



Asian Domain Name Dispute Resolution Centre

hk.hk

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1901300
Complainant:	voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd)
Respondent:	XuLiangSen (许良森)
Disputed Domain Name:	<yishengbei.com>

1. The Parties and Contested Domain Name

The Complainant is voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd), of 8 Cross Street, #27-04/05, Manulife Tower, Singapore 048424. The Complainant is represented in these administrative proceedings by Mr. James Lau from Baker & McKenzie, whose address is 14th Floor, Hutchison House, 10 Harcourt Road, Hong Kong.

The Respondent is XuLiangSen (许良森), of 中国,福建省, 莆田市秀屿区月塘坂尾 351152.

The domain name at issue is <yishengbei.com>, registered by Respondent with Xinnet Technology Corporation, of supervision@xinnet.com.

2. Procedural History

On 29 October 2019, the Complainant submitted a complaint in English to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“the ADNDRC-HK”) 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”).

Upon receipt of the complaint, the ADNDRC-HK sent to the Complainant by email an acknowledgement of the receipt of the complaint and reviewed the format of the complaint for compliance with the Policy, the Rules and the ADNDRC Supplemental Rules. Upon request by the ADNDRC-HK on 31 October 2019, the Registrar transmitted by email on 8 November 2019 to the ADNDRC-HK its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 15 November 2019, the ADNDRC-HK notified the Respondent about the commencement of the proceedings. On the same day, the ADNDRC-HK notified the Complainant that the complaint had been confirmed and transmitted to the Respondent, and also notified the Registrar of the commencement of the proceedings.

Also on 15 November 2019, the ADNDRC-HK notified the Complainant that the language of the registration agreement was Chinese and invited response from the Complainant. On 20 November 2011, the Complainant filed in a supplemental complaint in response, which was also forwarded to the Respondent on 21 November 2019, inviting response from the Respondent on or before 26 November 2019.

The Respondent replied the email on 17 November 2019, stating that the domain name in issue and the marks of the Complainant were phonetically different.

On 9 December 2019, the ADNDRC-HK sent out notice noting that no response had been received and the complaint was to be proceeded to a decision by the Panel to be appointed.

On 10 December 2019, the ADNDRC-HK sent to the Complainant and the Respondent notification for the selection of 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-HK notified the parties, on 11 December 2019, that the Panel in this case had been appointed, with Mr. Gary Soo acting as the sole panelist.

On 11 December 2019, the Panel received the file by email from the ADNDRC-HK and was requested to render the Decision on or before 25 December 2019.

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 proceedings 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 proceedings. The language of the current Disputed Domain Name registration agreement is Chinese. The Complainant submits that the Panel has authority to determine the language of the proceedings having regard to the circumstances under Paragraph 11 (b) of the Rules and requests the language to be in English. The Complainant highlights, inter alia, that the domain name in dispute is in the English language. The Panel notices that the name of the Respondent also includes English and the email reply from the Respondent indicates that the Respondent understands the complaint made. In the circumstances, given there is no response from the Respondents to the Complainant's request, the Panel determines English as the language of the proceedings.

3. Factual background

The Complainant

The Complainant in this case is voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd). The registration address is 8 Cross Street, #27-04/05, Manulife Tower, Singapore 048424. The Complainant appointed Mr. James Lau from Baker & McKenzie, the address of which being at 14th Floor, Hutchison House, 10 Harcourt Road, Hong Kong, as its authorized representative in this matter.

The Respondent

The Respondent, XuLiangSen (许良森), is the current registrant of the Disputed Domain Names <yishengbei.com> according to the Xinnet Technology Corporation. The address of the Respondent from the registration information is “中国,福建省, 莆田市秀屿区月塘坂尾 351152”. The Respondent’s email is 18915757075@163.com.

4. Parties’ Contentions

A. Complainant

The Complainant, voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd), contends that it holds trademark registrations for the “ASSAB” trademark and other related trademarks (“ASSAB Series Marks”) in various jurisdictions worldwide. The Complainant brings this action to protect its rights in the “ASSAB Series Marks”. The Complainant’s registered “ASSAB Series Marks” include those registered in Hong Kong, Taiwan and Mainland China.

The Complainant further submits as follows:

- i. The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant was formed in 1945 to market high quality tool steel from Sweden, renowned for its quality standards. Headquartered in Singapore, the Complainant operates close to 50 sales offices in the Asia Pacific supplying the best available steel in the market. Coupled with its best-in-class metallurgical tooling services and technical know-how, the Complainant is both the pioneer and the leader in tool steel solutions in Asia.

The Complainant anchors the distribution network for Uddeholm – the world’s leading tool steel manufacturer with more than 300 years of experience in the tool steel industry. The two companies together service leading multinational companies (MNCs) across practically all key industrial sectors in more than 90 countries.

Rapid industrialization in Asia has led to an exponential growth in demand for steel. The Complainant companies in Asia therefore focus on bringing superior quality steel to the market. The Complainant’s “Total Tooling Economy” provides the Complainant’s customers with key value-added services. In the greater China region, ASSAB is 一胜百 (Yi Sheng Bai) which, when literally translated, means “One beats One Hundred” and underlines the Complainant’s position as an industry leader. The Complainant is more than just another tool steel supplier.

The Complainant operates close to 50 branches and sales offices in the Asia Pacific. The Complainant’s presence in China dates back more than 60 years. In the mid-1950s, ASSAB tool steels were distributed in southern China. In the

early 1990s, the Complainant established its own first-ever outlet in Shenzhen. Today, the Complainant has more than 500 employees in 22 locations across mainland China and continues to expand its network of services in tandem with the growing needs and precision requirements of the manufacturing industry in China. There are 18 affiliates in locations, such as Beijing, Changchun, Changzhou, Chongqing, Dalian, Dongguan, Guangzhou, Hong Kong, Hunan, Ningbo, Qingdao, Shanghai, Suzhou, Tianjin, Wuhan, Xiamen, Xi'an and Yantai.

Below is the sales record of the Complainant's products in China. The total amount of sales of the Complainant's products in China reached RMB 1.36 billion from 2006 to 2011.

Year	Amount (RMB)
2006	205,602,516.00
2007	265,875,839.00
2008	62,595,886.00
2009	225,476,595.00
2010	268,167,845.00
2011	332,601,092.00
Total Amount:	1,360,319,773.00

Meanwhile, the Complainant has participated in several trade fairs/exhibitions in China (from 2007 to 2011):

Year	Location	Name of the Trade Fair/Exhibitions
2007	Shanghai	2007 Shanghai Mould Exhibition
2008	Shanghai	2008 Shanghai Mould Exhibition
March 2008	Shenzhen	International Machinery and Mould Exhibition Shenzhen China
April 2008	Xiamen	Xiamen China Mechanical and Electronic Industrial Exhibition
June 2008	Dongguan	China International Dongguan Linkage Industry Mould Exhibition
September 2008	Guangdong	Asia-pacific Mould Exhibition
November 2008	Dongguan	Dongguan International Mould and Metal Processing Exhibition
2009	Shanghai	2009 Shanghai Mould Exhibition
April 2009	Xiamen	The 13th Xiamen China Mechanical and Electronic Industrial Exhibition
May 2009	Guangdong	The 23rd International Plastics and Rubber Industries Exhibition
November 2009	Dongguan	The 11th Dongguan International Mould and Metal Processing Exhibition

April 2010	Xiamen	The 14th Xiamen China Mechanical and Electronic Industrial Exhibition
September 2010	Guangdong	The 3rd Guangdong International Mould Exhibition
November 2010	Dongguan	The 12th Dongguan International Mould and Metal Processing Exhibition
March 2011	Shenzhen	The 13th Shenzhen International Manufacturing Exhibition
May 2011	Guangdong	The 25th International Plastics and Rubber Industries Exhibition
July 2011	Guangdong	International Casting and Pressed Film Exhibits
November 2011	Dongguan	The 13th Dongguan International Mould and Metal Processing Exhibition

The PRC National Library Search indicates that the Complainant's "ASSAB" / "一胜百" trademarks have obtained a high degree of fame among the relevant consumers.

The Complainant owns trademark registrations for the "ASSAB Series Marks" in various jurisdictions. As listed above, among all other registrations, the Complainant obtained its registration for the "ASSAB" trademark in Class 6 (Reg. No. 19570513) in Hong Kong in as early as 1957, and obtained its registration for the "一胜百" trademark in Class 6 (Reg. No. 199609203) in Hong Kong in as early as 1996, long before the Respondent applied to register the disputed domain name on April 7, 2017. Therefore, the Complainant owns prior trademark rights in the "ASSAB" and the "一胜百" trademark.

The disputed domain name <yishengbei.com> contains two elements: "yishengbei" and top-level domain "com". Numerous UDRP precedents have established that the top-level domain suffice does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion. The only distinctive part of the disputed domain should be "yishengbei", which is near-identical to the Romanization of the Complainant's Chinese trademark "一胜百" (Yi Sheng Bai). The only difference is the use of the letter "e" in "bei" found in the disputed domain name, instead of the letter "a" in "bai" found in the Romanization of the Complainant's mark.

Most Chinese consumers would refer to the Complainant by its Chinese trademark "一胜百" and its corresponding Romanization "Yi Sheng Bai". As such, the use of the "yishengbei" in the disputed domain name will no doubt mislead consumers into believing that the website is owned and operated by or associated with the Complainant.

Based on the above, the disputed domain name is confusingly similar to the Complainant's prior "一胜百" (Yi Sheng Bai in Chinese) trademark.

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

According to the WHOIS record (Attachment I), the Respondent registered the disputed domain name on April 7, 2017, long after most of the applications and registration dates of the Complainant's "ASSAB Series Marks".

After years of extensive use, the "ASSAB Series Marks" have acquired significant worldwide recognition. The Complainant and the Respondent have no prior connection, and the latter has not been authorized by the former to use its mark in the disputed domain name. There is also no evidence that the Respondent has been commonly known by the disputed domain name. It is therefore impossible for the Respondent to logically use the disputed domain name, except in a deliberate attempt to take advantage of the "一胜百" mark for commercial gain. The Complainant has established a prima facie case that the Respondent has no rights nor legitimate interests in the disputed domain name, and thereby the burden of proof shifts to the Respondent to produce evidence in demonstrating rights or legitimate interests in respect of the disputed domain name.

- iii. The disputed domain name(s) has/have been registered and is/are being used in bad faith

It is clear that the disputed domain name has been registered and is being used in bad faith.

As mentioned above, the Complainant obtained its registration for the "ASSAB" trademark in Class 6 (Reg. No. 19570513) and the "一胜百" trademark in Class 6 (Reg. No. 199609203) in Hong Kong in as early as 1957 and 1996 respectively. The Complainant's "ASSAB Series Marks" had become widely-known among consumers and relevant public as a result of its long-term promotion and use. The Respondent must have had prior knowledge of the Complainant's "ASSAB Series Marks" before the registration of the disputed domain name on April 7, 2017.

The disputed domain name <yishengbei.com> resolves to a website operated under the name of a PRC company named 南京一胜百模具有限公司 (Nanjing Yi Sheng Bai Mould Co., Ltd.).

This Chinese company name appearing on the website entirely contains the Complainant's trademark "一胜百 (ASSAB in Chinese)", which also happens to be the Chinese trade name of the Complainant's PRC subsidiaries.

The Complainant has various subsidiaries with the similar names in China (please see <http://www.assab-china.com/cn/locations.php> for a list of subsidiaries).

Consumers will be confused by the Respondent's use of the company name listed on the <yishengbei.com> website along with the "一胜百 (ASSAB in Chinese)" trademark, as they may be misled into believing that it is an entity or

subsidiary affiliated with the Complainant in some way. In particular, the Respondent also sells and offers for sale tool steel and die steel products, and is involved in the same industry as the Complainant. The Respondent clearly intends to free ride on the fame of the Complainant's famous “一胜百 (ASSAB in Chinese)” trademark.

A search against the Respondent shows that he had registered the following domain names, which clearly infringe the Complainant's “ASSAB Series Marks”:

Domain Name	Registrant	Creation Date	Expiration Date
yishengbai.cn	许良森	2013-10-16	2020-10-16
assab17.com	xu liangsen	2013-04-11	2020-04-11
assab88.com	xu liangsen	2013-03-31	2020-03-11
sd-assab.com	xu liangsen	2014-09-11	Expired
assab-steel.com	许良森	--	Favourable decision obtained on 2017-12-21 under HK-1701036

In this regard, we also note that “ASSAB 17” is one of the Complainant's products, which is famous worldwide for its excellent cutting properties, wear resistance, toughness and heat resistance. Meanwhile “ASSAB 88” is also one of the Complainant's products characterized by good wear resistance, good chipping resistance, good machinability and grindability.

In summary, in the current case, there are sufficient grounds for an inference of bad faith based on the following:

- 1) The long history and high degree of fame enjoyed by the Complainant and its trademarks in the world, including in China;
- 2) The filing dates of the Complainant's marks long before the registration date of the disputed domain name;
- 3) The high degree of similarity between “yishengbai” (the Romanization of the Complainant's famous trademark “一胜百 (ASSAB in Chinese)”), when it is compared with the distinctive part “yishengbei” found in the disputed domain name;
- 4) The use of the Complainant's Chinese mark “一胜百 (ASSAB in Chinese)” in the name of the Respondent and the steel products sold and offered for sale on its website.

As demonstrated, it is clear that the disputed domain name has been registered and is being used in bad faith.

The Complainant wants to mention that in recent decisions, whereby the respondents have registered various “assab” domain names (and “ASSAB” is the English counterpart of “一胜百 (ASSAB in Chinese)”), the respondents were ordered to transfer the domain names to the Complainant:

- 1) HK-1600872 <china-assab.com>
- 2) HK-1600887 <assab-tooling.com>
- 3) HK-1600888 <assab-cn.com>
- 4) HK-1600889 <dgassab.com >
- 5) HK-1600890 <assab-zg.com>
- 6) HK-1600891 <assab-tool.com>
- 7) HK-1600892 <assab-gd.net>
- 8) DCN-1700756 <assabdongg.cn>
- 9) DCN-1700782 <assab-mould.cn> and <assabsteel.cn>
- 10) HK-1701019 <assab.xin>
- 11) HK-1701036 <assab-steel.com>
- 12) HK-1701038 <dongguan-assab.com>
- 13) HK-1701039 <assab-gz.com > and <assab.sz.com >
- 14) DCN-1800807 <assanshenz.cn> and <assabguanz.cn>
- 15) DCN-1800834 <assab-mould.com.cn> and other 8 domain names
- 16) DCN-1900882 <assab101.cn>
- 17) DCN-1901229 <as0p.com>

In these decisions, the Panelists decided that (1) the domain names are all confusingly similar to the Complainant’s name or mark in which the Complainant has rights; (2) the respondents have no rights or legitimate interests in respect of the domain names; and (3) the respondents have registered and are using the domain name in bad faith.

B. Respondent

As said, the Respondent, XuLiangSen (许良森), is the current registrant of the Disputed Domain Name <yishengbei.com> according to the Xinnet Technology Corporation. The Respondent registered the Disputed Domain Name on 7 April 2017.

The Respondent has replied by an email of 17 November 2019. The Respondent has not submitted a response within the stipulated time.

5. Findings

Paragraph 14 of the Rules provides that, in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by the Rules or the Panel, the Panel shall proceed to a decision on the complaint; and that, if a Party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under, the Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

Paragraph 15(a) of the Rules instructs the Panel as to the principles that the Panel is to use in determining the dispute, stating that the Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

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, though with name changed, was and is the holder of the various trademark registrations for the “一胜百” (Yi Sheng Bai), i.e. ASSAB in Chinese (“the Series Marks”) and the registrations were with various jurisdictions and of dates earlier than the registration of the domain name in issue by the Respondent. From the documents and evidence supplied, the Complainant is of worldwide scale operation with the Series Marks, at places including the People's Republic of China (“PRC”). To all these, the Panel accepts and finds that the Complainant has the necessary legal rights and interests over the Series Marks for the purpose of the Complaint.

The Panel finds it clear that the domain name in issue the domain name in dispute <yishengbei.com> incorporates the “yishengbei” part as its keep part for distinctive identification purposes and the part “.com”, as top level domain name, does not feature out to likewise extent. The Panel also believes that some internet users in PRC will take “yishengbe” to mean Dongguan, a place in PRC, that can be read from the registered email of the Respondent. While the two are not phonetically the same, the Panel agrees that the only difference is the use of the letter “e” in “bei” found in the disputed domain name, instead of the letter “a” in “bai” found in the Romanization of the Complainant's mark and that, to most internet users in PRC, the use of the “yishengbei” in the disputed domain name will no doubt mislead quite some users into believing that the website is owned and operated by or associated with the Complainant due to the confusing similarity of the two.

Accordingly, the Panel finds that the Complainant has succeeded in proving the element in Paragraph 4(a)(i) of the Policy as regards <yishengbei.com>.

B) Rights and Legitimate Interests

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name. Also, the Complainant submits that the Complainant and the Respondent have no prior connection, and the latter has not been authorized by the former to use its mark in the disputed domain name. As per the above, the ASSAB Series Marks have acquired significant recognition worldwide, prior to the registration of the domain name in issue. The Panel finds that, from the name of the Respondent, there is nothing to indicate that the Respondent has any rights or interests or connection to the “yishengbei” name or mark. Also, while the Respondent has an email

reply sent over, the Respondent has not filed a response to the Complaint and has not addressed this point.

Furthermore, the Panel agrees that the part “yishengbei” is not a term commonly used in the English language and there is also no evidence that the Respondent has been commonly known by the disputed domain.

To all theses, the Respondent does not respond to disagree or to submit contrary evidence.

Thus, the Panel finds that the Complainant has succeeded in proving the element 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 the Respondent has registered or 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 the Respondent’s 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 trademark 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 on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The Complainant contends that it is clear that the disputed domain name has been registered and is being used in bad faith. The Complainant highlights that the Complainant obtained its registration for the “ASSAB” trademark in Hong Kong as early as 1957 and, since then, the Complainant’s ASSAB Series Marks have become widely-known among consumers and relevant public as a result of its long-term promotion and use. The Complainant submits that the Respondent must have had prior knowledge of the Complainant’s ASSAB Series Marks before the registration of the disputed domain name on 7 April 2017. In particular, the Complainant points out that there are other domain name registered in relation to the Complainant’s Series Marks and the Complainant’s other marks.

To all theses, the Respondent does not respond to disagree or to submit contrary evidence. The Panel accepts these as factual findings and agrees with the Complainant that the

Respondent registers the domain name in issue knowing the rights and interests of the Complainant over the Series Marks. The Panel finds that all these do constitute bad faith on the part of the Respondent.

Therefore, the Panel also finds that the Complainant has succeeded in proving the elements in Paragraph 4(a)(iii) of the Policy as regards <yishengbei.com>.

6. Decision

Having established all three elements required under the Policy in respect of the Disputed Domain Name <yishengbei.com>, the Panel concludes that relief should be granted in favour of the Complainant. Accordingly, the Panel decides and orders that the Disputed Domain Name <yishengbei.com> shall be transferred from the Respondent to the Complainant.



Gary Soo
Sole Panelist
17 December 2019

