



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.:	HK-2001323
Complainant:	AB Electrolux
Respondent:	Nguyen The Dat
Disputed Domain Name:	<baohanhelectrolux.store>

1. The Parties and Contested Domain Name

The Complainant is AB Electrolux of Sankt Göransgatan 143, 112 17 Stockholm, Sweden.

The Respondent is Nguyen The Dat of Duong Hoang Hoa Tham, Phuong Vinh Phuc, Quan Ba Dinh City, Ha Noi, Viet Nam.

The domain name at issue is <baohanhelectrolux.store> registered by the Respondent with P.A. Viet Nam Company Limited of Ho Chi Minh City, Viet Nam.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on February 27, 2020. On February 27, 2020 the Centre transmitted to the Registrar a request for registrar verification in connection with the disputed domain name. On May 5, 2020, the Registrar transmitted to the Centre its verification response disclosing registrant information for the disputed domain name which differed from the named Respondent information in the Complaint. The Centre sent an email communication to the Complainant on May 5, 2020, providing the registrant information disclosed and by the Registrar, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on May 5, 2020.

The Centre has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”) and the Centre’s Supplemental Rules.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceeding commenced on May 8, 2020. In accordance with the Rules, the due date for the Response was May 28, 2020.

No Response was received by the Centre.

The Centre appointed Sebastian Hughes as the Panelist in this matter on June 1, 2020. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. Complainant

The Complainant is a Swedish joint stock company founded in 1901 and is one of the world's leading producers of appliances and equipment for kitchen and cleaning products and floor care products, under the trade mark ELECTROLUX (the “Trade Mark”).

The Complainant is the owner of numerous registrations for the Trade Mark in jurisdictions worldwide, including International Registration No. 836605, with a registration date of December 21, 2010.

The Complainant is also the owner of a large number of domain names comprising the Trade Mark, including <electrolux.com>, registered since April 30, 1996, which it uses to connect to websites informing potential customers about the Trade Mark and the Complainant’s products and services offered under the Trade Mark.

B. Respondent

The Respondent is apparently an individual resident in Vietnam.

C. The Disputed Domain Name

The disputed domain name was registered on November 24, 2019.

D. The Website at the Disputed Domain Name

The disputed domain name has been resolved to a Vietnamese language website which has the look and feel of an official Electrolux website, displays prominently the Complainant’s official ELECTROLUX logo, and also includes reference to warranty and technical services (the “Website”).

4. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar or identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainant’s contentions.

5. Findings

5.1 Language of the Proceeding

The language of the registration agreement for the disputed domain name is Vietnamese. Pursuant to the Rules, paragraph 11, in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement. However, paragraph 11(a) of the Rules allows the panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for the following reasons:

(i) The Trade Mark is a well-known international mark which has no meaning in Vietnamese, and the domain name comprises the English language top level domain <.store>, which demonstrates that the Respondent is more likely than not conversant in English;

(ii) Being a Swedish entity, the Complainant is not in a position to conduct these proceedings in Vietnamese without a great deal of additional expense and delay due to the need for translation of the Complaint and the supporting Annexes; and

(iii) If the Respondent will default in these proceedings the Respondent will not suffer no prejudice if English is made the language of the proceedings.

The Panel would have accepted a response in Vietnamese, but the Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use 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.

Although there does not appear to be sufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes equally that there is no evidence to support the conclusion that the Respondent is not conversant in English, and the Respondent has chosen not to contest this proceeding.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost-effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be unduly prejudiced, should the language of the proceeding be English.

Having considered all the matters above, the Panel therefore determines, under paragraph 11(a) of the Rules, that the language of this proceeding shall be English.

5.2 Substantive Elements of the Policy

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. The respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. The respondent has no rights or legitimate interests in respect of the domain name; and
- iii. The respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name incorporates the entirety of the Trade Mark, together with the words "bao" and "hahn", which stand for the Vietnamese "Bảo Hành" (meaning "guarantee").

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that

there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that the Respondent has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a bona fide offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, in order to create the false impression of being an official or authorised website of the Complainant.

Even if (which is not clear from the content of the Website) the Respondent is offering via the Website only goods bearing the Complainant's Trade Mark, the Respondent has not been authorised by the Complainant to provide warranty, guarantee or repair services in respect of the Complainant's goods bearing the Trade Mark, and in any event the Website does not accurately disclose the registrant's relationship with the Complainant.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name; and there has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name, and therefore finds that the requirements of paragraph 4(a)(ii) of the Policy are met.

C) Bad Faith

In light of the Panel's findings under section B) above, and in light of the undisputed evidence of the Respondent's use of the Website in the manner described above, the Panel finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that, for the purposes of the Policy, the disputed domain name has been registered and is being used in bad faith.

6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <baohanhelectrolux.store> be transferred to the Complainant.



Sebastian Hughes
Sole Panelist

Dated: June 19, 2020