



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1701033
Complainant:	voestalpine High Performance Metals Pacific Pte. Ltd.
Respondent:	Bao Fang Peng, luo ding shi yi sheng bai mo ju you xian gong si
Disputed Domain Name:	<ysb-tooling.com>

1. The Parties and Contested Domain Name

The Complainant is voestalpine High Performance Metals Pacific Pte. Ltd., of 8 Cross Street, #27-04/05 PWC Building, Singapore 048424.

The Respondent is Bao Fang Peng, luo ding shi yi sheng bai mo ju you xian gong si of Yunfu Shi, Luoding Shi, Shuangdong jiedao, Longfengxin cun 34 shou ceng, Luoding Shi, Guangdong, China.

The domain name at issue is <ysb-tooling.com>, registered by the Respondent with Bizcn.com, Inc., of 5/F, Tongda International Center, No.18, Gaoxiong Road Guanyinshan Business District, Siming District, Xiamen, Fujian 361008, China.

2. Procedural History

The Complainant filed the Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre on 25 October 2017 in accordance with the Uniform Policy for Domain Name Dispute Resolution approved by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the Policy), the Rules for Uniform Domain Name Dispute Resolution Policy approved by the ICANN Board of Directors on 28 September 2013 (the Rules) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy effective from 31 July 2015 (the Supplemental Rules). On 25 October 2017, the Hong Kong Office acknowledged receipt of the Complaint and sent an email to Bizcn.com, Inc. (the Registrar) requesting verification of information regarding the disputed domain name.

On 27 October 2017, the Registrar disclosed registrant and contact information for the disputed domain name which differed from that identified in the Complaint, and further disclosed that the language of the Registration Agreement was Chinese. On 31 October 2017, the Hong Kong Office informed the Complainant that the Complaint was administratively deficient. On 3 November 2017, the Complainant submitted a revised

Complaint. The Hong Kong Office confirmed that the revised Complaint was in administrative compliance with the Policy and the Rules.

On 6 November 2017, the Hong Kong Office sent the Respondent a written notice of complaint, informing him that he was required to submit a Response within 20 days (that is, on or before 26 November 2017). The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by that deadline. Accordingly, on 28 November 2017, the Hong Kong Office notified the Respondent's default.

On 8 December 2017, the Hong Kong Office appointed Prof. Matthew Kennedy as the sole Panelist in this dispute, who confirmed that he was available to act independently and impartially between the parties in this matter. On 8 December 2017, the Hong Kong Office transferred the case files to the Panel.

3. Factual background

The Complainant is a supplier of tool steel, steel for components and other steel products. It is headquartered in Singapore and operates close to 50 branches and sales offices in the Asia-Pacific region. The Complainant was formerly named ASSAB Pacific Pte Ltd. It uses the name “一胜百” (Yishengbai) in the greater China area and has affiliates across mainland China with corporate names in the format “一胜百模具(区域)有限公司” (Yishengbai Mould (*Place name*) Co., Ltd.). It also has Chinese subsidiaries with names in the format “ASSAB Tooling (*Place name*) Co., Ltd.” or “ASSAB Tooling Technology (*Place name*) Co., Ltd.” The Complainant owns multiple trademarks including Chinese trademark registration number 1055408 for “一勝百 ASSAB”, registered on 14 July 1997, specifying “steel bars; steel sheets; iron; metal wire and ironmongery; metal plate; steel pipe products” goods in class 6, and Chinese trademark registration number 13443133 for “一胜百”, registered on 28 June 2016, and specifying services in class 40 including welding; chromium plating; metal plating; electroplating; metal treating; metal casting; nickel plating; and sawing (saw mill). The Complainant operates official websites at <assab.com> and <assab-china.com>.

The Respondent is an individual and company located in China. The Respondent company's name may be translated as “Luoding City Yishengbai Mould Co., Ltd.”. The disputed domain name was registered on 20 October 2016 and resolves to a website in Chinese for a company named “一胜百模具(东莞)有限公司” (Yishengbai Mould (Dongguan) Co., Ltd.). According to a reverse WhoIs search conducted by the Complainant, the Respondent company is also the registrant of the domain names <assab-mould.cn>, <assab-dg.cn> and <assab.vip> that were registered on 21 and 22 December 2016 and 17 March 2017, respectively.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant's “一勝百 ASSAB” trademark. The disputed domain name contains two elements: “ysb-tooling” and the generic Top-Level Domain (“gTLD”) suffix “.com”. The gTLD suffix has no trademark significance, conferring no distinctiveness to the domain

name sufficient to avoid user confusion. The only distinctive part of the disputed domain should be “ysb-tooling”, which is acronym of the pinyin for the Complainant's trademark “Yi Sheng Bai” (一胜百). For most Chinese users, it is common for ASSAB to be referred to as “Yi Sheng Bai” which is the pinyin for the Complainant's “一胜百” trademark. In addition, “tooling” is used as a significant part of the Complainant’s subsidiaries’ corporate names in China, such as “ASSAB Tooling (Dong Guan) Co., Ltd.”, “ASSAB Tooling (Beijing) Co., Ltd.”, “ASSAB Tooling (Qingdao) Co., Ltd.”, “ASSAB Tooling Technology (Shanghai) Co., Ltd.”. The combination of “YSB” and “Tooling” in the domain name will no doubt mislead consumers into believing that the website is operated by or associated with the Complainant.

- ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent registered the disputed domain name long after most of the applications and registration dates of the Complainant's trademarks. The Complainant and the Respondent have no prior connection, and the latter has not been authorized by the former to use its mark in the disputed domain name. There is also no evidence that the Respondent has been commonly known by the disputed domain name. It is therefore impossible for the Respondent to logically use the disputed domain name, except in a deliberate attempt to take advantage of the “ASSAB” and “一胜百” mark for commercial gain.
- iii. The disputed domain name was registered and is being used in bad faith. The Complainant's trademarks have become widely-known among consumers and the relevant public as a result of its long-term promotion and use. The Respondent must have had prior knowledge of the Complainant's trademarks before the registration of the disputed domain name. The disputed domain name resolves to the website of a company named “一胜百模具（东莞）有限公司”. The website displays the corporate name “一胜百 and a triangle device”, which contains the Complainant's Chinese trademark “一胜百” in its entirety as well as a device similar to the Complainant’s logo. The website is strikingly similar to the Complainant's official websites at <assab.com> and <assab-china.com> as its design and layout are similar to the Complainant’s official websites and the text of the introductory page is copied directly from the Complainant’s official Chinese website. The contact email provided on the website is associated with over 300 other domain names, including <assab-mould.cn>, <assab-dg.cn> and <assab.vip>, which also resolve to websites strikingly similar to the Complainant’s official website.

B. Respondent

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

5. Findings

The Respondent’s default does not automatically result in a decision in favour of the Complainant. The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- 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.

Language of the Proceeding

According to Paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

In this proceeding, the Registration Agreement for the disputed domain name is in Chinese but the Complaint was filed in English. The Complainant requests that English be the language of the proceeding for the following reasons: the Complainant is a foreign company and it would cause tremendous cost, time and unfair prejudice if it were required to translate all the evidence from English; the disputed domain name is in English; and the disputed domain name resolves to a website in Chinese with some content in English. The Respondent did not comment on the language of the proceeding.

The Panel notes that the Respondent, despite having received notice of the Complaint in Chinese and English, has not indicated any interest in participating in this proceeding. Therefore, the Panel considers that translation of the Complaint and annexes would create an unnecessary expense to the Complainant and unduly delay the proceeding, whereas conducting the proceeding in English would not be unfair to either party.

Having regard to these circumstances, the Panel determines that the language of this proceeding is English.

A) Identical / Confusingly Similar

Based on the evidence submitted, the Panel finds that the Complainant has rights in the “一勝百 ASSAB” and “一胜百” trademarks. Both trademarks were registered prior to the registration of the disputed domain name. However, the Complainant has not registered the letters “ysb” as a trademark or as part of a trademark, nor has it asserted any unregistered rights in the letters “ysb”.

The disputed domain name does not contain the Complainant's trademarks or any part of either of them. The disputed domain name does not contain a translation or transliteration of either of the Complainant's trademarks. The disputed domain name does not contain the “ASSAB” element of the first trademark. However, the disputed domain name does include the letters “ysb”, which are the initials of the pinyin transliteration of the Chinese characters in both the Complainant's trademarks.

The disputed domain name does not resemble the Complainant's “一勝百 ASSAB” trademark or “一胜百” trademark either visually, aurally or semantically. See *National Spiritual Assembly of the Bahá'ís of the United States v Second International Bahá'í Council*, WIPO Case No. 2005-0214; *OSRAM GmbH v.*

mingshu li, limingshu, WIPO Case No. D2015-0030; *Société pour l'Oeuvre et la Mémoire d'Antoine de Saint Exupéry – Succession Saint Exupéry – D'Agay v. Perlegos Properties*, WIPO Case No. D2005-1085. The first element of the disputed domain name, the acronym “ysb”, is in a different script from “一胜百”; it is not pronounced like “一胜百”; and it comprises the initials of pinyin transliterations of many different three-character combinations besides “一胜百”. In any event, while there is evidence on record that the name “一胜百” has been used in connection with moulds and other goods in certain Chinese newspapers and trade and academic journals since at least 2004, that does not demonstrate that the letters “ysb” are used to refer to the Complainant or its products.

The disputed domain name also includes the element “tooling”. That is not part of the Complainant’s trademarks but is rather a general description of the Complainant’s products. In any event, “tooling” is an English language dictionary word and, in the English language, the Complainant uses the trademark ASSAB. The disputed domain name does not contain the ASSAB trademark or a translation of it. Consequently, the addition of the English word “tooling” does not increase any risk of confusing similarity between the disputed domain name and the Complainant’s trademarks.

The hyphen located between the “ysb” and “tooling” elements is mere punctuation. While it ensures that each of those elements is recognizable within the disputed domain name, the Panel does not consider that the hyphen creates a risk of confusing similarity with either of the Complainant’s trademarks.

The only other element in the disputed domain name is the gTLD suffix “.com” but that may be disregarded as a mere technical requirement of registration.

Accordingly, the Panel does not find that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has not satisfied the first element of Paragraph 4(a) of the Policy.

B) Rights and Legitimate Interests

In view of the Panel’s findings under the first element, it is unnecessary to consider the second element.

C) Bad Faith

In view of the Panel’s findings under the first element, it is unnecessary to consider the third element.

6. Decision

For the foregoing reasons, the Complaint is denied.

Matthew Kennedy
Panelist

Dated: 21 December 2017