



Asian Domain Name Dispute Resolution Centre

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1701049
Complainant:	Knorr-Bremse AG
Respondent:	Knorr-Bremse Limited
Disputed Domain Name(s):	<chinaknorr.com>

1. The Parties and Contested Domain Name

The Complainant is Knorr-Bremse AG of Moosacher Str. 80, 80809 Munchen, Germany.

The Respondent is Knorr-Bremse Limited of Fengzhongsi 617, Beijing.

The domain name at issue is **<chinaknorr.com>**, registered by Respondent with GoDaddy.com LLC, the Registrar. The disputed domain name was registered on 8th December 2015.

2. Procedural History

This Complaint has been filed with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre ("the Centre") pursuant to the Uniform Policy for Domain Name Dispute Resolution ("the Policy), the Rules approved by ICANN on 24th October 1999 (the Rules) and the Supplemental Rules effective from 31st July 2015.

The Complaint was filed by email on 30th November 2017 to hkiac@adndrc.org. On the 30th November 2017, the Centre sent a New Case Notification to the Registrar. On the 12th December 2017, the Centre notified the complainant to amend its Complaint to conform with the formality requirements by 17th December 2017. The Amended Complaint (Form C) in English was filed on 15th December 2017.

On the 19th December 2017, the Centre served the Amended Complaint to the Respondent. On the 21st December 2017, the respondent filed its Response (Form R) in Chinese - it was filed in time.

In the Amended Complaint, the complainant elected to have the dispute decided by a sole panelist. At paragraph 9 of the Response, the respondent did not elect whether the panel is to be comprised of one or three panelists. I was appointed by ADNDRC as the sole panelist on 10th January 2018 and in accordance with the Rules a decision is to be rendered by 24th January 2018.

On 20th December 2017 and without being invited to do so, the complainant filed a supplemental list of trademarks. Items 34, 41 and 43 of the supplemental list show that the complainant holds not only related trademarks in China, but also registered trademarks in other jurisdictions. I have considered this and have decided to exercise my discretion to allow the supplemental list of trademarks.

I have also decided to allow the Response filed in Chinese, as I am conversant in Chinese and I do not require translation of the Response into English. This would save time and costs. I also confirm it is appropriate in this case to have the Administrative Panel Decision drafted in English.

3. Factual background

The complainant, with its headquarter in Munich, is the world's leading manufacturer of braking and control systems for rail and commercial vehicles with annual sales of approximately EUR5.5 billion in 2016. It employs some 25,000 employees to develop, manufacture and service braking, control and energy supply and driver assistance systems. Ever since 1905 the company has been pioneering in new technologies to improve road and rail safety. Currently, the complainant has operations in China in 13 regions, including Beijing, Chongqing, Dalian, Guangzhou, Shanghai, Hong Kong, Qingdao etc. and <KNOOR> has become a known brand in China. The complainant trademark <KNORR> is registered in China –Class 12 valid until 6th June 2027.

The respondent has adopted the name “Knorr-Bremse” and is engaged in activities including the brake plates. The respondent has given no particulars as to when it was incorporated and why it was registered using the Complainant’s trade name. The respondent disclosed that it is registered in Hong Kong, but has not disclosed its Hong Kong registered address. Its principle place of business is disclosed as Fenzhongsu 617, Beijing. The respondent's email address is yadongbrakemarket@gmail.com.

4. Parties' Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The

disputed domain name completely contains the complainant's registered trademark <KNORR>. The only difference is that "china" is added before "knorr" in the disputed domain name, which the complainant says will easily confuse the consumer.

- ii. As the complainant has never authorized the respondent to use its registered trademark "Knorr" or use the trademark to register a domain name, the respondent has no rights or legitimate interests in respect of the distinguishing part of the disputed domain name. The respondent also has not registered any trademark related to the disputed domain name.
- iii. The disputed domain name has been registered and is being used in bad faith. In the website of "www.chinaknorr.com" registered by the respondent, the products shown are the same as the complainant's with the complainant's mark "Knorr" displayed. Obviously, the respondent is suspected of using wrongly the complainant's mark for gain and attempting to confuse customers – in which case the respondent did not use the disputed domain name in good faith.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The respondent contends that "kno" in <chinaknorr> stands for knowledge, "rr" short form for resistance ratio, and as a whole represents Chinese knowledge and technology.
- ii. The respondent further stated that purpose of registering the disputed domain name is to target on products such as brake plates.
- iii. The respondent refuses to accept the complainant's contentions, but suggests if the complainant wishes, it can contact the respondent to negotiate to acquire the disputed domain name.

5. Findings

Having read and considered the Complaint, the Response and the evidence produced by the parties, I shall proceed to render my decision.

The ICANN Uniform Domain Name Dispute Resolution 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

The complainant has produced evidence probative of the fact that the trademark and trade name <KNORR> had been registered in China and in other jurisdictions before the registration of the disputed domain name. The Panel does not accept the Respondent's explanation as to the genesis of <chinaknorr>.

It is also obvious that shorn of the geographic description "china", the distinguishing part of the disputed domain names comprised the entirety of the complainant's registered trademark. Numerous panels have recognized that the incorporation of another's trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered mark. See Microsoft Corporation v. J. Holiday Co., WIPO Case No. D2000-1493 in which it was written: "*Generally, a user of a mark may not avoid likely confusion by appropriating another's entire mark and adding descriptive or non descriptive matter to it*". This comment is echoed in the case Oki Data Americas v ASD Inc.: "*As numerous prior panels have held, the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusingly similar for purposes of the Policy despite the addition of other words to such marks.*" In this case, the panel finds that the complainant has fulfilled the first element under paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

Based on the materials and submissions, the panel finds that the complainant has right and legitimate interest in <KNORR> as it is the complainant's registered trademark and trade name. It is the consensus view of many panels that once a complainant has made out prima facie that it has rights and legitimate interests, burden shift to the respondent to prove by evidence of the circumstances specified in paragraph 4(c) of the Policy or of other circumstances giving rise to right or legitimate interest on the part of the respondent. See paragraph 2.1 of the WIPO Overview 2.0 and Ustream.TV, Inc. v. Vertical Axis, Inc, WIPO Case No. D2008-0598. The respondent in this case is neither affiliated with the complainant nor does it have a license to use the mark <KNORR>. The respondent has also failed to show: (i) pursuant to 4(c)(i) that the disputed domain names were used in connection with the bona fide offering of goods or services; or (ii) pursuant to 4(c)(ii) that the respondent has been commonly known by the domain name; or (iii)

pursuant to 4(c)(iii) the respondent has legitimate noncommercial or fair use of the disputed domain name.

The panel finds that the respondent does not have right or legitimate interest in the disputed domain names and the complainant has fulfilled the second element under paragraph 4(a) of the Policy.

C) Bad Faith

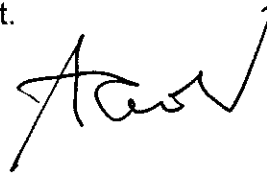
The panel agrees it is inconceivable that the respondent did not have actual notice of the registered trademark <KNORR> or Knorr-Bremse AG before the registration of disputed domain name. See paragraph 3.4 of WIPO Overview 2.0 on “Knew or Should Have Known” and “Willful Blindness”. The <KNORR> trademark was registered in China since 15th May 1985 and in other jurisdictions. The mark <KNORR> is notorious in braking systems and knowingly registered the disputed domain name may constitute bad faith registration.

The respondent’s offer to negotiate to sell the disputed domain name is also an indicia of bad faith. It is also the Complainant’s case that the website www.chinaknorr.com displays products, including products same as the complainant’s and with the word “knorr”.

The panel finds that the disputed domain names had been registered and used in bad faith pursuant to paragraphs 4(b)(i) and (iv) of the Policy and the complainant has fulfilled the third element under paragraph 4(a) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraph 4(a) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <chinaknorr.com> be transferred to the complainant.



Samuel Wong
Sole Panelist

Date: 24th January 2018