



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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Decision Submission

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Decision ID	DE-0700113
Case ID	CN-0700131
Disputed Domain Name	www.kraus-naimer.net
Case Administrator	Xinmin Cui
Submitted By	Shaojie Chi
Participated Panelist	
Date of Decision	14-06-2007

The Parties Information

Claimant	Kraus & Naimer Gesellschaft m.b.H
Respondent	Xu Peng Cheng

Procedural History

On April 2, 2007, the Complainant submitted a first Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the "Center"), 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") approved by ICANN on October 24, 1999, and Asian Domain Name Dispute Resolution Center Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules") effected on February 28, 2002. The Center confirmed the reception of the Complaint.

On April 2, 2007, the Center received the Registrar's confirmation on registration information of the disputed domain name.

On May 8, 2007, the Center sent the Complaint to the Respondent.

On May 9, 2007, the Center notified the parties regarding the commencement of proceeding, the Complaint being forwarded to the Respondent, and also sent the notification to both the ICANN and the Registrar.

On May 29, 2007, having received no response from the Respondent, the Center notified the Complainant that the hearing will take place by default.

Upon receiving the declaration of impartiality and independence and statement of acceptance from Mr. Chi Shaojie on May 31, 2007, the Center informed the Complainant and the Respondent of the appointment of Mr. Chi as the sole panelist.

On June 1, 2007, the Center transferred the documents in written copy submitted by the Complainant to the sole panelist by courier, and the latter confirmed the reception.

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

Having requested the Respondent to submit a response, the Center received no such document during the entire procedure.

The language of the proceeding is English due to the language of the Domain Name Registration and Service Agreement pursuant to Paragraph 11(a) of the Rules, and considering that it is the language used by the Complainant when filing the Complaint and that there is no express agreement to the contrary by the disputing parties.

Factual Background

For Claimant

Since its establishment in 1907 in Austria, the Complainant now has production facilities in Germany, Ireland, New Zealand, Brazil, USA and Hungary. "Kraus & Naimer" is the trade name used by the Complainant and its subsidiaries; it is actually the combination of the family names the company's two founders and was first registered in Austria on October 20, 1958. The Complainant also holds legal rights on "Kraus & Naimer" as a registered trademark in many countries. In 1991, the Complainant's sales company in Singapore registered "Kraus & Naimer Blue Line Switchgear" with the Malaysian trademark authorities. On July 28, 2003, the trademark "Kraus & Naimer" was registered in Austria, based on which the Complainant obtained the international registration No. 812515 "Kraus & Naimer" on September 22, 2003, designating China within the coverage of protection. However, the approval of the latter was delayed due to proceedings before the Trademark Review and Adjudication Board in China initiated by the Complainant against a registrant in bad faith of a prior application for the same trademark, "Kraus & Naimer". The Complainant has been making and selling electric switches within the global market for quite a long time and has started distributing their products in China many years ago under the company's original name "Kraus & Naimer Gesellschaft m.b.H" along with its Chinese translation "考尔斯和蓝默尔有限公司". The name is printed on the official document issued by PRC Quality Certification Centre on October 30 and November 3, 2003. The products made by the Complainant under the brand "Kraus & Naimer" are famous and eye-catching in both the foreign and Chinese market.

For Respondent

The Respondent is Xu Peng Cheng. He registered the disputed domain name on October 21, 2006 through the Registrar EB Commerce Communications Limited dba WEBNIC.CC.

Parties' Contentions

Claimant

The Complainant is a multinational company by the name of "Krause & Naimer", manufacturing and markets electric switches world-wide under the trademark "Kraus & Naimer" and the company's logo. The trademark has been widely registered including China where the approval is pending due to necessary proceedings against an unexpected improper registration of the same name. The Respondent is the legal representative of a company in competition with the Complainant. The disputed domain name is confusingly similar to the Complainant's trade name and registered trademark. The Respondent has no legitimate right or interest regarding the disputed domain name and has registered the name in bad faith.

The disputed domain name is substantially identical to the trademark used by the Complainant much earlier than the registration of the disputed domain name by the Respondent. The Respondent has no legitimate right or interest regarding the words "Kraus & Naimer". The two words, "Kraus" and "Naimer" are neither words frequently seen in the English dictionary nor common names used in English-speaking countries. Neither "Kraus & Naimer" or "Krause-naimer" is associated with a Chinese person or company. As a Chinese citizen, the Respondent has no interest in registering a domain name using "Krause-naimer" as the distinguishing part. The Respondent is the legal representative of Yue Qing Gao Bai Electric Co. whom has tried to register the trademark "KRAUS & NAIMER". The application for registration indicates that the company does not have any real interest in "Kraus & Naimer", but is simply trying to mislead the public by using a confusingly similar trademark. In addition, the company that the Respondent represents uses the sign "KRAUS & NAIMER" and the Complainant's logo on its website (www.kraus-naimer.com). Through the exhibits provided by the Complainant, it is doubtless that Yue Qing Gao Bai Electric Co. engages in the same business as the Complainant. The conclusion that the Respondent has registered the domain name in order to mislead the public, hence in bad faith, can be easily deduced. In addition, the Complainant's statements have been affirmed by both CIETAC and ADNDRC in different rulings.

In light of these reasons, the Complainant requests that the Panel transfer the domain name "kraus-naimer.net" from the Respondent to them.

Respondent

The Respondent failed to submit a defense.

Findings

One of the prerequisites for a domain name registration through the Registrar is to accept the Policy as the binding regulation in terms of the procurement of the entitlement. As previously mentioned, the Policy applies to the procedural and substantive issues during dispute resolution. As stipulated in the Paragraph 4(a) of the Policy, when claiming 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 is being used in bad faith.

Based on stipulations under the Policy, the Rules and ADNDRC Supplemental Rules, the Panel needs to determine whether the Complainant satisfies each of the criteria. If the answer is yes, then the Panel will make a final decision in accordance with the facts and relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules; if not, the Complainant's claims shall be rejected.

The Respondent failed to submit a response and a defense, and did not exhibit any intention to retain the disputed domain name. As stipulated in Paragraph 5(e) of the 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 light of this situation, the Panel has no choice but to make the decision based primarily on the Complainant's contentions and accompanying exhibits, unless proven otherwise or that the Panel, based on professional experiences, thinks that the Complainant's allegations are not logical or obviously contradictory to a prior judgment.

Identical / Confusingly Similar

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 they have rights to. In order to meet this requirement, the Complainant provided proof certifying their ownership of the registered trademark containing the key words "Kraus" and "Naimer" in many countries before the Respondent had registered the two words as the main part of their domain name. The exhibits clearly demonstrate that the Complainant had registered the trademark "KRAUS & NAIMER BLUE LINE SWITCHGEAR" in Malaysia in 1991, the trademark "KRAUS & NAIMER" in Austria in 2003. Based upon the latter, the Complainant filed an international application for the trademark "KRAUS & NAIMER" designating China as one of the territories of protection. Although there is no proof to demonstrate the completion of the proceedings before the Chinese trademark authorities, the Panel holds that prior to the registration of the disputed domain name by the Respondent, the Complainant does own registered trademarks containing the words "Kraus & Naimer", one of which was obtained in Malaysia in 1991, much earlier than the Respondent's registration of the domain name in dispute. Also, the Panel paid special attention to the fundamental fact that the combination of "Kraus & Naimer" is the trade name used by the Complainant ever since its foundation in early 1900's.

When making a judgment regarding the issue of identity or confusing similarity, the Panel often compares the identifying part of the questioned domain name with the claimed trademark. It is easily observable that the identifying part of the domain name in dispute is composed of two Latin words, namely "krause" and "naimer" linked by hyphen (-). The Complainant's registered trademark is composed of the same two Latin words "krause" and "naimer", separated by "&". Visually speaking, the minor difference of the two lies in the marks "-:" and "&". The hyphen "-" plays a role of putting the word "Kraus" together with the word "naimer" to form an integral meaning; "&" means "and" which is used to combine the words "Kraus" and "naimer" also forming an integral meaning. Theoretically speaking, "-" has the same meaning as "&", or at least the two have something in common in terms of their linguistic functions, thus making the identifying part of the disputed domain name identical if not confusingly similar to the Complainant's registered trademark.

Previous adjudications by CIETAC (China International Economic and Trade Arbitration Commission) and ADNDRC, as well as court judgments demonstrate the same or similar fact-findings as to what the Panel finds in terms of identity or confusing similarity in this case.

In light of the above reasoning, the Panel holds that the identifying part of the domain name in dispute is identical to the registered trademark belonging to the Complainant. As for the linguistic aspect, namely "-" not being the same as "&", the Panel firmly holds that the identical part of the disputed domain name is confusingly similar to the registered trademark owned by the Complainant. As the Policy requires either "identical to" or "confusingly similar to", the Panel rules that the Complaint satisfies the first requirement set forth in the Policy.

Rights and Legitimate Interests

Paragraph 4(c) of the Policy stipulates how a Respondent can effectively demonstrate their rights or legitimate interests in the disputed domain name. The Panel does not think that the Respondent has any legitimate right or interest in respect of the disputed domain name due to the fact that the Respondent did not claim such right or interest; nothing so far could

lead the Panel to conclude otherwise.

Though the burden of prove regarding "rights or legitimate interests of the Respondent" is generally on the party making the defense, the Panel paid special attention to the allegations and supporting evidences provided by the Complainant when making the claim that the two Latin words of "Krause" and "Naimer" are actually the family names of the two founders of the Complainant's business, and have been used as the corporate name and brand ever since the company's establishment in early 1900's.

The Panel came to the conclusion that the Complainant has legal rights and legitimate interests in the word combination of "Kraus & Naimer", upon which the Complainant is entitled to register a domain name containing the words "Kraus" and "naimer" as the essential components. In contrast, the Panel does not see any chance for the Respondent to claim rights or legitimate interests regarding the disputed domain name. Therefore, the Panel thinks that the Complainant satisfies the second requirement.

Bad Faith

The Complainant also need to establish the Respondent's bad faith as set forth in the Paragraph 4(a)(iii) of the Policy. Under Paragraph 4(b)(i) 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 alleges that the Respondent is the legal representative of Yue Qing Gao Bai Electric Co. (hereafter referred to as GaoBai) whom registered the domain name with "Kraus" and "Naimer" as the identifying part and was judged to transfer it to the Claimant by CIETAC and ADNDRC, as well as the enforceable court judgment. The Panel notices that in the said court judgment with Gao Bai as the losing party, it is indicated that the party's legal representative is named "徐鹏程" in Chinese characters. It is true that the Chinese characters "徐鹏程" is spelled "Xu Peng Cheng" in the mainland Chinese habit. Nevertheless, it is not true that the latter is none other than the former seeing that "Xu Peng Cheng" might also be the alphabetical spelling of Chinese characters 许彭成, 须蓬诚, etc. Thus, the Panel needs more evidence to confirm the Complainant's allegation that the Respondent is Gao Bai's legal representative. However, the following considerations support the Panel's affirmation that the Respondent registered and used the disputed domain name in bad faith.

(1) As indicated in the CIETAC, ADNDRC and the said court judgment, the legal representative of the losing party is named 徐鹏程, the alphabetical spelling of which is Xu Peng Cheng. Hence, the registrant of the disputed domain name "kruas-naimer.net" may be related to Gao Bai whom registered the domain names "kruasenaime.cn" and "krausenaime.com.cn". Under separate proceedings, the aforesaid domain names were all ordered to be transferred to the Claimant. It is worthy of mentioning that the dates of the awards by CIETAC and ADNDRC are May 26 & 24, 2006. The follow-up court proceedings against the award by CIETAC started on June 21, 2006, the hearing was held on October 20, and the judgment was rendered on November 7, 2006. The date on which the Respondent registered the domain name in this case is "2006-10-21", a day after the court hearing in relation to the disputed domain name "krausenaime.com.cn" and "krausenaime.cn". What a curious coincidence if the Respondent has absolutely no connection to the losing party. The Panel sees no defense capable of removing the curious coincidence and can think of no reasonable explanation or even logical probability to the question.

(2) As alleged by the Complainant, "Krause" and "Naimer" are the family names of the founders of the Complainant's business, Franz Kraus and Laurenz Naimer. Phonetically, "Kraus" and "Naimer" do not sound Anglo-Saxon neither do they look Anglo-Saxon alphabetically. The Panel sees no reason for the Respondent to be interested in the two Germanic-sounding names if he seeks no commercial interest. The question is, there are hundred and thousands of Germanic names, why did he specifically chose the two currently in dispute especially that there is no sign that the Respondent has any historical or modern linkage to the two Germanic names, or even a sign of the Respondent's comprehension of German?

(3) The Complainant does not claim the use of the disputed domain name from the Respondent, there is no proof of such use either. But if the Respondent registered the domain name in good faith, why is it not used after registration? Whatever the reason, the registration of the disputed domain name prevents the Complainant from registering and using the same name. In this case, the registration and non-usage of the disputed domain name is regarded as a conduct of web squatting, which is not encouraged in consideration of the maintenance of a healthy business order.

Based on the above reasoning, the Panel finds that the Complainant has established the criteria of bad faith, thus meeting the third requirement under the relevant articles of the Policy.

Based on all the above findings and comments, the Panel rules that the Complainant fulfills all conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy, hence their claims shall be held.

Status

www.kraus-naimer.net Domain Name Transfer

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 "kraus-naimer.net" is identical, or at least confusingly similar, to the Complainant's registered trademark "Kraus & Naimer"; and
- b) That the Respondent has no right or legitimate interest regarding the disputed domain name; and
- c) That the domain name was registered and subsequently utilized in bad faith.

As such, the Panel requires that the registration of the domain name "kruas-naimer.net" be transferred to the Complainant.

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