



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-18010192
<b>Complainant:</b>	AB Electrolux
<b>Respondent:</b>	Zhang Yufei
<b>Disputed Domain Name(s):</b>	< china-electrolux.com >

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**1. The Parties and Contested Domain Name**

The Complainant is AB Electrolux, of Sankt Göransgatan 143, 112 17 Stockholm, Sweden, through its Authorized Representative SILKA Law AB, of Strandvägen 7A, 114 56, Stockholm, Sweden.

The Respondent is Zhang Yufei, of Shichangpingqubaigezhuangxiqu4hao,100010 Beijing, People's Republic of China (PRC).

The domain name at issue is < china-electrolux.com >, registered by Respondent with Xin Net Technology Corporation, of Bei Gong Da Software Area Building #6, Level 1, BDA Beijing 100176, PRC.

**2. Procedural History**

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the "Centre") on November 8, 2018 and the Complainant chose sole panelist to review this case in accordance with the Uniform Domain Name Dispute Resolution Policy ("the Policy") which was adopted by the ICANN and came into effect on October 24, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") became effective on September 28, 2013 and the Supplemental Rules thereof which came into effective on July 31, 2015.

After receiving the Complaint, the Centre, in accordance with the Supplemental Rules, verified that the Complaint complied with the formal requirements of the Rules and the Supplemental Rules. In that regard, on November 16, 2018, the Centre requested the Registrar to confirm: (1) whether the disputed domain name is registered with Xin Net Technology Corporation, (2) whether the Respondent is the Registrant or holder of the disputed domain name, (3) whether the ICANN Uniform Domain Name Dispute Resolution Policy is applicable to the dispute. Additionally, the Center requested the Registrar to specify (4) the language of the Registration Agreement; (5) the registration

date and expiration date of the disputed domain name; (6) and the current status of the domain name.

On December 17, 2018, the Registrar provided its response to the Centre through which it (1) specified that the registrant is Zhang Yufei. In addition, the Centre confirmed that: (2) the name was registered with Xin Net Technology Corporation, and (3) the Policy applies to the name. The Registrar also stated that (4) the registration agreement is in Chinese language, (5) provided name and contact information pertinent to the name as reflected in its WhoIs database, and stated that (6) the disputed domain name had been locked and will not be transferred to another holder or registrar during the administrative proceeding or for a period of 15 business days after the proceeding is concluded in accordance with Paragraph 8 of the Policy.

On December 17, 2018, the Complainant submitted a revised Complainant to the Centre, within the required period of time, with regard to the registrant details only. On January 4, 2019, the Complainant submitted the registration agreement of the captioned case. On January 7, 2019, the Complainant submitted a request to change the language of the administrative proceeding to English.

On January 7, 2019, the Centre sent the Complaint to the Respondent. The Respondent was then provided with a 20-calendar day period, expiring on January 27, 2019, to file its Response both with the Centre and the Complainant. Moreover, on January 7, the Center asked the Respondent to respond on the language of the proceedings on or before 10 January 2019 but the Respondent did not comment on the language of proceedings by the specified due date.

On January 29, 2019, the Centre advised the parties by email that the Respondent had not filed any Response to the Complaint with the Centre on or before the deadline and, as such, the Centre would then proceed to appoint a Panelist for this matter. Pursuant to paragraph 6 (b) of the Rules and Supplemental Rules, the Centre, by email dated February 1, 2019, contacted the undersigned, Prof. Julien Chaisse, requesting his service as a Sole Panelist for this dispute. Subsequently, on the same day, Prof. Chaisse responded and affirmed his ability to act completely independently and impartially in this matter. Subsequently, the Centre, through an email dated February 1, 2019 notified the Parties of the appointment of Prof. Chaisse as the Sole Panelist.

The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Center on or before February 15, 2019.

### **3. Factual background**

#### **A. The Complainant and its activities**

AB Electrolux is a Swedish joint stock company founded in 1901 and one of the world's leading producers of appliances and equipment for kitchen and cleaning products and floor care products. Having started out with the sale of a single vacuum cleaner, after 90 years of innovations and acquisitions, Electrolux is now a global leader in home and professional appliances. The ELECTROLUX brand is the Complainant's flagship brand for kitchen and cleaning appliances for both consumers and professional users. In Annex 5 to the

Complaint, the Complainant could show that, in 2014, Electrolux had sales of SEK 112 billion and about 60,000 employees.

## **B. The Complainant's Marks**

Complainant is the owner of the registered well-known trademark ELECTROLUX as a word and figure mark in several classes in more than 150 countries all over the world including in China. See as example the International Trademark Registration 836605 registered in 2004 and national Chinese Trademark Registration No. 11314983 registered in 2014 and Chinese character Trademark Registration No. 976005 registered as early as in 1997. The trademarks have been registered in several classes, including class 7 that covers washing machines, spin driers, mangles, food processers, dust bags etc. In Annex 4 to the Complaint, the Complainant provided the list of the relevant registered trademarks.

Table 1. Overview of the relevant registered trademarks

<b>Trademark</b>	<b>Date of Registration</b>	<b>Registration number</b>	<b>Type of registration</b>
ELECTROLUX	21.12.2010	836605	International (designated China)
ELECTROLUX	2014.01.07	11314983	China
ELECTROLUX	1999.07.01	976005	China

The above-mentioned trademark registrations predate the registration of the Domain Name.

## **C. The Respondent**

As indicated in the WhoIs registration record, the Respondent registered the disputed domain name on March 16, 2017. Since December 17, 2018, the Disputed Domain Name has been locked by the Registrar and is currently inactive. The Centre confirmed that documents have been sent to the Respondent's address as registered with the registrar. However, the Centre did not receive a Response from the Respondent for the Domain Name Dispute within the required period of time.

The Respondent is to be considered in default.

## **4. Parties' Contentions**

Since the Respondent defaults, the Panel understands that the Complainant bears the burden of pleading at least a *prima facie* case. See, e.g., *Cyro Industries v. Contemporary Design*, WIPO, No. D2000-0336, Jun. 19, 2000 (holding that in cases of default, panels must pay special attention to evaluating the accuracy of Complainant's submissions); *Softquad Software Inc. v. Eleven-Eleven Ltd, DeC*, No. AF-0143 (Jun. 1, 2000) (stressing that in default cases, the burden of proving required elements remains with the Complainant).

## 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 Complainant submits that the domain name < china-electrolux.com > directly incorporates Complainant's well-known, registered trademark ELECTROLUX. In the current case the Domain Name is confusingly similar to the registered trademark ELECTROLUX.

The Complainant also submits that the country name China and a hyphen does not serve to distinguish the Domain Name from the trademark in any significant way, or otherwise to lessen the likelihood of confusion". In this respect, the Complainant refers to the "Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7: which provides that "it is generally accepted that the addition of country code top-level suffix in the domain name (e.g., ".com") are to be disregarded under the confusing similarity test". The Complainant submits that in the case No. DCN-1500631 *Bayer AG v. HUO Gai Zhen*, the Panel did not elaborate further on the actual .com.cn extension and regarded the disputed domain name to be identical to the Complainant's mark.

The Complainant submits that it is apparent that the disputed domain name is confusingly similar to the Complainant's marks and that the respondent intended to, and is currently, riding on the reputation of AB Electrolux' business.

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

The Complainant submits that the Respondent has connected the Domain Name to a website which has the look and feel of an official Electrolux website. The Respondent claims it is an after-sale service centre. On the website the customer can also purchase assistance by providing sensitive information such as name, email, etc. This data can be used in a fraudulent way and is not authorized by the Complainant.

The Complainant also submits that the Respondent's layout including a stylized ELECTROLUX logo appears prominently on the top left of the website and the centre. Given that the prominent use of Complainant's trademark on Respondent's website strongly suggests that there is a connection with Complainant.

While the Complainant admits that there can be no objection to Respondent advertising on its website that it offers repairs for ELECTROLUX products (if this, indeed, is what it does), the use of the word ELECTROLUX in the Domain Name strongly suggests that here is some official or authorized link with Complainant for the purposes of repairs and services within the greater of China. The Complainant submits that the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy which is not the case in this dispute.

The Complainant submits that the Respondent has no rights or legitimate interest in respect of the disputed domain name.

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

The Complainant tried to contact the Respondent on September 19, 2018 through a cease and desist letter. The letter was sent to the email address listed in the archive whois record. Complainant advised Respondent that the unauthorized use of its trademarks within the Domain Name violated their trademark rights and Complainant requested a voluntary transfer of the Domain Name. The Complainant submits that Respondent has simply disregarded such communication. Since the efforts of trying to solve the matter amicably were unsuccessful, Complainant chose to file a complaint according to the UDRP process.

The Complainant submits that the failure of a respondent to respond to a cease and desist letter, or a similar attempt at contact, has been considered relevant in a finding of bad faith, e.g., *News Group Newspapers Limited and News Network Limited v. Momm Amed Ia*, WIPO Case No. D2000-1623; *Nike, Inc. v. Azumano Travel*, WIPO Case No. D2000-1598; and *America Online, Inc. v. Antonio R. Diaz*, WIPO Case No. D2000-1460.

The Complainant submits that, in the WIPO case no. *Case No. D2015-1003 Electrolux v. Zhang Yu Han / YinSi BaoHu Yi KaiQi (Hidden by Whois Privacy Protection Service)* concerning the domain name < electroluxwx.net > with nearly identical circumstances to the current case, the Panel noted that: “[g]iven the observation above that the Respondent has not accurately disclosed its relationship (or more precisely lack thereof) with the Complainant and our consequent finding that the Respondent lacks rights or legitimate interests in the disputed domain name, this case can be simply dealt with on the basis that the disputed domain name involves an impersonation of the Complainant so as to benefit from confusion created by the domain name itself. Such registration and use of the disputed domain name clearly is abusive”.

The Complainant submits that the same circumstances apply in the current case. Further, the Respondent has never been granted permission to register the Domain Name. The Respondent takes advantage of the ELECTROLUX trademark by intentionally attempting to attract visitors to the Respondent’s website by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of Respondent’s website or location or a product or service on Respondent’s website or location. Similar to the WIPO case no D2014-0487 *Aktiebolaget Electrolux v. electroluxmedellin.com, Domain Discreet Privacy Service / Luis Rincon* where similar circumstances were at hand the Panel stated: “[t]he continuing use of the disputed domain name is clearly confusing to online users who will be attracted by the inclusion of the word ELECTROLX in the disputed domain name, and who will therefore believe that they are accessing a website that is in some way associated with or authorized by the Complainant. This is not the case, and the consumer confusion is further strengthened by the fact that there are services for Electrolux products advertised on the Respondent’s website without any disclaimer of association with the Respondent.”

From the Complainant’s point of view, the Respondent intentionally chose the Domain Name based on a registered and well-known trademark. Nowhere does Respondent disclaim on its website the non-existing relationship between itself and Complainant. Consequently, Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of its website. This conduct has been considered as bad faith under the Policy, and other

WIPO decisions have also arrived to the same conclusion, as an example see *Philip Morris Incorporated v. Alex Tsyarkin*, WIPO Case No. D2002-0946, in which the panel stated: “[i]t follows from what has been said about legitimacy that the Panel is satisfied that Respondent is using the disputed domain name intentionally to attempt to attract, for commercial gain, Internauts to his web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of his web site. Pursuant to Policy paragraph 4(b)(iv), this constitutes evidence of both bad faith registration and bad faith use, for the purposes of paragraph 4(a)(iii).

The Complainant submits that the disputed domain name has been registered and is being used in bad faith.

## **B. Respondent**

The Respondent is in default and the Panel will decide the dispute based on the information available to it and may draw such inferences as it deems appropriate from the Respondent’s failure to submit a timely Response.

A respondent’s default does not automatically result in a decision in favor of the complainant. The complainant must establish each of the three elements required by paragraph 4(a) of the Rules. Although a panel may draw appropriate inferences from a respondent’s default (e.g., to regard factual allegations which are not inherently implausible as being true), paragraph 4 of the Rules requires the complainant to support its assertions with actual evidence in order to succeed in a UDRP proceeding. See e.g., *M. Corentin Benoit Thiercelin v. CyberDeal, Inc.*, WIPO Case No. D2010-0941, <virtualexpo.com>; *Tradewind Media, LLC d/b/a Intopic Media v. Jayson Hahn*, WIPO Case No. D2010-1413, <intopicmedia.org>.

## **5. Findings**

### **A) Analysis of the Complaint**

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant’s undisputed representations.

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.

### **B) Language of the Proceedings**

The Complainant has requested that English be adopted as the language of the proceeding.

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, i.e., Chinese. The Complainant, upon receiving a notification from the Center that the language of the Registration Agreement of the disputed domain name < china-electrolux.com> was Chinese, submitted a request for this dispute to proceed in English. The Center made a preliminary determination to accept the Complaint filed in English, subject to a determination by the Panel pursuant to paragraph 11 of Rules.

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 *GroupeAuchan v. xmxzl*, WIPO Case No. DCC2006-0004; *Finter Bank Zurich v. ShuminPeng*, WIPO Case No. D2006-0432.

The Panel finds that in the circumstances of this case, paragraph 11 of the Rules is best served by allowing the proceedings to be conducted in English. The Panel was led to this conclusion by reason of the following factors:

- 1) The Complainant is unable to communicate in Chinese. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- 2) The evidence demonstrates the Respondent's ability to communicate in English. The content of the website that the Domain Name revolves to is in English, indicating not only that the Respondent has a good command of the English language, but that it is able to identify and communicate with the English-language companies that provide the advertising links on the website;
- 3) The Respondent has been given a fair chance to object to the Complainant's choice of English as the language of the proceeding, but has not done so, nor has it participated in the proceeding generally.; and
- 4) The Complainant has already been submitted in English without a Response having been filed. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

### **C) Identical / Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Marks acquired through registration and use which predate the date of registration of the disputed domain name by several years.

The above-mentioned trademark registrations predate the registration of the Domain Name. It has been established in previous decisions that ELECTROLUX is considered a well-known trademark, see for example WIPO Case no: D2008-0823 *Aktiebolaget Electrolux v. Mister Manager*, regarding the domain name *electrolux-appliance.com*. Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "electrolux", for example, <electrolux.com> (created on April 30, 1996) and a local Chinese website <electrolux.com.cn> (created on June 6, 1998). Complainant uses these domain names to connect to a website through which it informs potential customers about its ELECTROLUX mark and its products and services.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Marks and holds that the Complaint fulfills the first condition of paragraph 4(a) of the Policy.

#### **D) 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 the 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 non-commercial 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.*

In the light of the *Oki Data Americas, Inc. v. ASD, Inc.* WIPO Case No. D2001–0903, the use of a trademark as a domain name by an authorized or non-authorized third party is only to be regarded as a bona fide offering of goods or services within the meaning of paragraph 4(c) of the Policy if the following conditions are satisfied:

1. the respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;
2. the site must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site, if, in fact, it is only one of many sales agents;
3. the respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.

The Respondent fails on at least two of these tests, namely:

- First, Respondent does not publish a disclaimer on the challenged page.
- Secondly, the Respondent is depriving the Complainant of reflecting its own mark in the Domain Name and on the Chinese market.

The Respondent's use of the Domain Name creates an overall impression that they are the Complainant. In the present case, the Respondent's conduct does not meet all the *Oki Data* criteria. It is undeniable that Respondent was aware of Complainant's mark prior to the acquisition of the Domain Name and the establishment of Respondent's website. The Respondent has made no claims to neither having any relevant prior rights of its own, or to having become commonly known by the Domain Name.

The Respondent has been granted the opportunity to present some compelling arguments that it has rights in the Domain Name but has failed to do so. This behavior coupled with the use of the Domain Name cannot be considered as legitimate use of the Domain Name. The Complainant has previously successfully challenged numerous of ELECTROLUX domain names through the UDRP process see among others the following recent WIPO

cases: D2017-0835, D2017-0834, D2017-0920 D2015-1506; DIR2015-0007; D2015-1003; D2015-1006.

The Panel therefore finds that the Complaint fulfils the second condition of paragraph 4(a) of the Policy.

### **E) Bad Faith**

Pursuant to paragraph 4(b)(iv) of the Policy, the following conduct amounts to registration and use in bad faith on the part of a respondent: “[b]y using the disputed domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to the respondent’s 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.”

ELECTROLUX is a well-known trademark in the home appliance industry including in China. It is highly unlikely that Respondent was not aware of the rights Complainant has in the trademark and the value of said trademark, at the point of the registration.

Inference of bad faith registration and use of the Domain Name is also given by the fact that Respondent never replied to Complainant’s cease and desist letter. It is reasonable to assume that if Respondent did have legitimate purposes in registering and using the Domain Name it would have responded. Lastly, the Respondent does not meet the Oki Data principles on three elements, namely lack of a distinctive disclaimer and Respondent can be regarded to corner the market preventing Complainant from operating the Domain Name and they represent themselves as the trademark owner by displaying Complainant’s logo on the website.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith. Accordingly, the third condition of paragraph 4(a) of the Policy has been fulfilled.

## **6. Decision**

Based on the above analysis, the Panelist decides that: (1) the disputed domain name < china-electrolux.com > is confusingly similar to the Complainant’s name or mark in which the complaint has rights; (2) the Respondent has no right or legitimate interest in respect of the disputed domain names; (3) the Respondent has registered and is using the domain name in bad faith. Accordingly, under paragraphs 4(i) of the Policy and 15 of the Rules, the Panelist grants the relief sought by the Complainant. The disputed domain name, < china-electrolux.com >, is ordered transferred to the Complainant.



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Prof. Julien Chaisse  
Panelist  
Dated: February 8, 2019