



Asian Domain Name Dispute Resolution Centre

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No.	CN-1300719
Complainant:	ABB ASEA BROWN BOVERI LTD
Respondent:	hao gan
Disputed Domain Name(s):	< abb-shenbaikan.com >

1. Procedural History

On 15 October 2013, the Complainant submitted a Complaint in English to the Beijing Office of Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and selected 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 15 October 2013, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and reviewed the format of the Complaint in compliance with the Policy, the Rules and the Supplemental Rules. On 22 October 2013, the ADNDRC Beijing Office transmitted by email to ICANN and the Registrar, GoDaddy.com, LLC a request for registrar verification in connection with the disputed domain name.

On 23 October 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 29 October 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 29 October 2013. On the same date, 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 Respondent over the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same date, the ADNDRC Beijing Office notified ICANN and the Registrar of the commencement of the proceedings. On 19 November 2013, the Centre notified the parties that no Response was received and the Hearing shall be conducted by default.

On 19 November 2013, the ADNDRC Beijing Office notified the Proposed Panelist Ms. Xue Hong to see whether she is available to act as the Panelist in this case and if so, whether she is in a position to act independently and impartially between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, on 19 November 2013, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist on 20 November 2013 and asked the Panel to submit a decision on or before 4 December 2013.

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 ABB ASEA BROWN BOVERI LTD, of Affolternstrasse Zurich, Switzerland. The Complainant owns the trademark “ABB” that has been registered in China and more than 100 other countries and used on the products including electronic devices and electric equipments.

For the Respondent

The Respondent is hao gan, of zhenlongzhengaoshanlin hongshuicun21hao, xinyishi, China. The domain name at issue is <abb-shenbaikan.com>, registered by Respondent with GoDaddy.com, LLC on 17 May 2013.

3. Parties' Contentions

The Complainant

The Complainant's contentions may be summarized as follows:

(1) The Complainant contends that 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 May 17, 2013 which is the date of registration of the Disputed Domain Name at issue. The Disputed Domain Name comprises two parts of "abb-shenbeikan" and ".com", in which ".com" is suffix of this generic top-level domain name producing no civil right for the Respondent. The term "abb-shenbeikan" which is the key portion of the Disputed Domain Name is apparently a combination of "abb", "-" and "shenbeikan". 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 "shenbeikan" is combination of some alphabets which have not specific meaning or indication of originality. Although "abb-shenbeikan" is not completely identical with "abb", a combination of "abb" and "shenbeikan" with a hyphen does provides a prominent hint that the domain name is associate with or related to "abb" which is a mark well-known enough to catch the eyes of the public. Thus "abb-shenbaikan" shall be considered confusingly similar to "abb". Further as "abb-shenbaikan" shall be considered as the "identifying part" of the disputed domain name when we compares the Complainant's trademark ABB and "abb-shenbeikan.com", it shall be concluded that the disputed domain name, "abb-shenbeikan.com" shall be considered confusingly similar to 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 "shenbeikan" 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-shenbeikan" 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 companies 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.

(2)The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name <abb-shenbeikan.com>.

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.

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

The Complainant became aware of registration of the Disputed domain name by the Respondent in June 2013. The Respondent left his address as "zhenlongzhengaoshanlin hongshuicun21hao, xinyishi China (Note: somewhere in China). The Complainant further noted that the Respondent has redirected the disputed domain name to a website providing gambling advertisement and lots of links to other gambling websites.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, The Complainant 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 a phrase without any indication, then had it registered as the disputed domain name. It is adequate to conclude that the Respondent has registered and use the disputed domain name for the purpose of intentionally attracting internet users who are interested in ABB products or service to visit the website and gain improper commercial profit. The use of the disputed domain name should be deemed as in bad faith set forth by Paragraph 4(b) (iv) of the Policy. 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.

For the reasons outlined above, the Complainant requests that the disputed domain name be cancelled.

The Respondent

The Respondent did not reply to the Complainant's contentions.

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) 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
- ii) the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii) the domain name has been registered and is being used in bad faith

(1) Identical / Confusingly Similar

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 similarity between the disputed domain name and its trademark.

The Panel notes that the Complainant has registered the trademark “ABB” in China and more than 100 other countries. The disputed domain name is <abb-shenbeikan.com>. Apart from the generic top-level domain suffix “.com”, the disputed domain name consists of “abb-shenbeikan”, which can easily be read as “abb”, “-” and “shenbeikan”. The first part “abb” is indisputably identical with the Complainant’s registered trademark, the second part is generic dash mark “-”, and the third party “shenbeikan” is unknown and meaningfully unclear. The Complainant contends that it is only the first part “abb” that makes the domain name as a whole distinctive and thus confusingly similar to the Complainant’s mark “ABB”. The Panel does note the existence of the part “shenbeikan” in the domain name and wish to know its meaning and function of being attached with “abb”. If the Respondent could have made any relevant submission, the Panel might assess the pertinent function of “shenbeikan” in the overall configuration of the domain name more sufficiently. Unfortunately, upon the complete silence of the Respondent, the Panel can only presume that “shenbaikan” is no more than a string of letters randomly selected and combined together. Compared with the obvious distinctiveness of “abb”, “shenbaikan” is more descriptive than distinctive.

The Panel therefore finds that the disputed domain name <abb-shenbeikan.com>, as a whole, is confusingly similar to the Complainant’s registered trademarks “ABB”. Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

(2) Rights and Legitimate Interests

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name <abb-shenbaikan.com> and, as stated above, the Respondent did not provide any information or evidence to the Panel to assert or explain the basis for any rights or legitimate interests 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 <abb-shenbeikan.com>. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

(3) Bad Faith

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

The evidence provided by the Complainant shows that the Respondent redirected the disputed domain name to a website providing gambling advertisement and lots of links to other gambling websites. The Respondent does not contend the above-mentioned evidence.

The Complainant has proved that its registered mark "ABB" is reputable and well-known in China through use on the products and promotion in the market and has been used in the core part of the trade name of both the Complainant per se and its subsidiaries in China.

Since the disputed domain name was registered and is fully controlled by the Respondent, the Respondent is responsible for any use of them. The Panel finds that the current use of the disputed domain name is highly likely to attract and confuse the consumers with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the disputed domain name's website or of the services offered on the website. Therefore, the registration and use of the disputed domain name constitute the evidence of bad faith specified in paragraph 4(b)(iv) of the Policy.

Therefore, the Complaint successfully proves 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 disputed domain name <abb-shenbeikan.com> be cancelled.

Panelist: 薛虹

Dated: 4 December 2013