

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1200572

Complainant: Bosch Rexroth AG
Respondent: gao guirong
Domain Name: rexrothhydraulics.net
Registrar: Godaddy.com, Inc.

1. Procedural History

On 21 May 2012, the Complainant submitted a complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (“the ADNDRC”) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (“the Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”), the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“the ADNDRC Supplemental Rules”).

On 25 May 2012, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. On 26 May 2012, upon request by the ADNDRC, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 6 June 2012, the ADNDRC transmitted the complaint to the Respondent. On 21 June 2012, the ADNDRC notified the Respondent about the commencement of the proceedings and the ADNDRC also notified the Complainant that the complaint had been confirmed and transmitted to the Respondent, and also notified the Registrar and ICANN of the commencement of the proceedings.

The Respondent had not filed a response within the stipulated time. On 12 July

2012, the ADNDRC sent out notice noting that no response had been received and the complaint was to be proceeded to a decision by the Panel to be appointed.

Having received a declaration of impartiality and independence and a statement of acceptance, the ADNDRC notified the parties, on 17 July 2012, that the Panel in this case had been appointed, with Mr. Gary Soo (苏国良 ‘Mr. Su Guoliang’) acting as the sole panelist.

Accordingly, the Panel received the file by email from the ADNDRC and was requested to render the Decision on or before 31 July 2012.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the registration agreement, the language of the administrative proceedings shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceedings. The language of the current disputed domain name registration agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

The Complainant

The Complainant in this case is Bosch Rexroth AG. The registration address is Heldehofstr. 31, D-70184 Stuttgart, Germany. The Complainant appointed WU Yuhe and LI Rongxin of China Patent Agent (H.K.) Ltd. as its authorized representative in this matter.

The Respondent

The Respondent, gao guirong, is the current registrant of the disputed domain name “rexrothhydraulics.net” according to the Whois information. The address of the Respondent from the registration information is jiyu zhen, lugang cun 045hao xingyang shi, henan sheng 450123, China. The Respondent’s email is gaoguirong50@yahoo.com.cn.

3. Parties' Contentions

The Complainant

According to the Complainant, the Complainant has registered following trademarks in China over "REXROTH" and its Chinese translation "力士乐". These include Registration No. 617421 for "REXROTH", Registration No. 617422 for "REXROTH rr", Registration No. 617557 for "REXROTH", Registration No. 617559 for "REXROTH rr", Registration No. G790817 for "Rexroth", Registration No. 631963 for "力士樂", Registration No. 633169 for "力士樂", Registration No. 3545098 for "力士乐", Registration No. "3545099" for "力士乐", Registration No. 3545570 for "力士乐", Registration No. 3545572 for "力士乐", Registration No. 3545573 for "力士乐", Registration No. "3545574" for "力士乐" and Registration No. 3545575 for "力士乐". Among these marks, the Nos. 617421, 617422, 617557 and 617559 are the earliest ones and were registered on November 10, 1992. The marks are all designated to be used under the goods of hydraulic devices and the parts thereof.

The Complainant also states that the Complainant enjoys trade name right over "BOSCH REXROTH".

- The Complainant's company name is "BOSCH REXROTH AG", wherein "BOSCH REXROTH" is the indentifying part and "AG" only indicates the business nature of the company. The Complainant, in its commercial promotions all over the world including China, has been using "BOSCH REXROTH" to indicate the company. The relevant public are also used to call the Complainant "BOSCH REXROTH", and in China call the Complainant "博世力士乐", which is the Chinese translation of "BOSCH REXROTH". Therefore, the Complainant enjoys trade name right over "BOSCH REXROTH".
- The Complainant, Bosch Rexroth, is one of the world's leading specialists in the field of drive and control technologies. Under the brand name of Rexroth, the company supplies more than 500,000 customers with tailored solutions for driving, controlling and moving. As the Drive & Control Company, Bosch Rexroth develops, produces and sells components and systems in more than 80 countries in the technology fields such as Electric Drives and Controls, Industrial Hydraulics, Mobile Hydraulics, Linear Technology, Assembly Technology and Pneumatics.

- From 1978, the Complainant launched its business in China, and has established factories in Shanghai, Beijing, Changzhou, Shenzhen and Xi'an.

The Complainant has registered several domain names concerning "BOSCHREXROTH". The Complainant is also the owner of the domain names boschrexroth.com, boschrexroth.net, boschrexroth.org. The Complainant uses the website directed by boschrexroth.com to promote its products including gear box and hydraulic system.

In support of the above, the Complainant has attached various documents to the Complaint.

The Complainant also submits that the domain name at issue is confusingly similar to the Complainant's trademark "REXROTH" and trade name "BOSCH REXROTH".

- The Complainant, Bosch Rexroth, is one of the world's leading specialists in the field of drive and control technologies. Under the brand name of Rexroth the company supplies more than 500,000 customers with tailored solutions for driving, controlling and moving. As The Drive & Control Company, Bosch Rexroth develops, produces and sells components and systems in more than 80 countries in the technology fields such as Electric Drives and Controls, Industrial Hydraulics, Mobile Hydraulics, Linear Technology, Assembly Technology and Pneumatics. Since 1996, Bosch Rexroth (Beijing) Hydraulic Co., Ltd, one of the most important manufacturing bases of the Complainant in China, has been successfully operating to offer customers with hydraulic components and systems, generator gearboxes for wind turbines, and frequency converters. The company has two factories in Beijing Yizhuang Economic and Technology Development Area with building area of 100,000 square meters and more than 1,100 staff. The Bosch Rexroth Beijing has provided the most advanced manufacturing technique and professional products and services to the Chinese customers. The Complainant has been extensively using the trademark "REXROTH" on the goods of "hydraulic components" and etc. in China. The Complainant's subsidiaries, Shanghai Bosch Rexroth Hydraulics & Automation Ltd. and Bosch Rexroth (China) Ltd., have sold a large number of hydraulic products with the trademark "REXROTH". Machine Tool & Hydraulics is a famous magazine in the industry of hydraulic component in China. The Complainant has promoted its products and the trademark "REXROTH" was prominently used on the magazine. The Complainant's trademark "REXROTH" has a high popularity in the

Chinese hydraulic industry.

- The Complainant states that it has the corresponding civil rights. The Complainant has the trademark rights over “REXROTH” and “力士乐”. The Complainant has registered 11 trademarks concerning “REXROTH” and 9 marks concerning “力士乐” in China. Those trademarks are approved by the Chinese Trademark Office to be used in respect of the goods and services concerning various hydraulic devices and the parts thereof and the related services. The Complainant owns the domain names boschrexroth.com, boschrexroth.net and boschrexroth.org. From 2000 to 2003, the Complainant registered the above domain names with a major part of “boschrexroth”, and those domain names are all valid and active at the present time. According to the Complainant, “BOSCH REXROTH” is the major part of the Complainant’s full company name, and “AG” in the company’s name only reflects the enterprise’s business nature. The Complainant, in its commercial promotions all over the world including China, has been using “BOSCH REXROTH” to indicate the company. The relevant public are also used to call the Complainant “BOSCH REXROTH”, and in China call the Complainant “博世力士乐”, which is the Chinese translation of “BOSCH REXROTH”.
- Also, the Complainant has civil rights including trademarks and trade name over “REXROTH” and “BOSCH REXROTH”, and is the registrant of the domain names boschrexroth.com, boschrexroth.net and boschrexroth.org. And those civil rights all were created prior to the registration date of the disputed domain name, i.e. May 30, 2011. The “.net” in the disputed domain name “rexrothhydraulics.net” is a generic Top-Level Domain and does not play any distinctive role. Therefore, the Complainant believes that, the disputed domain name’s identifying part “[rexrothhydraulics](http://rexrothhydraulics.net)” shall be the key issue to be considered in evaluating the similarity of the domain name as comparing with the Complainant’s “REXROTH” and “BOSCH REXROTH”. This “[rexrothhydraulics](http://rexrothhydraulics.net)” is composed of two parts, i.e. it consists of both the Complainant’s trademark “REXROTH” and the word “hydraulics”. Its first part is identical to the Complainant’s trademark “REXROTH” and the latter part of the trade name “BOSCH REXROTH”. And the second part “hydraulics” is a generic term and belongs to the goods designated by the Complainant’s trademarks. As mentioned aforesaid, the Complainant provided customers all over the world including China with products and services relating to Electric Drives and Controls, Hydraulic Pumps and motors and etc., under the Brand “REXROTH” and its Chinese translation “力士乐”. In addition, the website running under the disputed domain name also shows several words including “bosch rexroth hydraulics, rexroth hydraulics valves, rexroth hydraulics pump uses” and etc. which words are all related to the Complainant’s brand “REXROTH” and the

goods and products manufactured by the Complainant. When the public see and visit the website “rexrothhydraulics.net” or conduct Internet searches for the website, they will be misled to believe that the website was created by the Complainant or should be somewhat related to the Complainant given the extremely high fame of the Complainant’s hydraulic products and its trademark “REXROTH”. So the disputed domain name is confusingly similar to the Complainant’s trademark “REXROTH” and might cause confusion among the public, and its use and registration will inevitably harm the rights and legitimate interests of the Complainant. Besides the Respondent, some other competitors intended to take advantage of the high reputation of the Complainant, its “REXROTH” trademark and its “BOSCH REXROTH” trade name, and illegally grabbed several domain names. The Complainant has successfully solved the domain name disputes regarding boschrexrothchina.com and rexrothhydraulic.com before ADNDRC Beijing Office.

The Complainant states that the Respondent has no rights or legitimate interests in respect of the disputed domain name. “REXROTH”, the major part of the Complainant’s company name, does not indicate any specific meaning by itself, was independently created by the Complainant and has high distinctiveness. On account of long-term use, registration and promotion, “REXROTH” has acquired extremely high fame and reputation around the world and the public have solely associated “REXROTH” with the Complainant. Furthermore, while conducting searches through the Chinese Trademark Office’s website, one would find that the Respondent has never registered trademarks over “REXROTH”. The Complainant does not have business relationship with the Respondent and never authorized nor licensed the Respondent to use REXROTH trademark, so the Respondent has no rights or interests to the disputed domain name.

Also, the Complainant states that the Respondent had obvious bad faith in registering and using the disputed domain name, for the following reasons:-

- (a) The Respondent has no rights or legitimate interests in respect of the major part “rexrothhydraulics” of the disputed domain name. After registering the disputed domain name, the Respondent opened a website on the domain name and showed the words including “bosch rexroth hydraulics, rexroth hydraulics valves, rexroth hydraulics pump uses” on the website. Therefore, the disputed domain name is easily and mistakenly regarded by the public customers as an official website of the Complainant or might be associated with the Complainant. However, the Respondent’s website has no business to the Complainant, and the Respondent is taking a free ride of the high

fame of the Complainant's trademark "REXROTH" and daydreamed to reap illegal high profits by taking advantage of the Complainant's good reputation.

- (b) Furthermore, it is noticed that an offer of "Buy This Domain" is provided on the Respondent's website, which indicates the Respondent's obvious bad faith in registering and using the domain name according to Para. 4b (i) of the Policy that "(i) circumstances indicating that you have registered or you have 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 trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name".
- (c) Considering the high reputation of the trademark/trade name "REXROTH", it is most impossible that the Respondent independently designed and registered the disputed domain name without knowing the Complainant's trademark, trade name and domain names concerning "REXROTH". The Respondent's registration and use of the disputed domain name is in bad faith and constitutes copy and plagiarism of the Complainant's trademark and trade name. According to Para. 4b (iv) of the Policy, "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location", such acts shall be evidence of the Respondent's registration and use of a domain name in bad faith.
- (d) Evidently the Respondent would take free ride of the high fame of the Complainant's trademarks, trade name and domain names concerning "REXROTH" and daydreamed to reap illegal high profits through transferring the domain name to the Complainant or other competitors in this field. The malicious conducts of the Respondent not only infringed upon the Complainant's trademark right but also violated the governing principles of honesty and credit in PRC civil laws.

In conclusion, though the Respondent completely knows the ownership and the reputation of the Complainant's trademarks worldwide, it still intentionally registered the disputed domain name which is misleadingly similar to the Complainant's registered trademarks, trade name and domain names and the website directed by the dispute domain name uses lots of information concerning "REXROTH" and "BOSCH REXROTH" of the Complainant without authority, which has infringed on the trademark and trade name right of the Complainant. The intent of the register obviously is to make the customers

misunderstand that there are some relations between the Complainant and the Respondent, and the Respondent also intends to make illegal profits by taking advantage of the reputation and the popularity of the Complainant.

In the premises, the Complainant asks for the transfer of the disputed domain name to the Complainant.

The Respondent

The Respondent has not submitted a response.

4. Findings

Paragraph 14 of the Rules provides that, in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the complaint; and that, if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 15(a) of the Rules instructs the Panel as to the principles that the Panel is to use in determining the dispute, stating that the Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4 (a) of the Policy requires that the Complainant shall prove all of the following three elements in order to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (2) the Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identity or Confusing Similarity

The Complainant submits various documents to show that the Complainant's brand and marks "BOSCH REXROTH", "REXROTH" and the Chinese translation "力士乐" in the field of drive and control technologies for hydraulics products in many countries, including China, and that the marks "REXROTH" and the Chinese translation "力士乐", owned by the Complainant, are registered respectively in China before for years. The Panel notices that such registrations were made prior to the registration of the disputed domain name. On the other hand, the Respondent did not respond or dispute the rights of the Complainant over these marks.

Under this circumstance, the Panel finds that the Complainant has succeeded in establishing the necessary rights over these marks as required under Paragraph 4(a) of the Policy.

In the disputed domain name "rexrothhydraulics.net", the Panel accepts that the ".net" part is the generic top level domain name for internet. Noting that "rexrothhydraulics" itself is not a word/phrase within the daily use of vocabulary, the Panel agrees that it consists of the Complainant's trademark "REXROTH" and the word "hydraulics", with its first part being identical to the Complainant's trademark "REXROTH" and the latter part of the trade name "BOSCH REXROTH" and the second part "hydraulics" being a generic term related to the goods designated by the Complainant's marks. Therefore, the Panel is of the view that the main distinctive part in the disputed domain name is indeed "rexroth". There being so, "rexrothhydraulics" is obviously confusingly similar to these marks in which the Complainant has rights.

In the premises, the Panel finds that the Complainant has successfully established that the disputed domain name "rexrothhydraulics.net" is confusingly similar to these marks in which the Complainant has rights.

Accordingly, the Panel finds that the Complainant has succeeded in proving the element in Paragraph 4(a)(1) of the Policy as regards "rexrothhydraulics.net".

Rights or Legitimate Interests of the Respondent

The Complainant submits that the Respondent has no such rights or legitimate

interests necessary under the Policy as regards the disputed domain name. The Complainant made clear that the Respondent has never been authorized by the Complainant to use any of these marks. To this, the Respondent does not deny or provide evidence to the contrary.

From the name of the Respondent, the Panel does not see any rights of the Respondent over the disputed domain name “rexrothhydraulics.net” or its prominent part, i.e. “rexroth”. Also, taking into account that neither “rexroth” or “rexrothhydraulics” is in the daily use of language, that the Respondent did not explain why it has rights to register this disputed domain name, and that the Complainant has trademark rights over the “BOSCH REXROTH”, “REXROTH”, “力士樂” and “力士乐” marks, the Panel finds that the Complainant has succeeded in proving the element in Paragraph 4(a)(2) of the Policy as regards “rexrothhydraulics.net”.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use in bad faith:

- (i) Circumstances indicating that the Respondent has registered or 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 trademark 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 trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose 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 website 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 website or location or of a product or service on its website or location.

The Complainant alleges that (1) After registering the disputed domain name, the Respondent opened a website on the domain name and showed the words

including “bosch rexroth hydraulics, rexroth hydraulics valves, rexroth hydraulics pump uses” on the website, (2) An offer of “Buy This Domain” is provided on the Respondent’s website and that the Respondent completely knows the ownership and the reputation of the Complainant’s trademarks worldwide. To these, there is no response from the Respondent. The Panel notes that the address of the Respondent as indicated in the domain name registration information is in China and that the Complainant’s marks have been put to use throughout the world and in China, particularly in relation to hydraulics products.

From all these, it seems clear to the Panel that the Respondent was well aware of the Complainant’s rights in this regard when registering and using this disputed domain name. By doing this, the Panel finds that the registration and use of the disputed domain name were and are with bad faith and believes that the purpose is for using the domain name to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant’s marks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website and/or for selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the concerned marks or to a competitor of that Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name.

Therefore, the Panel also finds that the Complainant has succeeded in proving the elements in Paragraph 4(a)(3) of the Policy as regards “rexrothhydraulics.net”.

5. Decision

Having established all three elements required under the Policy in respect of the disputed domain name “rexrothhydraulics.net”, the Panel concludes that relief should be granted in favour of the Complainant. Accordingly, the Panel decides and orders that the disputed domain name “rexrothhydraulics.net” shall be transferred to the Complainant, Bosch Rexroth AG.

Sole Panelist



Dated: 30 July 2012