



(Hong Kong Office)

Administrative Panel Decision

Case No.	HK-1600846
Complainant 1:	Koch Industries, Inc.
Complainant 2:	Koch Membrane Systems, Inc.
Respondent:	Song Tao
Domain Name:	<kochcn.com>

1. The Parties and Contested Domain Name

There are two Complainants in this case. Complainant 1 is Koch Industries, Inc., of 4111 E 37th Street N Wichita, Kansas 67220 U.S.A. Complainant 2 is Koch Membrane Systems, Inc., of 850 Main Street, Wilmington, Massachusetts 01887 U.S.A.

The Respondent is Song Tao, of Room 1909, Xingfu Middle Road, Zhifu District, Yantai, Shandong 264000, China.

The domain name at issue is <kochcn.com>, registered by the Respondent with GUANGDONG JINWANBANG TECHNOLOGY INVESTMENT CO., LTD.

2. Procedural History

The Complaint was received by the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on 29 January 2016, and its receipt was acknowledged on the same day. On 29 January 2016, the Centre sent an email to the Registrar, GUANGDONG JINWANBANG TECHNOLOGY INVESTMENT CO., LTD. requesting verification of the registrant of the disputed domain name. The Registrar replied on the same date by email to the Centre confirming that the Respondent is listed as the registrant of the disputed domain name and providing the registrant contact details.

On 23 February 2016, the Centre notified the parties in both Chinese and English that the language of the Registration Agreement in this case was Chinese. On 26 February 2016, the Complainant sent an email requesting English to be the language of the proceedings. The Respondent did not submit any reply related to the language of the proceedings.

On 26 February 2016, the Centre reviewed the Complaint and verified that the Complaint satisfied the formal requirement of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy (the

“Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On 26 February 2016, pursuant to the Policy, Article 4 of the Rules and Article 6 of the Supplemental Rules, a Notification of the Commencement of the Proceedings was sent to the Respondent by email and requested the Respondent to submit a Response within 20 calendar days. The Respondent failed to submit a Response within the required period of time. The Centre notified the Respondent’s default on 31 March 2016.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. ZHAO Yun, the Centre notified the parties of the appointment of Mr. ZHAO Yun 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 1 April 2016, the Panel received the file from the Centre and should render the Decision within 14 days.

After the establishment of the Panel, the Respondent sent in an email on 2 April 2016 requesting the Complaint and materials to be provided in Chinese. The issue of the language will be dealt with later in Panel’s findings.

3. Factual background

The Complainants

There are two Complainants in this case. Complainant 1 is Koch Industries, Inc. The registered address is 4111 E 37th Street N Wichita, Kansas 67220 U.S.A. Complainant 2 is Koch Membrane Systems, Inc., of 850 Main Street, Wilmington, Massachusetts 01887 U.S.A. The authorized representative for both Complainants is Hogan Lovells International LLP.

The Respondent

The Respondent in this case is Song Tao. The registered address is Room 1909, Xingfu Middle Road, Zhifu District, Yantai, Shandong 264000, China. The Respondent registered the disputed domain name <kochcn.com> with the Registrar, GUANGDONG JINWANBANG TECHNOLOGY INVESTMENT CO., LTD., on 31 July 2015.

4. Parties’ Contentions

A. The Complainant

The Complainant’s contentions may be summarized as follows :

The Complainants are the owners of numerous “KOCH” and “KOCH”-related trademark registrations across various jurisdictions, including, but not limited to, KOCH, KOCH ADVANCED NITROGEN and KOCHKLEEN. These registration are collectively referred to herein as the “Complainants’ Marks”. The Complainants’ Marks demonstrate the strength and scope of Complainants’ rights in the “KOCH” house mark and other “KOCH” marks and serve as the basis for this Complaint.

Based in Wichita, Kansas U.S.A., Complainant 1 is one of the largest private companies in America and owns a diverse group of companies involved in the business of fertilizers; refining, chemicals and biofuels; forest and consumer products; polymers and fibers; process and pollution control equipment and technologies; electronic components; commodity trading; minerals; energy; ranching; glass; and investments (collectively referred to herein as “Koch”).

Koch has a presence in more than 60 countries and employs more than 100,000 people worldwide. In Asia Pacific, Koch is present in China, Japan, South Korea, Taiwan, India, Australia, New Zealand, Singapore, Malaysia, Philippines, Thailand and Vietnam and employs nearly 30,000 people involved in manufacturing, trading, marketing and sales. Koch companies in Asia Pacific include, Koch Fertiliser Australia Pty Ltd., Koch Membrane Systems (Beijing and Shanghai), Koch Chemical Technology Co., Ltd. (Wuxi), Koch Fertilizer (Beijing) Co., Ltd., Koch-Glitsch Asia Pacific, Koch Fertilizer Asia Private, Ltd., Koch Supply & Trading and Koch Heat Transfer. Koch has invested more than \$70 billion in acquisitions and other capital expenditures since 2003 to make life better around the world by efficiently converting resources into products and services that people depend on every day.

Koch Fertilizer, LLC is an indirect, wholly-owned subsidiary of Complainant 1. Koch Fertilizer and its affiliates (collectively, “Koch Fertilizer”) are one of the world’s largest manufacturers, marketers and distributors of fertilizer products. The companies own or have interests in fertilizer plants in the United States, Canada, Trinidad and Tobago and distributes its fertilizer products globally through hubs in the U.S., Canada, Mexico, Brazil, Australia, France and the United Kingdom. Koch Fertilizer’s product portfolio includes ammonia, urea, UAN, phosphate, potash and sulfur-based products, in addition to a variety of high-performance fertilizers, including AGROTAIN nitrogen stabilizer, AGROTAIN PLUS nitrogen stabilizer, SUPERU fertilizer, NITAMIN Targeted Foliar Nitrogen, blended fertilizers from Bunn Fertiliser Limited, and Koch Advanced Nitrogen fertilizer.

From just January 2009 to present, Koch around the globe has earned 1,046 awards for safety, environmental excellence, community stewardship, innovation, and customer service. Accomplishments include operating safety, and in ways that reduce energy use and conserve natural resources. For example, Koch Fertilizer and Koch Sulfur Products Co. have each received numerous awards for safe shipping by rail. Koch Fertilizer has also received the Grand Slam Award, the highest safety award given by the Association of American Railroads for safe shipping practices.

Koch has had a direct presence in China since at least 2006, when it established Koch Chemtech (Shanghai) Trading Co., Ltd. Since then, it has established several companies in China, including Koch Chemical Technology (Wuxi) Co., Ltd. in 2008, Koch Membrane Systems, Inc. Beijing Representative Office in 2008, Koch Fertilizer (Beijing) Co., Ltd. in 2011, and Koch Mineral Products (Beijing) Co., Ltd. in 2011. Moreover, Koch has done business in China since at least 2002, and the KOCH name and brand-both in English and as 科氏 in Chinese-have been used extensively and continuously in the China market. In view of the above facts, it is clear KOCH is a well-known and recognizable global brand.

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

“Panels have long recognized Complainants’ registration of a mark with a trademark authority is sufficient to confer rights in the mark pursuant to paragraph 4(a)(i) of the Policy.” It does not matter whether the Complainant has registered its trademark in the country in which the

Respondent resides, only that the Complainant can establish rights in some jurisdictions. When comparing the disputed domain name with the Complainant's trademark, the relevant comparison to be made is between only the second-level portion of the domain name and the Complainant's trademark.

Here, by virtue of its trademark registrations, the Complainants are the true owners of and have rights in the Complainants' Marks, which include registrations globally and in China where the Respondent resides. Moreover, the disputed domain name is confusingly similar to the Complainants' KOCH trademark as it captures the well-known KOCH trademark in its entirety and simply adds the geographic indicator "cn" (for China) to the end of the trademark. The mere addition of geographical terms to a Complainant's trademark does not sufficiently differentiate the disputed domain name from the trademark to avoid being confusingly similar.

The disputed domain name is also confusingly similar to the other Complainants' Marks, including KOCH ADVANCED NITROGEN and KOCHKLEEN. Specifically, KOCHCN.COM is identical to the well-known "KOCH" word portion of the "KOCH" marks, except for the addition of the "cn" geographic indicator, which is insufficient to distinguish the domain name from the marks. KOCHCN.COM, likewise, copies the "KOCH" portion of the marks KOCH ADVANCED NITROGEN and KOCHLEEN, which makes it confusingly similar to those marks as well.

The misleading nature of the disputed domain name is especially severe given that the Complainants (1) operate under numerous company names that use "KOCH" as the primary part of the name, including several companies in China, and (2) own and use numerous domain names that similarly are a combination of "KOCH" and other general terms, like KOCHIND.COM, KOCHINDUSTRIES.CN, KOCHFERTILIZER.COM, KOCHFERTILIZER.CN, KOCHADVANCEDNITROGEN.COM, KOCHENERGY.COM and KOCHCOLLEGE.COM, all of which were registered before the disputed domain name. Under these circumstances, the disputed domain name's second-level combination of "KOCH" and "CN" will likely cause the public to incorrectly associate the disputed domain name and associated website with the Complainants.

Moreover, the Respondent's use of the "cn" geographic indicator in conjunction with the KOCH trademark increases the confusion between the disputed domain name and the Complainants' Marks as Koch maintains a physical presence and does significant business in China. By adding this particular geographic indicator to the KOCH trademark, the Respondent has created the misleading impression that the disputed domain name and related website are owned and operated by, sponsored by or associated with the Complainants' Marks.

Additionally, the Respondent's use of the disputed domain name contributes to the confusion. The Respondent owns a company called Wanma (Shenzhen) Special Fertilizers Co., Ltd. ("Wanma") that was just established on 27 July 2015 and sells fertilizers. Koch owns a diverse group of companies involved in fertilizers and is recognized as having one of the largest fertilizer businesses in the world. It has owned KOCH trademark registrations for fertilizer since at least 2011. The Respondent uses the disputed domain name to host a website that gives the impression of being associated with Koch by (1) displaying the Complainants' KOCH trademark and logo prominently on the homepage and using other registered KOCH trademarks, such as KOCH and 科氏 (KOCH in Chinese), without authorization; (2) falsely stating that Wanma is Koch's only distributor for fertilizer in China and making other misleading references to Koch; (3) copying images owned by Koch; and (4) selling KOCH-branded fertilizers that appear to be counterfeit. The website demonstrates that the Respondent intended the disputed domain name to be

confusingly similar to the Complainants' Marks as a means of furthering consumer confusion and misleading consumers into thinking the website is sponsored by or associated with Koch.

The Complainants accordingly submit that they have proved the disputed domain name is confusingly similar to the registered trademarks in which the Complainants have rights or interests for the purpose of Paragraph 4(a)(i) of the Policy.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name:

In contrast to the Complainants' valid and exclusive rights in the KOCH trademarks, the Respondent has no rights or legitimate interests in the confusingly-similar disputed domain name. The Respondent is not sponsored by or affiliated with the Complainant in any way. The Respondent has not received the Complainants' permission to use the Complainants' Marks in any manner, including in domain names. And the Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests. Where "the WHOIS information suggests that the Respondent is known as an entity other than the trademark associated with the Complainant, and the Complainant has not licensed, authorized, or permitted the Respondent to register domain names incorporating the Complainants' mark, a panel should find the Respondent is not commonly known by the disputed domain name.

Moreover, the Respondent is not using the disputed domain name for a bona fide offering or for a legitimate noncommercial or fair use. Instead, the Respondent uses the disputed domain name in connection with a commercial website offering what appear to be counterfeit versions of Koch's products and as a means of misleading consumers into thinking the website is sponsored by or associated with Koch. Past panels have concluded that a Respondent's efforts to sell counterfeit products under the guise of a Complainant's brand, trademarks and/or logos amounts to neither a bona fide offering of goods or services pursuant to paragraph 4(c)(i) of the Policy, nor a legitimate noncommercial or fair use pursuant to paragraph 4(c)(iii) of the policy.

The Complainant accordingly submit that they have proven the Respondent has no rights or legitimate interests in respect of the disputed domain name for the purpose of Paragraph 4(a)(ii) of the Policy.

- iii. The disputed domain name has been registered and is being used in bad faith:

The Complainants and the Complainants' Marks are well-known internationally and in China. The Complainants' Marks have been registered in numerous countries, and were first registered, including in China, in the 1990's. The Complainants have marketed and sold their goods and services under the Complainants' Marks sine the 1990's and, in China, since at least 2002. Their registration and use of the Complainants' Marks, in China and elsewhere, occurred well before the Respondent's registration of the disputed domain name on 31 July 2015.

Given the facts set forth in this Complaint, the Respondent was clearly aware of the Complainants and the Complainants' Marks when he registered the disputed domain name. And by registering a domain name that merely adds the geographic indicator "cn" to the Complainants' well-known KOCH trademark, the Respondent intentionally created a domain name that is confusingly similar to the Complainants' Marks, as well as their KOCH trade name and KOCH domain names. The Respondent's knowledge and intention are evidenced by the fact that the website associated with the disputed domain name seeks to pass itself off as the

Complainants' website in China (or at least sponsored by or associated with the Complainants) by

- Prominently displaying a copy of the Complainant's KOCH trademark and logo on the homepage, and extensively using this mark and other registered KOCH marks on its website and products, including KOCH and 科氏 (KOCH in Chinese, the earliest registration date on 21 September 1997), without authorization;
- Displaying a photo on the homepage showing KOCH NITROGEN COMPANY and KOCH trademark and logo with text stating that Koch Fertilizer, which is affiliated with Koch Industries and other Koch companies, is one of the world's largest manufacturers and distributors of fertilizer with manufacturing and sales operations around the world and that KOCH fertilizer has been registered in China and is being sold on the market under the KOCH brand;
- Falsely stating that Wanma is Koch's only distributor for KOCH products in China and that its fertilizer is of top quality based on its cooperation with the world's top R&D institutes, including Koch Laboratories and Cornell Agriculture University;
- Displaying a photo on the "About US" page showing Koch Fertilizer executives with text stating that Koch Fertilizer is affiliated with Koch Industries and other Koch companies; and
- Offering for sale what are likely counterfeit versions of the Complainants' products, using unauthorized labeling/packaging that is affixed with the Complainants' registered trademarks, such as KOCH and 科氏.

Respondent's knowledge and bad-faith intention regarding the Complainants' Marks is confirmed by the fact that the Respondent filed an application to register the Complainants' KOCH trademark and logo and Chinese name and house mark 科氏 in China on the same day he registered the disputed domain name. Paragraph 4(b) of the Policy dictates that bad faith is established if evidence shows either (1) the Respondent "registered the domain name primarily for the purpose of disrupting the business of a competitor" or (2) "by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website 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."

Here, the evidence shows the Respondent registered KOCHCN.COM with full knowledge of the Complainants' rights in the KOCH trademarks and KOCH trade names and with the intention of creating a domain name confusingly similar to those rights. In registering KOCHCN.COM and linking it to its website, the Respondent intended to disrupt the Complainants' business for its own commercial gain by creating confusion with the KOCH trademarks and misleading consumers into thinking Koch was the source of, or sponsored or was affiliated with, the website and its products, when, in fact, it is not. The Respondent intended to divert potential customers from Koch to itself and profit from the confusion caused by the disputed domain name and its website by selling what are likely counterfeit versions of the Koch's products. In essence, the Respondent is using the fame of the Complainants' Marks to improperly increase traffic to the website associated with the disputed domain name for his own commercial gain.

Furthermore, there is no plausible good-faith reason for the Respondent to have registered KOCHCN.COM and use the domain name to host a website in the misleading manner it does.

The Complainants accordingly submit that they have proven the Respondent has registered and is using the disputed domain name in bad faith for the purpose of paragraph 4(a)(iii) of the Policy.

The Complainants request that the disputed domain name-KOCHCN.COM-be transferred to Complainant 1.

B. The Respondent

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

5. Findings

Language of Proceedings

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 Chinese, the language of this proceeding should be in the Chinese language.

The Complaint was submitted in the English language and the Complainants submitted a request that English be the language of the proceeding. The evidence submitted by the Complainants shows that the website of the disputed domain name is mainly in the Chinese language; however, most of the content of the website is about Complainant 1's subsidiary, Koch Fertilizer, LLC, which translated directly from the English description of the subsidiary in its website <http://www.kochfertilizer.com>. Furthermore, English language is also used in some part of the website of the disputed domain name. For example, page 5 of the website screenshots includes English description of the fertilizer products as "KAN IS THE MOST EFFICIENT NITROGEN FERTILIZER"; pages 13-31 of the website screenshot also include English descriptions of the product packaging. The evidence shows that the Respondent has at least a basic understanding of the English language. On the contrary, the Complainants, both being non-Chinese companies registered in the U.S.A., do not understand the Chinese language and will require translation. The arrangement of translation, while possible, will require extra time and costs.

The UDRP proceeding is designed in a way to provide an efficient mechanism to resolve domain name disputes in a fair manner. The leeway provided in the Rules regarding the language issue aims to provide flexibility in the use of language by taking into relevant factors so that the whole proceedings can be conducted in an efficient and fair manner to both parties; here the "efficiency" mainly refer to the cost and time involved in the dispute resolution process.

As discussed above, the use of the Chinese language will cause extra costs to the Complainants and lead to undue delay in the proceedings; while avoiding extra costs and unduly delaying the proceedings on the one hand, use of the English language will, on the other, not cause substantive unfairness to both parties, in particular the Respondent.

More importantly, after being properly notified of the language request by the Centre in both Chinese and English languages, the Respondent did not submit a Response within the specified time period to argue against the use of the English language for the proceedings or decline to participate in the proceeding.

Exactly one day after the establishment of the Panel, the Respondent sent in a short email to the Centre asking for the documents to be provided in the Chinese language without providing any

justifications for this late request. This short email with less than 10 Chinese words could have done within a few minutes during the specified time period. The above fact serves to demonstrate that the Respondent is well aware of the Complaint and the ongoing administrative proceeding, but chose not to respond within the specified time period for a Response. Accommodating this late request would unduly delay the whole administrative process, causing unfairness to the Complainants, which have strictly complied with the Policy, the Rules and the Supplemental Rules. Furthermore, accommodating this late request would set up a bad precedent, allowing the Respondent to send in any Response after the specified time period without any justifications.

In consideration of the above circumstances and in the interest of fairness and efficiency to both parties, the Panel hereby decides that English be the language of the proceeding in this case.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of the three findings must be made in order for a Complaint to prevail:

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

A) Identical / Confusing Similar

The Complainants are both American companies in the business of fertilizers and other relevant products. Both companies are owners of numerous “KOCH” and “KOCH”-related trademark registrations in different jurisdictions. Complainant 2 registered the trademark “KOCHKLEEN” in the United States in 1991. The evidence shows that as early as 16 June 1995, Complainant 1 has already registered the “KOCH” trademark in the United Kingdom for goods listed in Class 1 (including chemicals and chemical products). Since then, the two Complainants have successfully registered the KOCH and KOCH-related trademarks in various other countries, including the United States, the European Union and Philippines. The “KOCH” trademark with graph was registered by Complainant 1 in China as early as 21 September 1997; the “KOCH” trademark was registered by Complainant 1 in China on 21 July 2004. The above trademarks are still within the protection period. The Panel has no problem in finding that the Complainants enjoy the trademark right over “KOCH”. The Panel further finds that the registration dates of the above trademarks are much earlier than the registration date of the disputed domain name (i.e. 31 July 2015). The Complainants enjoy the prior rights in the trademark “KOCH”.

The disputed domain name “kochcn.com” ends with “.com”, this suffix only indicates that the domain name is registered under this gTLD and “.com” is not distinctive. Thus, we will only need to examine the main part of the disputed domain name.

The main part of the disputed domain name is “kochcn”, consisting of two sub-parts: “koch” and “cn”. Obviously, the first sub-part (“koch”) is identical to the Complainants’ trademark “KOCH”. The second sub-part (“cn”) of the disputed domain name is an abbreviation of “China” and is not distinctive. The Panel finds that the addition of the name of a place to a trademark, such as the addition of “cn” to “koch”, is a common method for specifying the location of business provided under the trademark. The addition of a place name generally does not alter the underlying mark to which it is added. In this case, the combination of two sub-parts cannot effectively differentiate the main part of the disputed domain name from the Complainants’ trademark; on the contrary, such a combination strengthens the links between the disputed domain name and the Complainants, misleading the consumers to believe that this domain name is to show the Complainants’ existence in China.

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

B) Rights and Legitimate Interests

The Complainants contend that the Respondent does not have rights to or legitimate interests in the disputed domain name. The Complainants have never authorized the Respondent to use the trademark or the domain name. The Complainants' 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 elaborated in the next part. The Respondent has not been commonly known by the disputed domain name. It is clear from the website of the disputed domain name that the Respondent is making commercial use of the disputed 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 legitimate interests with the Respondent.

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

C) 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 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 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.

Complainant 1 is one of the largest private companies in the United States in business of fertilizer and other related products. It has a presence in more than 60 countries. The evidence shows that Complainant 1 and its related companies have won many awards around the world for safety, environmental excellence, community stewardship, innovation, and customer services. Complainant 1 registered the trademark "KOCH" with graph in China as early as 1997 and then the trademark "KOCH" in 2004. Since entering the Chinese market, Complainant 1 has been very successful in promoting its business with several companies established in different cities in China, including Shanghai, Beijing and Wuxi. Through extensive use, advertisement and promotion, the trademark "KOCH" has achieved a strong reputation. As such, the public has come to recognize and associate the Complainants' trademark as originating from the Complainants and no other.

The evidence shows that the Respondent owns a company called Wanma (Shenzhen) Special Fertilizers Co., Ltd., which is claimed to be the Complainants' only distributor for fertilizer in China. The evidence further shows that the website of the disputed domain name was designed for the business of fertilizer, the same product trademarked "KOCH". The Complainants' trademark "KOCH" with graph (together with the trademark in Chinese) is displayed distinctively in the website; furthermore, the website contains descriptions of the Complainants and their affiliated companies. The above facts are obvious to all that the Respondent is aware of the existence of the Complainants and their trademark. The action of registering the disputed domain name *per se* has constituted bad faith.

In fact, the Complainants have never authorized the Respondent to use the trademark or sell fertilizer trademarked "KOCH". 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 Complainants' 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.

6. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name <kochcn.com> be transferred from the Respondent to Complainant 1.

Panelist : ZHAO Yun

Dated: 15 April 2016