



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-1801162

Complainant: SUBARU CORPORATION

Respondent: liang zhang

Domain Name: subaru-power.com

Registrar: Pheenix, Inc.

1. Procedural History

On 10 April 2018, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) 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) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 10 April 2018, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, Pheenix, Inc., a request for registrar verification in connection with the disputed domain name.

On 13 April 2018, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 18 April 2018, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had

sent the Complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and the Registrar, Pheenix, Inc., of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. The ADNDRC Beijing Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. Matthew Murphy, the ADNDRC Beijing Office notified the parties on 9 May 2018 that the Panel in this case had been selected, with Mr. Matthew Murphy acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 9 May 2018, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 23 May 2018.

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 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. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

A. The Complainant

The Complainant in this case is SUBARU CORPORATION. The registered address is 1-20-8, EBISU, SHIBUYA-KU, TOKYO, JAPAN. The authorized representative in this case is Beijing Tee & Howe Law Office.

The Complainant claims that incorporated in 1953, the Complainant SUBARU CORPORATION is a famous automobile manufacturer in the world and has ranked among the world's top 500 companies for many consecutive years.

The Complainant also claims "SUBARU" as its core brand. It has provided details of Chinese trademark registrations for "SUBARU" Nos.151327 and 5701085 in class 12

and “SUBARU”, No. 5701100 in class 41, and provided the evidence showing that the registration “SUBARU” No.151327 was ever recognized as well-known trademark in respect of automobiles in China.

The Complainant has also provided the evidence to show it has advertised and promoted its SUBARU brand in the world including China.

B. The Respondent

The Respondent in this case is liang zhang. The registered address is kaixian, xinglongjie, 186hao, Chongqing, China.

The Respondent is the current registrant of the disputed domain name “subaru-power.com”, which was registered on 5 August 2017 according to the WHOIS information. The registrar of the disputed domain name is Pheenix, Inc.

3. Parties’ Contentions

A. The Complainant

The Complainant is a global transportation manufacturer with its core business being the manufacturing of automobiles. Thanks to its unique horizontally opposed engine (“SUBARU BOXER engine”) and Symmetrical All-Wheel Drive system, the Complainant’s automotive products have outstanding handling and engine performance and thus enjoy a high reputation around the world. The Complainant’s trademark “SUBARU” has become a well-known trademark in respect of automobiles in Mainland China through extensive use, promotion and advertising. The disputed domain name is confusingly similar to the SUBARU trademark registrations of the Complainant.

The Respondent has no rights or legitimate interests to the disputed domain name. The Complainant has never authorized or licensed the Respondent to use SUBARU trademark, so the Respondent has no rights or interests to the disputed domain name.

The Respondent obviously possessed bad faith in registering and using the disputed domain name. The Complainant is famous for its powerful engine and its trademark “SUBARU” is recognized as a well-known trademark in respect of automobiles in China. It shall be by no means accidental that the Respondent registered the Complainant’s well-known trademark “SUBARU” plus the descriptive word “POWER” about engine as his domain name. It was evident that the Respondent deliberately

registered the domain name to mislead the public that the Respondent is associated with the Complainant, maliciously attempting to take a free ride on the reputation of the SUBARU brand to attract more internet visits to its website so as to illegally obtain more business opportunities. In addition, the website www.subaru-power.com indicated that the Respondent used the domain name to engage in illegal gambling by operating slot machines (老虎机), which will definitely damage the Complainant's brand and goodwill of the Complainant.

The Complainant requires to transfer the disputed domain name to the Complainant.

B. The Respondent

The Respondent has not asserted any claims, defenses or contentions.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name 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 documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent 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 online 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.

A. Identity or Confusing Similarity

The Panel finds that the Complainant has established that it is the owner of the trademark "SUBARU". The validity and fame of this trademark are beyond dispute in many countries including China. The Respondent's domain name wholly contains the Complainant's trademark "SUBARU", with additions to it a hyphen "-" and a word "POWER". The word "POWER" as a descriptive word has less distinctiveness, and it is noted that it is often used to describe automobiles/engines industry which is obviously a key one of the Complainant's business, and one that the Complainant's SUBARU trademark is registered and used in relation to. Internet users may easily understand the disputed domain name to be related to the Complainant in some way, since the domain name includes the Complainant's well-known trademark and the trademark itself, is a distinctive mark that is highly attributable to the Complainant. No evidence or submissions to refute these conclusions have been provided by the Respondent. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark "SUBARU" owned by the Complainant.

B. Rights or Legitimate Interests of the Respondent

There is no evidence that the Respondent had any right or legitimate interest whatsoever in respect of the trademark "SUBARU", or that there was any authorized association between the trademark "SUBARU" and its activities, before registering the disputed domain name. Given that the Respondent has not provided any evidence to support a right or legitimate interest in the domain name, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Bad Faith

The trademark "SUBARU" is well-known enough that it is presumable that the Respondent knew about its existence when registering the domain name (see *Banca Sella S.p.A. v. Mr. Paolo Parente*, WIPO Case No. D2000-1157; *Expedia, Inc. v. European Travel Network*, WIPO Case No. D2000-0137). No argument has been submitted by the defaulting Respondent in order to counter these findings. The Panel concludes that the disputed domain name has been registered in bad faith.

As far as use of the domain name in bad faith is concerned, the Panel concludes that

the Respondent's holding of the disputed domain name in this particular case satisfies the requirement of Paragraph 4(a)(iii) of the Policy in that the domain name "is being used in bad faith" by the Respondent (see *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-0003; *Espirito Santo Financial Group S.A. v. Peter Colman*, WIPO Case No. D2001-1214) - the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use and registration in various countries throughout the world, and the Respondent has not provided any evidence of any actual or contemplated good faith use by it of the disputed domain name.

5. Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the disputed domain name "subaru-power.com" be transferred to the Complainant SUBARU CORPORATION.

Sole Panelist: *Matthew Murphy*

Dated: 22 May 2018