

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)

ADMINISTRATIVE PANEL DECISION
Case No. CN-20100334

Complainant: SEIKO EPSON CORPORATION

Respondent: Huang Hengshu

Domain Name: epsondriversdownload.com

Registrar: NAME.COM LLC

1. Procedural History

On March 2, 2010, the Complainant submitted a Complaint in English version 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") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

Then, ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and NAME.COM LLC (the Registrar of the domain name) a request for registrar verification in connection with the domain name in dispute. On March 9, 2010, NAME.COM LLC transmitted by email to ADNDRC Beijing Office its verification response confirming that, the domain name in dispute was registered under its domain registrar, and the Respondent is listed as the registrant.

ADNDRC Beijing Office sent by email the Transmittal of Claims attached by the Complaint to the Respondent on March 31, 2010.

On April 7, 2010, ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings would commence on April 7, 2010. On the same day, the Notifications of Commencement of proceedings were notified to the Respondent, ICANN and the Registrar. Till April 27, 2010, the last day of the fixed period of Response, no submission came from the Respondent. ADNDRC Beijing Office noticed the Parties that, as there's no response from the Respondent, the case administrator would appointed the Panelist shortly, and the case would be decided by default.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, ADNDRC Beijing Office appointed Tang Guangliang as the sole panelist in this matter on May 5, 2010. Then ADNDRC Beijing Office transferred all the case materials to the panel on May 6, 2010, and asked the panel to submit a decision on or before May 20, 2010.

2. Factual Background

For the Complainant

SEIKO EPSON CORPORATION (hereinafter referred to as the Complainant) was established in 1942 in Japan. Its main products include information products such as printers, projectors, consuming materials and so on; electronic equipment products such as semi-conduct, LCD, Quartz Crystal Oscillator and so on; high precision products such as watch and so on. In 2003, the Complainant had 84,889 employees and the sale reached 1.4132 billion JP ¥.

The Complainant began to invest in China since 1984 and has established several sole or joint subsidiary companies. It has 18 enterprises and research institutions with 32,897 employees in China. Its investment in China amounts to RMB 5.76 billion. The Complainant owns the world biggest factory producing printer and Quartz Crystal Oscillator in China. In 2003, its total output value is RMB27.4 billion and the sales value is RMB 7.67 billion in China.

In this case, the Complainant authorized Linda Liu & Partners as its agent.

For the Respondent

The Respondent is Huang Hengshu, a citizen of Mainland China, who registered the disputed domain name on October 12, 2009 through the Registrar. The Respondent made no response in the fixed period of time, and no agent or representative empowered thereof in this case.

3. Parties' Contentions

The Complainant

According to the Complaint, the assertion of the Complainant includes--

(1) The Complainant owns rights on "EPSON".

(a) "EPSON" is the trademark created by the Complainant.

In Japan, the trademark "EPSON" was registered in 1975 at first and has been registered in all 1~45 classes. It has been recognized as the well-known trademark in Japan for many years. In China, the trademark "EPSON" was registered in 1989 at first and has been registered in class 7, class 9, class 10, class 11, class 14, class 16, class 17, class 21, class 26, class 38, class40 and class42. It is still in the term of validity. Furthermore, the Complainant also has registered the trademark "EPSON" in different classes in different countries, such as America, Germany, etc. In all, the Complainant has registered "EPSON" trademark for 1,157 times (in various classes) in 273 countries and fields in the world. In all 273 countries and fields, the "EPSON" trademark is registered in Class 9. This class of commodity is: LINE PRINTERS, PRINTERS, MAGNETIC DRUMS, MARKED CARD READERS, PAPER TAPE PUNCHERS, PAPER TAPE READERS, CASH REGISTERS AND PARTS THEREOF.

The Complainant is the register and owner of the trademark "EPSON" and has used "EPSON" as trademark in business field over 33 years. Owing to excellent management and extensive promotion, products and services, the "EPSON" brand is in the front rank around the globe. Moreover, in 2007, the trademark "爱普生 EPSON" owned by the Complainant was granted the well-known trademark in China.

(b) The Complainant has registered plenty of domain names including "EPSON" in China and the

world.

Using “EPSON” as the etyma, the Complainant sets up plenty of websites in different countries and regions, such as: www.epson.co.jp (Japan); www.epson.com (America); www.epson.com.hk (Hong Kong); www.epson.com.tw (Taiwan); www.epson.fr (France); www.epson.de (Germany), etc. The Complainant has registered over 70 domain names containing “EPSON”.

To sum up, “EPSON” is the registered trademark of the Complainant; the Complainant thus has undisputed prior right on “EPSON”.

(2) The disputed domain name is confusingly similar to the trademark “EPSON” of Complainant.

It is well-known that “EPSON” is a worldwide famous trademark which is owned by Complainant. The validity and fame of its trademarks are beyond dispute.

The disputed domain name “epsondriversdownload.com” consists of “epson”, “drivers” and “download”. “epson” is the well-known trademark and trade name of the Complainant. The Chinese translation of “drivers” is “驱动”, the Chinese translation of “download” is “下载”. And the products sold by EPSON Corporation also include drivers which can only be obtained through downloading in the website of EPSON Corporation. Meanwhile, the internet users may easily misunderstand that this domain name has some relation with EPSON Corporation or its products as well as business.

Accordingly, the domain name is confusingly similar to the trademark “EPSON” owned by Complainant and infringes the Complainant’s legal rights.

(3) The registrant has no rights or legitimate interests in respect of the domain name.

“EPSON” is a trademark and trade name originally created by Complainant. The Complainant has registered the trademark EPSON in a lot of countries. And its corporation name includes “EPSON”. It is beyond question that the Complainant has the prior right on “EPSON”.

The registrant has nothing to do with the Complainant, and there was no association between the trademark and his activities before registering the domain name. The Complainant has never authorized the registrant to use “EPSON” by any means. Besides these, the registrant registered the disputed domain name on Oct. 12, 2009, much later than the date when Complainant registered the trademark or its style.

So the registrant should be considered as having no rights or legitimate interests in respect of the domain name.

(4) The domain name has been registered in bad faith.

Since the trademark “EPSON” is so well-known in the world, and was granted the well-known trademark in September 2007 in China. And the disputed domain name was registered on Oct. 12, 2009, later than the recognition of well-known trademark.

The Complainant established the website www.epsondriversdownload.com by the use of this domain name. We can see the trademark “EPSON” as well as the words “Epson Driver Download” on the top of the webpage. When clicking the keyword link on the left side of the webpage, we can

see the download linkages of drivers of various types of products with EPSON brand. And these drivers can only be downloaded on the website of the Complainant. With no relationship with the Complainant and no authorization from him, the registrant established this website and provided the driver download, which have infringed the right of the Complainant.

Moreover, after noticing this domain name was preemptively registered by the registrant, the Complainant sent a C&D letter via email in respect of the infringement of Complainant's trademark right and trade name right on Oct. 30, 2009. However, after receiving the C&D letter from the Complainant, the registrant still set up the website by the use of the disputed domain name.

The trademark "EPSON" owned by the Complainant has a high reputation in China, thus the registrant knew clearly the existence of this famous trademark and still intended to confuse the consumers so as to gain improper interests.

Accordingly, the disputed domain name "epsondriversdownload.com" should be considered as having been registered in bad faith.

According to the Rules, and based on the reason above-mentioned, the Complainant requests the panel to make a decision that the disputed domain name "epsondriversdownload.com" should be transferred to the Complainant.

The Respondent

There's no Response came from the Respondent.

4. Findings

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

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

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the afore-said prerequisites. If all the answers are "yes", the Panel 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, the Complaint shall be rejected.

With regard to current dispute, a fundamental fact is that the Respondent failed to submit a defense or a response of any sort. Particularly, the Respondent did not exhibit any intention to RETAIN the disputed domain name. As stipulated in Paragraph 5(e) of the Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In light of this stipulation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and the accompanying exhibits unless proven otherwise or that the Panel, based upon its professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment or

any other enforceable decisions.

Identical or Confusing Similarity

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

According to the complaint, “epson” is the well-known trademark and trade name of the Complainant. While the Chinese translation of “drivers” is “驱动”; and the Chinese translation of “download” is “下载”. For the reason that the products sold by the Complainant also include drivers which can only be obtained through downloading in the website of EPSON Corporation, the Complainant believes that internet users may easily misunderstand that this domain name has some relation with the Complainant or its products as well as business.

Based on the facts above, the Complainant concludes that the disputed domain name is confusingly similar to the trademark “EPSON” owned by Complainant and infringes the Complainant’s legal rights.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the registered trademark. In this case, the identifying part of the domain name in dispute is “epsondriversdownload”, which might be identified as composed of three parts, namely “epson”, “drivers” and “download”. Among those, “drivers” means programs used to drive products, while “download” means taking something down from the websites of Internet. As the result, the exact identifying part of the domain name will be the first part, namely the part of “epson”, which is identical with the trademark EPSON. Putting those three parts as a whole, the term simply tells the Internet users where the drivers of EPSON products may be downloaded.

For this reason, the Panel agrees with the Complainant, and holds that the identifying part of the domain name in dispute is identical with the registered trademark “EPSON”, which belongs to the Complainant. And as a whole, “epsondriversdownload” is confusingly similar to the registered trademark. Thus the Complainant has satisfied the first requirement when claiming back a domain name registered by another as set forth in the Policy.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant’s claim.

The Complainant alleged that “EPSON” is a trademark and trade name originally created by Complainant. The Complainant has registered the trademark EPSON in a lot of countries in relation with various classes of products and services. And its corporation name also includes “EPSON”. It is beyond question that the Complainant has the prior right on “EPSON”.

The Complainant claimed that the registrant has nothing to do with the Complainant, as there was no association between the trademark and the Respondent’s activities before registering the domain name. The Complainant has never authorized the registrant to use “EPSON” by any means. As a conclusion, the Complainant claims that the Respondent has no rights or legitimate

interests on the disputed domain name.

As the Respondent has not provided any defense and contradicting materials, the Panel concludes that the Respondent has no rights or legitimate interest over the disputed domain name. The Complainant has satisfied the second requirement as set forth in the Policy.

Bad Faith

The Complainant also needs to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b)(i) of the Policy, the following 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."

The Complainant alleged that, since the trademark "EPSON" is so well-known in the world, and was granted the well-known trademark in September 2007 in China. And the disputed domain name was registered on Oct. 12, 2009, later than the recognition of well-known trademark, the Respondent should have acknowledged the trademark when registering the disputed domain name.

According to the complaint, the Complainant(it should be "the Respondent") established the website using the disputed domain name "epsondriversdownload.com", where the Internet users can see the trademark "EPSON" as well as the words "Epson Driver Download" on the top of the webpage. When clicking the keyword on the left side of the webpage, download links of drivers of various types of products with EPSON brand will be seen.

Moreover, after noticing this domain name was preemptively registered by the registrant, the Complainant sent a C&D letter via email in respect of the infringement of Complainant's trademark right and trade name right on Oct. 30, 2009. However, after receiving the C&D letter from the Complainant, the registrant still set up the website by the use of the disputed domain name.

Considering the high reputation of the trademark in China, the Complainant alleged that the purpose of the Respondent here is to confuse the consumers so as to gain improper interests. Accordingly, the disputed domain name "epsondriversdownload.com" should be considered as

having been registered and used in bad faith.

The Respondent did not deny the allegation of the Complainant.

The Panel agrees with the Complainant that, knowing the well-known characteristic of the trademark, the Respondent's registration and use of the disputed domain name falls under the circumstances in Paragraph 4(b)(iv) and shall be considered as evidence of the registration and use of the disputed domain name in bad faith. The Complainant has satisfied the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant has satisfied all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence its claims shall be held.

5. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds: the disputed domain name "epsondriversdownload.com" is confusingly similar to the Complainant's registered trademark "EPSON"; the Respondent has no right or legitimate interest with regard to the identifying part of the disputed domain name; the domain name was registered and subsequently used in bad faith.

Finally, the Panel decides the domain name "epsondriversdownload.com" be transferred to the Complainant.

Sole Panelist:



Dated: May 17, 2010