

# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

(Beijing Office)

## ADMINISTRATIVE PANEL DECISION

Case No. CN-1300659

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**Complainant:** SEIKO EPSON CORPORATION

**Respondent:** LIBO ZHU

**Domain Name:** epsonprojectorbulbs.com

**Registrar:** GODADDY.COM, LLC

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### 1. Procedural History

On February 25, 2013, the Complainant submitted the Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Beijing Office") pursuant to the Uniform Policy for Domain Name Dispute Resolution (the "Policy") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "ADNDRC Supplemental Rules").

The ADNDRC Beijing Office confirmed the receipt of the Complaint and asked the Registrar on March 1, 2013 for the confirmation of the registration information with regard to the disputed domain name.

On March 2, 2013, the ADNDRC Beijing Office received from the Registrar the registration confirmation in connection to the disputed domain name.

On April 8 2013, the ADNDRC Beijing Office 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 ADNDRC Supplemental Rules. On the same day, the

ADNDRC Beijing Office notified ICANN and Registrar of the commencement of the proceedings.

The ADNDRC Beijing Office had received no Response by the Respondent; On May 7, 2013, the ADNDRC Beijing Office notified the parties that no Response had been received yet, and the case would be heard by default.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the ADNDRC Beijing Office informed the disputing parties of the Confirmation of the Appointment of the Sole Panelist on May 13, 2013.

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

The procedural language 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 conformity with the language used by the Complainant in the submitted Complaint.

## **2. Factual Background**

### ***For the Complainant***

The Complainant in the proceeding is SEIKO EPSON CORPORATION, addressed at Head Office 3-5 Owa 3-chome Suwa-shi Nagano-ken 392-8502 Japan and represented in the proceeding by LINDA LIU & PARTNERS.

### ***For the Respondent***

The Respondent in the proceeding is known as Libo Zhu, addressed at Shanghai, Shanghai 200011, China. The Registrar of the disputed domain name is GoDaddy.com LLC. The disputed domain name “epsonprojectorbulbs.com” was registered on December 31, 2012.

## **3. Parties' Contentions**

### ***The Complainant***

The Complainant contends that SEIKO EPSON CORPORATION is a well-known global company which was established in 1942 in Japan. Its

main products include information products such as printers, projectors, consuming materials and so on; electronic equipment products such as semi-conduct, LCD, Quartz Crystal Oscillator and so on; high precision products such as watch and so on. In 2003, the Complainant had 84,889 employees and the sale reached 1.4132 billion JPY.

The Complainant began to invest in China since 1984 and has established several sole or joint subsidiary companies. It has 18 enterprises and research institutions with 32,897 employees in China. Its investment in China amounts to 5.76 billion RMB. The Complainant owns the world biggest factory producing printer and Quartz Crystal Oscillator in China. In 2003, its total output value is 27.4 billion RMB and the sales value is 7.67 billion RMB in China. In addition, the Complainant is the main supplier of printer products in Chinese market, Epson Printer owns a high reputation among the consumers and gains numerous awards and honors from authorized professional medias. "EPSON" is the trademark created by the Complainant. In Japan, the trademark "EPSON" was registered in 1975 at first and has been registered in all 1~45 classes. It has been recognized as the well-known trademark in Japan for many years. In China, the trademark "EPSON" was registered in 1989 and has been registered in class 7, class 9, class 10, class 11, class 14, class 16, class 17, class 21, class 26, class 38, class 40 and class 42. They are all in term of validity. Furthermore, the Complainant also has registered the trademark "EPSON" in different classes in different countries, such as America, Germany, etc. In all, the Complainant has registered "EPSON" trademark for 1,157 times (in various classes) in 273 countries and regions in the world. In all 273 countries and regions, the "EPSON" trademark is registered in Class 9. The designated goods are: LINE PRINTERS, PRINTERS, MAGNETIC DRUMS, MARKED CARD READERS, PAPER TAPE PUNCHERS, PAPER TAPE READERS, CASH REGISTERS AND PARTS THEREOF.

The Complainant is the owner of the trademark "EPSON" and has used "EPSON" as trademark in business field over 33 years. Owing to its excellent management and extensive promotion of its products and services, the "EPSON" brand is in the front rank around the globe.

Moreover, in 2007, the trademark “爱普生 EPSON” owned by the Complainant has been recognized a well-known trademark in China.

The Complainant registered a number of domain names containing “EPSON” in China and around the world. The Complainant sets up plenty of websites in different countries and regions using “EPSON” as the etyma, such as: www.epson.co.jp (Japan); www.epson.com (America); www.epson.com.hk (Hong Kong); www. epson.com. tw (Taiwan); www.epson.fr (France); www.epson.de (Germany) , etc. The complainant has registered over 70 domain names containing “EPSON”, the list of these domain names is attached to this complaint.

To sum up, “EPSON” is the registered trademark of the Complainant, the Complainant thus has undisputed prior right on “EPSON”. The disputed domain name should be transferred to the Complainant based upon the following groundings:

(1)The disputed domain name is confusingly similar to the trademark “EPSON” of the Complainant.

It is well-known that “EPSON” is a worldwide famous trademark owned by the Complainant. The validity and fame of its trademarks are beyond dispute. The disputed domain name “epsonprojectorbulbs.com” consists of “EPSON”, “projector” and “bulbs”. “EPSON” is the well-known trademark and trade name of the Complainant. “projector bulbs” are parts and products of the Complainant. In this domain name, only “Epson ” can tell the origin of product . It is thus obvious the use of the disputed domain name will mislead the relevant consumers to believe the products or services of the registrant are related to the Complainant’s products and services. Accordingly, the domain name “epsonprojectorbulbs.com” infringes the Complainant’s legal rights. In addition, the registrant set up a website with the name of “epsonprojectorbulbs.com”. There are many kinds of advertisements links including projectors sales, etc.

(2) The registrant has no rights or legitimate interests in respect of the domain name.

“EPSON” is a trademark and trade name originally created by the Complainant. The Complainant has registered the trademark “EPSON” in

a lot of countries. And its corporation name includes “EPSON”. It is beyond question that the Complainant has the prior right on “EPSON”.

The registrant has nothing to do with the Complainant and the registrant has no business relationship with the Complainant. The Complainant has never authorized the registrant to use “EPSON” by any means. Besides, the registrant registered the disputed domain name on Dec 31, 2012, which is much later than the date when the Complainant registered the trademark or its style. So the registrant should be considered as having no rights or legitimate interests in respect of the domain name.

(3) The domain name has been registered in bad faith.

The trademark “EPSON” is famous in the world and it was recognized as a well-known trademark in September, 2007 in China. The disputed domain name was registered on Dec 31, 2012, which is later than the date when “EPSON” is recognized as a well-known trademark.

As the trademark “EPSON” is owned by the Complainant and has a high reputation in China, the registrant should know clearly the existence of this famous trademark. Moreover, after noticing this domain name was preemptively registered by the registrant, the Complainant sent a C&D letter via email in respect of the infringement of the Complainant’s trademark right and trade name right on Jan 14, 2013. But the registrant fails to give any response till now. Accordingly, the disputed domain name “epsonprojectorbulbs.com” should be considered registered in bad faith.

All in all, the Complainant requests the panel to make a decision on the transfer of the disputed domain name to the Complainant

### ***The Respondent***

The Respondent makes no response in any form against any of the allegations and claims by the Complainant in the whole course of the proceeding.

### **4. Findings**

It is significant for the parties to understand the legal nature of the current proceeding which is totally different from that of arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really

NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to a decision made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding is a part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide on a core issue of which party should be the rightful holder of the disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficiary to the protection of common interests of the web-users.

The indispensable pre-condition for the Panel to find out the disputing facts is to base itself upon the allegations and defenses by the parties, which does not exist in the judgment of the present dispute due to the lack of any defense by the Respondent. In view of this, what the Panel is going to do for the fact-finding is to base itself upon the submissions and exhibits by the Complainant alone. Unless the Panel has a reason to reject any submission or evidence by the Complainant in view of the panelist's professional sense to make judgment and personal experiences in making decisions on domain name disputes, the facts are to be held by the adoption of the Complainant's submitted evidences.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant's request is to be sustained or rejected. As stipulated in the

Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- (i) That the domain name of the Respondent 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 itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each AND all of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes a decision in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected.

### ***Identity or Confusing Similarity***

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or service mark to which it is entitled. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant submits dozens of certificates to prove that it is entitled to the trademarks "EPSON" which were registered in many countries and regions some twenty or more years earlier than the disputed domain name was, and are all currently valid and enforceable. The Panel examines all the relevant exhibits by the Complainant in relation to the entitlement of the registered trademark "EPSON" in those countries and regions, esp. in mainland China, and finds no reason for NOT holding the Complainant-stated fact, in particular, under the circumstance of no objection by the Respondent to whatever the Complainant states.

The disputed domain name is "epsonprojectorbulbs.com". Obviously the identifying part of it is not identical to the Complainant's registered

trademark “EPSON”. Since the disputed domain name is in Latin letters and by gTLD nature, the judgment on the issue of confusing similarity should be made from a global perspective. No wonder, English is the world prevailing language nowadays, even in China. From the point of view of English linguistics, the disputed domain name may be divided into three parts, i.e. “epson”, “projector” and “bulbs”. For those who understand English, “projector” and “bulbs” are concrete physical stuffs known to the general public. Thus the most prominent eye-catching element of the identifying part of the name is nothing but the word “epson” which is identical to the Complainant’s registered trademark “EPSON”. It is beyond any doubt that in the eye of those who know the EPSON company and its products and are trying to find the company on the website, the disputed domain have MIGHT be in relation to the Complainant. It is absolutely hard to believe that the consumers of the EPSON-related products may think of the Respondent when they see the disputed domain name.

With regard to the issue of “confusion”, the Panel is of the opinion that when talking on the issue, attention should be focused on the “Potentiality” instead of “Reality”, i.e. what the Complainant needs to prove is the POSSIBLE confusion by the consumers. On the other hand, when talking about the issue of “confusion”, it is imperative to identify the objective of the Respondent to register the disputed domain name. The reasons is that if the said objective is to take a ride of other’s reputation, how could it work if the domain name cannot cause the web—users to think of the one who has the reputation while seeing the domain name?

As it is, the Panel in a position to be HARDLY hold that the disputed domain name COULD NOT cause confusion to the web-users who are interested in the Complainant’s goods or service; and further rules that the disputed domain name is confusingly similar to the Complainant’s registered trademark, and the Complainant meets the first requirement set forth under Paragraph 4(a)(i) of the Policy.

### ***Rights or Legitimate Interests of the Respondent***

Pursuant to Paragraph 4(a)(ii), the second requirement for the Complainant to meet in terms of the request for the transfer of the

disputed domain name is to prove that the Respondent does not have rights to or legitimate interests in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant claims that it is entitled to the disputed domain name and the Respondent has nothing to do with it except registered it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Panel pays more attention to whatever the Respondent argues with regard to the rights or legitimate interests in respect to the disputed domain name. The Policy gives the chance to the Respondent to make argument on this issue by stipulating several could-be circumstances in the relevant article of the Policy. Unfortunately, the Respondent makes no argument to say it does have certain right or legitimate interest in regard to the domain name at issue. Under the circumstances, how could the Panel hold that it is the Respondent who is entitled to the disputed domain name?

On the other side, the Complainant submitted abundant exhibits to certify that it innovated and created the distinctive mark “EPSON” which meaning can hardly be identified by common folks except those who know the history of “EPSON” evolution. Since the Complainant has been extensively using the mark “EPSON” in its business activities, the high-valued good-will has been cultivated with the word “EPSON”; i.e. when relevant consumers see the word “EPSON” alone or contained in a word-combination, they think of nothing but the Complainant and its products and service. On the other side, when web-users see the disputed domain name, how could they think of the Respondent as a natural person who has no historical, cultural, business or any other linkage or heritage with the word “EPSON”? Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sufficient reason to ascertain that it is none other than the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

## ***Bad Faith***

The Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: “..... (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; .....(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 and proves that the disputed domain name was registered by a natural person who has nothing to do with the Complainant; and also the domain name was used on website for the advertisement of the marketing of projector products in connection to “EPSON”; and what is worse, the disputed domain name was offered for sale on the web.

From the perspective of fact-finding, since the Respondent’s name did not appear on the evidence submitted by the Complainant for the proving of bad-use fact, there existing two major probabilities. One is the disputed domain name was used and offered for sale by someone other than the Respondent without his authorization; the other is those were done by the authorization of the Respondent. If the former is true, the simple fact of register-but-no-use reveals the Respondent’s intention to prevent the Complainant from reflecting its registered trademark in a corresponding domain name; thus the Panel may apply the Paragraph 4(b)(ii) of the Policy to hold that the disputed domain name was registered and used in bad faith. If the latter is true, Paragraph 4(b)(iv) may be applied for the ruling of the Respondent’s bad faith in the registration and use of the disputed domain name. A very simple logical thinking is that how much probability it is for the offering for sale of the disputed domain name on the

web without the authorization of the claimed owner of the one being offered for sale?

Furthermore, the logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party has rights and legitimate interests with high market value, the intention of the registration is clear, namely taking illegal advantages by causing confusion to the consumers. On the other hand, if the registrant is NOT intentionally to take others' advantage, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. The conduct of "register only" may be regarded as sort of passive form of ill-use. That seems to be underlying the stipulation under Item (ii) of Paragraph 4(b) of the Policy. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. On the other side, whether or not the registrant of the disputed domain name has any linkage to the actual user of the name, the fundamental truth is that the disputed domain name is being badly used to damage the reputation of the Complainant and cause harm to internet users' interests. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to final conclusion that the Complaint fulfills each AND all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy.

## **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 disputed domain name "epsonprojectorbulbs.com" is confusingly similar to the trademark "EPSON" to which the Complainant has prior rights and legitimate interests; and
- b) That the Respondent has no rights to or legitimate interests in the

disputed domain name; and

c) That the domain name was registered and used in bad faith.

As such, the Panel rules that the disputed domain name “epsonprojectorbulbs.com” shall be transferred to the Complainant SEIKO EPSON CORPORATION.

The Sole Panelist:



Dated: May 27, 2013