



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

---

<b>Case No.</b>	<b>HKcc-0800010</b>
<b>Complainant:</b>	<b>BASF SE (formerly BASF AKTEINGESELLSCHAFT)</b>
<b>Respondent:</b>	<b>Punhoi Yeu</b>

---

### 1. The Parties and Contested Domain Name

The Complainant is BASF SE, a company organized and existing under the laws of Germany of Carl-Bosch-Strasse 38, 67056 Ludwigshafen, Germany (the ‘Complainant’).

The Respondent is Punhoi Yeu, of 128 Xiawuying, Qinhuai District, Nanjing, Jiangsu, China, 210000 (the ‘Respondent’).

The domain name at issue, <basf.cc>, is registered with Web Commerce Communications Limited dba Webnic.cc (‘Web Commerce’).

### 2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the ‘Centre’) on October 15, 2008. On October 22, 2008 the Centre transmitted by email to Web Commerce a request for registrar verification in connection with the domain name at issue. That same day Web Commerce transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the ‘Policy’), the Rules for Uniform Domain Name Dispute Resolution Policy (the ‘Rules’), and the Centre’s Supplemental Rules.

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on November 1, 2008. In accordance with the Rules, the due date for Response was November 24, 2008. The Respondent failed to respond to the Complaint and the Centre notified the Respondent of its default on November 26, 2008.

The Centre appointed Debrett G. Lyons as the sole panelist in this matter on December 24, 2008. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

1. The Complainant is a producer of chemicals, plastics, crude oil and natural gas. It is regularly ranked as the world's premier chemicals company.
2. The Complainant has done business under the name BASF since its establishment in 1856.
3. The Complainant has traded in China since 1885 and now has eight production facilities and over 5000 employees in China.
4. The Complainant owns countless trade mark registrations for BASF in countries around the world, including China.
5. The Complainant has not licensed or otherwise permitted the Respondent to use the trade mark or to register or use any domain name incorporating the trade mark.
6. The Respondent registered the disputed domain name on December 16, 2005.
7. A password protected website at an address corresponding with the domain name is directed towards recruitment and employment services.
8. The Complainant petitions the Panel to transfer the disputed domain name from the Respondent to the Complainant.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant asserts trade mark rights and states that the disputed domain name is either identical, or confusingly similar to, the trade mark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

The detail of the Complaint is discussed as necessary in Part 5 of this decision.

#### **B. Respondent**

The Respondent did not reply to the Complainant's contentions.

### **5. Findings**

Notwithstanding the fact that the Respondent did not offer a response to the Complaint, the Rules instruct the Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) the domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

- (ii) the Respondent has no rights or legitimate interests in respect of the domain name;  
and
- (iii) the domain name has been registered and is being used in bad faith.

Having considered the Complainant's case and the available evidence, the Panel finds the following:

**A. Identical or Confusingly Similar**

The Complainant's international reputation is established by the evidence and the Panel has no hesitation in finding that the Complainant has common law rights in the trade mark BASF acquired through use and reputation (Policy ¶ 4(a)(i) does not require a trade mark registration with a national authority if it is shown that rights in the trade mark have accrued on a common law or unregistered basis because of widespread use and reputation. *See SeekAmerica Networks Inc. v. Masood*, D2000-0131 (WIPO Apr. 13, 2000), finding that the Rules do not require that a complainant's trademark or service mark be registered by a government authority or agency for such rights to exist; *see also Great Plains Metromall, LLC v. Creach*, FA 97044 (Nat. Arb. Forum May 18, 2001), stating that "The Policy does not require that a trademark be registered by a governmental authority for such rights to exist".

Accordingly, in this case there is no need to examine the Complainant's registered trade marks.

Applying the principles now broadly accepted under the Policy, the Panel finds the disputed domain name to be legally identical to the Complainant's trade mark. The disputed domain name wholly incorporates the Complainant's trade mark. The addition of the ccTLD, ".cc", is trivial and does nothing to defeat the Complainant's claim of identity of domain name and trade mark. See, for example, *Rollerblade, Inc. v. McCrady*, WIPO Case No. D2000-0429 finding that the top level of the domain name such as ".net" or ".com" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

The Panel finds that the Complainant has satisfied the first element of the Policy.

**B. Rights or Legitimate Interests**

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the domain name. Nevertheless, it is well settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to demonstrate rights or legitimate interests. *See Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, NAF Case No. 741828; *AOL LLC v. Gerberg*, NAF Case No. 780200.

Paragraph 4(c) of the Policy states that any of the following circumstances which if found by the Panel to be proved based on its evaluation of the evidence, demonstrate rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or
- (iii) you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant has established its trade mark rights. There is no evidence that the Respondent has similar rights, registered or not. The WHOIS data does not support any argument that the Respondent might be commonly known by the domain name. The Complainant has stated there to be no relationship between the parties. There is scant support for an argument that in terms of paragraph 4(c)(i) of the Policy, the Respondent had used or made preparations to use the domain name in connection with a *bona fide* offering of goods or services. The website corresponding with the domain name cannot be fully accessed. The home page suggests a business having no association with the Complainant and, without the advantage of a Response, the Panel can find no reason to justify why the Respondent has sought to use Complainant's trade mark, BASF, an arbitrary term with no common meaning, in connection with its website.

The Panel finds a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. Since the Respondent made no reply, it has not discharged the onus which fell to it.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the domain name and so the second limb of the Policy is established.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (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 trade mark 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 trade mark 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.

What is noteworthy about paragraphs 4(b)(i)-(iv) is that they are cases of both registration and use in bad faith. Paragraph 4(b) is not exhaustive and other instances of bad faith might be in evidence but, in those instances, the Panel must be able to find both bad faith registration *and* bad faith use.

Respondent's conduct in this case does not obviously fall under any one of those sets of circumstances, nor for that matter does the Complainant try to make the argument that it does. Instead, the Complainant relies on a combination of factors which are said to show bad faith registration and use.

First, given the enormity of the Complainant's reputation, even in China, the submission is of an overwhelming likelihood that the Respondent knew of the Complainant's trade mark and its business at the time it registered the domain name. Secondly, absent any explanation, the Respondent has shown no rights or legitimate interests in a domain name which corresponds only with an invented word uniquely associated with the Complainant's business. Third, imputing the Respondent with knowledge of the Complainant's trade mark and business, it is put that it is more likely than not that the Respondent is using the domain name with the intention of garnering some competitive or financial advantage from the magnetism of the Complainant's trademark. Finally, the Respondent is using the domain name in relation to a website which not only has no endorsement or approval from the Complainant, but has no possible connection with the Complainant or its business. The Complainant rightly submits that formative panels applying the Policy have consistently held that action to be bad faith use.

The Policy would be unworkable were it to require positive proof of registration and use in bad faith. All that is required is evidence that it is more likely than not that a respondent registered and then used the domain name in bad faith. In the absence of a Response, it is not inappropriate for the Panel to draw inferences which might be unfavourable to the Respondent. *See, for example, Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000), holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true; *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000).

For the constellation of reasons advanced by the Complainant, the Panel is satisfied that the Respondent registered and used the disputed domain name in bad faith. Accordingly, the Complainant has satisfied the third and final element of the Policy.

## **6. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name "basf.cc" be transferred to the Complainant.

A handwritten signature in black ink, reading "Debrett G. Lyons." The signature is written in a cursive style with a large initial 'D' and a trailing flourish.

Debrett G. Lyons  
Sole Panelist

Date: January 5, 2009