Asian Domain Name Dispute Resolution Center
Beijing Office
Administrative Panel Decision
Case No. CN-1200562

Complainant: Bosch Rexroth AG
Respondent: Jiangsu Hengyuan Hydraulic Co., Ltd
Domain Name: rexrothhydraulicpump.com
Registrar: GODADDY.COM, INC.

1、Procedural History

On 21 May 2012, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected 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 25 May 2012, the ADNDRC sent to the Complainant by email an acknowledgement of the receipt of the complaint.

On 25 May 2012, the ADNDRC transmitted by email to the Registrar GODADDY.COM, INC. and ICANN a request for registrar verification in connection with the disputed domain name.

On 26 May 2012, The Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 12 June 2012, The ADNDRC transmitted the Complaint to the Respondent. Then the ADNDRC notified the Respondent of the commencement of the proceedings. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified ICANN and the Registrar of the commencement of the proceedings.

On 21 July 2012, The Respondent failed to submit a Response within the specified time period. The ADNDRC notified the Respondent's default and informed the Complainant and Respondent that the ADNDRC would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the Panel in this case had been appointed, with Mr. ZHAO Yun acting as the sole panelist on 19 July 2012.

On 19 July 2012, the Panel received the file from the ADNDRC and were required to render the Decision within 14 days, i.e., on or before 2 August 2012.

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2、Factual Background

For the Complainant

The Complainant in this case is Bosch Rexroth AG. The registered address is Heldehofstr. 31, D-70184 Stuttgart, Germany. The authorized representative in this case is Wu Yuhe and Li Rongxin from China Patent Agent (H.K.) Ltd.

For the Respondent

The Respondent in this case is Jiangsu Hengyuan Hydraulic Co., Ltd. The registered address is No. 810, Heping Road, Jingdu Building, Qidong City, Jiangsu Province, China. The Respondent is the current registrant of the disputed domain name “rexrothhydraulicpump.com” according to the Whois information.

3、Parties’ Contentions

Complainant

（1）The domain name at issue is confusingly similar to the Complainant’s trademark “REXROTH” and trade name “BOSCH REXROTH”.

The Complainant is one of the world’s leading specialists in the field of drive and control technologies. Under the brand name of Rexroth, the Complainant supplies more than 500,000 customers with tailored solutions for driving, controlling and moving. As the Drive & Control Company, the Complainant develops, produces and sells components and systems in more than 80 countries in the technology fields: Electric Drives and Controls, Industrial Hydraulics, Mobile Hydraulics, Linear Technology, Assembly Technology and Pneumatics.

Since 1996, Bosch Rexroth (Beijing) Hydraulic Co., Ltd, one of the most important manufacturing bases of the Complainant in China, has been successfully operating to offer customers with hydraulic components and systems, generator gearboxes for wind turbines, and frequency converters.

The Company has two factories in Beijing Yizhuang Economic and Technology Development Area with building area of 100,000 square meters and more than 1,100 staff. The Bosch Rexroth Beijing has provided the most advanced manufacturing technique and professional products and services to the Chinese customers.

The Complainant has been extensively using the trademark “REXROTH” on the goods of “hydraulic components” and etc. in China. The Complainant’s subsidiaries Shanghai Bosch Rexroth Hydraulics & Automation Ltd. and Bosch Rexroth (China) Ltd. have sold a large number of hydraulic products with the trademark “REXROTH”.

Machine Tool & Hydraulics is a famous magazine in the industry of hydraulic component in China. The Complainant has promoted its products and the trademark “REXROTH” was prominently used on the magazine.

The Complainant has registered 11 trademarks concerning “REXROTH” and 9 marks concerning “力士乐” in China. Those trademarks are approved by the Chinese Trademark Office to be used in respect of the goods and services concerning various hydraulic devices and the parts thereof and the related services. From 2000 to 2003, the Complainant registered the domain names with a major part of “boschrexroth” and those domain names are all valid and active at the present time.

“BOSCH REXROTH” is the major part of the Complainant’s full company name, and “AG” in the company’s name only reflects the enterprise’s business nature. The Complainant, in its commercial promotions all over the world including China, has been using “BOSCH REXROTH” to indicate the company. The relevant public is also used to call the Complainant “BOSCH REXROTH”, and in China call the Complainant “博世力士乐”, which is the Chinese translation of “BOSCH REXROTH”.

The Complainant has civil rights including trademarks and trade name over “REXROTH” and “BOSCH REXROTH”, and is the registrant of the domain names boschrexroth.com, boschrexroth.net and boschrexroth.org. And those civil rights all created prior to the registration date of the disputed domain name, i.e. 8 December 2011. The “.com” in the disputed domain name “rexrothhydraulicpump.com” is a generic Top-Level Domain and does not play any distinctive role. Therefore, the Complainant believes that, the disputed domain name’s identifying part “rexrothhydraulicpump” shall be the key issue to be considered in evaluating the similarity of the domain name as compared with the Complainant’s “REXROTH” and “BOSCH REXROTH”.

This “rexrothhydraulicpump” is composed of two parts, i.e. it consists of both the Complainant’s trademark “REXROTH” and the word “hydraulicpump”. Its first part is identical to the Complainant’s trademark “REXROTH” and the latter part of the trade name “BOSCH REXROTH”. And the second part “hydraulicpump” is the generic term and belongs to the goods designated by the Complainant’s trademarks.

The Complainant provides customers all over the world including China with products and services relating to Electric Drives and Controls, Hydraulic Pumps and motors and etc., under the Brand “REXROTH” and its Chinese translation “力士乐”. In addition, the website running under the disputed domain name also shows several words in its column “All products” that “Rexroth Axial Pump, Rexroth Hydraulic Pump, Rexroth Hydraulic Pump parts” and etc., which words are all related to the Complainant’s brand “REXROTH” and the goods and products manufactured by the Complainant. When the public see and visit the website “rexrothhydraulicpump.com” or conduct Internet searches for the website, they will be misled to believe that the website was created by the Complainant or should be somewhat related to the Complainant given the extremely high fame of the Complainant’s hydraulic products and its trademark “REXROTH”. So the disputed domain name is confusingly similar to the Complainant’s trademark “REXROTH” and might cause confusion among the public, and its use and registration will inevitably harm the rights and legitimate interests of the Complainant.

Besides the Respondent, some other competitors intended to take advantage of the high reputation of the Complainant, its “REXROTH” trademark and “BOSCH REXROTH” trade name, and illegally grabbed several domain names. The Complainant has successfully solved the domain name disputes regarding “boschrexrothchina.com” and “rexrothhydraulic.com” before the ADNDRC Beijing Office.

（2）The Respondent has no rights or legitimate interests in respect of the disputed domain name.

“REXROTH”, the major part of the Complainant’s company name, does not indicate any specific meaning by itself, was independently created by the Complainant and has a high distinctiveness. On account of long-term use, registration and promotion, “REXROTH” has acquired extremely high fame and reputation around the world and the public has solely associated “REXROTH” with the Complainant. Furthermore, while conducting searches through the Chinese Trademark Office’s website, one would find that the Respondent has never registered trademarks over “REXROTH”. The Complainant does not have business relationship with the Respondent and never authorized nor licensed the Respondent to use REXROTH trademark, so the Respondent has not rights or interests to the disputed domain name.

（3）The Respondent had obvious bad faith in registering and using the disputed domain name.

The Respondent has no rights or legitimate interests in respect of the major part “rexrothhydraulicpump” of the disputed domain name. After registering the disputed domain name, the Respondent opened a website on the domain name and showed the related words including “Rexroth Axial pump, Rexroth Hydraulic Pump, Rexroth Hydraulic Pump Parts” on the website. Therefore, the disputed domain name is easily and mistakenly regarded by the public as an official website of the Complainant or might be associated with the Complainant. However, the Respondent’s website has no business relation to

the Complainant, and the Respondent is taking free ride of the high fame of the Complainant's trademark "REXROTH" and daydreamed to reap illegal high profits by taking advantage of the Complainant's good reputation.

Considering the high reputation of the trademark/trade name "REXROTH", it is most impossible that the Respondent independently designed and registered the disputed domain name with never knowing the Complainant's trademark, trade name and domain names concerning "REXROTH". The Respondent's registration and use of the disputed domain name is in bad faith and constitutes copy and plagiarism of the Complainant's trademark and trade name. According to Para. 4b(iv) of the Policy, "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", such acts shall be evidence of the Respondent's registration and use of a domain name in bad faith.

Evidently the Respondent would take free ride of the high fame of the Complainant's trademarks, trade name and domain names concerning "REXROTH" and daydreamed to reap illegal high profits through transferring the domain name to the Complainant or other competitors in this field. The malicious conducts of the Respondent not only infringed upon the Complainant's trademark right but also violated the governing principles of honesty and credit in PRC civil laws.

In conclusion, though the Respondent completely knows the ownership and the reputation of the Complainant's trademarks all over the world, it still intentionally registered the disputed domain name which is misleadingly similar to the Complainant's registered trademarks, trade name and domain names and the website directed by the disputed domain name uses a lot of information concerning "REXROTH" and "BOSCH REXROTH" of the Complainant without authority, which has infringed on the trademark and trade name right of the Complainant. The intent of the registration obviously is to make the customers misunderstand that there is some relation between the Complainant and the Respondent, and the Respondent also intends to make illegal profits by taking advantage of the reputation and the popularity of the Complainant.

According to the reasons clarified above, the Complainant requests the Panel to issue a decision to transfer the Disputed Domain Name to the Complainant.

Respondent

The Respondent failed to submit a Response within the specified time period.

4、Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall 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."

Paragraph 4 (a) of the Policy requires that the Complainant should prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

1) 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
2) the Respondent has no rights or legitimate interests in respect of the domain name; and
3) the domain name has been registered and is being used in bad faith.

Identity/Confusingly Similarity

The Complainant is a famous German company in the field of drive and control technologies. The major part of the Complainant's trade name is "BOSCH REXROTH", thus the Complainant enjoys the trade name right over "BOSCH REXROTH". The evidence shows that the Complainant registered the trademark "REXROTH" in mainland China as early as 1992. This trademark is still within the protection period. Obviously, the registration date of the trademark is much earlier than the registration date of the disputed domain name (8 December 2011). The Panel has no problem in finding that the Complainant enjoys the prior rights in the trademark "REXROTH".

The disputed domain name is "rexrothhydraulicpump.com". As the suffix ".com" only indicates that the domain name is registered under this gTLD and is not distinctive, the main part of the disputed domain name is "rexrothhydraulicpump". This main part consists of two sub-parts ("rexroth"and "hydraulicpump"). Obviously, the first sub-part ("rexroth") is identical to the Complainant's trademark "REXROTH". The second sub-part ("hydraulicpump") can be further divided into two English words "hydraulic" and "pump". The term "hydraulic pump" is exactly one major products of the Complainant and thus is not distinctive. The addition of "hydraulic pump" to the Complainant's trademark "REXROTH" does not differentiate the main part of the disputed domain name from the Complainant's trademark; with "hydraulic pump" being a major product of the Complainant, such an addition, on the contrary, strengthens the connection between the disputed domain name and the Complainant's trademark.

The Panel therefore holds that the Complaint fulfills the condition provided in Paragraph 4 (a)(i) of the Policy

Rights and Legitimate Interests

The Complainant contends that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainant has never authorized the Respondent to use the trademark or the domain name. The

Complainant's assertion is sufficient to establish a *prima facie* case under Policy 4 (a)(ii), thereby shifting the burden to the Respondent to present evidence of its rights or legitimate interests.

Under Paragraph 4 (c) of the Policy, the following are relevant examples a Panel may take as evidence of the Respondent's rights or legitimate interests to the disputed domain name:

(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 trademark 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.

Obviously, the above circumstances do not exist in the current case. The evidence shows that the Respondent has not carried out the business in good faith, which will be further discussed in the next part. The Respondent has not been commonly known by the domain name. It is clear from the website of the disputed domain name that the Respondent is making commercial use of the domain name. As such, the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the disputed domain name. The act of registering the disputed domain name does not automatically endow any legal rights or interests with the Respondent.

The Panel therefore finds that the Complaint fulfills the condition provided in Paragraph 4(a)(ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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.

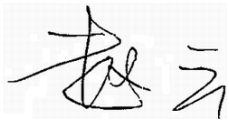
The Complainant is a famous German company in the field of drive and control technologies. The evidence shows that the earliest trademark was registered in 1992 in mainland China and that the trademark is still in the protection period. The trademark has been registered for various categories of products, including hydraulic pumps. Through extensive use, advertisement and promotion, the trademark “REXROTH” has achieved a strong reputation around the world. As such, the public has come to recognize and associate the Complainant’s trademark as originating from the Complainant and no other. The fact that the website of the disputed domain name contains the trademark “REXROTH” and the same product “hydraulic pump” is obvious to all that the Respondent is aware of the existence of the Complainant and its trademark. The action of registering the disputed domain name *per se* has constituted bad faith. Actually, it is impossible to conceive of any plausible active use of the disputed domain name by the Respondent that would not be illegitimate.

The evidence further shows that the website of the disputed domain name has been designed to sell the same products trademarked “REXROTH” as the Complainant. In fact, the Complainant has never authorized the Respondent to use the trademark or sell these products. This is exactly the type of bad faith use of the disputed domain name as identified in the Policy, i.e. the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the website or other on-line location, by creating a likelihood of confusion with the Complainant’s trademark as to source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on the website or location.

The Panel concludes that the Respondent has registered and used the domain name in bad faith. Accordingly, the Panel finds that the Complaint satisfies the condition provided in Paragraph 4 (a) (iii) of the Policy.

5、Decision

For the foregoing reasons, the Panel orders that the domain name “rexrothhydraulicpump.com” be transferred to the Complainant, Bosch Rexroth AG.



DATED: 2 August 2012