



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (HONG KONG OFFICE)

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### Decision Submission

[English](#) [Print](#)

Version	
Decision ID	DE-0800182
Case ID	HK-0800193
Disputed Domain Name	www.bASF.mobi
Case Administrator	Dennis CAI
Submitted By	Lyons Debrett G.
Participated Panelist	

Date of Decision	16-12-2008
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Language Version : English

#### The Parties Information

<b>Claimant</b>	BASF SE (formerly BASF AKTEINGESELLSCHAFT)
<b>Respondent</b>	Zhong Sou

#### Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on July 31, 2008. On September 26, 2008 the Centre transmitted by email to OnlineNIC a request for registrar verification in connection with the domain name at issue. On September 27, 2008 OnlineNIC transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the ‘Policy’), the Rules for Uniform Domain Name Dispute Resolution Policy (the ‘Rules’), and the Centre’s Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on October 9, 2008. In accordance with the Rules, the due date for Response was October 29, 2008. The Respondent made informal email contact with the Centre on one occasion but did not ultimately submit a response. Accordingly, the Centre notified the Respondent’s default on October 31, 2008.

The Centre appointed Debrett G. Lyons as the sole panelist in this matter on December 5, 2008. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

#### Factual Background

##### For Claimant

1. The Complainant is a producer of chemicals, plastics, crude oil and natural gas. It is regularly ranked as the world’s premier chemicals company.
2. The Complainant has done business under the name BASF since its establishment in 1856.
3. The Complainant has traded in China since 1885 and now has eight production facilities and over 5000 employees in China.
4. The Complainant owns countless trade mark registrations for BASF in countries around the world, including China.
5. The Complainant has not licensed or otherwise permitted the Respondent to use the trade mark or to register or use any domain name incorporating the trade mark.
6. The Respondent registered the disputed domain name on September 26, 2006.
7. There was no obvious use of the domain name until the Complainant approached the Respondent pre-Complaint.

8. The domain name now points to an extremely rudimentary homepage.
9. In response to a pre-Complaint offer by Complainant to purchase the domain name, the Respondent asked for 300,000 Euros.
10. The Complainant petitions the Panel to transfer the disputed domain name from the Respondent to the Complainant.

### **For Respondent**

(refer to the above paragraph)

### **Parties' Contentions**

#### **Claimant**

The Complainant asserts trade mark rights and states that the disputed domain name is either identical, or confusingly similar to, the trade mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

The detail of the Complaint is included where necessary in Part 5 of this decision.

#### **Respondent**

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

### **Findings**

Notwithstanding the fact that the Respondent did not offer a response to the Complaint, the Rules instruct the Panel to "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."

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the domain name is identical or confusingly similar to a trade mark 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.

The Panel is entitled to accept reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc., FA 95095 (Nat. Arb. Forum July 31, 2000) holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true; Talk City, Inc. v. Robertson, D2000-0009 (WIPO Feb. 29, 2000) holding that "In the absence of a response, it is appropriate to accept as true all allegations of the Complaint." .

Having considered the Complainant's case and the available evidence, the Panel finds the following:

#### **Identical / Confusingly Similar**

The Complainant's international reputation is established by the evidence and the Panel has no hesitation in finding that the Complainant has common law rights in the trade mark BASF acquired through use and reputation ( Policy ¶ 4(a)(i) does not require a trade mark registration with a national authority if it is shown that rights in the trade mark have accrued on a common law or unregistered basis because of widespread use and reputation. See SeekAmerica Networks Inc. v. Masood, D2000-0131 (WIPO Apr. 13, 2000) (finding that the Rules do not require that the complainant's trademark or service mark be registered by a government authority or agency for such rights to exist); see also Great Plains Metromall, LLC v. Creach, FA 97044 (Nat. Arb. Forum May 18, 2001) ("The Policy does not require that a trademark be registered by a governmental authority for such rights to exist." ). Accordingly, there is no need to examine the claim to registered trade mark rights, which the Panel adds as an aside, is a little too casually assembled.

Applying the principles now broadly accepted under the Policy, the Panel finds the disputed domain name to be identical to the Complainant's trade mark. The disputed domain name wholly incorporates the Complainant's trade mark. The addition of the gTLD, ".mobi", is trivial and does nothing to defeat the Complainant's claim of identity of domain name and trade mark. See, for example, Rollerblade, Inc. v. McCrady, WIPO Case No. D2000-0429 finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly

similar; Wal-Mart Stores, Inc. v MacLeod d/b/a For Sale, WIPO Case No. D2000-0662 holding confusing similarity when the domain name includes the trademark, or a confusingly similar approximation, regardless of the other non-distinctive terms in the domain name.

The Panel finds that the Complainant has satisfied the first element of the Policy.

### **Rights and Legitimate Interests**

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to demonstrate rights or legitimate interests. See *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000 0624; *Hanna Barbera Prods., Inc. v. Entm't Commentaries*, NAF Case No. 741828; *AOL LLC v. Gerberg*, NAF Case No. 780200. Paragraph 4(c) of the Policy states that any of the following circumstances which if found by the Panel to be proved based on its evaluation of the evidence, demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has established its trade mark rights. There is no evidence that the Respondent has similar rights, registered or not. The WHOIS data does not support any argument that the Respondent might be commonly known by the domain name. The Complainant has stated there to be no relationship between the parties. There is no evidence that prior to the Complainant first contacting the Respondent, the Respondent was using, or had made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services. The website which later appeared is so basic that no inferences benefiting the Respondent can be drawn from its existence. The offer to sell the domain name raises a reasonable inference that the Respondent had no intention to use the domain name.

Based on those facts, the Panel finds a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Since the Respondent made no reply, it has not discharged the onus which fell to it.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the domain name and so the second limb of the Policy is established.

### **Bad Faith**

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (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 trade mark 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 trade mark 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.

What is noteworthy about paragraphs 4(b)(i)-(iv) is that they are cases of both registration and use in bad faith. Paragraph 4(b) is not exhaustive and other instances of bad faith might be in evidence but, in those instances, the Panel must be able to find both bad faith registration and bad faith use.

In this case, the Complainant submits that the Respondent's conduct falls squarely under paragraph 4(b)(i). The evidence wholly supports that submission. Given the enormity of the Complainant's reputation, even in China, the overwhelming likelihood is that the Respondent registered the disputed domain name in the knowledge of the Complainant's trade mark and its business. Although it was the Complainant who first approached the Respondent with a view to purchasing the domain name, there had been no use of the domain name until that time and the sum asked for transfer of the domain name was massive. On the evidence, the Panel finds it more likely than not that the Respondent registered the domain name primarily for the purpose of selling it to the

Complainant for a consideration in excess of its out of pocket acquisition costs.

The Panel finds bad faith under paragraph 4(b)(i) and so finds that the Complainant has satisfied the third and final limb of the Policy.

**Status**

www.bASF.mobi                    Domain Name Transfer

**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 “bASF.mobi” be transferred to the Complainant.

Debrett G. Lyons  
Sole Panelist

Date: December 15, 2008