



Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK - 18010152
Complainant:	BASF SE
Respondent:	Zhang Xiaojing / Shang Hai Mu Xin Jian Zhu Zhuang Shi Gong Cheng You Xian Gong Si 上海睦鑫建筑装饰工程 有限公司
Disputed Domain Name(s):	<ttbasf.com>

1. Procedural History

The complainant, in this case, is BASF SE a corporation organized under the laws of Indonesia, whose address is 67056 Ludwigshafen, Germany (“Complainant”). Their authorized representative in these proceedings is IP TWINS SAS.

The respondent is Zhang Xiaojing, Zhang Xiaojing / Shang Hai Mu Xin Jian Zhu Zhuang Shi Gong Cheng You Xian Gong Si 上海睦鑫建筑装饰工程有限公司 whose address in Whois is 327 Jinzhai Road, Hefei, 10th Floor, XinHongAn, he fei shi, an hui 230061, CN.

The domain name in dispute is <ttbasf.com>. The Registrar of the domain name is Alibaba Cloud Computing Ltd. d/b/a HiChina, whose address is Alibaba, Building No.9 Wangjing East Garden 4th Area, Chaoyang Beijing 100102, China.

On 13 July 2018, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (“the Rules”) and Asian Domain Name Dispute Resolution Supplemental Rules (“the ADNDRC Supplemental Rules”), the Complainant submitted a complaint in the English language to the Hong Kong Office of the ADNDRC (the "HK

Office of the Centre”) and elected this case to be dealt with by a single-member panel. On 17 July 2018, the HK Office of the Centre sent to the Complainant by email an acknowledgment of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the HK Office of the Centre Supplemental Rules. On 17 July 2018, the HK Office of the Centre notified the Registrar of the Complaint by email. On 25 July 2018, the HK Office of the Centre resent its notification to the Registrar and received the reply from the Registrar on the same day.

On 25 July 2018, the HK Office of the Centre notified the Complainant of the deficiency of the Complaint and requested Complainant to rectify, within 5 calendar days, the deficiency by changing the name of the Respondent to “Zhang Xiaojing” according to the Whois information provided by the Registrar. On the same day, the HK Office of the Centre received a revised Complaint submitted by the Complainant.

On 26 July 2018, the HK Office of the Centre confirmed by email that the Complaint is in administrative compliance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") and its Rules. All abovementioned correspondence to and from the HK Office of the Centre was in the English language.

On 26 July 2018, the HK Office of the Centre sent a Written Notice of Complaint to the Respondent in both Chinese and English, notifying the Respondent of the commencement of the proceedings and that the deadline for submitting the response is 15 August 2018.

On 22 August 2018, the Hong Kong Office of the Centre sent email to the Parties in both Chinese and English regarding the language of the proceeding informing the Parties that:

"The language of the Registration Agreement of the disputed domain name < ttbasf.com > is Chinese. Therefore the language of the proceedings of this complaint should be Chinese. However, the Complainant may request to use English as the language of the proceedings and provide reasons, and the Respondent may respond to such a request. The Panelist shall make the final determination on the language issue. "

On 22 August 2018, the Complainant replied the HK Office of the Centre reiterating its request for using English as the language of the proceedings with reasons provided.

On 3 September 2018, the HK Office of the Centre sent email to Mr. Dennis CAI for listing as a

candidate of the panelist. On 6 September, Mr. Dennis CAI confirmed that he is available to act as a panelist for this case, and if appointed, he can act independently and impartially between the parties.

On 7 September 2018, the HK Office of the Centre notified the parties that the Panel in this case had been selected, with Mr. Dennis CAI acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

2. Factual Background

For the Complainant

BASF is the largest chemical company in the world and is listed on the Frankfurt Stock Exchange, London Stock Exchange, and Zurich Stock Exchange. The BASF Group comprises subsidiaries and joint ventures in more than 80 countries and operates six integrated production sites and 390 other production sites in Europe, Asia, Australia, Americas, and Africa.

BASF has customers in over 200 countries and supplies products to a wide variety of industries, employing more than 112,000 people around the world. Therefore, BASF SE is undoubtedly a major, well-known company. BASF SE owns more than 1500 trademark rights for “BASF” worldwide. Moreover, BASF SE is notably the owner of the following trademarks registered years before the contested domain names in a very large number of jurisdictions (*Complain Annex 2- copies of the trademark portfolio of BASF SE*).

Moreover, BASF SE has owned trademark rights in CHINA years before the registration of the contested domain name. The Complainant has Chinese trademark “巴斯夫” (BASF) since 1988 which cover large classes of goods and services. The Complainant never stopped protecting its trademark rights in China. Today, the Complainant owns about 127 Chinese trademarks

“ 巴斯夫 ” (BASF) which cover large classes of goods and services (*Complaint Annex 3- certificates printout from Chinese Trademark Office Database*)

Besides, the Complainant owns also the International trademark “BASF” n° 909293 designating China. This trademark filed in 2006 and registered in 2007 covers large classes of goods and services. (*Complaint Annex 4- certificates printout from WIPO*).

For the respondent

The Respondent registered the Disputed Domain Name on 25 December 2013. The Respondent files no Response to the Complaint.

3. Parties’ Contention

The Complainant

The Complainant asserts that the Disputed Domain Name is identical or confusingly similar to the Complainant’s marks, in that the domain name at issue is comprised of the BASF mark.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the domain name, and that the Respondent's domain name has been registered and is being used in bad faith.

The Respondent

The respondent did not file a response within the stipulated time.

4. Findings

4.1 Preliminary Issue

The language of the Proceedings

According to paragraph 11 of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceedings shall be the language of the Registration Agreement, subject to Panel’s authority to determine otherwise, According to the Registrar’s reply, the language of the Registration Agreement of the disputed domain name is Chinese.

The Complainant submitted the Complaint in English, and requested that the proceedings be conducted in English mainly based on the following grounds:

- On the homepage, there is an English phrase "The Chemical Company" as the prominent term.
- Besides, the Respondent uses English to present and sell products on the website.
- All the reference of the products in English have been translated into Chinese. This indicates the respondent can understand perfectly English.

After being notified of the Complaint and the language issue, The Respondent did not file any submissions on this issue. Hence, there is no agreement between the parties with respect to the language of the present proceedings.

According to Paragraph 11(a) of the Rules, the panel may determine the language of the proceeding having regard to all the circumstances. The Panel considers that the submissions put forward by the Complainant support the possibility that the Respondent is conversant in English.

Having considered all the circumstances of the present case, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

4.2 Substantial Issues

Paragraph 15(a) of the Rules directs 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 directs that the Complainant must prove **each of** the following:

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

Identical or Confusing Similarity

The Complainant has established that registered trademark rights in the trademark BASF existed prior to the time that Respondent registered the Disputed Domain Name. The Panel also accepts

the Complainant's contention that its trademark BASF is a famous trademark.

When accessing whether the Disputed Domain Name is identical and confusingly similar to the Complainant's trademark, it has been well established that the ".com" generic top-level part should not be considered. The Panel is of the view that the Complainant's mark BASF is a coined term, which has already gained a very high distinctiveness by the Complainant's substantial use of the trademark internationally (including China where the Respondent is located) for a long period of time. Given the very high distinctiveness of the trademark BASF, the inclusion of the entire trademark in the second level domain generally renders the Disputed Domain Name confusingly similar to the trademark, even though there are other characters included in the second level. Therefore, the Panel accepts the Complainant's contention that additional element "tt" in the contested domain names can't avoid the confusion between the Complainant's trademark and the contested domain name.

On this basis, the Panel finds that the Disputed Domain Name <ttbasf.com> is confusingly similar to the Complainant's other registered mark.


Rights or Legitimate Interests of the Respondent

The Complainant has contended that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, such as the Complaint has never authorized the Respondent to use the trademark and the Respondent is not commonly known by the mark BASF. The Panel considers that the Complaint has established a *prima facie* case in this element, and the burden of proof has been shifted to the Respondent. (*Croatia Airlines d.d. vs. Modern Empire Internet Ltd., WIPO Case ID D2003-0455*). Respondent has failed to show that Respondent has any rights or legitimate interests in respect of the Disputed Domain Name, which entitles the Panel to infer that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

Bad Faith

UDRP requires the Complaint to establish that the Disputed Domain Name was registered and is being used in bad faith to seek transfer of the Disputed Domain Name.

Evidence put forward by the Complainant proves that the Complainant's trademark BASF has become a significant identifier of the Complainant's goods and services, which enjoys a high reputation worldwide.

The Complainant has put forward evidence showing that a logo  is presented in the dominant place of the homepage of the website resolved by the Disputed Domain Name, and this logo is identical to the one on the Complainant's official website.

The Complainant has also alleged that Respondent's false statements on the website corresponding to the disputed domain name creates a false affiliation between themselves and the Complainant.

The panel finds that the Respondent and the Complainant are in the same industry, as the products displayed on the Respondent's website are identical or of close connection to those offered by the Complainant. As such, the Panel infers that the Respondent must have sufficiently known about the Complainant's trademark and reputation before registering the Disputed Domain Name. Under this circumstance and in the absence of legitimate rights and interests, the Respondent still chose to register the Disputed Domain Name. The Panel finds that this constitutes registration of domain name in bad faith.

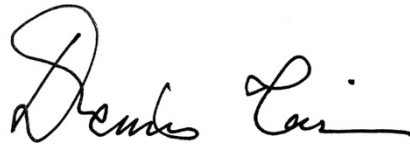
Paragraph 4(b)(iv) of the Policy provides that "by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location". In the present case, the Panel finds that the Respondent's registration and use of the Disputed Domain Name are in bad faith under Para 4(b)(iv) of the Policy

The Panel concludes that the Disputed Domain Name has been registered and is being used in bad faith.

5. Decision

For all of the foregoing reasons, the Panel decides that the domain name registered by Respondent is confusingly similar to the mark in which the Complainant has rights, that the

Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and that the Respondent's domain name has been registered and is being used in bad faith. Accordingly, pursuant to Paragraph 4(i) of the Policy, the Panel orders that the registration of the domain name <ttbasf.com> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read "Dennis Cai". The signature is fluid and cursive, with a large initial "D" and a period at the end of the name.

Dennis Cai
Sole Panelist
DATED: 21 Sep 2018