



Asian Domain Name Dispute Resolution Centre
hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1500704
Complainant:	Westinghouse Electric Corporation (西屋电气公司)
Respondent:	Chen Hongwei
Disputed Domain Name(s):	<westinghouseke.com>

1. The Parties and Contested Domain Name

The Complainant is Westinghouse Electric Corporation, of 51 West 52nd Street, New York, New York, U.S.A. 10019.

The Respondent is Chen Hongwei, of No. 52-1-401 Changqing Garden 14 District, Wuhan, Hubei Province, P.R. China 430023.

The domain name at issue is <westinghouseke.com>, registered by Respondent with 35 Technology Co., Ltd. (厦门三五互联科技股份有限公司), of Xiamen, Fujian Province, P.R. China.

2. Procedural History

On 4 February 2015, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“Center”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of directors on 30 October 2009 (“Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”). The Center confirmed receipt of the Complaint on 4 February 2015. The Complainant elected that a single panelist be appointed to decide this case.

On 4 February 2015, the Center transmitted by email to the Registrar 35 Technology Co., Ltd., a request for registrar verification of the disputed domain name. On 4 February 2015, the Registrar transmitted by email to the Center its verification response, confirming that the Respondent is listed as the Registrant and providing contact details as Chen Hongwei (143434) of No. 52-1-401 Changqing Garden 14 District, Wuhan, Hebei Province, P.R. China 430023, whose email address is chw8848@sina.com and whose telephone number is +86 2783961937.

On 10 February 2015, the Center transmitted an email to the Complainants representatives, Messrs. Baker & McKenzie, advising that according to the information provided by the Registrar, the language of the Registration Agreement of the Disputed Domain Name is Chinese. The Center referred to paragraph 11 of the Rules, which provides that:

1. 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.
2. The Panel may order that any documents submitted in languages other than the language of the administrative proceeding be accompanied by a translation in whole or in part into the language of the administrative proceeding.

The Center requested that Complainant submit its Complaint in Chinese on or before 15 February 2015, or alternatively, that it provide reasons why English should be used as the language of these administrative proceedings.

On 13 February 2015, Complainant submitted to the Center a supplemental submission requesting that English be used as the language of the administrative proceeding. Also on 13 February 2015, by email to Complainant's representatives, the Center acknowledged its receipt of Complainant's supplemental submission and advised that Complainant's request would be forwarded to the Respondent and that the Panelist would decide the language issue.

On 16 February 2015, the Center transmitted the Complaint and evidence to Respondent by email to Respondent's registered email addresses (chw8848@sina.com; chw8848@163.com; and postmaster@westinghouseke.com), pursuant to the Policy, Article 4 of the Rules and Article 6 of the Supplemental Rules, requesting that the Respondent submit a Response within 20 calendar days, further specifying the due date as being on or before 8 March 2015. The Center included in its transmission to Respondent the earlier email communications between Complainant and the Center regarding the language of the proceedings, along with Complainant's supplemental submission requesting that English be used as the language of the proceedings, directing Respondent to provide comments on the Complainant's request for consideration by the Panelist.

Since the Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the Supplemental Rules, and the Notification, the Center informed the Complainant and Respondent by email on 9 March 2015, that the Center would appoint a single-member panel to proceed to render the decision.

On 19 March 2015, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Mr. David Kreider (柯瑞德先生) acting 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. Also on 19 March 2015, the Panel received the file from the Center.

3. Factual background

The Complainant, Westinghouse Electric Corporation, has a long history of over 100 years of innovation in providing important home and industrial technologies and appliances. The

Complainant holds registrations for the “Westinghouse” trademark in over 120 jurisdictions worldwide, including the “西屋” mark registered in China (“Mark” or “Marks”). The public worldwide knows Complainant’s highly reputable Marks, including in China. The Complainant has registered 269 domain names worldwide.

Respondent, whose name transliterated into English is “Chen Hongwei”, resides in Wuhan, Hebei Province, P.R. China. Respondent registered the Disputed Domain Name <westinghouseke.com> on 6 March 2008.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

The Disputed Domain Name is Confusingly Similar to a Trademark or Service Mark in which Complainant has Rights

The Disputed Domain Name incorporates Complainant’s registered Mark in its entirety. The addition of the letters “ke” at the end of “westinghouse” and the inclusion of the common TLD “.com” does not hide the fact that the spelling, pronunciation and overall appearance of the two are confusingly similar. The striking resemblance will no doubt mislead consumers into believing that the website to which the Disputed Domain Name resolves is operated by, or with permission from, Westinghouse Electric Corporation. As such, the Disputed Domain Name is confusingly similar to Complainant’s Marks.

The Respondent has no Rights or Legitimate Interests in Respect of the Domain Name

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. The mark Westinghouse is not a term commonly used in the English language. It is therefore impossible to conceive of a circumstance in which Respondent would use the Disputed Domain Name, except in a deliberate attempt to take advantage of the Marks for commercial gain.

Given the above reasons and the fact that the Complainant has prior rights in the Marks preceding the Respondent’s registration of the Disputed Domain Name, the Complainant has established a prima facie case that Respondent has no rights and legitimate interests in the Disputed Domain Name and the burden of proof shifts to Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name.

Respondent’s Registration and Use of the Disputed Domain Name was in Bad Faith

The Disputed Domain Name <westinghouseke.com> resolves to a website operated under the name of a P.R. China company called Wuhan Xiwukeyi Electronic Equipment Co., Ltd. (武汉西屋柯伊电气设备有限公司) (“Xiwukeyi”), which contains Complainant’s Chinese Mark “西屋” (“Westinghouse” in Chinese) in its entirety. Xiwukeyi makes false and

misleading claims on the website that it has established long-term cooperation with Westinghouse Electric Corporation (“Westinghouse”) and Eaton Corporation (“Eaton”).

Another P.R. China corporation, Zhengzhou Jintaier Electric Co., Ltd., (“Jintaier”), Xiwukeyi’s associated business partner listed on the website and its business brochure, has been using the “Westinghouse”, the Westinghouse “Circle W Logo” and “Eaton” marks on the signboard at Jintaier’s premises. The unauthorized use of Complainant’s Marks, as well as Eaton’s house mark, is very likely to mislead the public to associate Xiwukeyi and Jintaier with Complainant, or Eaton, or with both.

In addition, Xiwukeyi has also attempted to register a “WESTINGHOUSE / XI WU KE YI in Chinese” mark in Class 9 (App. No. 6785069) in China. Complainant had filed an opposition and a court appeal against App. No. 6785069. The appeal is currently pending in the Chinese court and neither Respondent nor Xiwukeyi has a valid registration for the mark.

As demonstrated, it is clear that the Disputed Domain Name has been registered and is being used in bad faith.

B. Respondent

The Respondent’s contentions may be summarized as follows:

Respondent has defaulted and has submitted no response or other papers in these administrative proceedings, timely or otherwise.

5. Findings

Language

The Panelist notes that the Disputed Domain Name is in the English language, although the website to which the Disputed Domain Name resolves is in Chinese, except for the English language company names and marks “Westinghouse” and “Eaton” which are incorporated (appropriately from a linguistic standpoint), within the Chinese text.

Citing the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition, Complainant’s Supplement to Complaint recites at paragraph 4:

“Where a Complaint is made in a language other than that of the Registration Agreement, and it is not clear that this poses no difficulty for the Respondent, the Respondent should normally receive notice of the Proceeding in the language of the Registration Agreement...Furthermore, if the Complainant is seeking, or the Panel is considering, a determination that the Proceeding be conducted in a language other than that of the Registration Agreement, such proposal should be communicated to the Respondent, so that it has an opportunity to raise any contrary arguments”: These requirements will normally be met through the availability of a coversheet in the language of the registration agreement and through the inclusion in the complaint of appropriate submissions on the language of the proceeding (**Exhibit ii Beiersdorf AG v. Good Deal Communications**, Case No. D2000-1759). Accordingly, it is submitted that such requirements are met by this supplement, and the Complainant

re-submits the Complaint with this supplement under the Complaint Transmittal Coversheet in both English and Chinese to the ADNDRC.’ (Emphasis original)

Here, with the exception of the Complaint itself and certain annexures which appear in English, the relevant correspondence, coversheets and notices transmitted to the Respondent to alert it to the pendency of these administrative proceedings; of Complainants request that the language of these proceedings be English; and of the requirement that Respondent file a response timely; were transmitted to the Respondent in both Chinese and English. Respondent’s default and failure to submit timely a Response or to indicate a preference as to the language to be used in these proceedings cannot be said to have resulted from any failure by Complainant or the Center to communicate with Respondent in Chinese.

The Panel finds that Respondent has been given a fair chance to object to the use of English as the language of these proceedings, and that the Complainant would be unfairly disadvantaged (as Complainant has alleged), should it be required by this Panelist to translate the Complaint and all supporting documents into Chinese.

Additionally, the Panelist notes that the only registration particulars provided by the Registrar in response to the Center’s 4 February 2015 email request for ‘confirmation of registration particulars’ (注册信息确认) are in English, notwithstanding that the Center’s request was written in Chinese as well as in English.

Significantly, in the view of this Panelist, the Registrar has not even provided the Respondent’s name written in Chinese characters in response to the Center’s request for the Registrant’s particulars. (A number of possible combinations of Chinese characters would be pronounced and written “Chen Hong Wei” when transliterated into English).

Having failed even to provide his or her own name in the Chinese language when Respondent registered the Disputed Domain Name, and having received due and proper notice of these proceedings in Chinese, as well as in English, without objection, the Panel decides that the English language will be used in these proceedings. Respondent will suffer no genuine prejudice thereby.

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 Disputed Domain Name incorporates Complainant’s registered Mark “westinghouse” in its entirety. The Panel finds that the addition of the letters “ke” at the end of “westinghouse” and the inclusion of the common TLD “.com” does not hide the fact that the spelling, pronunciation and overall appearance of the two are confusingly similar.

B) Rights and Legitimate Interests

The mark Westinghouse is not a term commonly used in the English language, except in relation to Complainant's globally renowned brand. Complainant has demonstrated that it enjoys prior rights in the Marks preceding the Respondent's registration of the Disputed Domain Name, moreover, Complainant has not authorized or licensed Respondent to use its Marks.

C) Bad Faith

Complainant has adduced compelling evidence, including screen shots of Respondent's website, evidencing that the Disputed Domain Name <westinghouseke.com> resolves to a website operated under the name of a P.R. China company called Wuhan Xiwukeyi Electronic Equipment Co., Ltd. (武汉西屋柯伊电气设备有限公司) ("Xiwukeyi"), which contains Complainant's Chinese Mark "西屋" ("Westinghouse" in Chinese) in its entirety. Xiwukeyi makes false and misleading claims on the website that it has established long-term cooperation with Westinghouse Electric Corporation ("Westinghouse") and Eaton Corporation ("Eaton").

Complainant has additionally produced photographs of the signage in front of the Jintaier business premises in support of its allegation that Xiwukeyi's associated business partner, Jintaier, listed on the website, has been using the "Westinghouse", the Westinghouse "Circle W Logo" and "Eaton" marks on the signboard at the Jintaier business premises.

Complainant contends, and this Panelist so finds, that the unauthorized use of Complainant's Marks is very likely to mislead the public to associate Xiwukeyi and Jintaier with Complainant and with Complainant's products and technologies.

The Panel finds that Respondent registered and is using the Disputed Domain Name in bad faith to intentionally mislead public Internet users for its own commercial gain.

6. Decision

It is ORDERED that the <westinghouseke.com> domain name be TRANSFERRED to the Complainant.

David L. Kreider, Esq.
Panelist

Dated: 22 March 2015