



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0500052
Case ID	CN-0500061
Disputed Domain Name	www.rosement.com
Case Administrator	Xinmin Cui
Submitted By	Yong Li
Participated Panelist	

Date of Decision	26-09-2005
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The Parties Information

Claimant	Rosemount Inc.
Respondent	Lv Jingli

Procedural History

On July 22, 2005, Beijing Office of the Asian Domain Name Dispute Resolution Center (hereinafter referred to as the Office) received the Complaint from the Complainant.

On July 27, 2005, the Office informed the Complainant of receipt of the Complaint and sent an email to the registrar asking for relevant information.

On Aug. 2, 2005, the Office received a reply from the Registrar confirming that the disputed domain name has been placed under a locked status according to the UDRP and the language of the registration agreement of the disputed domain name is English.

On Aug. 3, 2005, the Office transmitted the Complaint to the Respondent.

On Aug. 17, 2005, the Office sent the Complaint and the Notification of the Commencement of the Proceedings to the Respondent in which the Office notified the Respondent that he had 20 calendar days to submit a Response to the Complaint. On the same day, the Office notified the Registrar of the commencement of the case and informed the Complainant that the Complaint had been reviewed and forwarded to the Respondent and the Registrar.

On Sep. 8, 2005, because no Response had been received from the Respondent before the stipulated date, the Office sent a Notification of Hearing by Default to both the Complainant and the Respondent.

On Sep.9, 2005, the Office informed the parties that Mr. Li Yong had been appointed by the Office as the sole Panelist for the case and the date of submitting a decision was set to Sep. 23, 2005.

Factual Background

For Claimant

The Complainant asserted, and provided evidence in support of, the following facts, which the Panel finds established: The Complainant is Rosemount Inc. with its address at 8200 Market Boulevard, Chanhassen, MN 55317 USA. The Complainant has acquired registration for trademark “ROSEMOUNT” in China since 1982.

For Respondent

According to the Complaint furnished by the Complainant, the Respondent is Lv Jingli. The Respondent has not participated in this administrative proceeding and has not submitted any documents.

Parties' Contentions

Claimant

The Complainant is one of the leading multinationals that designs, manufactures and sells a complete line of pressure, temperature, flow, level and safety measurement instrumentation. The Complainant started its business in the PRC from the late 1970s, and has been providing a variety of products using the trademark “ROSEMOUNT” to customers all over the PRC.

The Complainant’s exclusive right to the trademark “ROSEMOUNT” in connection with its products is protected by PRC law. The trademark was registered under Class 19 on March 30, 1982. The products or services under which the trademark was registered and has been used include pressure sensing instruments and electronically controlled pressure sensing instruments used in industrial and aircraft, temperature sensing instruments and electronically controlled temperature instruments, angle of attack sensors, etc. The aforesaid trademark registrations are valid at present.

Up till now, the registered trademark “ROSEMOUNT” has achieved high degree of recognition in the fields of pressure, temperature, flow and level measurement and instrumentation, and become well known among customers.

The Respondent’s domain name is confusingly similar to the Complainant’s mark.

The identifying part of the disputed domain name “rosement” is confusingly similar to the Complainant’s trademark “ROSEMOUNT” in sight and sound.

Further, when entering the disputed domain name into the browser, the web page displays the Chinese translation of the disputed domain name as “罗斯蒙特”, which is identical with the Chinese equivalent of the Complainant’s registered trademark “ROSEMOUNT” in English and “罗斯蒙特” in Chinese.

Also, the likelihood of confusion is evidenced by the striking similarity that the graphical user interface of the Respondent’s website bears with that of the Complainant’s website.

The Respondent does not have any rights or legitimate interests in the domain name at issue.

The Respondent has no right to the trademark “ROSEMOUNT” or any confusingly variation thereof. The

Complainant has never, directly or indirectly, authorized or licensed the Respondent to use the trademark “ROSEMOUNT” or any similar word or expression. There is no indication that the Respondent has been commonly known by the domain name or has used the domain name or its identifying portion in connection with a bona fide offering of goods or services. In fact, the evidence clearly shows that the use of the domain name by the Respondent is commercial in nature with the intent to misleadingly divert consumers.

The Respondent registered and used domain name at issue in bad faith.

The “look-and-feel” of its user interface of the web site based on the disputed domain name “rosement.com” is confusingly similar to the Complainant’s official website located at <http://www.rosemount.com>.

In addition, the instrumentation products displayed on Respondent’s website look essentially the same in appearance as those of the Complainant bearing the trademark “ROSEMOUNT”.

In view of the above, it is apparent that by using the disputed domain name containing a slight variation of the Complainant’s registered trademark “ROSEMOUNT”, the Respondent attempted to attract, for commercial gain, Internet users to its web site by creating likelihood of confusion with the Complainant’s registered trademark “ROSEMOUNT” as to the source, sponsorship, affiliation, or endorsement of its web site, or of a product or service on its web site. Therefore, according to Article 4.b (iv) of the Policy, the registration and use of the registered domain name by the Respondent has constituted bad faith.

The Complaint requests the Panel for a decision to transfer the disputed domain name to the Complainant.

Respondent

The Respondent failed to submit its contentions before the stipulated date in the administrative proceeding.

Findings

Identical / Confusingly Similar

The Complainant has established its rights in the trademarks “ROSEMOUNT” in China.

The Panel follows the Complainant’s submission that the domain name <rosement.com> is confusingly similar to the Complainant’s trademark. In the Panel’s opinion, the identifying part of the disputed domain name “rosement” is confusingly similar to the Complainant’s trademark “ROSEMOUNT” in sight and sound. This finding could be further supported by the fact that the Complainant translates its mark into Chinese as “罗斯蒙特” while the Respondent uses the same Chinese characters “罗斯蒙特” to represent his domain name according to the exhibit 3 submitted by the Complainant showing the user interface of the website based on the disputed domain name.

The Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a non-exclusive list of circumstances which, if found by the Panel to be proved based on its evaluation of all evidence submitted, shall demonstrate rights to or legitimate interests in the domain name in dispute.

The Respondent, in not responding to the Complaint, has failed to invoke any of the circumstances, which could demonstrate, pursuant to Paragraph 4(c) of the Policy, any rights to or legitimate interests in the domain name in dispute. This entitles the Panel to draw any inferences from such default as it considers appropriate pursuant to Paragraph 14(b) of the Rules. The Respondent has not provided evidence of circumstances of the type specified in the Policy, 4(c). There exists no evidence that the Respondent, before receipt of any notice of the dispute, has used the domain name or a name corresponding to the domain name in connection with bona fide; or that the Respondent has been commonly known by the domain name; or that the Respondent is making a legitimate noncommercial or fair use of the domain name. Furthermore, the Respondent has not provided evidence of any other circumstances giving rise to a right or legitimate interest in the disputed domain name. As such, the Panel believes that the Respondent has no rights or legitimate interests with respect to the disputed domain name.

Bad Faith

In accordance with the Policy, the Complainant asking for transfer of the domain name must prove that the Respondent has registered the domain name and is using it in bad faith (Policy, 4 (a)(iii)).

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that can prove registration and use of a domain name in bad faith. Any one of the following behaviors is sufficient to support a finding of bad faith:

- (i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or
- (ii) you have 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 you have engaged in a pattern of such conduct; or
- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location.

The Respondent did not file any response to the Complaint, failing thereby to invoke any circumstance which could demonstrate his good faith in the registration or use of the domain name at issue. Nevertheless, the Panel still has the responsibility of determining which of the Complainant's assertions are established as facts, and whether the conclusions asserted by the Complainant can be drawn from the established facts.

Based on the statements made by and the exhibits submitted by the Complainant, the Panel finds the following facts established: a) the Complainant is one of the leading multinationals that designs, manufactures and sells a complete line of pressure, temperature, flow, level and safety measurement instrumentation, and started its business in the PRC from late 1970s, and has been providing a variety of products using the trademark "ROSEMOUNT" to customers all over the PRC; b) the "look-and-feel" of the user interface of the website based on the disputed domain name "rosement.com" is confusingly similar to the Complainant's official website; c) the instrumentation products displayed on the Respondent's website look essentially the same in appearance as those of the Complainant bearing the trademark "ROSEMOUNT".

Based on the above facts, the Panel finds that the circumstance of the Policy 4(b)(iv) exists in this case, namely, the Respondent, by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website. Accordingly, the Panel finds that bad-faith within the meaning of the Policy 4(a)(iii) is established.

Status

www.rosement.com

Domain Name Transfer

Decision

The Panel concludes (a) that the domain name <rosement.com> is confusingly similar to the Complainant's trademark, (b) that the Respondent has no rights or legitimate interest in the domain name and (c) that the domain name at issue has

been registered and used in bad faith. Therefore, pursuant to paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <rosement.com> be transferred to the Complainant.

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