



Asian Domain Name Dispute Resolution Centre

beijing

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No.	CN-1300690
Complainant:	ABB ASEA BROWN BOVERI LTD.
Respondent:	liu da
Disputed Domain Name(s):	abb-sensor.com
Registrar:	GoDaddy.com,LLC

1. Procedural History

On July 16, 2013, the Complainant submitted a Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) 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 July 25, 2013, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the Complaint. On the same day, the ADNDRC Beijing Office requested the Registrar GoDaddy.com,LLC by email for the provision of information at their WHOIS database in respect of the disputed domain name, and such registration information was confirmed by the Registrar on the same day.

On August 1, 2013, the ADNDRC transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the Respondent over the disputed domain name and the ADNDRC had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified the ICANN and the Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On August 28, 2013, the ADNDRC notified both parties of the Respondent's default, and informed both parties that the ADNDRC would proceed to appoint the panel for this case.

On August 30, 2013, the ADNDRC issued the notification of proposed Panelist. At the same day, the ADNDRC gave notice to potential panelist candidate, Mr. Gao Lulin, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

Having received a declaration of impartiality and independence and a statement of acceptance from Mr. Gao Lulin, the ADNDRC informed the parties that Mr. Gao Lulin would be the sole Panelist for this case and formally transferred the files of this case to Mr. Gao Lulin on September 3, 2013.

The Panelist received the file, on September 3, 2013, from the ADNDRC and should render the Decision on or before September 17, 2013.

2. Factual background

For the Complainant

The Complainant of this case is ABB ASEA BROWN BOVERI LTD. Its address is at Affolternstrasse Zurich, Switzerland. Its authorized representative is Liu, Shen & Associates.

For the Respondent

The Respondent of this case is liu da with the address at hao 123 ku ba etc hao22 bi ji, bi ji 100001 China. The Respondent registered the disputed domain name "abb-sensor.com" on March 1, 2013 through the registrar, GODADDY.COM,LLC..

3. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

I. The introduction of the Complainant and its trademarks

Part I: Complainant is the owner of numerous registrations for the ABB trademarks and variations thereof, which have been registered in over 100 countries in the world including the Peoples Republic of China

The Complainant, ABB Asea Brown Boveri Ltd, is a company incorporated under the laws of Switzerland and is a global leader in the field of electricity and automated technologies including electric power generation, transmission and distribution and is dedicated to providing solutions for industrial use and in the electricity industry. The business of the Complainant are widespread in more than 100 countries including China with as many as 1,000 subsidiaries and 145,000 employees. The Complainant is well-known internationally and in China and it is one of the Fortune 500 Companies in the world.

The Complainant is also the owner of numerous registrations for trademarks comprising the letters “ABB” and variations thereof (“ABB trademarks”) in over 100 countries worldwide including China.

In China where the Respondent is domiciled according to the WHOIS database concerning the Disputed Domain Name, the Complainant registered the ABB trademarks since 1980s. Up to now, the Complainant has obtained registration of various forms of the “ABB” trademark in respect of goods and services in Classes 1, 3, 4, 5,7, 9, 10, 11, 13, 14, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45. In addition to these Chinese national registrations, the Complainant’s international registrations under Madrid Agreement and Protocol of ABB trademarks Nos. 613568, 625829, 625830, 664858 have been extended to the People’s Republic of China.

Part II: Complainant is the owner of ABB trade name which is the most distinctive and distinguishing portion in its name, and the Complainant enjoys civil rights in the ABB trade name

ABB is the most distinctive and distinguishing portion of the Complainant’s trade name. The Complainant has been frequently, widely and substantially using the “ABB” trade name in its worldwide business operations. In the People’s Republic of China where the Respondent is domiciled, the Complainant has made huge investment and has established many subsidiary companies and joint ventures who are authorized to use ABB in their trade names to show the relationship and connection with the Complainant, for example, “ABB Xi'an High Power Rectifier Company Limited”, “ABB Xiamen Switchgear Co Ltd.”, “ABB LV Installation Materials Co., Ltd., Beijing”, “ABB Shanghai Transformer Co Ltd.”, “ABB Chongqing Transformer Co Ltd.”, and

“ABB (China) Ltd.”etc., a wholly-owned subsidiary of the Complainant. Throughout the years, whenever the Complainant and the aforesaid subsidiaries and joint ventures are referred to by the general public in China, whether in newspapers or other media, “ABB company” is used whenever the Complainant is mentioned. In the eyes and minds of the general public in China, “ABB” is and can only be associated with the Complainant. According to the related provisions of the Paris Convention for the Protection of Intellectual Property, the Complainant is entitled to the legitimate rights and interests in “ABB” trade name.

Part III: Complainant owns over 300 domain names containing “ABB”

Complainant and its affiliated companies are owners of over 300 domain names containing its trademark “ABB” including gTLDs and relevant ccTLDs, for example abb.com, abb.org, abb.net, abb.ch, abb.us, abb.cn, abb-electric.com etc.

II. The factual and legal grounds on which the Complaint is made

Part I: The Disputed Domain Name is confusingly similar to ABB trademarks and trade name in which the Complainant has the rights and interests:

The Complainant has legitimate rights over its ABB trademarks and trade name, and such rights were all acquired far earlier than March 1, 2013 which is the date of registration of the Disputed Domain Name. The Disputed Domain Name comprises two parts of “abb-sensor” and “.com”, in which “.com” is suffix of this generic top-level domain name producing no civil right for the Respondent. The term “abb-sensor” which is the key portion of the Disputed Domain Name is apparently a combination of “abb”, “-” and “sensor”. In this combination, “abb” is completely identical with the Complainant’s trademarks and trade name which have been widely registered and substantially used throughout the world. The latter part “sensor” is a normal English word of an electric instrument which is kind of device widely used in everyday objects such as elevator bottoms and lamps etc. Sensors are important products of the Complainant and ABB companies operating in over 100 countries. “ABB Xi'an High Power Rectifier Company Limited” is one of the subsidiaries of the Complainant in the PRC which manufactures and distributes ABB branded sensors. As “abb-sensor” shall be considered as the “identifying part” of the disputed domain name when we compares the Complainant’s trademark ABB and “abb-sensor”, and a combination of Complainant’s trademark being registered widely and Complainant’s important product apparently strengthen the relationship between the

disputed domain name and Complainant and its registered trademark, it shall be concluded that as the identifying part of the disputed domain name, abb-sensor shall be considered confusingly similar to the Complainant's registered trademark and trade name ABB.

The Complainant's "ABB" trademarks and trade name is so distinctive and distinguishing, thus it is impossible for anyone including the Respondent to choose the word "abb" and "sensor" as a key part of the Disputed Domain Name by his own imagination or by coincidence without making reference to the ABB trademarks. In the present case, the Respondent chose the word "abb-sensor" for the Disputed Domain Name, such act of the Respondent is apparently a copying of the Complainant's well-known trademark with an ill intention to mislead the general public who are familiar with ABB groups and ABB branded goods into believing that the Disputed Domain Name has certain connection with the Complainant or its subsidiaries, joint ventures, or affiliated companies.

The Complainant's rights and interests and the reputation in the ABB trademarks and trade name has been acknowledged and confirmed by different Domain Name Dispute Resolution organizations. For example, in WIPO Case No. D2000-1714 ABB Asea Brown Boveri Ltd v. Mark Sheppard (abb.net), WIPO Case No. D2007-1466 ABB Asea Brown Boveri Ltd v A.B.B Transmission Engineering Co., Ltd. (abb-cn.com), in DNDRC of CIETAC Case No. CND2008000002 ABB Asea Brown Boveri Ltd v. 潘继东 (china-abb.cn), DNDRC of CIETAC Case No. CND2008000102 ABB Asea Brown Boveri Ltd v. S.E.E.S Media Inc (abb-sales.com.cn), ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (Beijing Office) ADMINISTRATIVE PANEL DECISION Case No. CN-1100448 ABB Asea Brown Boveri Ltd v. jinjiayong (abb-electric.com) all held that the Complainant and its ABB trademarks enjoy a substantial reputation with regard to the Complainant's goods.

The company name of the Complainant is ABB Asea Brown Boveri Ltd, in which "ABB" is the abbreviation of Asea Brown Boveri, the original company name of the Complainant. The Complainant is well known under the abbreviation "ABB". By virtue of extensive and substantive use of the ABB trademarks and trade name by the Complainant and its subsidiaries and joint ventures worldwide including China, the ABB trademarks and trade name have gained substantial goodwill and reputation and are synonymous with the Complainant. When the relevant public comes across with the letters "ABB", they will immediately associate it with the famous ABB trademarks and trade name of the

Complainant. The Complainant is a company with a long business history. Although the Complainant was only formed in 1988 through a merger between the Swedish Asea and the Swiss BBC Brown Boveri, Swedish Asea's history dates back to 1883, while BBC Brown Boveri was founded in 1891. In China where the Respondent is domiciled, the trading relations between the Complainant and China dates back to 1907 when it's the Complainant's predecessor made its first sale of steam boilers to China. The Complainant set up its 1st Asian headquarter of ABB China in Hong Kong in 1974, within which there was a China affair department, and the Complainant set up its permanent office in Beijing in 1979. A few years later, in 1992 the Complainant set up its 1st manufacturing joint venture in China, and in 1994 the Complainant moved its Asian headquarter of ABB China from Hong Kong to Beijing, whose name was ABB (China) Investment Co. Ltd. and has now become ABB (China) Ltd. With rapid expansion of business in these years in China, the Complainant now has over 30 joint ventures, subsidiaries and affiliated companies, and sales and services branches spreading over 60 major cities in China. Up to now the Complainant has over 15 thousand employees working in these organizations in China. The Complainant has its revenue in China exceeding USD 4.5 billion for 2008, which ranked China as the 2nd largest market of the Complainant in the world. The Complainant has been contracted as supplier of equipments in many important and huge state projects in China including the Three Gorges project, the Qinghai-Tibet railway, the gigantic south-to-north water diversion project and the Beijing 2008 Olympic-related projects.

The Complainant has been making much effort in advertising its ABB trademarks and trade name in China by publishing advertisements on dozens of professional and non-professional magazines, periodicals and newspapers, outdoor advertising. Apart from these, top level officers of the Complainant's group are frequently interviewed by well-known Chinese media.

In all these years, the Complainant and its subsidiaries, joint ventures etc. have made great contribution to the economic development of China and this contribution has been highly valued and respected by top officials of Chinese central and local governments. As far back in June of 1994, President JIANG Zemin made a visit to ABB Xiamen Switchgear Co Ltd and had made an inscription for the company. Since then, present and precedent leaders of China, such as Mr. HU Jintao, Mr. WEN Jiabao, Mr. LI Ruihuan, Mr. XI Jinping, Mr. LI Keqiang, Mr. HUANG Ju, and Ms. WU Yi, and many Ministers of the State Council and top officials of related provinces and cities visited the ABB subsidiaries and joint

ventures in China, and at the same time, top level officers of the Complainant were met by top Chinese government officials.

The business of the Complainant are widespread in more than 100 countries including China with as many as 1,000 subsidiaries and 145,000 employees. The Complainant is well-known internationally and in China and it is one of the Fortune 500 Companies in the world. It should therefore be concluded that the incorporation of “abb” to the Disputed Domain Name will cause confusion among the public.

In summary, the Complainant’s ABB trademarks and trade name enjoy goodwill and high reputation in China and throughout the world. The identifying part of the Disputed Domain Name “abb-sensor” is confusingly similar to the Complainant’s ABB trademarks and trade name. The Disputed Domain Name is very likely to be mistaken as the domain name of the Complainant or having connection with the Complainant, thus the registration of the Disputed Domain Name will very likely to cause confusion in the public. Therefore, the Complainant satisfies the first prerequisite as set forth in the Policy. That is, the domain name in dispute is confusingly similar to the trademark in which the Complainant has right.

Part II: The Respondent owns no legitimate rights or interests in respect of the Disputed Domain Name.

The Respondent has no connection with the Complainant who never licensed or authorized the Respondent to use the ABB marks or domain name. The Disputed Domain Name is not the name of the Respondent. The Respondent has not been commonly known by the Disputed Domain Name. Furthermore, to the best knowledge of the Complainant, the Respondent owns no rights over any trademark that is identical with or similar to the Disputed Domain Name. The Respondent is not making a commercial or fair use of the Disputed Domain Name. For the reasons above, it is believed that the Respondent owns no legitimate rights or interests in the Disputed Domain Name. Therefore, the Complainant satisfies the second prerequisite as set forth in the Policy. That is, the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Part III: The Disputed Domain Name was registered and is being used in bad faith

The Complainant became aware of the registration of the Disputed domain name by the Respondent in early 2013, the Respondent left his

address as “hao 123 ku ba etc hao22 bi ji, bi ji 100001 China” (Note: somewhere in China). The Complainant further noted that the Respondent has resolved the Disputed domain name to a website www.5678bb.com. When visiting this website, it is noted that the content of the webpages are pornographic photos, videos and other links to other pornographic websites. As it is obvious that spreading online obscene and pornographic content is a violation of the Constitution of the PRC and related internet administrative laws and regulations, the disputed domain name was registered and is being used in bad faith.

Taking into consideration the facts that the Complainant enjoys high reputation of the ABB trademarks and trade name, and the disputed domain name is confusingly similar to the trademark and trade name of the Complainant, we can presume that Respondent is aware of the ABB trademarks or trade name, and has good knowledge of the very high reputation of the Complainant’s ABB trademarks and trade name. With this knowledge in mind, the Respondent had copied the Complainant’s ABB trademarks and had it incorporated with one of Complainant’s important product title, then had it registered as the Disputed domain name.

Based on the above, it is adequate to conclude that the Respondent has registered the Disputed domain name for the purpose of attracting internet users who are interested in ABB products or service to visit the website and gain improper profit, and such act of the Respondent had virtually damaged the reputation of the Complainant, disrupted the normal business operation of the Complainant, hampered the registration of the Disputed Domain Name by the Complainant, created a likelihood of confusion with the Complainant to mislead the public.

It is submitted, for the reasons outlined above, that the Disputed Domain Name was registered and is being used in bad faith in accordance with paragraph 4(b)(iv) of the Policy: by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to Respondent’s website or other on-line location, by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or of a product.

B. Respondent

The Respondent did not make any response by the scheduled time.

4. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

Based on the relevant stipulations under the Policy, the Rules, and ADNDRC Supplemental Rules, the Panelist must determine whether the Complainant satisfies each of the elements under the Policy. If satisfied, the Panelist will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules, and the ADNDRC Supplemental Rules; If not satisfied, the Complainant's claims shall be rejected.

A) Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights to.

First, according to the registration certificates of the Complainant's trademarks in China provided by the Complainant, the Complainant has registered "ABB" with Registration Nos. 3820284, 3820283, 3820282, 3820280, 3820216, 3820215, 3820390, 3820497, 3820393, and 3820500 on designed goods of "transformers [electricity] , electric switches, computer peripheral devices, electronic devices, electrical equipments, etc." in Class 9 and "apparatus for lighting, electric cooking utensils, cooling installations, etc." in Class 11 in 2005.

These trademarks are valid and the registration dates are much earlier than the registration date of the disputed domain name, March 1, 2013. Thus, the Panelist recognizes that the Complainant enjoys prior trademark rights.

Second, the Panelist needs to determine whether the disputed domain name is confusingly similar to the Complainant's prior trademarks.

The identifying part of the disputed domain name is “abb-sensor” which consists of “abb” and “sensor.” “abb” is identical to the Complainant’s prior trademark “ABB” with minor difference in term of upper or lower case. “sensor” is a generic term of an electric instrument and constitutes similar goods with the designated goods of “transformers [electricity], electric switches, etc.” under the Complainant’s trademark “ABB.”

The Panelist opines that the addition of a generic term does not necessarily distinguish the disputed domain name from the Complainant’s prior trademark. In addition, the term “sensor” may very well increase the confusing similarity between the disputed domain name and the Complainant’s trademark “ABB”.

Therefore, the Panelist finds that the disputed domain name is confusingly similar to the Complainant’s trademarks; and the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

The Complainant argues that the Respondent has no connection with the Complainant who never licensed or authorized the Respondent to use the ABB marks or domain name. The disputed domain name is not the name of the Respondent. Furthermore, to the best knowledge of the Complainant, the Respondent owns no rights over any trademark that is identical with or similar to the disputed domain name. Therefore, the Complainant holds the view that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent did not make any response within the scheduled time, nor did it make any explanation or provide any evidence to prove its trademark rights, legitimate interests, or any other legal rights to the disputed domain name.

Accordingly, the Panelist concludes that the Complainant has provided preliminary evidence required by Paragraph 4(a) (ii) of the Policy and the burden of proof is transferred to the Respondent, who should prove its rights or legitimate interests of the disputed domain name. However, the Respondent failed to respond to the Panelist and did not submit any evidence. Hence, the Panelist cannot come to a conclusion that the Respondent has rights or legitimate interests in respect of the disputed domain name.

Accordingly, the Panelist finds the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

C) Bad Faith

The Complainant also needs to establish the Respondent's bad faith under Paragraph 4(a)(iii) of the Policy, where the circumstances in particular shall be considered as evidence of the registration and use of a domain name 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 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.

First, the Complainant argues the bad faith of the Respondent based on Paragraph 4(b) (iv) of the Policy. The Complainant provided the print-out of the webpage of the disputed domain name. It reveals that the disputed domain name was directed to a website which displays pornographic photos, videos and etc.

The Panelist deems that the Respondent has intentionally attempted to attract, for commercial gain, internet users to the web site or other on-line location by using the disputed domain name. The use of the disputed domain name should be deemed as in bad faith set forth by Paragraph 4(b) (iv) of the Policy.

Second, the Panelist notices that the identifying part of the disputed domain name is the combination of trademark “abb” and “sensor” which is a generic name of electricity instrument.

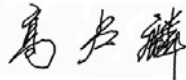
Based on the evidence provided by the Complainant, the Panelist opines that the Complainant and its trademark “ABB” have enjoyed fame in the field of electricity and automated technologies prior to the registration date of the disputed domain name, March 1, 2013. The Respondent should have known ABB when he registers the disputed domain name.

Thus, the registration of the disputed domain name itself has prevented the Complainant from reflecting its mark in a corresponding domain name. The Panelist views that the registration of the disputed domain name is in bad faith set forth by Paragraph 4 (b) (ii) of the Policy.

Accordingly, the Panelist finds the Complainant has satisfied the third condition under Paragraph 4(a) of the Policy.

5. Decision

According to the analysts of the Panelist, the Complainant has satisfied the three elements of Paragraph 4(a) of the Policy. The Panelist supports the Complainant’s request that the disputed domain name “abb-sensor.com” shall be transferred to the Complainant, ABB ASEA BROWN BOVERI LTD.



Gao Lulin
Panelist

Dated: September 17, 2013