

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)

ADMINISTRATIVE PANEL DECISION

Case No. CN-1000380

Complainant: ABB ASEA BROWN BOVERI LTD

Respondent: qiuyuhui

Domain Name: abb.cc

Registrar: WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC

1. Procedural History

On September 16, 2010, the Complainant submitted a Complaint in English version to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "ADNDRC Beijing Office"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

Then, ADNDRC Beijing Office confirmed the receipt of the Complaint and transmitted by email to ICANN and WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC (the Registrar of the domain name) a request for registrar verification in connection with the domain name in dispute. On September 27, 2010, WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC transmitted by email to ADNDRC Beijing Office its verification response confirming that, the domain name in dispute was registered under its domain registrar, and the Respondent is listed as the registrant.

ADNDRC Beijing Office sent by email the Transmittal of Claims attached by the Complaint to the Respondent on October 21, 2010.

On November 2, 2010, ADNDRC Beijing Office notified the Complainant that the Complaint had been confirmed and forwarded and the proceedings would commence on November 2, 2010. On the same day, the Notifications of Commencement of proceedings were notified to the Respondent, ICANN and the Registrar. Till November 22, 2010, the Respondent sent an email in Chinese to the Center, but no response to the case. Although it wasn't satisfied the requirements of the Policy, the Rules and the Supplemental Rules, the Center

transmitted the email to the Complainant on November 24, 2010.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, ADNDRC Beijing Office appointed Tang Guangliang as the sole panelist in this matter on November 30. Then ADNDRC Beijing Office transferred all the case materials to the panel, and asked the panel to submit a decision on or before December 14, 2010.

At the same time, the Center sent an email to the Panel, stating that the Respondent claimed not know English and wished the procedure be conducted in Chinese while the Complainant did not agree, asking the Panel to consider such an issue.

On the same day, the Panel replied the Center by email, ruling that the Respondent may give a Response in Chinese as the agents of the Complainant are Chinese residents, while the decision of the case would be made in English at last.

On December 8, 2010, after receiving the notice from the Center, the Respondent sent an email to the Center with a look-like Response in its content which is still not satisfied the requirements of the Policy, the Rules and the Supplemental Rules.

2. Factual Background

For the Complainant

The Complainant is ABB ASEA BROWN BOVERI LTD, who's address is Affolternstrasse Zurich, Switzerland. In this case, the Complainant empowered Hu Zhanying Jia, Qin He as its agents.

For the Respondent

The Respondent is qiuyuhui(邱宇晖), who's address is building No. 6, Jinke Sheng Tai Yuan, Nancun Zhen, Panyu District, Guangzhou, Gunagdong Province, 511442.

3. Parties' Contentions

The Complainant

According to the Complaint, the assertion of the Complainant includes—

I. The disputed domain name is confusingly similar to ABB trademarks and trade name in which the Complainant has the rights and interests:

The Complainant has legitimate rights over its ABB trademarks and trade name, and such rights were all acquired far earlier than October 26, 2005 which is the date of registration of the disputed domain name at issue. The disputed domain name comprises the Complainant's "ABB" trademark and trade name and ".cc" which is the Country Code for ccTLD (Country Code top-level domain) used and reserved for "Cocos Island", and which serves as a generic regional term which produces no civil right for the Respondent. Accordingly, the term "abb", which is the key portion of the disputed domain name, is completely identical with the Complainant's trademarks and trade name which have been widely registered and substantially used throughout the world. It should therefore be concluded that the incorporation of "abb" to the disputed domain name will cause confusion among the public.

The Complainant's "ABB" trademarks and trade name is so distinctive and distinguishing, thus it is impossible for anyone including the Respondent to choose the word "abb" as a key part of the disputed domain name by his own imagination or by coincidence without making reference to the ABB trademarks. In the present case, the Respondent chose the word "abb" for the disputed domain name, such act of the Respondent is apparently a copying of the Complainant's well-known trademark with an ill intention to mislead the general public who are familiar with ABB groups and ABB branded goods into believing that the disputed domain name has certain connection with the Complainant or its subsidiaries, joint ventures, or affiliated companies.

The Complainant's rights and interests and the reputation in the ABB trademarks and trade name has been acknowledged and confirmed by different Domain Name Dispute Resolution organizations. For example, in WIPO Case No. D2000-1714 ABB Asea Brown Boveri Ltd v. Mark Sheppard (abb.net), WIPO Case No. D2007-1466 ABB Asea Brown Boveri Ltd v A.B.B Transmission Engineering Co., Ltd. (abb-cn.com), in DNDRC of CIETAC Case No. CND2008000002 ABB Asea Brown Boveri Ltd v. 潘继东 (china-abb.cn), DNDRC of CIETAC Case No. CND2008000102 ABB Asea Brown Boveri Ltd v. S.E.E.S Media Inc (abb-sales.com.cn), all held that the Complainant and its ABB trademarks enjoy a substantial reputation with regard to the Complainant's goods.

In summary, the Complainant's ABB trademarks and trade name enjoy goodwill and high reputation in China and throughout the world. The key part of the disputed domain name abb.cc is confusingly similar to the Complainant's ABB

trademarks and trade name. The disputed domain name is very likely to be mistaken as the domain name of the Complainant or having connection with the Complainant, thus the registration of the disputed domain name will very likely to cause confusion in the public.

II. The Respondent owns no legitimate rights or interests in respect of the disputed domain name.

The Respondent has no connection with the Complainant who never licensed or authorized the Respondent to use the ABB marks or domain name. The disputed domain name is not the name of the Respondent. The Respondent has not been commonly known by the disputed domain name. Furthermore, to the best knowledge of the Complainant, the Respondent owns no rights over any trademark that is identical with or similar to the disputed domain name. The Respondent is not making a commercial or fair use of the disputed domain name. For the reasons above, it is believed that the Respondent owns no legitimate rights or interests in the disputed domain name.

III. The disputed domain name was registered and is being used in bad faith

The Complainant became aware of the registration of the disputed domain name by the Respondent in 2009, the Respondent left his address as “ganzhou, Jiangxi, cn 312000 (Note: somewhere in Ganzhou City, Jiangxi Province, China)”. The Complainant then contacted the Respondent claiming its rights in ABB trademarks and trade name. The Respondent in his reply email to the Complainant explained about the disputed domain name and expressed its willingness to sell the disputed domain name to the Complainant. In the email, the Respondent quoted USD 400,000 as the price for transferring the disputed domain name to the Complainant. Obviously, the price of US\$400,000 is an unusual high price for a brand new trademark or a brand new domain name. Since no evidence can prove that the Respondent has any legitimate right over ABB or the disputed domain name, it is apparent that the Respondent has good knowledge of the very high reputation of the Complainant’s ABB trademarks and trade name, and has good knowledge of the value and importance of the ABB domain names to the Complainant. With this knowledge in mind, the Respondent had copied the Complainant’s ABB trademarks and had it registered as the disputed domain name in his name. The Respondent did this with an expectation that the Complainant will approach the Respondent and will accept his extremely high price for buying the disputed domain name.

Attention should be paid to the facts that the Respondent registered the disputed domain name in 2005, since then the disputed domain name has been idled and now it is still idle, but the Respondent came to a selling price of USD 400,000

immediately when he received the letter from the Complainant. Evidently, the Respondent primarily registered the disputed domain name not for the purpose of use, but just for keeping it for sale, especially for sale to the Complainant who is the owner of ABB trademarks and trade name or for sale or rental to third parties who are competitors of the Complainant in order to gain improper profit.

The Respondent, after obtaining the registration of the disputed domain name, resolved the disputed domain name to “www.abb.cc”. When visiting this website, it is noted that there is a statement “abb.cc Baby Products webpage is under construction”. The webpage has no substantial content except a few intentional hyperlinks of certain online suppliers of infant stuff. This obviously shows that the Respondent is merely passively holding the domain name and the corresponding website, which should be used for publicizing or advertising its goods or services. Additionally, it is noted that in the webpage of www.abb.cc, there is a statement: “our ‘abb.cc’ has no relationship with ABB company (Full name Asea Brown Boveri Ltd)”. This statement shows that the Respondent has good knowledge about the Complainant and Complainant’s ABB trademarks and trade name which have longstanding and very high reputation in the world including China.

It is submitted, for the reasons outlined above, that the disputed domain name was registered and is being used in bad faith in accordance with paragraph 4(b)(i) of the Policy: circumstance indicating that Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to Complainant who is the owner of the trademark or service mark or to a competitor of Complainant, for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly related to the domain name, and paragraph 4(b)(iv) of the Policy: by using the domain name, Respondent has intentionally attempted to attract, for commercial gain, internet users to Respondent’s website or other on-line location, 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 of a product.

Then, the Complainant requests the Panel to decide that the disputed domain name should be transferred to the Complainant.

The Respondent

Instead of providing a formal Response according to the Rules and the ADNDRC Supplemental Rules, the Respondent presented an email to the Center in Chinese as follows:

“Firstly, I know that ‘cc’ domain name is widely used in the web, and greatly registered and used in south-east Asia. The Certification of Domain Name Registration clearly stated that ‘abb.cc’ has been registered by Qiu Yuhui, and recorded in the international top-level domain name database. The registrant owns all the rights legitimately in relation with the domain name.

Secondly, I registered the domain name in 2005, and have been used it from then on. The webpage using this domain name might be visited normally when the administrator of the Complainant contacted with me, and still be available today. I told her that it is used for baby goods when she asked me about the function of the web site. But because I have no enough money, the plan could not be realized promptly. The domain name ‘abb.cc’ has been ready for the web site ‘Love-Baby baby goods’ for a long time. Searching by google, my ‘Love-Baby baby goods’ web site can be found now.

Thirdly, before its administrator contacted with me, I have no knowledge about the ABB Company, and I remembered that I ever said this in the first email replied to her. I know nothing about ABB in China.

Fourthly, the reason for me to register such a domain name is that: I have a good expectation about China’s baby goods market, and hope to sell related goods through constructing a ‘Love-Baby baby goods’ web site. While a successful web site may need a great amount of investment which might not be recovered in 3 to 5 years. What I can do is just planning. Up to now, I do not deny that the ‘Love-Baby baby goods’ web site is still a plan.

Fifthly, from the year 2005 to 2009, it was the administrator of the Complainant Monika Stutz who actively contact with me. I had no intention to mislead the consumer or misuse the trademark. My aim is to provide goods and services to the public honestly.

Sixthly, what I plan to sell are baby goods which have no relation and no interference with the goods of ABB Company. They belong to totally different fields, no influence with each other.

Seventhly, I regret that after ABB contacted with me, I told the matter to a friend who knows English in summary. Then he emailed to ABB Company that led some misunderstanding. This friend may prove the procedure.

Eighthly, early in 2005, I made a plan for internet business of ‘Love-Baby baby goods’, and discussed such a plan with my classmate who may prove the procedure.”

4. Findings

According to the Paragraph 14(a) of the Rules, in the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint. In this case, the Respondent did not submit a qualified Response in the time limit and extension. The case should be decided in default in its normal sense.

While the Panel, based on the Paragraph 10 (b), that in all cases, shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. Decideding to give an adequate consideration to the Respondent's assertions revealed by the email, the Panel thus make the decision as follows:

As stipulated in the Paragraph 4(a) of the Policy, when claiming dispute to a domain name registered by another, the Complainant must prove each of the following:

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

Based on the relevant stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, to make the Claim to be supported by the Panel, the Complainant needs to satisfy each of the afore-said prerequisites.

Identical or Confusing Similarity

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name in dispute is identical or confusingly similar to a trademark or service mark in which the Complainant has right.

According to the Complainant's assertion and evidences presented therewith, the Complainant had registered a number of trademarks with the sign of "ABB" in the world including China. Accordingly, the Panel agrees with the Complainant that before the registration of the disputed domain name, the Complainant had already got the legitimate right.

When making a judgment on the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with that of the registered trademark. In this case, the disputed domain name is “abb.cc”, where the identifying part is “abb”.

According to the assertion of the Complainant, the disputed domain name is composed of two parts, “abb” and “.cc”, while ABB is the Complainant’s trademark and trade name and “.cc” is the Country Code for ccTLD (Country Code top-level domain) used and reserved for “Cocos Island”, serves as a generic regional term which produces no civil right for the Respondent. Accordingly, the term “abb”, which is the key portion of the disputed domain name, is completely identical with the Complainant’s trademarks which have been widely registered and substantially used throughout the world.

In its informal response, the Respondent did not deny the similarities between the domain name and the trademark of the Complainant, but holds abb is the abbreviated pronunciations of Chinese term “爱宝宝” which has no relation with ABB.

Although the Panel could not deny that the Chinese term “爱宝宝” might be pronounced “abb” as abbreviated in Pinyin, but as the identifying part of the disputed domain name, it is identical with the Complainant’s registered trademark in fact.

Therefore, the Panel holds that, the Complainant satisfies the first prerequisite as set forth in the Policy. That is, the domain name in dispute is identical with the trademark in which the Complainant has right.

Rights or Legitimate Interests of the Respondent

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate its rights or legitimate interests with regard to the disputed domain name, as an argument against the Complainant’s claim.

The Complainant’s claims that the Respondent has no connection with the Complainant who never licensed or authorized the Respondent to use the ABB marks or domain name. The disputed domain name is not the name of the Respondent. The Respondent has not been commonly known by the disputed domain name. Furthermore, to the best knowledge of the Complainant, the Respondent owns no right over any trademark that is identical with or similar to the disputed domain name. The Respondent is not making a commercial or fair use of the disputed domain name. For the reasons above, it is believed that the Respondent owns no legitimate right or interest in the disputed domain name.

As the opposing assertion, the Respondent holds that, he registered the domain name in 2005, and have been used it from then on. The webpage using this domain name might be visited normally when the administrator of the Complainant contacted with me, and still be available today. Before its administrator contacted with him, he has no knowledge about the ABB Company. Except those explanations, the Respondent claims that “abb” is the abbreviated pronunciations of Chinese term “爱宝宝” which has no relation with ABB.

The Panel acknowledged that, the Complainant had been known widely in the world for a long history. In its simple webpage, the Respondent ever made a statement that “our ‘abb.cc’ has no relationship with ABB company (Full name Asea Brown Boveri Ltd)”. To the Panel, such a statement is nothing but a good illustration that the domain name has relationship with ABB Company. The claim that abb is the abbreviated pronunciation of Chinese term “爱宝宝” is not convincing.

The Panel agrees with the Complainant that the Respondent has not been commonly known by the disputed domain name, the Respondent owns no rights over any trademark that is identical with or similar to the disputed domain name, and the Respondent is not making a non-commercial or fair use of the disputed domain name.

As there’s no other reasonable, convincing and acceptable basis provided by the Respondent, the Panel concludes that, the Complainant has satisfied the second prerequisite of the Policy, that is the Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

The Complainant also needs to establish the Respondent’s bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b) of the Policy, the following circumstances in particular shall be considered as evidence of the registration and use of a domain name in 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 web site 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 web site or location or of a product or service on your web site or location."

The Complainant claims that the disputed domain name was registered and is being used by the Respondent in bad faith, the grounds of which include:

a) The Complainant's ABB trademark and trade name are very famous throughout the world including China, and the Respondent had registered the disputed domain name based on the knowledge of the trademark and trade name.

b) The disputed domain name was registered in 2005, but had been idled from then on, and resolved to an under-construction web site and

c) The Respondent, while received the email from the Complainant, immediately asked for an unusual high price of USD 400,000, which is expressly in excess of the documented out-of-pocket costs directly related to the domain name.

The Respondent does not agree. According to the informal response, the Respondent asserts that he got the domain name through legitimate registration, and used it normally for a planned web site. The selling price was made by one of his friends. It's a misunderstanding between the two parties.

Based on the Complainant's assertion and evidences therewith, the Respondent is not able to persuade the Panel to believe that disputed domain name was registered and being used normally. Taking all the factors in consideration, the Panel agrees with the Complainant that the acts of the Respondent fall under the circumstances in Paragraph 4(b)(i) of the Policy, and shall be considered as evidence of the registration and use of the disputed domain name in bad faith, and thus the Complainant satisfies the third prerequisite under the relevant articles of the Policy.

Based on all the findings and comments above, the Panel rules that the Complainant fulfills all the prerequisites provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, thus its claims should be supported.

5. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the identifying part of the disputed domain name “abb.cc” is identical with the Complainant's registered trademark “ABB”; and
- b) That the Respondent has no right or legitimate interest with regard to the identifying part of the disputed domain name; and
- c) That the domain name was registered and subsequently used in bad faith.

As the final decision, the Panel requires the domain name “abb.cc” be transferred to the Complainant.

Sole Panelist



December 14, 2010