



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-18010198
Complainant:	AB Electrolux
Respondent:	Huynh Van Dai
Disputed Domain Name(s):	<baohanhelectroluxhcm.com>

1. The Parties and Contested Domain Name

The Complainant is **AB Electrolux**, of Stockholm, Sweden.

The Respondent is **Huynh Van Dai**, of TP, Ho Chi Minh City, Vietnam.

The domain name at issue is **<baohanhelectroluxhcm.com>**, (“Domain Name”) registered by the Respondent with P.A. Viet Nam Company Limited, of Ho Chi Minh City, Vietnam.

2. Procedural History

On 5 December 2018, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999. The Centre confirmed receipt of the Complaint that same day. The Complainant elected that this case be decided by a single panelist.

On 6 December 2018, the Centre transmitted by email to the Registrar, P.A. Viet Nam Company Limited, a request for registrar verification of the disputed domain name. On 7 December 2018, the Registrar transmitted by email to the Centre its verification response, confirming that the Respondent is listed as the Registrant and providing contact details.

On 11 December 2018, following notification from the Centre that the language of the Registration Agreement was Vietnamese, the Complainant filed a request that the language of the proceedings be English.

On 12 December 2018, the Centre transmitted the Complaint and evidence to the Respondent, notifying the Respondent of the commencement of the action and requesting that the Respondent submit a Response within 20 calendar days.

On 3 January 2019, the Centre replied to the Complainant, advising that a Response to the Complaint had not been submitted to the Centre within the required period of time. Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules for Uniform Domain Name Dispute Resolution Policy (“Rules”), the ADNDRC Supplemental Rules, and the Notification, the Centre informed the Complainant and Respondent that the Centre would appoint a single-member panel to proceed to render the decision.

On 14 January 2019, having received confirmation of his impartiality and independence, the Centre notified the parties that the Panel in this case had been selected, with Mr. Nicholas Smith acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules.

On 21 January 2019, the Panel issued an order (discussed further below) that the Complainant provide a Vietnamese translation of the Complaint with the Centre, following which the Respondent will be provided with a copy of the translated Complaint and have 20 calendar days to submit a Response. On 30 January 2019 the Complainant provided the Centre with a copy of the Complaint translated into Vietnamese, which was subsequently provided to the Respondent, with the Respondent having until 19 February 2019 to provide any Response to the translated Complaint. No Response has been received.

The Language of the Proceedings

The language of the registration agreement for the Domain Name is Vietnamese.

Pursuant to paragraph 11 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. The Complainant, upon receiving a notification that the language of the registration agreement for the Domain Name was Vietnamese from the Centre, submitted a request for this dispute to proceed in English. The Centre made a preliminary determination to accept the Complaint filed in English, subject to a determination by the Panel pursuant to paragraph 11 of Rules.

The WIPO Overview 3.0, paragraph 4.5.1, in considering how the (working) language of a UDRP proceeding is determined, states:

Against this background, panels have found that certain scenarios may warrant proceeding in a language other than that of the registration agreement. Such scenarios include (i) evidence showing that the respondent can understand the language of the complaint, (ii) the language/script of the domain name particularly where the same as that of the complainant’s mark, (iii) any content on the webpage under the disputed domain name, (iv) prior cases involving the respondent in a particular language, (v) prior correspondence between the parties, (vi) potential unfairness or unwarranted delay in ordering the complainant to translate the complaint, (vii) evidence of other respondent-controlled domain names registered, used, or corresponding to a particular language, (viii) in cases involving multiple domain names, the use of a particular language agreement for some (but not all) of the disputed domain names, (ix) currencies accepted on the webpage under the disputed domain name, or (x) other indicia tending to show that it would not be unfair to proceed in a language other than that of the registration agreement.

The credibility of any submissions by the parties and in particular those of the respondent (or lack of reaction after having been given a fair chance to comment) are particularly relevant.

Where it appears the parties reasonably understand the nature of the proceedings, panels have also determined the language of the proceeding/decision taking account of the panel's ability to understand the language of both the complaint and the response such that each party may submit pleadings in a language with which it is familiar.

In adopting a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs; see *Groupe Auchan v. xmxzl*, WIPO Case No. DCC2006-0004; *Finter Bank Zurich v. Shumin Peng*, WIPO Case No. D2006-0432.

In the present case the Panel considered the Complainant's request and was not persuaded by the evidence before it that there is a likely possibility that the Respondent is conversant in English. The Respondent is Vietnamese. The website to which the Domain Name resolves to is in Vietnamese targeted at Vietnam. The Domain Name does not contain any English words and the Complainant has provided no other significant evidence of the Respondent's capacity to communicate in the English language. As a result the Panel issued an order that the Complainant provide a version of the Complaint translated into Vietnamese to ensure that the Respondent was given a fair opportunity to present its case.

The Respondent has chosen not to file a Response to the Complaint or participate in the proceeding in any way. Paragraph 10(b) of the Rules provides that "In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case." The Panel, now satisfied that the Respondent has been provided with a fair opportunity to present its case in English or Vietnamese and has in no way been disadvantaged, considers it appropriate to render its decision in English pursuant to paragraph 11(a) of the Rules.

3. Factual background

The Complainant, AB Electrolux, is a Swedish company founded in 1901 and produces appliances and equipment for kitchens as well as cleaning and floor care products. The Complainant is the owner of numerous registered trade marks featuring the word "electrolux" (the "ELECTROLUX Mark"), including a registered mark in Vietnam, the location of the Respondent, first registered in 2003. In addition, the Complainant is the owner of numerous domain names containing the ELECTROLUX Mark, including <electrolux.com> (created on April 30, 1996), which it uses to connect to country websites informing potential customers about its products and services

The Respondent has provided no details about itself. The Domain Name is presently inactive, however prior to the commencement of the present proceeding resolved to a website ("Respondent's Website") in the Vietnamese language that purported to offer

appliance repair services and prominently displayed the same Electrolux logo used by the Complainant.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- (i) that the Domain Name is identical or confusingly similar to the Complainant's ELECTROLUX Mark;
- (ii) that the Respondent has no rights or any legitimate interests in respect of the Domain Name; and
- (iii) that the Domain Name has been registered and is being used in bad faith.

The Complainant is the owner of the ELECTROLUX Mark, having registered the ELECTROLUX Mark in various locations around the world, including Vietnam. The Domain Name reproduces the ELECTROLUX Mark along with the words "bao hahn", meaning "guarantee" and the letters "hcm", short for Ho Chi Minh City (the largest city in Vietnam).

There are no rights or legitimate interests held by the Respondent in respect of the Domain Name. The Respondent is not commonly known as the Domain Name nor does the Respondent have any authorization from the Complainant to register the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Names. Rather the Respondent is using the Domain Name to resolve to a website that purports to be an official website of the Complainant offering warranty and technical services to users of the Complainant's products in the Ho Chi Minh City area. Such use is not *bona fide*.

The Domain Name was registered and is being used in bad faith. By using the Domain Name for a website that reproduces the Complainant's logo and purports to be an official website of the Complainant, it can be inferred that the Domain Name is used to misleadingly redirect the Complainant's customers to an entity unconnected to it for commercial gain. Such conduct amounts to registration and use of the Domain Name in bad faith.

B. Respondent

The Respondent has defaulted and has not submitted timely a Response to the Complaint.

5. Findings

The Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- (i) Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- (ii) Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

To prove this element the Complainant must have trade or service mark rights and the Domain Name must be identical or confusingly similar to the Complainant's trade or service mark.

The Complainant is the owner of the ELECTROLUX Mark, having registrations for ELECTROLUX as a trade mark in various locations around the world, including Vietnam, the location of the Respondent.

The Domain Name incorporates the ELECTROLUX Mark in its entirety with the addition of the descriptive words "bao hahn", meaning "guarantee" and the abbreviation "hcm", which could be an abbreviation for Ho Chi Minh City. The addition of such descriptive or geographical terms to a complainant's mark does not prevent a finding of confusing similarity. An individual viewing the Domain Name may be confused into thinking that the Domain Name would resolve to a site offering services from to the Complainant in the Ho Chi Minh City area. The Panel finds that the Domain Name is confusingly similar to the Complainant's ELECTROLUX Mark. Consequently, the requirement of paragraph 4(a)(i) of the Policy is satisfied.

B) Rights and Legitimate Interests

To succeed on this element, a complainant must make out a prima facie case that the respondent lacks rights or legitimate interests in the domain name. If such a prima facie case is made out, then the burden of production shifts to the respondent to demonstrate rights or legitimate interests in the domain name.

Paragraph 4(c) of the Policy enumerates several ways in which a respondent may demonstrate rights or legitimate interests in a domain name:

"Any of the following circumstances, in particular but without limitation, if found by the panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the 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 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."

The Respondent is not affiliated with the Complainant in any way. It has not been authorized by the Complainant to register or use the Domain Name or to seek the registration of any domain name incorporating the ELECTROLUX Mark or a mark similar to the ELECTROLUX Mark. There is no evidence that the Respondent is commonly known by the Domain Name or any similar name. There is no evidence that the Respondent has used or made demonstrable preparations to use the Domain Name in connection with a legitimate non-commercial use.

Rather it appears that the Respondent has used the Domain Name to operate a website that, without the permission of the Complainant, passes itself off as being an official and endorsed provider of repair services for Complainant's products under guarantee in Vietnam. Such conduct is potentially fraudulent and does not amount to a *bona fide* offering of goods and services; particularly because the Respondent is passing itself off as the Complainant or an endorsed provider of services, rather than as an entity that can repair the Complainant's products.

The Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the Domain Name. The Respondent has had the opportunity to put on evidence of its rights or legitimate interests, including submissions as to why its conduct amounts to a right or legitimate interest in the Domain Name under the Policy. In the absence of such a response the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name under paragraph 4(a)(ii) of the Policy.

C) Bad Faith

For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent has registered or has 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 the complainant, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent has 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 the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location (Policy, paragraph 4(b)).

The Panel finds that the Respondent was aware of the Complainant and its reputation in the ELECTROLUX Mark at the time the Domain Name was registered. The Respondent's

Website purports to offer authorised repair services for Complainant's ELECTROLUX products and reproduces the Complainant's Electrolux Logo. The registration of the Domain Name in awareness of the ELECTROLUX Mark and in the absence of rights or legitimate interests amounts under these circumstances to registration in bad faith.

The Respondent has used the Domain Name to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's Website, by creating a likelihood of confusion with the Complainant's ELECTROLUX Mark as to the source, sponsorship, affiliation or endorsement of its website. The Respondent's ELECTROLUX is used to deceive the Complainant's customers into using the Respondent's repair services, under the misapprehension that the Respondent is the Complainant or is affiliated with or endorsed by the Complainant. The Respondent receives a financial reward from Internet users who visit the Respondent's Website under the impression (created by the Domain Name and the content of the Respondent's Website) that the Respondent is somehow connected to the Complainant. The Panel finds that such use amounts to use in bad faith.

Accordingly, the Panel finds that the Respondent has registered and used the Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

6. Decision

Having established all three elements required under Paragraph 4(a) of the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the domain name must be TRANSFERRED from the Respondent to the Complainant.

N · S M I T M

Nicholas SMITH
Sole Panelist

Dated: February 20, 2019