempted to attract, for commercial gain, Internet users to the Respondent’s web site by creating an initial likelihood of confusion with the Complainant’s trademark as to the source, affiliation or endorsement of the Respondent’s website. The fact that the Respondent expressly refers to the Complainant’s products allows the conclusion that the Respondent knew about the Complainant’s trademarks and tried to unfairly and opportunistically benefit from the goodwill associated with them by intercepting and siphoning off traffic from its intended destination. This constitutes bad faith.

(2) As the domain name incorporates the Complainant’s famous trademark “BOSCH” and merely adds a generic term, it is inconceivable that the Respondent could make any use of the disputed domain name without creating a false impression of association with the Complainant. As every use of the

domain name would inevitably create a confusion of the public, bad faith.

(3) The Complainant used to send warning letter to the Respondent to ask them log-out the domain name. But the Complainant did not receive any feedback from the Respondent. This constitutes bad faith.

The Complainant requests that the disputed domain name “cn-bosch.com” should be transferred to it.

The Respondent

The Respondent did not submit the Response.

4. Findings

Identity or Confusing Similarity

Pursuant to the Policy, paragraph 4(a)(i), 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. In line with such requirement, a complainant must prove its trademark rights and the identity or similarity between the disputed domain name and its trademark.

The Panel finds that before the registration of the disputed domain name the Complainant’s trademark BOSCH had been used on electronic car components, electric power tools, household appliances and security systems and had been registered in China. The Complainant therefore has the exclusive right over the mark “BOSCH.”

The disputed domain name is “cn-bosch.com”. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “cn-bosch”. Since “cn” is the generic and non-distinctive string representing country-code top-level domain for China and “bosch” is identical with the Complainant’s registered trademark, addition of “cn” before “bosch” can be more confusing with than differential from the Complainant’s trademark.

The Panel therefore finds that the disputed domain name “cn-bosch.com” is confusingly similar to the Complainant’s registered trademark “BOSCH”. Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and presents evidence to support its assertion. As stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

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 can be taken to demonstrate a respondent’s rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a Response leads the Panel to draw a negative inference.

Therefore, and also in light of the Panel’s findings below, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name “cn-bosch.com”. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

Bad Faith

The Complainant contends that the Respondent registered and is using the disputed domain name in bad faith. The Respondent did not respond.

Through examining the evidence submitted, the Panel notes that the website at the dispute domain name “cn-bosch.com” prominently shows the mark “BOSCH 博世” and sells solar energy products. Since the Respondent’s products are in

direct competition with the Complainant's and the Respondent specifically selects to use the Complainant's trademark "BOSCH" for product promotion, it can be safe to presume that the Respondent intentionally registered the dispute domain name confusingly similar to the Complainant's trademark.

The Panel finds that the Respondent's intentional use of a disputed domain name that is confusingly similar to the Complainant's registered trademark to attract consumers to a website that is offering competitive products is highly likely to create an initial confusion with the Complainant's trademark as to the source, affiliation or endorsement of the Respondent's website and products on the website.

The Panel, therefore, rules that this is adequate to conclude that the Respondent has registered and is using the disputed domain name in bad faith under the Policy, paragraph 4(b). Accordingly, the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "cn-bosch.com" be transferred to the Complainant ROBERT BOSCH GMBH.

Sole Panelist: 薛虹

Dated: 28 February 2011