

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN-1200636

Complainant: KABUSHIKI KAISHA HITACHI SEISAKUSHO
(D/B/A HITACHI, LTD.)

Respondent: Shenzhen Seg-Hitachi Color Display Device Co., Ltd.

Domain Name: seg-hitachi.com

Registrar: GoDaddy.com, LLC

1. Procedural History

On 30 November 2012, the Complainant submitted its Complaint to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (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") on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules").

On 4 December 2012, the ADNDRC Beijing Office confirmed the receipt of the Complaint and forwarded a request for verification of registration information to ICANN and the registrar of the domain name in dispute, GoDaddy.com, LLC

On 6 December 2012, the ADNDRC Beijing Office received the Registrar's confirmation of registration information of the domain name in dispute.

On 11 December 2012, the ADNDRC Beijing Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced on 11 December 2012. 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 Respondent over the disputed domain name and the ADNDRC Beijing Office had sent the Complaint and its attachments to the Respondent through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and Registrar of the commencement of the proceedings.

The Respondent failed to submit a Response within the specified time period. On 17 January 2013, the ADNDRC Beijing Office sent the Notification of No Response Received and Hearing by Default to the Complainant and the Respondent.

On 21 January 2013, the ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Mr. LIAN Yunze, requesting him to confirm whether he would accept the appointment as a sole Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Mr. LIAN Yunze, on 23 January 2013, the ADNDRC Beijing Office informed the Complainant and the Respondent of the appointment of the Panelist, and transferred the case file to the Panelist.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the ADNDRC Supplemental Rules.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express agreement to the contrary by the Parties.

2. Factual Background

For the Complainant

The Complainant is KABUSHIKI KAISHA HITACHI SEISAKUSHO (D/B/A HITACHI, LTD.) located at 6-6, MARUNOUCHI 1-CHOME, CHIYODA-KU, TOKYO, JAPAN. The authorized representative of the Complainant is FU Haiying/HE Jie.

For the Respondent

The Respondent is Shenzhen Seg-Hitachi Color Display Device Co., Ltd. located at Lianhua Caitian Industrial Zone, Huanggang Road, Futian District, Shenzhen City, Shenzhen 518026, China. The disputed domain name "seg-hitachi.com" was registered on 16 July 2009 through the Registrar, GoDaddy.com LLC., according to the WHOIS information.

3. Parties' Contentions

The Complainant

- a) "Hitachi" is the registered trademark which has been used by the Complainant for many years and is also the famous English trade name of the Complainant being enjoys high reputation in relevant industry. The prominent part of the disputed domain name is similar to the trademark and the trade name "Hitachi" for which the Complainant owns prior rights that could easily cause confusion among the consumers.
 - i. The Complainant enjoys legitimate right and interest to "Hitachi"

The complainant was founded in 1910 under the laws of Japan. Over the years, the complainant has broadened the horizon to develop a highly diversified product mix ranging from electricity generation systems to consumer products and electronics devices. According to the latest annual report of the Complainant, income before income taxes for the year ended March 31, 2012 increased to 557.7 billion Japanese Yen, and in the year ended March 31, 2012, net income attributable to the Complainant was 347.1 billion. Due to the well development, the Complainant was ranked as No.38 according to the Fortune Global 500, 2012. While focusing on the development of business, the Complainant also pays great attention to the protection of its intellectual property rights. In Japan, the Complainant enjoys trademark rights for "HITACHI" series marks on the goods and services in all the 45 classes. And the trademark "HITACHI" is even recognized as famous mark and defensive mark in Japan.

Since the establishment of its first Company in 90s of last century, Hitachi in mainland China has developed into a well-organized conglomerate. And in China, the Complaint not only deals with compressor business by a subsidiary named Hitachi Industrial Equipment Systems Co., Ltd., which has set several offices in China, including Shanghai, Beijing, Guangzhou and Qingdao, but also establishes several Chinese subsidiaries to do compressor business, including but not limited to Hitachi Industrial Equipment (Nanjing) Co., Ltd. and Hitachi Compressor Products (Guangzhou) Co., Ltd.

The complainant also takes the IP protection in China into serious consideration. As early as in 1980, the Complainant has registered the trademarks "HITACHI" covering full range of goods and services and has successfully obtained the registrations of "HITACHI" in respect of goods including "Kinescope, camera tubes, transistors, diodes, LCD displays, plasma displays, displays for telephones and multimedia LCD display for projector, etc." in Class 9. Generally speaking, "HITACHI" as the famous house mark and trade name of the Complainant, has established sole connection with the Complainant.

Therefore, through long time promotion and use, the Complainant and its series HITACHI marks have obtained high fame around the world. To this point, the ADNDRC has recognized the Complainant's fame in the previous cases.

- ii. The prominent part of the disputed domain name "seg-hitachi" is similar to the trademark and trade name "Hitachi" on which the Complainant owns prior rights that would mislead the consumers

As mentioned above, "Hitachi" is the Complainant's trademark and trade name which enjoys high reputation in the related industries and is registered by the Complainant covering full range of goods and services including "Kinescope, camera tubes, transistors, diodes, LCD displays, plasma displays, displays for telephones and multimedia LCD display for projector, etc." in Class 9. When seeing "Hitachi", the relevant consumers will directly associate it with the Complainant and the products and services thereof.

As a matter of fact, the Respondent's name "Shenzhen Seg-Hitachi Color Display

Devices Co., Ltd.” is exactly identical with the English company name of the Complainant’s previous Chinese joint-venture company, namely Shenzhen Seg-Hitachi Color Display Devices Co., Ltd., (hereinafter referred to as “Seg-Hitachi Co., Ltd.”). It should be clarified that the Respondent is not the said Chinese joint-venture company of the Complainant. Since the Complainant and the investor from the other party stopped the business cooperation in March 2009, Seg-Hitachi Co., Ltd. had changed its company name into Shenzhen Kezhigu Investment Co., Ltd. and had modified its business scope as well on March 9, 2009 and in the meanwhile, stopped using its English company name.

In addition, Seg-Hitachi Co., Ltd. was engaged in manufacture of displays and kinescope products for displays, and had ever registered the domain name “seg-hitachi.com” to build an official website (www.seg-hitachi.com) for promoting business. However, since Complainant’s joint-venture company Seg-Hitachi Co., Ltd. stopped the business in March 2009, the domain name “seg-hitachi.com” was stopped the use and thus was invalid.

The prominent part of the disputed domain name “seg-hitachi” incorporates two parts “seg-” and “hitachi”. “Hitachi” is identical with the Complainant’s famous mark and trade name “Hitachi”, while “seg-” does not have the dictionary meaning and is lack of the distinctiveness. As a result, the well-known “hitachi” in the disputed domain name would be visually and obviously considered as the dominant and prominent part. Furthermore, the distinctive part of disputed domain name “seg-hitachi” is not only similar to the trade name and registered trademark of the Complainant but also is identical with the English trade name of Seg-Hitachi Co., Ltd. Under the circumstance, if the relevant public and consumers browse the website built by the disputed domain name “seg-hitachi.com”, they will easily and inevitably believe that the website is built up by Seg-Hitachi Co., Ltd. and/ or is operated under the authorization of the Complainant. Therefore, the registration and use of the disputed domain name will inevitably cause the misunderstanding and confusion among the relevant public and consumers. Moreover, even now, through the Internet search with the keywords of the prominent part of the disputed domain name “seg-hitachi”, there are still a lot of links and web pages related to Seg-Hitachi Co., Ltd.

b) The respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant’s trademark “Hitachi” has been recognized as the famous trademark in Japan early since 1970 and has been successfully obtained the registrations covering full range of goods and services especially on the goods “Kinescope, camera tubes, transistors, diodes, LCD displays, plasma displays, displays for telephones and multimedia LCD display for projector, etc.” in Class 9 in China. According to the Complainant’s search on the official database of the China Trademark Office and main search engines, the Respondent has no civil rights or legitimate interests in respect of “seg-hitachi”. In addition, the Complainant has never authorized the Respondent to use any trademarks related to “Hitachi” or to register “seg-hitachi” as a domain name. Therefore, the Respondent has no civil rights or legitimate interests in respect of “seg-hitachi”.

c) The domain name was registered and is being used in bad faith

As mentioned above, “Hitachi” is the Complainant’s trademark and trade name which enjoys high reputation in the related industries and is registered by the Complainant covering full range of goods and services including “Kinescope, camera tubes, transistors, diodes, LCD displays, plasma displays, displays for telephones and multimedia LCD display for projector, etc.” in Class 9. In addition, from 1989 to 2009, Seg-Hitachi Co., Ltd. had been always using “Seg-Hitachi” as its trade name. Being promoted and used by Seg-Hitachi Co., Ltd. in relevant industry nearly two decades, “Seg-Hitachi” had established high reputation among the relevant republic and consumers. Therefore, it is obviously that the Respondent is attracted by the fame and great influence of “Hitachi” and “Seg-Hitachi”, and took the chance, when the domain name “seg-hitachi.com” was invalid and the Complainant did not register the same, to complete the registration of the disputed domain name. For the Respondent’s registering the disputed domain name, the purpose is obvious that the Respondent is to take the advantage of the high reputation of the Complainant and Seg-Hitachi Co., Ltd. so as to gain illegal business benefits. The Respondent’s proprietorship and possible use of the disputed domain name will inevitably cause confusion among the relevant public and consumers, who would easily misunderstand that the disputed domain name or the website built by the disputed domain name, is owned by the Complainant or had a certain relationship with the Complainant. Therefore, the Respondent’s proprietorship of the disputed domain name is obviously in bad faith and should be stopped.

According to the above, the prominent part of the disputed domain name “seg-hitachi” is regarded as similar to the Complainant’s famous prior registered trademark “Hitachi” and the Respondent’s registration of the disputed domain name is in bad faith as prescribed in 4(b)(ii) of the Policy, which reads “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”. According to the above provisions, the Complainant earnestly requests the Panel to rule that the Respondent shall transfer the domain name to the Complainant to protect the legitimate rights and interests of the Complainant and to ensure the competition order in the market.

The Respondent

The Respondent was duly notified by the ADNDRC Beijing Office of the Complaint lodged by the Complainant and asked to submit the Response in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplementary Rules, but failed to give any sort of defense in any form against the Complaint by the Complainant.

4. Findings

The Policy, at paragraph 4(a), that the Complainant must prove that each of the following three elements are present in order for the Complainant to prevail:

i. Respondent’s domain name must be identical or confusingly similar to a

- 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.

Based on the above stipulations under the Policy, what the Panel needs to do is to find out whether each and all of the above-mentioned elements are present. If all the three elements are present, the Panel will make a decision in favor of the Complainant in accordance with the fact-finding and the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If the three elements are not present, the Complaint shall be rejected.

The Respondent failed to submit the Response of any argument against what the Complainant claimed and to show his intention to retain the disputed domain names as required by the Policy, the Rules and the ADNDRC Supplemental Rules, "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint". In view of the situation, the Panel cannot but make the decision based primarily upon the contentions and the accompanying exhibits by the Complainant, except otherwise there is an exhibit proving to the contrary.

Identity or Confusing Similarity

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

According to the evidence provided by the Complainant and the information revealed in the database of China Trademark Office, the Panel notes that the Complainant's trademark "HITACHI" has been registered in both China and Japan. The earliest Chinese registration No. 139926 dates back to 20 September 1980 and was registered in class 9 on such goods as "kinescope, camera tubes, transistors and diodes". The other two Chinese registrations No. 3557298 and No. 3477917 were respectively registered on 28 November 2004 and 21 December 2004 both in class 9. The Complainant's two Japanese registrations No. 0433710 in classes 9, 10, 11, 17 and No. 1698222 in classes 6, 7, 8, 9, 11, 12, 15, 16, 17, 19, 20, 21, 26, 28 were recognized as well-known marks in Japan. The trademarks above are all valid and registered earlier than the disputed domain name, i.e. 16 July 2009. The Complainant therefore enjoys the exclusive trademark right to "HITACHI".

The disputed domain name is "seg-hitachi.com". Apart from the generic top-level domain suffix ".com", the disputed domain name consists of "seg-hitachi". Given that the Complainant's trademark "HITACHI" enjoys high reputation and the letter combination "seg" has no substantial meaning, the distinctive part of the disputed domain name falls on "hitachi", which is identical with the Complainant's registered trademark.

The Panel therefore finds that the disputed domain name is confusingly similar to the

Complainant's registered trademark "HITACHI". Accordingly, the Complainant has proven that the first element is present under paragraph 4(a) (i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name and, as stated above, the Respondent did not provide any information to the Panel asserting any right or legitimate interest it may have in the disputed domain name.

It is apparent from the Complaint that the Complainant has never authorized the Respondent to use any trademarks related to "HITACHI" or to register "seg-hitachi" as a domain name. And the information revealed in the database of the China Trademark Office shows no "HITACHI" or "seg-hitachi" trademarks registered by the Respondent. Paragraph 4(c) of the Policy lists a number of circumstances which can be taken to demonstrate a respondent's rights or legitimate interests in a domain name. However, there is no evidence before the Panel that any of the situations described in paragraph 4(c) of the Policy apply here. To the contrary, the lack of a response leads the Panel to draw a negative inference.

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name. Accordingly, the Complainant has proven the second element required by paragraph 4(a) (ii) of the Policy.

Bad Faith

Under Paragraph 4 (b) of the Policy, the following are relevant examples a Panel may take as evidence of registration and use 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 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 Complainant was founded in 1910 and after decades of development, it has become a large-scale international corporation. The Complainant established its first

company in China in 1990s and has now offices and subsidiaries in major cities in China. Its trademark "HITACHI", after extensive and long term use, has been widely known not only in China but also around the world. Consumers, when seeing the trademark "HITACHI", may easily associate it with the Complainant but not anyone else.

Furthermore, the evidence provided by the Complainant and the information revealed in the database of Market Supervision Administration of Shenzhen Municipality show that the Respondent, before changing its trade name and business scope in March 2009, was engaged in development, design and manufacture of color kinescope, color TV, electronic components, etc, which belong to the field that the Complainant is also engaged in. It is therefore concluded that the Respondent, when registering the disputed domain name, should have been aware of existence of the Complainant and its trademark "HITACHI". The Respondent's act of registering and using the disputed domain name per se thus constituted bad faith.

In view of the above, the Panel holds that the disputed domain name should be considered as having been registered and used in bad faith under the Policy, paragraph 4(b)(ii). Therefore, the Complainant has proven the third element required by paragraph 4(a) (iii) of the Policy.

5. Decision

For all the foregoing reasons, in accordance with Paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "seg-hitachi.com" be transferred to the Complainant KABUSHIKI KAISHA HITACHI SEISAKUSHO (D/B/A HITACHI, LTD.).

Sole Panelist:



Dated: February 5, 2013