



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2001406
<b>Complainant:</b>	voestalpine High Performance Metals Pacific Pte. Ltd.
<b>Respondent:</b>	guang dong yi sheng bai mu ju ji shu you xian gong si (广东一胜百模具技术有限公司) / xuwensen (许文森)
<b>Disputed Domain Name(s):</b>	<assab.xyz>

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**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 Respondent is guang dong yi sheng bai mu ju ji shu you xian gong si (广东一胜百模具技术有限公司) / xuwensen (许文森), of Guang Dong Dong Guan Shi Nan Cheng Qu Hong Tu Lu Tang Bei Xin Yuan A1003, Postal Code 523000 (广东东莞市南城区宏图路塘贝新苑 A1003 邮编 523000, China.

The domain name at issue is <assab.xyz>, registered by Respondent with Alibaba Cloud Computing Ltd. d/b/a HiChina (www.net.cn), whose address is 701-29, Hai Dian Dong San Jie No.2, Haidian Qu, Beijing Shi, China.

**2. Procedural History**

On 23 November 2020, 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 26 August 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of directors on 28 September 2013 (“Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”). The Center confirmed receipt of the Complaint on 23 November 2020. Complainant elected that a single panelist decide this case.

On 23 November 2020, the Center transmitted by email to the Registrar, Alibaba Cloud Computing Ltd. d/b/a HiChina, a request for registrar verification of the disputed domain name. On 26 November 2020, the Registrar transmitted by email to the Center its verification response, confirming that Respondent is listed as the Registrant and providing contact details as: telephone 86-135-09013889 and email 550153141@qq.com.

On 26 November 2020, the Center notified Complainant by email that the Complaint as originally submitted did not name Respondent as the Registrant. On 27 November 2020, Complainant submitted timely, in accordance with paragraph 4 (b) of the Rules, a Supplemental Complaint, with exhibits.

On 27 November 2020, the Center transmitted the Complaint and evidence to Respondent by email to Respondent's registered email addresses, requesting that Respondent submit a Response within 20 calendar days, further specifying the due date as being on or before 17 December 2020.

Since 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 Complainant and Respondent by email on 18 December 2020, that the Center would appoint a single-member panel to proceed to render the decision.

On 18 December 2020, 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 L. Kreider 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. In accordance with the Rules, subject to exceptional circumstances, a decision for the captioned domain name dispute shall be rendered by the Panelist on or before 1 January 2021.

### **Preliminary Issue –Language of the Proceeding**

On 26 November 2020, Complainant requested the Panelist to exercise its discretion under UDRP Rule 11(a) to determine that these proceedings would be conducted in English. Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by Complainant to suggest the likely possibility that Respondent is conversant and proficient in the English language. After considering the circumstances of the present case, the Panel decides that these proceedings should be conducted in English.

### **3. Factual background**

Launched in 1945 to market high quality tool steel from Sweden, the Complainant operates close to 50 sales offices in the Asia Pacific Region, 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. In the greater China region, "ASSAB" is also known as "一胜百 (Yi Sheng Bai)" which, when literally translated, means "One beats One Hundred", which underscores the Complainant's position as an industry leader.

The Complainant holds trademark registrations for the "ASSAB" trademark and other related trademarks, including the Chinese character trademark "一胜百", in various jurisdictions worldwide, including the Hong Kong SAR and China. The Complainant employs more than 500 personnel in 22 locations across the mainland of China and conducts business through 18 affiliates in Beijing, Changchun, Changzhou, Chongqing, Dalian, Dongguan, Guangzhou, Hong Kong, Hunan, Ningbo, Qingdao, Shanghai, Suzhou, Tianjin, Wuhan, Xiamen, Xi'an and Yantai, among other locations.

On its part, the Respondent in these administrative proceedings has defaulted and failed to submit timely, or at all, a Response to the Complaint.

#### **4. Parties' Contentions**

##### **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:**

Complainant submits that Respondent's Disputed Domain Name is confusingly similar to Complainant's registered "ASSAB" trademarks and its common law rights in the "ASSAB" brand, which are protected under the law of passing off in Hong Kong. The Disputed Domain Name wholly incorporates Complainant's "ASSAB" mark. The top-level domain ".xyz" is a standard registration requirement and as such is disregarded under the first element confusing similarity test of the Policy.

##### **ii) The Respondent has no rights or legitimate interests in respect of the domain name:**

The Respondent registered the disputed domain name on 25 October 2017, long after most of the application and registration dates of the Complainant's "ASSAB" marks. The Complainant has not permitted or authorised the Respondent the use the "ASSAB" name or marks.

The Complainant alleges that, after years of extensive use, the "ASSAB" marks have acquired significant recognition worldwide. 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. Additionally, the "ASSAB" mark is not a term commonly used in the English language. There is also no evidence that the Respondent has been commonly known by the Disputed Domain Name. It is therefore impossible to conceive of a circumstance in which the Respondent would use the Disputed Domain Name, except in a deliberate attempt to take advantage of the "ASSAB" mark for commercial gain.

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

The Complainant avers that the Disputed Domain Name <assab.xyz> resolves to a website operated by one or more PRC companies variously named 广东一胜百模具技术有限公司 (Guangdong Yi Sheng Bai Mould Technology Co., Ltd.) and 一胜百模具技术有限公司 (Yi Sheng Bai Mould Technology Co., Ltd.). Both aforementioned company names incorporate the Complainant's registered Chinese character trademark "一胜百" (ASSAB in Chinese) in their entirety and both are similar to the names of Complainant's authorised subsidiaries located in Dongguan, Guangdong Province, China, to wit:- 一胜百模具(东莞)有限公司 (ASSAB Tooling (Dongguan) Co., Ltd.) and 一胜百模具(东莞)有限公司广州分公司 (ASSAB Tooling (Dongguan) Co., Ltd. Guangzhou Branch).

The website to which the Disputed Domain Name resolves directs Internet users to contact the Respondent by email at "assab@assab.so". It is obvious, the Complainant alleges, that the Respondent is trying to deceive consumers into believing that they are related to the Complainant by using the mailbox "assab@assab.so", which contains the Complainant's "ASSAB" mark in its entirety. Moreover, the website's layout, index pictures, the contents of the Introductory Page, Environment Responsibility and Corporate Social Responsibility pages are strikingly similar to those of the Complainant's official website located at URL: www.assab.com/china.

The Complainant observes that Xu Wensen (许文森) appears in the WHOIS registration information as the contact person of the Disputed Domain Name. The Complainant alleges that Xu Wensen (许文森) is listed in public databases as the legal representative and shareholder of 广东一胜百模具技术有限公司 (Guangdong Yi Sheng Bai Mould Technology Co., Ltd.) and the legal representative of 一胜百模具技术有限公司东莞分公司 (Yi Sheng Bai Mould Technology Co., Ltd. Dongguan Branch); 一胜百模具技术有限公司江苏分公司 (Yi Sheng Bai Mould Technology Co., Ltd. Jiangsu Branch); and 陕西一胜百模具技术有限公司东莞分公司 (Shaanxi Yi Sheng Bai Mould Co., Ltd Dongguan Branch); and also as a shareholder of a number of companies including 一胜百模具技术有限公司 ((Yi Sheng Bai Mould Technology Co., Ltd.).

The Complainant avers that Xu Wensen's (许文森) above-referenced companies above have incorporated “一胜百” (ASSAB in Chinese) as their trade names and Xu Wensen (许文森) has registered “ASSAB” domain names that incorporate the Complainant's "ASSAB" mark. Xu Wensen's various corporate entities offer for sale steel products via their related websites with the intention, and for the purpose, the Complainant alleges to mislead the consuming public into believing the above-referenced companies are connected or affiliated with the Complainant.

The ADNDRC panel decisions in case HK-1600889, which concerned the domain name <dgassab.com>, and HK-1701019 which concerned the domain name <assab.xin>, each resulted in orders on 12 October 2016 and 13 November 2017, respectively, that the infringing domain names be transferred by the Registrant of those domains, Xu Wensen (许文森), to the Complainant.

In addition to the two (2) decided panel decisions involving Xu Wensen (许文森), the same Respondent as in the present UDRP proceedings, numerous other panels have ordered the transfer to the Complainant of infringing domains incorporating the “ASSAB” marks, including: HK-1600872 <china-assab.com>; HK-1600887 <assab-tooling.com>; HK-1600888 <assab-cn.com>; HK-1600890 <assab-zg.com>; HK-1600891 <assab-tool.com>; HK-1600892 <assab-gd.net>; DCN-1700756 <assabdongg.cn>; DCN-1700782 <assab-mould.cn> and <assabsteel.cn> ;HK-1701036 <assab-steel.com>; HK-1701038 <dongguan-assab.com>; HK-1701039 <assab-gz.com > and <assab.sz.com >; DCN-1800807 <assanshenz.cn> and <assabguanz.cn>; DCN-1800834 <assab-mould.com.cn> and other 8 domain names; DCN-1900882 <assab101.cn>; DCN-1901229 <as0p.com>; HK-1901299 <assab-dg.com>; and HK-1901300 <yishengbei.com>.

Respondent is using the Complainant's “ASSAB” mark in its entirety in the Disputed Domain Name and website with intent to mislead consumers into believing that Respondent is the Complainant, when, in fact, it is an unauthorised individual or entity

attempting to trade on the Complainant's name and goodwill to gain an unfair commercial advantage.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent in these administrative proceedings has defaulted and failed to submit timely, or at all, a Response to the Complaint.

**5. Findings**

Complainant has rights to the "ASSAB" trademark which it registered in Hong Kong in as early as 1957, as well as common law rights in the "ASSAB" brand, since approximately the mid-1950s, which are protected under the law of passing off in Hong Kong.

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 argues that Respondent's Disputed Domain Name is identical to Complainant's "ASSAB" mark pursuant to Policy ¶ 4(a)(i). The Disputed Domain Name incorporates the Complainant's mark in its entirety. The Panel finds that the addition of the generic top-level domain ".xyz", a standard administrative requirement for domain name registration, is irrelevant in distinguishing a disputed domain name from an established mark. *See, Microsoft Corp. v. Mehrotra*, D2000-0053 (WIPO Apr. 10, 2000) (finding that the domain name <microsoft.org> is identical to the complainant's mark).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

**B) Rights and Legitimate Interests**

The Panel finds that the Complainant has not authorized the Respondent to use the "ASSAB" mark, nor is the Respondent commonly known by the Disputed Domain Name. The Complainant alleges, and the Panel agrees, that it is therefore impossible to conceive of a circumstance in which the Respondent would use the Disputed Domain Name, except in a deliberate attempt to take advantage of the "ASSAB" mark for commercial gain.

The Complainant has established a *prima facie* case that the Respondent has no rights and legitimate interests in the disputed domain name, and the burden of proof thus shifts to the Respondent to produce evidence demonstrating that the Respondent *has* rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent has failed to submit a Response to the Complaint or to show any rights or legitimate interest in the “ASSAB” mark and has not denied the allegations raised by the Complainant.

Further, a review of screenshots taken of the Respondent’s website confirms the conclusion that the Respondent targeted Complainant with the intention of registering the Disputed Domain Name to create confusion and lead consumers to believe that the Respondent is the Complainant, when, in fact, it is some unknown individual or entity attempting to trade on the Complainant’s name and goodwill. The Respondent’s conduct is inconsistent with any lawful or legitimate right or interest in the Disputed Domain Name.

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

### **C) Bad Faith**

The Panel finds on the Complainant’s evidence that the Respondent, Xu Wensen (许文森), has targeted the Complainant’s trademarks in a pattern of infringing conduct in relation to the Complainant’s “ASSAB” marks. The Complainant has adduced evidence, moreover, that the Respondent’s website offers for sale steel products in competition with the Complainant and that the Respondent is connected with companies located in Guangdong Province, China, with names very similar to the names of the Complainant’s authorized subsidiary or affiliate companies.

The Panel further finds on the evidence adduced, that the Respondent registered and used the Disputed Domain Name in bad faith for the primary purpose of disrupting the Complainant’s business and attracting Internet users for commercial gain to compete unfairly with the Complainant in the same market, niche or specialized field by creating a likelihood of confusion with the Complainant’s mark as to the source or sponsorship of the Respondent’s website or of the products on Respondent’s website, or both. The Respondent did not submit a Response to the Complaint and has not sought to refute the Complainant’s evidence.

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

## **6. Decision**

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

It is **ORDERED** that the <assab.xyz> domain name be **TRANSFERRED** from Respondent to Complainant.



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David L. Kreider  
Panelist

Dated: 21 December 2020