

ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Beijing Office)
ADMINISTRATIVE PANEL DECISION
Case No. CN 0900312

Complainant: Seiko Epson Corporation

Respondent: Kevin Cheng

Domain Name: epsondriver.biz、epsondriver.info、epsondriver.org

Registrar: GoDaddy.com Inc

1. Procedural History

On 26 November 2009, the Complainant submitted a Complaint in the English language to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC) and elected this case to be dealt with by a one-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (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 the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules).

On 1 December 2009, the ADNDRC sent to the complainant by email an acknowledgement of the receipt of the complaint.

On 1 December 2009, the ADNDRC transmitted by email to the Registrar GoDaddy.com Inc., a request for registrar verification in connection with the disputed domain name.

On 3 December 2009, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 14 December 2009, the ADNDRC transmitted the Complaint to the Respondent.

On 19 December 2009, the ADNDRC notified the Respondent of the commencement of the action. On the same day, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent, and notified ICANN and the Registrar of the commencement of the proceedings.

The Respondent filed a Response with the ADNDRC by Chinese. The ADNDRC transmitted the Response to the Complainant on 24 February 2010.

Upon receiving the declaration of impartiality and independency and the statement of acceptance from the candidate Panelist, the Center appointed Matthew Murphy as the

sole panelist in this matter on 9 March 2010. Then the Center transferred all the case materials to the panel on the day, and asked the panel to submit a decision before 23 March 2010.

Pursuant 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. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

2. Factual Background

For the Complainant

The Complainant in this case is Seiko Epson Corporation. The registration address is Head Office 3-5 Owa 3-chome Suwa-shi, Nagano-ken, 392-8502 JAPAN. In this case, the Complainant authorized Linda Liu & Partners as its agent.

For the Respondent

The Respondent is Kevin Cheng, The address is Tian He Zhong Lin He Dong Lu Tian He Qu GuangZhou, GuangDong 510000, who registered the disputed domain names on September 17, 2009 through the Registrar.

3. Parties' Contentions

The Complainant

The Complainant is a well known multinational company that was established in 1942 in Japan. Its main products include information products such as printers, projectors, consuming materials, electronics, watches etc. In 2003, the Complainant claimed to have 84,889 employees and sales reaching 1.4132 billion yen. The Complainant is the registered owner of the trademark EPSON and has been using it for over 26 years – the Complainant has provided evidence to show that it has registered the mark in a large number of classes in many countries throughout the world including China, Japan, the UK, the USA and Germany. The Complainant also claims to have registered over 70 domain names containing EPSON – a list has been provided by the Complainant. The EPSON trademark was first registered by the Complainant in Japan in 1975. The Complainant claims that its EPSON trademark, therefore, has attained the status of a famous mark through decades of use and consumer recognition. None of these claims have been refuted by the Respondent.

The Claimant discovered that the Respondent registered the domain names. The Claimant asserts that the Respondent's registration of these domain names will confuse existing and future customers of Claimant.

(1) The disputed domain names are confusingly similar to the trademark “EPSON” of complainant.

It is well-known that “EPSON” is a worldwide famous trademark which is owned by complainant. The validity and fame of its trademarks are beyond dispute. The disputed domain names “epsondriver.biz”, “epsondriver.info” and “epsondriver.org” all consist of “EPSON” and “DRIVER”. “EPSON” is the well-known trademark and trade name of the complainant. The Chinese translation of “DRIVER” is “驱动”. Seiko Epson Corporation always sells electronic products with the attachment of drivers. After the combination of these two words, the internet users may easily misunderstand that these domain names have some relation with EPSON Corporation or its products as well as business. Accordingly, the domain names are confusingly similar to the trademark “EPSON” owned by complainant, this kind of act has brought bad effect to the complainant and infringes the complainant’s legal rights.

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

“EPSON” is a trademark and trade name originally created by 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 Respondent has nothing to do with the complainant, and there was no association between the trademark and his activities before registering the domain names. The complainant has never authorized the registrant to use “EPSON” by any means. Besides these, the Respondent registered the disputed domain names on Sep. 17, 2009, much later than the date when complainant registered the trademark or its style.

So the Respondent should be considered as having no rights or legitimate interests in respect of the domain names.

(3) The domain names have been registered in bad faith.

Since the trademark “EPSON” is so well-known in the world, and was granted the well-known trademark in September 2007 in China. And the disputed domain names were registered on Sep. 17, 2009, later than the recognition of well-known trademark. The trademark “EPSON” owned by the complainant has a high reputation in China, thus the Respondent knew clearly the existence of this famous trademark. However, the Respondent set up the website “www. epsondriver.org” which provides the advertisement information related to the web server. Considering the well-knownness of “EPSON” in China, the complainant firmly believe that the Respondent intended to confuse the consumers so as to gain improper interests.

Accordingly, the disputed domain names “epsondriver.biz”, “epsondriver.info” and “epsondriver.org” should be considered as having been registered in bad faith.

The Respondent

The Respondent denied all of the claims of the Complainant. It claims that the Complainant does not own the trademark rights for EPSON DRIVER. It claims that it

has not used the domain names and has simply set up place holder pages for the domain names. It claims that it has a good relationship with IBM and this assists its case that it would use the domain names responsibly.

The Respondent claims that it is not using the domain names, but if it did, then it would do so properly or in good faith.

4. Findings

Under paragraph 4 (a) of the Policy, the Panel should be satisfied that:

- (i) The 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) The domain name has been registered in bad faith;
- (iv) The domain name is being used in bad faith.

Identical or Confusing Similarity

The Panel finds that Complainant has established that it is the owner of the trademark EPSON. The validity and fame of this trademark are beyond dispute. The Respondent's domain name includes the Complainant's trademark and adds a reference to "DRIVERS" in the domain name – the claim by the Respondent, that the Complainant should own the trademark "EPSON DRIVERS" to be protected, is not well founded and is hereby rejected. Internet users may easily understand the domain name to refer to the Complainant's EPSON Driver products, since the Complainant is a well-known multi-national company, as are its drivers. Accordingly, the domain name is confusingly similar to the trademark EPSON owned by the Complainant.

Rights or Legitimate Interests of the Respondent

There is no evidence that the Respondent had any right or legitimate interest whatsoever in respect of the well-known trademark EPSON, or that there was any association between the trademark EPSON and its activities, before registering the domain name. Given that the Respondent has not provided any evidence to support a right or legitimate interest in the domain name, the Panel finds that the Respondent has no rights or legitimate interests in respect of the domain name.

Bad Faith

The trademark EPSON is well-known enough that it is presumable that the Respondent knew about its existence when registering the domain name (see Banca Sella S.p.A. v. Mr. Paolo Parente, WIPO Case No. D2000-1157; Expedia, Inc. v. European Travel Network, WIPO Case No. D2000-0137). No argument has been submitted by the defaulting Respondent in order to counter these findings. The Panel concludes that the domain name has been registered in bad faith.

As far as use of the domain name in bad faith is concerned, the Panel concludes that the Respondent's holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) of the Policy in that the domain name "is being used in bad faith" by the Respondent (see *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No. D2000-0003; *Espirito Santo Financial Group S.A. v. Peter Colman*, WIPO Case No. D2001-1214) - the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in various countries throughout the world, and the Respondent has provided no evidence of any actual or contemplated good faith use by it of the domain name.

5. Decision

Pursuant to Paragraph 4(a) of the Policy and Article 15 of the Rules, this Panel orders that the domain name <epsondriver.biz , epsondriver.info , epsondriver.org> be transferred to the Complainant Seiko Epson Corporation.

Matthew Murphy
Sole Panelist

Dated: 23 March, 2010