

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1300660

Complainant: Beijing Sohu Internet Information Service Co., Ltd.

Respondent: ha bao

Domain Name: sohuyingyin.com

Registrar: GoDaddy.com, LLC

1. Procedural History

On 26 February 2013, the Complainant submitted a Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) 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 1 March 2013, the ADNDRC Beijing Office send to the Complainant by email an acknowledge 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. All correspondence to and from the ADNDRC Beijing Office described herein was in the English language.

On 1 March 2013, the ADNDRC Beijing Office transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 2 March 2013, The Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 7 April 2013, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the complaint and its

attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 7 May 2013, the ADNDRC Beijing Office notified both parties of the Respondent's default, and informed both parties that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision. Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Zhao Yun, the ADNDRC Beijing Office notified the parties on 13 May 2013 that the Panel in this case had been selected. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 13 May 2013, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 27 May 2013.

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 proceeding 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 proceeding. The language of the current disputed domain name Registration Agreement is English and no request has been made to carry out the proceeding in a language other than English, thus the Panel determines English as the language of the proceeding.

2. Factual Background

For the Complainant

The Complainant in this case is Beijing Sohu Internet Information Service Co., Ltd. The registered address is Level 15, Sohu.com Internet Plaza, No. 1 Park, Zhongguancun East Road, Haidian District, Beijing 100084, P.R. China. The authorized representative in this case is Wang Haifeng.

For the Respondent

The Respondent in this case is ha bao. The address is haha ximenzi, xhao 453433 Fiji. According to the Whois information, the Respondent is the current

registrant of the disputed domain name “sohuyingyin.com” which was registered on 16 September 2012 through the registrar GoDaddy.com, LLC.

3. Parties’ Contentions

The Complainant

“Sohu” trademark has been used as an important brand of the Complainant so far since the Complainant was founded in 1996. The Complainant has registered “搜狐及图” trademark in Category 35 in 1999 with registration number 1284825 and “搜狐及图形” trademark in Category 9 with registration number 1303643; in 2006, it also registered “搜狐” trademark in Category 16 and “搜狐sohu.com” in Categories 9, 16, 38 and 41. To expand protection scope for “搜狐” trademark, the Complainant also applied for the registration of trademarks including “搜狐”, “狐狸和图形” and “sohu.com” in Categories 18, 25, 28 and 36. Sohu is a leading new media, electronic business, communication and mobile value-added service suppliers in China, a famous internet brand in Chinese language world.

From the first large classification search engine in China, the Complainant developed into a general portal the most popular with the users. Sohu network has been selected as 1998 and 1999 Top 10 Chinese Internet Networks by China Internet Information Center, Chinese Outstanding (General and Portal) and Network Contributing to Chinese Informationization by Chinese Internet Competition Organizing Committee. In 2002, a data of survey Sinomonitor International shows, the Complainant had the highest coverage among citizens in 30 cities; in 2005, sohu became the first internet sponsor of 100-year Olympic Games; in 2008, sohu won the title “Chinese Internet Top 10 in terms of User Scale” and “Award of Best User Experience in Chinese Internet Olympic Transmission” from DCCL. In 2008, Beijing Administration for Industry and Commerce recognized it as “Beijing’s Famous Trademark”.

Since 1999, sohu introduced over 50 channels and products such as news, sports, finance, IT, automobile, woman, life, education, job opportunity, games, men, foods, golf, maternal and child, culture, book reading, public welfare, video, blog and micro-blog to provide ideal social, learning, life and financing and other online platforms for citizens as the best channel for Chinese network users to access to Internet. In July 2000, the Complainant was listed on

NASDAQ:SOHU. It finally developed itself from a domestic famous enterprise into a world brand.

In 2000, the Complainant purchased domestic biggest young social network ChinaRen.com so as to hold the position of China's biggest Chinese language network; in 2003, it merged China's biggest online game consultation network 17173.com and Beijing's most influential real estate focus network focus.cn. In 2004, it introduced the third generation of interactive search engine-sogo and officially completed the acquirement for domestic leading WAP service provider, goodfeel.com.cn. In 2010, the Complainant's business began to involve internet website, wireless value-added services, new media business, network advertising, online game, electronic publications, etc. and constructed local versions for a number of cities so as to form the portal matrix and cultural matrix with the biggest traffics in Chinese Internet industry.

With proper operation of the Complainant, sohu brand enjoys high reputation among internet users and partners. It has established close long-term cooperation with thousands of famous enterprises home and abroad including Microsoft, Intel, AMD, IBM, Dell, Apple, Coca-Cola, Pepsi, China Mobile, China Unicom, China Telecom, Motorola, Sony Ericsson, Nokia, BMW, GM, Volkswagen, Toyota, Honda, P&G, Lenovo, Haier, Bank of China, China Merchants Bank, Industry and Commerce Bank of China, etc.

All media home and abroad give full affirmation on the successful operation of sohu network. Since 1998, a number of domestic media including "Science and Technology Daily", "China Business Times", "Beijing Youth Daily", "Wen Wei Po", "Computer Business Information", "China Internet Weekly" reported development of sohu network and the growth of sohu brand with great description. Sohu has own a number of big honors: in 2007, on China Brand Forum Annual Conference, sohu was elected as the "Internet Media with the Most Valuable Brand in China" and sohu image has become the icon of the time of internet. Based on the performance of sohu, in 1998, Mr. Charles Zhang, the founder and CEO of the Complainant was appraised as one of "50 Digital Heroes" by "Time"; in 2001, he was selected by one of "Global 25 New Stars of Enterprise" by "Fortune"; in 2004, he won the highest honor of international management science field: "Outstanding Manager of the Year"; in 2008, he got the honors of "30 Figures of Chinese Economy in 30 Years Since Development

and Reform” and “Award of Outstanding Contribution in 30 Years” on the 6th Chinese Enterprise Leader Summit.

To publicize sohu brand, the Complainant has been putting in a lot of labors, properties and funds in large and middle cities all over the country and releasing advertising materials on TV, papers, magazines, large-sized outdoor broads, bus, bus stops, subway media, telephone boxes, etc. during the period from 1999 when “搜狐 sohu” brand was founded to 2009, up to RMB 1 billion (the expenses for physical, network advertising and other non-currency exchange resource promotion excluded) has been putting in advertising promotion alone.

As the first brand of Chinese internet industry, sohu’s operating incomes show a rising trend. The total incomes were USD 233 million in quarter 3, 2011 alone, a year-on-year growth rate of 42%. In 2010 the total incomes exceeded USD 600 million.

Due to recognition of “sohu” brand, a lot of companies and illegal network use 搜狐 trademark or the domains similar to sohu’s domains on their commodities without permission of the Complainant. In 2003, the Complainant brought out a complaint about use of sohu.com trademark in its domain by Beijing Xinsilu Technologic Development Co., Ltd. without permission at Beijing Administration for Industry and Commerce. In 2006, the Complainant brought a complaint about domain “xjsohu.com” run by Xinjiang Jiasheng Technology Company and domain “sohuit.com” run by Beijing Xinwang Digital Information Technology Co., Ltd.; in 2011, the Complainant brought a complaint about domain “sohubook.com” run by natural person Zhang Fan. Among other cases, the Complainant’s all complaints have been supported.

The domain “sohuyingyin.com” registered by the Respondent with network name in Chinese “搜狐影音网”, confusing with the Complainant’s client end software “tv.sohu.com” and misleading netizens and consumers that sohuyingyin.com is a network run by the Complainant or a cooperative between the Complainant and the Respondent.

According to “Trademark Law of PRC”, “Uniform Domain Name Dispute Resolution Policy”, “Rules on Uniform Domain Name Dispute Resolution Policy” and “Supplementary Rules of ADNDRC on Uniform Domain Name Dispute Resolution Policy”, 1) the domain registered by the Respondent and the famous trademark owned by the Complainant are confusing. 2) with regard to

registration of domain, any enterprise will choose using Pinyin or English letters related to the business activities, name or other elements of the enterprise, while the domain sohuyingyin.com registered by the Respondent and the domain sohu.com registered by the Complainant, and its client end software “tv.sohu.com” and trademark “搜狐 SOHU.COM” are easy to mislead public that sohu.tv is the network established by the Complainant or the cooperative between the Complainant and the Respondent. Therefore, the registration infringes the trademark right of the Complainant.

3) The Respondent has no legal right over the domain in dispute. The registration behavior of the Respondent violates the provision of Article 13 of “Trademark Law”. Item 2, Article 13 of “Trademark Law” provides for that, when applying for registration of a trademark which copies, simulates or translates a famous trademark registered by others in China, mislead public and cause possible damage of the interest of the registration holder of the famous trademark for a different or non-similar commodity, the application will be refused and use will be forbidden. The Complainant’s trademark sohu.com has been registered in multiple categories and the Respondent has infringed the legal right of the famous trademark of the Complainant.

The registration behavior of the Respondent violates the provisions of Article 31, “Trademark Law”. According to provisions of Article 31 of “Trademark Law”, the application for trademark registration should neither impair existing prior right of others nor take over the registration of a trademark used by others with certain influence with inappropriate approach. The Complainant’s trademark “sohu.com” has high recognition home and abroad and “sohu.com” has been recognized as a famous trademark, so the use of sohu’s trademark by the Respondent obviously infringes trademark right of the Complainant.

The registration of “sohuyingyin.com” by the Respondent is a behavior of vicious registration and use. The Respondent registered the domain with reputation of the Complainant to seize interest by intention.

To sum up, the domain name of the Respondent is very similar to the domain name and secondary domain name of the Complainant, and the coexistence of both will cause misleading of consumers and thus impair interest of consumers and have adverse social influence. To protect registered trademark, maintain interest of consumers and assure healthy image of Chinese government in

intellectual property right protection, the Complainant requests to transfer the domain name “sohuyingyin.com” from the Respondent to the Complainant.

The Respondent

The Respondent failed to submit a Response within the specified time period.

4. Findings

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

Paragraph 4(a) of the Policy requires that the Complainant should prove each of the following three elements 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 is a Chinese company in the field of information technology and new media. Evidence submitted by the Complainant shows that the Complainant registered “sohu” as major part of the trademark on 14 September 2000, the registration number is 1445852. The trademark has been registered for several categories of service commodities. This trademark is still within the protection period. The Panel has no problem in finding that the Complainant enjoys the trademark right over “sohu”. The Panel further finds that the registration date of the above trademark is much earlier than the registration date of the disputed domain name (16 September 2012). The Complainant enjoys the prior rights in the trademark “sohu”. The evidence further shows that “sohu” been recognized as a well-known trademark in China.

The disputed domain name “sohuyingyin.com” ends with “.com”, this suffix

only indicates that the domain name is registered under this gTLD and “.com” is not distinctive. Thus, we will only need to examine the main part of the disputed domain name.

The main part (“sohuyingyin”) of the disputed domain name consists of two parts: “sohu” and “yingyin”. The first part is the same as the Complainant’s trademark. The second part “yingyin” shares the same pinyin form of the Chinese term “影音”, which is a generic term. Since the Complainant is also involved in providing online entertainment services and owns the client end software “tv.sohu.com”, the combination of the two parts cannot differentiate the main parts of the disputed domain name from the Complainant’s trademark “sohu”; such a combination, on the contrary, strengthens the connection between the disputed domain name and the Complainant’s trademark. Even if this second part does not equal to the Chinese term “影音”, the combination of “sohu” and “yingyin” does not reduce the distinctiveness of “sohu” in the main part of the disputed domain name, in view of the fame of the trademark “sohu” in the Chinese market. Therefore, the disputed domain name is confusingly similar to the Complainant’s trademark “sohu”.

Accordingly, the Panel holds that the Complaint fulfills the condition provided in Paragraph 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the disputed domain name. The Complainant’s assertion is sufficient to establish a *prima facie* case under Policy 4(a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

The Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. No evidence has shown that the Respondent is using or plans to use the domain name for a *bona fide* offering of goods or services. The Respondent is not commonly known by the domain name. The evidence submitted by the Complainant further shows that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

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 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; or
- (ii) You have 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) You have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, you have intentionally attempted to attract, for commercial gain, internet users to your 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 your website or location or of a product or service on your website or location.

The Complainant is a famous Chinese company in the field of new media. The evidence shows that the Complainant registered the trademark in 2000 and that the trademark is still in the protection period. Since its registration, the Complainant has put in a lot of money and efforts in promoting its products and services trademarked with "sohu". Through extensive use, advertisement and promotion, the trademark has achieved a strong reputation. As such, the public has come to recognize and associate the Complainant's trademark as originating from the Complainant and no other. The fact that the website of the disputed domain name contains the trademark "sohu" and the Chinese trademark of the Complainant ("搜狐") is obvious to all that the Respondent is aware of the existence of the Complainant and its trademark. This conclusion can be further

substantiated by the existence of the Chinese term “搜狐影音网” and a list of films on the website of the disputed domain name, which provides the same services as those provided by the Complainant in its client end software “tv.sohu.com”. The act of registering the disputed domain name *per se* has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of this disputed domain name by the Respondent that would not be illegitimate.

The fact that the website of the disputed domain name provides the same services as the Complainant’s client end software “tv.sohu.com” constitutes exactly the type of bad faith use of the disputed domain name as identified in the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant’s trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4(a)(iii) of the Policy.

5. Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name “sohuyingyin.com” should be TRANSFERRED to the Complainant, Beijing Sohu Internet Information Service Co., Ltd..

The Sole Panelist:



Dated: 27 May 2013