

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN 1000370

Complainant: SEIKO EPSON CORPORATION

Respondent: yao fenglei

Domain Name: epsong.com

Registrar: MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE

1. Procedural History

On June 25, 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 (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules").

On June 28, 2010, the ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE (the Registrar of the domain name) a request for registrar verification in connection with the domain name in dispute. On August 10, 2010, MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE transmitted by email to the 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.

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

On September 7, 2010, the ADNDRC Beijing Office notified the Complainant

that the Complaint had been confirmed and forwarded and the proceedings commenced on September 7, 2010. On the same day, the Notifications of Commencement of Proceedings were notified to the Respondent, ICANN and the Registrar.

Till September 27, 2010, the last day of the fixed period of Response, no submission came from the Respondent.

On October 11, 2010, the ADNDRC Beijing Office noticed the parties that, as there's no response from the Respondent, The ADNDRC Beijing Office would appointed the Panelist shortly, and the case would be decided by default.

On October 12, 2010, the ADNDRC Beijing Office notified the Proposed Panelist Mr. Lian Yunze, to see whether he is available to act as the Panelist in this case and if so, whether he 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 Mr. Lian Yunze, on October 13, 2010, the Centre informed the Complainant and the Respondent of the appointment of the Panelist, transferred the case file to the Panel, and asked the Panel to submit a decision on or before October 27, 2010.

The language of the proceedings is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules and there being no agreement by the disputing parties to the contrary.

2. Factual Background

For the Complainant

The Complainant is SEIKO EPSON CORPORATION represented by its authorized agent Linda Liu & Partners, residing at F16 Tower C, Beijing Global Trade Center, 36 North Third Ring East Road, Dongcheng District, Beijing 100013 P. R. China

For the Respondent

The Respondent is yao fenglei with the address of jiefang Road, jiefang building. The Respondent registered the disputed domain name with the registrar

MELBOURNE IT, LTD. D/B/A INTERNET NAMES WORLDWIDE on May 13, 2010.

3. Parties' Contentions

The Complainant

The Complainant contends that:

(1) A brief introduction of the Complainant

SEIKO EPSON CORPORATION (hereinafter referred to as the Complainant) is a well-known global company which 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.

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. The Complainant owns the world biggest factory producing printer and Quartz Crystal Oscillator in China. In 2003, its total output value was RMB27.4 billion and the sales value was RMB 7.67 billion in China. In addition, the Complainant is the main supplier of printer products in Chinese market, Epson Printer owns a high reputation among the consumers and gains numerous awards and honors by authorized professional medias.

(2) Trademarks of the Complainant

“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, class 40 and

class 42. 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.

The Complainant is the 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.

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

(3) The Disputed Domain Name is confusingly similar to the trademark “EPSON” of the Complainant.

It is well-known that “EPSON” is a worldwide famous trademark which is owned by the Complainant. The validity and fame of its trademarks are beyond dispute. The Disputed Domain Name “EPSONG.COM” consists of “EPSON” and letter “G”. “EPSON” is the well-known trademark and trade name of the Complainant. The single letter “G” bears no specific meaning. Accordingly, the Domain Name “epsong.com” is confusingly similar to the trademark “EPSON” owned by the Complainant and infringes the Complainant’s legal rights.

(4) The registrant has no rights or legitimate interests in respect of the Domain Name.

“EPSON” is a trademark and trade name originally created by the Complainant. The Complainant has registered the trademark EPSON in a lot of countries. 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, the registrant registered the Disputed Domain Name on May 13, 2010, much later than the date when the Complainant registered the trademark.

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

(5) 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. The Disputed Domain Name was registered on May 13, 2010, later than the recognition of well-known trademark.

The Complainant established the website “www.epsong.com” by using this Domain Name. This domain name is linked to a website publicizing the knowledge of beauty and diet, which have infringed the business fame and trade right of the Complainant.

Moreover, after noticing that this Domain Name was preemptively registered by the registrant, the Complainant sent a C&D letter via email in respect of the infringement of the Complainant’s trademark right and trade name right on May 17, 2010. However, after receiving the C&D letter from the Complainant, the registrant still set up the website by using 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 “epsong.com” should be considered as having been registered in bad faith.

According to the Policy and in light of the above reasons, the Complainant requests the Panel to rule that the Disputed Domain Name in this case shall be transferred to the Complainant.

The Respondent

The Respondent didn't respond to the Complaint.

4. Findings

Under paragraph 4(a) of the Policy, the Complainant must prove the following:

- (i) That the domain name of the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 is being used in bad faith.

Identical or Confusing Similarity

Under paragraph 4(a)(i) of the Policy the Complainant must show that the Disputed Domain Name is “identical or confusingly similar to a trademark or service mark in which the Complainant has rights”.

The Complainant has provided evidence of owning many registered trademarks consisting of “EPSON” in China. The Panel finds that one of the Complainant's earliest registered trademarks in China “EPSON” (No. 341841) was registered in the good of “printer”, “computer” etc. in class 9 on March 10 of 1989, and it is still in the term of validity after renewal. The registration date of the afore-mentioned trademark is much earlier than the registration date of the disputed domain name, i.e. May 13 of 2010. Besides this trademark, the Panel finds that the Complainant also registered many other trademarks consisting of “EPSON” in China prior to the registration date of the disputed domain name, including No. 346604 in class 10, No. 343482 in class 11, No. 341657 in class 14, No. 346827 in class 14, No. 343143 in class 16, No. 1160666 in class 16, No. 341555 in class 24, No. 384819 in class 21, No. 382283 in class 26, No. 771171 in class 38, No. 770460 in class 42, No. 340961 in class 7, No. 341980 in class 7, No. 342686 in class 7, No. 1201728 in class 9, No. 1244955 in class 9, and the designated goods cover printers, projectors, consuming materials,

electronic equipment products such as semi-conduct, LCD, Quartz Crystal Oscillator etc. Thus the Panel is of the view that the Complainant has the prior trademark right to “EPSON”.

As such, what the Panel needs to do is to make a conclusion on the identity or confusing similarity between the Complainant’s registered trademark “EPSON” and the disputed domain name “epsong.com”. Since the “.com” suffix is not taken into account in the comparison, the Panel finds that the main part of the Disputed Domain Name “epsong.com” is different from the Complainant’s trademark by adding a letter “g”. Because “g” is meaningless and bears no distinctiveness, and this letter does not make the main part of the disputed domain name materially distinguished from the trademark “EPSON” of the Complainant, the Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant’s trademark.

For the foregoing reasons, the Panel finds that paragraph 4(a)(i) of the Policy has been satisfied.

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 contended that the registrant had 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.

The Panel holds that when the Complaint shows prima facie evidence that the Respondent lacks rights or legitimate interests, the burden of proof to the contrary evidence will shift to the Respondent. Because the Respondent fails to produce evidence to the contrary, the Panel concludes that the Respondent has no rights or legitimate interests over the disputed domain name.

Considering the foregoing, the Panel concludes that the paragraph 4(a)(ii) of the Policy has been satisfied.

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 evidence of the Complainant, Decision (2007) Trademark Opposition No. 04756 of China Trademark Office, indicates that the Complainant's trademark "EPSON" is a well-known trademark in China. As the Respondent did not challenge this evidence, the Panel accepts this evidence and recognizes that the Complainant's trademark is of great fame in China before the registration date of

the disputed domain name and that the Respondent knew or should know the trademark of “EPSON” before applied for the registration of the disputed domain name. The Panel therefore holds that the Respondent registered the disputed domain name in bad faith.

According to the Complaint and the evidence submitted by the Complainant, the Respondent established a website publicizing the knowledge of beauty and diet, by using the disputed domain name “epsong.com”. Considering the high reputation of the trademark in China, and that the disputed domain name is confusingly similar with the Complainant’s trademark, the Panel concludes, that the Respondent using the disputed domain name in this way will make the internet users think by mistake that the Complainant now engages in the field of beauty and diet, and will increase click ratio and awareness of the Respondent’s website, and that the Respondent may gain improper commercial interests on this ground. Therefore, the action of the Respondent falls under the circumstances in Paragraph 4(b)(iv) and shall be considered using the disputed domain name in bad faith.

Considering the foregoing, the Panel concludes that the Respondent registered and is using the domain name in bad faith and that the requirement of paragraph 4(a)(iii) of the Policy has been satisfied.

5. Decision

For all the forgoing reasons, in accordance with paragraphs 4(a) of the Policy and 5(e) of the Rules, the Panel decides that the Complainant has proved sufficiently the three elements of Paragraph 4(a) of the Policy. Accordingly, the Panel decides that the disputed domain name should be transferred to the Complainant i.e. SEIKO EPSON CORPORATION.

The Sole Panelist: 

Dated: 27th October, 2010