



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

## **ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-18010194
<b>Complainant:</b>	AB Electrolux
<b>Respondent:</b>	Bao jinxiu
<b>Disputed Domain Name(s):</b>	< electrolux-bx.com >

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### **1. The Parties and Contested Domain Name**

The Complainant is AB Electrolux, of Sankt Göransgatan 143, 112 17 Stockholm, Sweden.

The Respondent is Bao jinxiu, of Siming District, Software Park Innovation Building, 4th Floor, 403, 15294087806Hk7Xs, Beijing Fujian Province. China.

The domain name at issue is electrolux-bx.com, registered by Respondent with Xin Net Technology Corporation of Bei Gong Da Software Area Building #6, Level 1, BDA Beijing 100176 China.

### **2. Procedural History**

On 23 November 2018, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On the same day, the ADNDRC-HK confirmed receipt of the Complaint and requested the Complainant to submit the case filing fee.

On the same day, the ADNDRC-HK notified Xin Net Technology Corporation (“Registrar”) of the Disputed Domain Name of the proceedings by email.

On 30 November 2018, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Name is registered with the Registrar, that Bao jinxiu is the holder of the Disputed Domain Name, that the Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy (“the Policy”) is applicable to the Disputed Domain Name, the language of the Disputed Domain Name is Chinese as provided by the WHOIS information in relation to the Disputed Domain Name and confirmed that the Disputed Domain Name is under Registrar lock status.

On 4 December 2018, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS

database). The Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 24 December 2018).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the ADRDRC-HK on 15 January 2019. The papers pertaining to the case were delivered to the Panel by email on the same day.

### 3. Factual background

According to the documents submitted by the Complainant, the Complainant is the owner of the registered trademark ELECTROLUX as a word and figure mark in several classes in more than 150 countries including in China, where the trademark was registered as early as 1997. The trademarks have been registered in several classes, including class 7 that covering washing machines, spin driers, mangles, food processers, and dust bags.

<u>Trademark</u>	<u>Date of Registration</u>	<u>Registration number</u>	<u>Type of registration</u>
ELECTROLUX	21.12.2010	836605	International (designated China)
ELECTROLUX	2014.01.07	11314983	China
ELECTROLUX	1999.07.01	976005	China

The Respondent, Bao Jinxiu of Fujian Province registered the disputed domain name on 4 August 2018. The Respondent did not file a Reply with the Centre.

### 4. Parties' Contentions

#### A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

The Complainant notes that AB Electrolux (Complainant), is a Swedish joint stock company founded in 1901 and a leading producer of appliances and equipment for kitchen and cleaning products and floor care products. Having started out with the sale of a single vacuum cleaner, after 90 years of innovations and acquisitions, Electrolux is now a global producer in home and professional appliances. The ELECTROLUX brand is the Complainant's flagship brand for

kitchen and cleaning appliances for both consumers and professional users. According to the information provided by the Complainant, in 2014, Electrolux had sales of SEK 112 billion and about 60,000 employees. The trademark registrations predate the registration of the Disputed Domain Name. Complainant has registered a number of domain names under generic Top-Level Domains ("gTLD") and country-code Top-Level Domains ("ccTLD") containing the term "electrolux", for example, <electrolux.com> (created on April 30, 1996) and a local Chinese website <electrolux.com.cn> (created on June 6, 1998). Complainant uses these domain names to connect to a website through which it informs potential customers about its ELECTROLUX mark and its products and services.

The Disputed Domain Name directly incorporates Complainant's well-known, registered trademark ELECTROLUX. The Complainant contends that the Disputed Domain Name is confusingly similar to the registered trademark ELECTROLUX. The Complainant further contends that the inclusion of the letters "bx" preceded by a hyphen does not serve to distinguish the Disputed Domain Name from the trademark in any significant way, or otherwise to lessen the likelihood of confusion (see Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.7. "In addition, it is generally accepted that the addition of country code top-level suffix in the domain name (e.g., ".com") are to be disregarded under the confusing similarity test".

- ii. The Respondent has no rights or legitimate interests in respect of the domain name:

The Complainant argues that the website connected to the Domain Name has links to numerous other sites such as 8522.com, 9822.com, and has no connection to the trademark ELECTROLUX. At the bottom of the site it says Minsheng Steamship Co. Tld, All rights reserved. The Complainant notes that this company has nothing to with the Complainant.

Complainant notes that respondent has not put forward any claims to legitimate rights in the Disputed Domain Name. The lack of a legitimate claim coupled with the existing use of the Domain Name, the Claimant argues, cannot be considered a legitimate use of the Domain Name. The Complainant has previously successfully challenged numerous ELECTROLUX domain names through the UDRP process (see among others the following recent WIPO cases: D2017-0835, D2017-0834, D2017-0920 D2015-1506; DIR2015-0007; D2015-1003; D2015-1006.)

- iii. The disputed domain name has been registered and is being used in bad faith:

On the bad faith issue, the Complainant contends that although Respondent did not disclose its identity, Complainant tried to contact the Respondent on September 19, 2018 through a cease and desist letter. The letter was sent to the email address listed in the archive whois record. Complainant advised Respondent that the unauthorized use of its trademarks within the Domain Name violated their trademark rights and Complainant requested a voluntary transfer of

the Domain Name. Respondent disregarded such communication. Since the efforts of trying to solve the matter amicably were unsuccessful, Complainant chose to file a complaint according to the UDRP process.

Further, the Complainant argues that Respondent has never been granted permission to register the Domain Name. Respondent takes advantage of the ELECTROLUX trademark by intentionally attempting to attract visitors to the Respondent's website by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or a product or service on Respondent's website or location.

From Complainant's perspective, Respondent intentionally chose the Disputed Domain Name based on a registered and well-known trademark. Nowhere does Respondent disclaim on its website the non-existing relationship between itself and Complainant. Consequently, Respondent is using the Domain Name to intentionally attempt to attract, for commercial gain, internet users to the website, by creating a likelihood of confusion with Complainant's trademark as to the source, sponsorship, affiliation or endorsement of its website.

In Sum, the Complainant argues that ELECTROLUX is a well-known trademark in the home appliance industry including in China. It is highly unlikely that Respondent was not aware of the rights Complainant has in the trademark and the value of said trademark, at the point of the registration. Inference of bad faith registration and use of the Domain may be implied by the fact that Respondent never replied to Complainant's cease and desist letter. It is reasonable to assume that if Respondent did have legitimate purposes in registering and using the Domain Name it would have responded.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent did not submit a reply.

## 5. Findings

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.

### **Preliminary Issue: Language of Proceedings**

Prior to the Panels consideration of the application of Paragraph 4(a) of ICANN's Uniform Domain Name Dispute Resolution Policy to the facts in this case, a preliminary issue must be addressed, namely the language of the proceedings.

With regard to the language issue, the language of the proceedings, according to Article 11(a) of the UDRP 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.”

While the Panel observes that the language of the registration agreement is Chinese, in accordance with the Rules of UDRP, the Panel has the authority to determine the language of the proceedings, having regard to the circumstances. Having reviewed the Complainant's submission, for reasons of efficiency the Panel thus determines that the language of the proceedings is English.

#### **A) Identical / Confusingly Similar**

The Complainant has established its right to the “ELECTROLUX” trademark by submitting trademark registration certificates and records in a number of jurisdictions including in China. The disputed domain name < electrolux-bx.com > contains three elements: "ELECTROLUX" “bx” and the top-level domain ".com". Numerous UDRP precedents have established that the top-level domain does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion.

The only distinctive part of the disputed domain should be "electrolux", which is identical to the Complainant's "ELECTROLUX" trademark and trade name. This striking resemblance will no doubt mislead consumers into believing that the website is operated by or associated with the Complainant. The Disputed Domain Name incorporates the Complainant's ELECTROLUX Mark in its entirety, and adds only the qualifier “bx.” This qualifier does nothing to reduce the likelihood of confusion with the Disputed Domain Name. By analogy, the use of a famous mark in its entirety together with a geographic or descriptive term in a domain name creates a domain name that is confusingly similar to the famous mark. See *Playboy Enterprises International Inc. v. Melancia, WIPO Case No. D2006-1106*.

There is no doubt that the Disputed Domain Name < electrolux-bx.com > completely incorporates the Complainant's “ELECTROLUX” trademark which is the distinctive part of the Disputed Domain Name, and such incorporation makes the Disputed Domain Name confusingly similar with the Complainant's trademark.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(i).

#### **B) Rights and Legitimate Interests**

As the owner and/or proprietor of the “ELECTROLUX” trademarks, the Complainant has confirmed that it has no prior connection with the Respondent in any way, nor has it authorized the Respondent to use its trademarks in the Disputed Domain Name.

In determining whether the Respondent has any legal right and interest in the Disputed Domain Name, the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns legal rights and interests thereof; otherwise, “all registrants would have such rights or interests, and no complainant could succeed on a claim of abusive registration” - See: *Adobe Systems Incorporated v. Domain*

In the present case, the Respondent failed to provide evidence indicating that it has been commonly known by the Disputed Domain Name, nor has been making a legitimate noncommercial or fair use thereof. On the contrary, the Complainant has pointed out with screenshots of the Disputed Domain Name website that the Disputed Domain Name resolves to a website that links to numerous other sites such as 8522.com, 9822.com, and has no connection to the trademark ELECTROLUX. At the bottom of the site it says Minsheng Steamship Co. Tld, All rights reserved. The Complainant notes that this company has nothing to with the Complainant. It is well established that using a Disputed Domain Name to attract visitors to a website with misleading and potential infringing content does not constitute a “bona fide offering of goods or services”.

In conclusion, the Panel finds that the Complainant has satisfied the Paragraph 4(a)(ii).

### **C) Bad Faith**

In determining whether the Respondent has registered or used the Disputed Domain Name in bad faith, paragraph 4(b) of the Policy sets down four (4) factors which the Panel will need to examine. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be 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 Respondent, domiciled in China, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name given the Complainant's reputation in the mark “ELECTROLUX” internationally and within China as of the date that the Respondent registered the Disputed Domain Name.

No evidence has been provided showing that the Respondent sought the permission of the Claimant to use its mark, nor any evidence showing that the Claimant gave such permission to the respondent.

Given the above findings, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

## **6. Decision**

Pursuant to Paragraph 4(i) of the Policy and Article 15 of the Rules, the Panel orders that the disputed domain name < electrolux-bx.com > be transferred to the Complainant.

/s/ Shahla F. Ali

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Dr. Shahla F. Ali  
Panelist

Dated: 28 January 2019