



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.:	HK-1901229
Complainant:	voestalpine High Performance Metals Pacific Pte.Ltd. (formerly ASSAB Pacific Pte Ltd)
Respondent:	baofang peng
Disputed Domain Name(s):	<asp0.com>

1. The Parties and Contested Domain Name

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

The Respondent is baofang peng of pengbaofang, of guanchengqu.dongguanshi, songshanhudadao dongguanshi guangdong, Email: assabsales@qq.com, Tel No: +86.076985352855.

The domain name at issue is <asp0.com>, registered by Respondent with MAFF Inc, of abuse@maff.com; support@xz.com and eamongong@kqw.com; Registrar Abuse Contact Tel No.:+86.07698535990220.

2. Procedural History

On 27 February, 2019, the Complainant's authorized representative, Baker & McKenzie, of 14th Floor, Hutchinson House, 10 Harcourt Road, Hong Kong submitted the Complaint with Annexures, in English, against the Respondent's registration of the disputed domain name <asp0.com> to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the Hong Kong Office), in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on October 24, 1999, the Rules for UDRP (the Rules) approved by the ICANN Board of Directors on September 28, 2013, and ADNDRC's Supplemental Rules for UDRP (Supplemental Rules) effective from July 31, 2015. The Complainant requested a single person panel.

On 27 February, 2019, the Hong Kong Office transmitted via-email in Chinese to MAFF Inc.(the Registrar) requesting the Registrar to verify: (1) that the disputed domain name was registered with MAFF Inc., (2) whether the Respondent is the current registrant or holder of the disputed domain name, (3) whether ICANN's UDRP applies to the Complaint of the disputed domain name, (4) what was the language of the Registration Agreement of the disputed domain name, (5) the respective dates of the registration and

expiration of the disputed domain name, (6) that the disputed domain name would not be transferred to another holder during the pending administrative proceeding for a period of 15 business days after such proceeding is concluded pursuant to paragraph 8 of UDRP, and (7) the relevant information of the disputed domain name from the Registrar's Whois database.

On 11 March, 2019, the Hong Kong Office sent an email in English to the Registrar urging for a reply. On 12 & 14 March, 2019, the Registrar responded to the Hong Kong Office providing the requested particulars, confirming the applicability of UDRP and the language of the Registration Agreement was Chinese. On 14 & 18 March, 2019, the Hong Kong Office informed the Complainant that the Complaint was administratively deficient. On 18 March, 2019, the Hong Kong Office also sent its observations regarding the language of the administrative proceeding to the Complainant.

On 22 March, 2019, the Complainant submitted a revised Complaint which was accepted by the Hong Kong Office as compliant with UDRP and the Rules on the same day. In the meantime, the Complainant also filed its Supplemental Complaint with exhibits, requesting that English be used as the language of the administrative proceeding, in response to the Hong Kong Office's observations of 18 March 2019.

On 22 March, 2019, the Hong Kong Office sent the Respondent a written notice in Chinese of the rectified Complaint, informing the Respondent, among others, that it had to submit a Response within 20 days i.e. on or before 11 April, 2019 in accordance with Article 5 of the Rules and the Supplemental Rules; and that the Complainant has requested that English be used as the language of the proceeding.

The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by the due date. On 12 April, 2019, the Hong Kong Office notified the Parties of the Respondent's default.

On 26 April, 2019, the Hong Kong Office appointed Mr Peter Cheung as the Sole Panelist in the present dispute, who confirmed that he was available to act impartially and independently between the Parties in this matter. The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

3. Factual background

The Complainant, voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd), holds trademark registrations for the "ASSAB" trademark and other related trademarks ("ASSAB Marks") in various jurisdictions worldwide. The Complainant brings this action to protect its rights in the "ASSAB Marks". Some of the Complainant's registered "ASSAB Marks" are listed below.

- **Hong Kong**

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
A S S A B	6	19570513	July 31, 1957	All kinds of iron,

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
				steel bars, strips, tubular products, sheets, wires and tool bits.
ASSAB 一勝百	6	199609203	October 4, 1996	Iron, steel bars, and strips, tubes, sheets, wires
ASSAB SuperClean	6	302784754	July 31, 2014	Molds, mold lumps, mold seats, steel, high speed steels, tool steels, moulded steels, hard alloys, stainless steels, high tensile steels, steel tubes, steel wires, hot rolled steel plates, cold rolled steel sheets, cold rolled strip and valve steels; processed or semi-processed steels, irons, cast irons and common metals; alloys; beryllium copper and carbide alloy; common metals and their alloys; metal building materials; materials of metal for railway tracks; non-electric cables and wires of common metal; ironmongery, small items of metal hardware; pipes and tubes of metal; goods of common metal not included in other classes; ores


- Taiwan

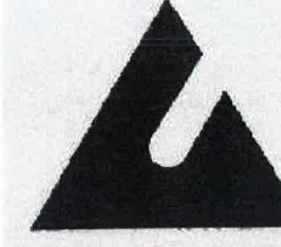
Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
ASSAB	6	1080356	January 16, 2004	Molds, mold lumps, mold seats, steels, high speed steels, tool steels, molded steels, hard alloys, stainless steels, high tensile steels, steel tubes, steel wires hot rolled steel plates, cold


Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
				rolled sheets, cold rolled strip steel & valve steels. Processed or semi processed steels, iron, cast irons. & common metals; alloys; beryllium copper & carbide alloy.

- **China**

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
ASSAB 718	6	5711810	August 7, 2009	Common metal, unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
ASSAB S-136	6	5711811	August 7, 2009	Common metal, unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
ASSAB SuperClean	6	13443130	January 21, 2015	Metallurgical powder; steel sheets; hoop steel; steel alloys; nickel-silver; cast steel; steel, unwrought or semi-wrought; aluminium; steel wire; steel hoop strip.
ASSAB 618	6	5711809	August 7, 2009	Common metal, unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
ASSAB 8407-S	6	5711808	August 7,	Common metal,

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
			2009	unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
ASSAB 88	6	5711813	August 28, 2009	Common metal, unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
ASSAB XW-42	6	5711812	August 7, 2009	Common metal, unwrought or semi wrought; common metal alloys; bar of metal; sheets of metal; plates of metal; steel alloys; steel sheets; steel strip; steel forged, rolled or cast; strip steel.
	6	1055408	July 14, 1997	Steel bars; steel sheets; iron; metal wire and ironmongery; metal plate; steel pipe products.
ASSAB	6	13443140	February 28, 2015	Steel, unwrought or semi-wrought; synthetic steel; hoop steel; steel sheets; steel masts; cast steel; aluminium; nickel-silver; blooms [metallurgy]; sheets and plates of metal; aluminium foil; chromium; alloys of common metal; cast iron, unwrought or semi-wrought; hoop iron; iron, unwrought or semi-wrought; copper, unwrought or semi-wrought; iron

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
				slabs; chrome iron; metallurgical powder; beryllium [glucinium]; common metals, unwrought or semi-wrought; laths of metal; steel pipes; pipes of metal; platforms, prefabricated, of metal; sheet steel form; fittings of metal for building; railway material of metal; steel hoop strip; steel wire; wire of common metal alloys, except fuse wire; aluminium wire; bolts of metal; foundry molds [moulds] of metal; signalling panels, non-luminous and non-mechanical, of metal; rods of metal for brazing and welding.
ASSAB	8	13443138	January 21, 2015	Knife steels; handsaws [hand tools]; milling cutters [hand tools]; milling cutter strips [part of hand tools]; fire irons; pin punches; scrapers [hand tools]; steel knives.
ASSAB	40	13443137	January 21, 2015	Grind processing; burnishing by abrasion; soldering; chromium plating; metal treating; nickel plating; metal casting; metal forging; metal plating; electroplating; sawing [saw mill].
	6	923529	December 28, 1996	Steel sheets; Steel wire; ironmongery; various iron sheets; steel rods; steel pipe products; steel blocks.

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
	8	13443128	February 28, 2015	Spatulas [hand tools]; knife steels; steel knife; saws [hand tools]; milling cutters [hand tools]; saw blades [parts of hand tools]; fire irons; pin punches.
	7	13443131	February 7, 2016	Hole working cutters; scraping tools [hand tools]; saw blades [parts of machines]; knives [parts of machines]; cutters [machines]; rolling mill cylinders; blades [parts of machines]; rolling mills; molds [parts of machines]; tools [parts of machines]; plastic processing molds; tungsten carbide molds; die-casting molds; cold-punching moulds; turning tools; milling cutters; tapping cutters; gear knife tool; broaching cutters.
	6	13443132	June 7, 2016	Rods of metal for brazing and welding; steel, unwrought or semi-wrought; synthetic steel; hoop steel; steel strip; steel wire; cast steel; steel masts; steel sheets; nickel-silver; aluminium; aluminium wire; beryllium [glucinium]; iron slabs; chromium; chrome iron; railway material of metal; copper, unwrought or semi-wrought; iron, unwrought or semi-wrought; hoop iron; cast iron, unwrought or semi-wrought; laths of metal; blooms [metallurgy]; common metals, unwrought or

Mark	Class	Registration Number	Registration Date	Specification of Goods/ Services
				semi-wrought; signalling panels, non-luminous and non-mechanical, of metal; wire of common metal alloys, except fuse wire; alloys of common metal; aluminium foil; sheets and plates of metal; foundry molds [moulds] of metal; powder metallurgy.
	40	13443133	June 28, 2016	Welding; chromium plating; metal plating; electroplating; metal treating; metal casting; nickel plating; sawing [saw mill]; metal casting.

(**Attachment II:** Records of the Complainant's above listed trademarks)

The Respondent is an entity in mainland China. It uses the contact email "assabsale@qq.com" when registering the domain name. It shows another contact email address "assabsales@sina.com" on its webpage.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i/ The long history and high degree of fame enjoyed by the Complainant and its trademarks worldwide.

The Complainant, voestalpine High Performance Metals Pacific Pte. Ltd. (formerly ASSAB Pacific Pte Ltd) ("the Complainant") was formed in 1945 to market high quality tool steel from Sweden, renowned for its quality standards. Headquartered in Singapore, the Complainant operates close to 50 sales offices in the Asia Pacific supplying the best available steel in the market. Coupled with its best-in-class metallurgical tooling services and technical know-how, the Complainant is both the pioneer and the leader in tool steel solutions in Asia.

(**Attachment III:** Name Change Certificate of the Complainant)

The Complainant anchors the distribution network for Uddeholm – the world's leading tool steel manufacturer with more than 300 years of experience in the tool steel industry. The two companies together service leading multinational companies (MNCs) across practically all key industrial sectors in more than 90 countries.

(**Attachment IV:** Copies of introduction of the Complainant)

Rapid industrialization in Asia has led to an exponential growth in demand for steel. The Complainant companies in Asia therefore focus on bringing superior quality steel to the market. The Complainant's "Total Tooling Economy" provides the Complainant's customers with key value-added services. In the greater China region, ASSAB is Yi Sheng Bai (一胜百) which, when literally translated, means "One beats One Hundred" and underlines the Complainant's position as an industry leader. The Complainant is more than just another tool steel supplier.

(**Attachment V:** Copy of the Complainant's Regional Brochure)

- Complainant in China

The Complainant operates close to 50 branches and sales offices in the Asia Pacific. The Complainant's presence in China dates back more than 60 years. In the mid 1950s, ASSAB tool steels were distributed in southern China. In the early 1990s, the Complainant established its own first-ever outlet in Shenzhen. Since the start, the Complainant has grown to be the leading foreign distributor of quality tool steels and services in China. Today, the Complainant has more than 500 employees in 22 locations across mainland China and continues to expand its network of services in tandem with the growing needs and precision requirements of the manufacturing industry in China. There are 18 affiliates in locations, such as Beijing, Changchun, Changzhou, Chongqing, Dalian, Dongguan, Guangzhou, Hong Kong, Hunan, Ningbo, Qingdao, Shanghai, Suzhou, Tianjin, Wuhan, Xiamen, Xi'an and Yantai.

(**Attachment VI:** Articles about the Complainant's Activities in China)

Below is the sales record of the Complainant's products in China. The total amount of sales of the Complainant's products in China reached RMB 1.36 billion from 2006 to 2011.

Year	Amount (RMB)
2006	205,602,516.00
2007	265,875,839.00
2008	62,595,886.00
2009	225,476,595.00
2010	268,167,845.00
2011	332,601,092.00
Total Amount:	1,360,319,773.00

(**Attachment VII:** Some copies of the sales agreement and sales invoice)

Meanwhile, the Complainant has participated in several trade fairs/exhibitions in China (from 2007 to 2011):

Year	Location	Name of the Trade Fair/Exhibitions
2007	Shanghai	2007 Shanghai Mould Exhibition
2008	Shanghai	2008 Shanghai Mould Exhibition
March 2008	Shenzhen	International Machinery and Mould Exhibition Shenzhen China
April 2008	Xiamen	Xiamen China Mechanical and Electronic Industrial Exhibition
June 2008	Dongguan	China International Dongguan Linkage Industry Mould Exhibition
September 2008	Guangdong	Asia-Pacific Mould Exhibition
November 2008	Dongguan	Dongguan International Mould and Metal Processing Exhibition
2009	Shanghai	2009 Shanghai Mould Exhibition
April 2009	Xiamen	The 13th Xiamen China Mechanical and Electronic Industrial Exhibition
May 2009	Guangdong	The 23rd International Plastics and Rubber Industries Exhibition

November 2009	Dongguan	The 11th Dongguan International Mould and Metal Processing Exhibition
April 2010	Xiamen	The 14th Xiamen China Mechanical and Electronic Industrial Exhibition
September 2010	Guangdong	The 3rd Guangdong International Mould Exhibition
November 2010	Dongguan	The 12th Dongguan International Mould and Metal Processing Exhibition
March 2011	Shenzhen	The 13th Shenzhen International Manufacturing Exhibition
May 2011	Guangdong	The 25th International Plastics and Rubber Industries Exhibition
July 2011	Guangdong	International Casting and Pressed Film Exhibits
November 2011	Dongguan	The 13th Dongguan International Mould and Metal Processing Exhibition

(Attachment VIII): Pictures of the exhibition booth and introduction materials of the Complainant's products)

The PRC National Library Search (**Attachment IX**) indicates that the Complainant's "ASSAB"/"一胜百" trademark has obtained a high degree of fame among the relevant consumers.

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

The disputed domain name "asp0.com" contain the following two elements:

	Disputed Domain Name	First Element	Second Element
1	asp0.com	asp0	.com

Numerous UDRP precedents have established that the top-level domain “.com” 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 name should be the first element of the names as set out above. As the "0" in the domain name is just a numerical number, it cannot be recognized as being distinctive. Thus, the only distinctive part of the disputed domain name should be "ASP", which is identical to the Complainant's "ASP23", "ASP30" and "ASP60" products.

According to the WHOIS records (**Attachment I**), the Respondent registered the disputed domain name in 2018 (details as set out below), long after the Complainant's sale of the "ASP23", "ASP30" and "ASP60" products.

Domain Name	Registration Date
asp0.com	2018-08-05

Copies of the ASSAB brochures dated as early as 2004 that display the "ASP23", "ASP30" and "ASP60" products are attached (**Attachment X**).

The Complainant and the Respondent have no prior connection, and the Complainant has not authorized the Respondent to use its mark for any purposes, commercial or otherwise. Additionally, the mark ASP0 is not a term commonly used in the English language. 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 Complainant's "ASP23", "ASP30" and "ASP60" products for commercial gain. The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name, and thereby the burden of proof shifts to the Respondent to produce evidence in demonstrating rights or legitimate interests in respect of the disputed domain name.

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

It is clear that the disputed domain name has been registered and is being used in bad faith.

As mentioned above, the Complainant obtained its registration for the "ASSAB" trademark in Class 6 (Reg. No. 19570513) in Hong Kong in as early as 1957 and has sold the "ASP23", "ASP30" and "ASP60" products before the registration date of the disputed domain name. The Complainant's "ASSAB Marks" and ASP products had become widely-known among consumers and relevant public as a result of long-term promotion and use. The Respondent must have had prior knowledge of the Complainant's "ASSAB Marks" and ASP products before the registration of the disputed domain name on August 5, 2018.


In addition, the disputed domain name "asp0.com" resolves to a website operated under the name of a PRC company called 东莞一胜百(模具)有限公司 (Dongguan Yi Sheng Bai (Mould) Co., Ltd.) (screenshots attached).



This Chinese company name appearing on the website contains the Complainant's Chinese mark “一胜百(ASSAB in Chinese)” in its entirety.

The Complainant has a Dongguan subsidiary with a similar name, 一胜百模具(东莞)有限公司/ ASSAB Tooling (Dongguan) Co., Ltd. (please see <http://www.assab-singapore.com/en/locations.php> for a list of subsidiaries).

www.assab-singapore.com/en/locations.php

ASSAB  ABOUT US / PRODUCTS / APPLICATIONS / SERVICES / LOCATIONS

Dongguan	Guangzhou	Dalian
ASSAB Tooling (Dong Guan) Co. Ltd.	ASSAB Tooling (Dong Guan) Co., Ltd., Guangzhou Branch	ASSAB Tooling (Beijing) Co. Ltd., Dalian Branch
3, Gongye North 1 Road Dongguan Songshan Lake National High-tech Industrial Development Zone Dongguan 523808 China	B505, No.179 Dashi Section Yingbin Road Dashi Town, Panyu District Guangzhou 511430 China	No.102, Shuang D Gang 2nd street Dalian Economic and Technical Development Zone Dalian 116600 China
Tel +86 769 2289 7888 Fax +86 769 2289 9312 E-Mail info.dongguan@assab.com Web http://www.assab-china.com	Tel +86 020 3482 8891 Fax +86 020 3482 5329 E-Mail info.guangzhou@assab.com Web http://www.assab-china.com	Tel +86 411 8761 8080 Fax +86 411 8761 9595 E-Mail info.dalian@assab.com Web http://www.assab-china.com
<input type="button" value="SHOW ON MAP"/>	<input type="button" value="SHOW ON MAP"/>	<input type="button" value="SHOW ON MAP"/>

Consumers will be confused by the use of the company name listed at the top of the “asp0.com” website in conjunction with “一胜百(ASSAB in Chinese)”, as they may be led to believe that it is an entity or subsidiary affiliated with the Complainant in some way.

Attachment XI: Copy of the Business Licence for 一胜百模具(东莞)有限公司 (Yi Sheng Bai Mould (Dongguan) Co., Ltd.

Further, the website of the disputed domain name “asp0.com” also bears some resemblance to the Complainant's websites "www.assab.com" and "www.assab-china.com". The types of wording displayed are very similar to those displayed on the Complainant's websites, indicating a clear bad faith attempt to mimic the look and feel of the Complainant's websites and to confuse and deceive consumers.

On the websites, the Respondent has used with images using the Complainant's “



” mark in order to confuse and deceive consumers into believing that it is an entity or subsidiary affiliated or related to the Complainant.

The Respondent has also copied the introduction and history of the Complainant. As can be seen from the attached table, the content of the introductory page on “asp0.com” has been directly copied from the introductory page on “www.assab-china.com” owned by the Complainant.

Attachment XII: Content of the introductory page on “asp0.com” as compared to the introductory page on “www.assab-china.com”.

Furthermore, the website includes references and pictures that are obviously copied from the Complainant's websites. To name a few:

www.assab-china.com	www.asp0.com
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Attachment XIII: Print-outs of the Respondent's and the Complainant's websites

The Respondent uses the contact email "assabsale@qq.com" when registering the domain name. It again shows another contact email address "assabsales@sina.com" on its webpage. Again, it is obvious that the Respondent is trying to deceive consumers into believing that they are related to the Complainant by using the mailbox "assabsales" which contains the Complainant's "ASSAB" mark to its entirety. A screenshot of the home page of the "www.asp0.com" website showing the contact mailbox is attached below.



The contact email for “asp0.com” is also “assabsales@qq.com”, which is the same as the contact email for “assabsteel.cn” (see below).

The Respondent pengbaofang is the legal representative and shareholder of a PRC company “Luoding City Yi Sheng Bai Tooling Co., Ltd.” (罗定市一胜百模具有限公司). A copy of the Business Licence of “Luoding City Yi Sheng Bai Tooling Co., Ltd.” is attached as **Attachment XIV**.

A search against “Luoding City Yi Sheng Bai Tooling Co., Ltd.” reveals that this company has registered the following domain names which clearly infringe the Complainant’s “ASSAB Marks”:

Domain Name	Registrant	Creation Date	Expiration Date
assab-dg.cn	罗定市一胜百模具有限公司	2016-12-22	2017-12-22
assab.vip	罗定市一胜百模具有限公司	2017-03-17	2020-03-17
assabsteel.cn	罗定市一胜百模具有限公司	2017-10-03	Favourable decision obtained for these two domain names on 2018-01-10 under DCN-1700782.
assab-mould.cn	罗定市一胜百模具有限公司	2016-12-21	

(**Attachment XV**: Copies of the WHOIS information of the above domain names)

In summary, in the current case, there are sufficient grounds for an inference of bad faith based on the following:

- 1) The long history and high degree of fame enjoyed by the Complainant and its trademarks in the world, including in China;
- 2) The filing dates of the Complainant’s marks long before the registration date of the disputed domain name;
- 3) The incorporation of the Complainant’s famous trademark in its entirety in the disputed domain name;
- 4) The various additional infringing domain name associated with the Respondent targeting the Complainant’s ASSAB trademark;

- 5) The striking similarity of the Complainant's and the Respondent's websites;
- 6) The false and misleading claims regarding its history on the website; and
- 7) The use of the Complainant's Chinese mark “一胜百(ASSAB in Chinese)” in the name of the Chinese company owned by the Respondent.

As demonstrated, it is clear that the disputed domain name has been registered and is being used in bad faith.

The Complainant also wants to mention that in recent decisions, whereby the respondents have registered various "assab" domain names similar to the disputed domain name, the respondents were ordered to transfer the domain names to the Complainant:

- 1) HK-1600872 <china-assab.com>
- 2) HK-1600887 <assab-tooling.com>
- 3) HK-1600888 <assab-cn.com>
- 4) HK-1600889 < dgassab.com >
- 5) HK-1600890 <assab-zg.com>
- 6) HK-1600891 <assab-tool.com>
- 7) HK-1600892 <assab-gd.net>
- 8) DCN-1700756 <assabdongg.cn>
- 9) DCN-1700782 <assab-mould.cn> and <assabsteel.cn>
- 10) HK-1701019 <assab.xin>
- 11) HK-1701036 <assab-steel.com>
- 12) HK-1701038 <dongguan-assab.com>
- 13) HK-1701039 <assab-gz.com > and <assab.sz.com >
- 14) DCN-1800807 <assanshenz.cn> and <assabguanz.cn>
- 15) DCN-1800834 <assab-mould.com.cn> and other 8 domain names

In these decisions, the Panelists decided that (1) the domain names are all confusingly similar to the Complainant's name or mark in which the Complainant has rights; (2) the respondents have no rights or legitimate interests in respect of the domain names; and (3) the respondents have registered and are using the domain name in bad faith.

Attachment XVI: Print-outs of the above decisions

B. Respondent

The Respondent did not file any Response in reply to the Complainant's contentions.

5. Findings

Language of the Proceedings

A preliminary procedural issue concerns the language of the present proceeding. The Complainant has also filed a Supplement to Complaint <asp0.com> and exhibits in response to the email dated March 18, 2019 from the Hong Kong Office that according to Article 11(a) of the Rules, the language of the domain name dispute resolution shall be in Chinese. The Complainant submits that where a Supplement “does not add a new ground of Complaint” and that the Respondent has a chance to consider the Supplement in preparing and submitting the Response, the Supplement should be accepted by the Panel (Exhibit i :Jeannette Winterson v Mark Hogarth, Case No. D2000-0235).

Under Article 11 of the UDRP Rules, the Panel has the authority to determine the language of the proceedings having regard to the circumstances. The Complainant requests the language of the proceedings be in English, submitting that “*Where a Complaint is made in a language other than that of the Registration Agreement, and it is not clear that this poses no difficulty to the Respondent, the Respondent should normally receive notice of the Proceeding in the language of the Registration Agreement. Furthermore, if the Complainant is seeking, or the Panel is considering, a determination that the Proceeding be conducted in a language other than that of the Registration Agreement, such proposal should be communicated to the Respondent, so that it has an opportunity to raise any contrary arguments*”. These requirements will normally be met through the availability of a coversheet in the language of the registration agreement and through the inclusion in the complaint of appropriate submissions on the language of the proceeding (Exhibit ii: Beiersdorf AG v. Good Deal Communications, Case No. D2000-1759). Accordingly, the Complainant submitted that such requirements are met by the Supplement, and the Complainant re-submitted the Complaint with the Supplement under the Complaint Transmittal Coversheet in both English and Chinese to the Hong Kong Office.

Under Article 10(b) of the UDRP Rules, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. The Complainant submits that it would be unfair to require the Complainant to translate the Complaint into Chinese for the following reasons:

- (a) The Complainant is a foreign company, and the Exhibits are mostly in English. It would cause tremendous costs, time and unfair prejudice to the Complainant by requiring it to provide Chinese translations of all the evidence.
- (b) The disputed domain name <asp0.com> is in the English language.
- (c) The disputed domain name is resolved to a website in Chinese and English; as such, the Respondent should have knowledge of the English language.

The circumstances of the present case are in accordance with *Finter Bank Zurich v. Shumin Peng*, pursuant to which the Panel decided that the proceedings should be in English notwithstanding that the registration agreement was in Chinese.

- (a) The disputed domain name is in English and “has nothing to do with China or languages spoken in China”; and
- (b) Most exhibits of the Complaint are in English and thus, English is the reasonable and appropriate language of this administrative proceeding.

The Complainant cited that: “*The general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel’s discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her ability to articulate the arguments for the case.*”

Where a respondent does not respond to the Complainant’s communications (and thus it was not possible for the Complainant to come to an agreement on the issue of the language of the

proceeding), and the material facts of the proceeding are generally in English (eg, disputed domain name, the language of the Respondent's and the Complainant's websites, the services provided in the websites, etc), the proceedings should be in English. This is so even if the respondent is on record not a native English speaker, if persuasive evidence has been adduced to suggest that the respondent is conversant and proficient in the English language (Exhibit iii: Finter Bank Zurich v Shumin Peng, Case No, D2006-0432).

Article 11 of the UDRP Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take Article 10 (b) of the Rules into consideration for the purpose of determining the language of the proceeding. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding. English should be used in proceedings (even if the registration agreement was in Chinese) where:

- (1) The Complainant communicates in English and would be prejudiced should it be required to translate the complaint and participate in the proceeding in Chinese;
- (2) Requiring the Complainant to translate the complaint and exhibits into Chinese would cause unnecessary delay and involve significant costs;
- (3) The Respondent has demonstrated that he or she understands English since the Disputed Domain Name, <asp0.com> resolves to a website which is published in both Chinese and English. English examples include: the English phrase 'BEYOND EXPECTATION' on its introduction page, its contact information assabsteel@sina.cn; its reference to the Complainant's products such as Dievar, QRO 90 Supreme, Unimax, Stavax ESR, Mirrax ESR, Mirrax, Royalloy, Elimax. Vanadis, etc, as well as the reference of Uddeholm Tooling";
- (4) In addition to the above, the Respondent has on its Compliance page (<http://www.asp0.com/cn/compliance.html>) rules and guidelines in English, demonstrating that the Respondent understands English as well. (Exhibit iv: Guccio Gucci S.p.A v. Domain Adminstrato – Domain Administrator, Case No.2010-1589);

“The respondent's ability to clearly understand the language of the complaint, and the complainant's being disadvantaged by being forced to translate, may in appropriate circumstances both support a panel's determination that the language of the proceeding remains the language of the complaint, even if it is different from the language of the registration agreement”. (Exhibit v: “Dr Martens” International Trading GmbH, “Dr. Maertens” Marketing GmbH v Lin Xiaodu, Case No. 2010-2170; and also *“The Complainant has submitted the Complaint in English and would bear considerable costs to translate all the submissions into and take part in the proceeding in the language of the registration agreement”.* (Exhibit vi: Luxottica Group S.p.A. and Luxottica Fashion Brillen Vertriebs GmbH v kaoe Monia aka/Mania Kaoe, Case No. D2010-1569).

The Panel also notes circumstances that may affect the determination of the language of the proceedings in the present case that -

- (1) The procedural justice will normally be met through the availability of a coversheet in the language of the registration agreement and through the inclusion in the Complaint of appropriate submissions on the language of the proceeding ie Chinese. Such requirements

are met by the submission of the Complainant's Supplement under the Complaint Transmittal Coversheet in both English and Chinese to the Hong Kong Office.

(2) The Respondent did not raise any objection with respect to the Complainant's language request, nor make any comments in the present proceeding.

(3) Both the disputed domain name and the disputed domain name website contain English elements.

(4) The Complainant, as a foreign company, is not able to understand Chinese, and most of the materials presented are in English, which would take a lot of time and additional cost for such Chinese translation, and therefore, a delay in the proceedings will be inevitable.

Having considered all the relevant circumstances including whether the Respondent is able to understand and effectively communicates in the language in which the Complaint has been made and would suffer any real prejudice, and whether the expenses of requiring translation and the delay in the proceeding can be avoided without at the same time causing injustice to the Parties, the Panel takes the view that it is reasonable to infer that the Respondent probably has the language ability in English, and should be able to understand English used in the proceeding. Even if the Respondent might have any difficulty of understanding English, since the email communications were written in Chinese, the Respondent must have been aware of the language request raised by the Complainant, and should have understood what would happen if the proceeding is determined to be conducted in English. With sufficient time and opportunity to comment on or object to such language request, the Respondent did not raise any objection on the language issue and did not show any interest in this proceeding.

Upon weighing all the relevant and special circumstances of the Parties, the Panel considers that there are sufficient grounds in support of the Complainant's language request. The Panel accepts the Complainant's Supplemental to the Complaint and determines that it is appropriate for the Panel to exercise its discretion to conduct the proceeding in English.

As to the main substantive issue of this matter, 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.

A) Identical / Confusingly Similar

The Complainant demonstrated that it owns the trademark registrations for the "ASSAB" marks in various jurisdictions. (Attachment II) Among all the other registrations, the Complainant obtained its registration for the "ASSAB" trade mark in Hong Kong as early as 1957, long before the Respondent applied to register the disputed domain name on August 5, 2018.

The disputed domain name <asp0.com> contains two elements: “asp0” and the generic top-level domain “.com” It is trite rule that the generic top-level domain name is technical in nature, does not have any proprietary significance, cannot confer any distinctiveness and is incapable of differentiating the disputed domain name from others’ proprietary rights.

The potential distinctive element of the disputed domain name is therefore “asp0”. The dominant part is the letters “asp” which are identical with the Complainant’s trade marks or trade names for products “ASP 23”, “ASP 30” and “ASP 60”, as the intent of domain names is to be case-insensitive. The Panel takes the view that considering the disputed domain name as a whole, the addition of the non-distinctive numeral “0” at the end of “asp”, which is identical with the last numeral of Complainant’s “ASP 30” and “ASP 60” products’ trade marks or trade names, does not confer to the whole a new meaning and does not dispel confusing similarity between the disputed domain name as a whole and the Complainant’s proprietary trade marks or trade names.

The disputed domain name is not identical but is confusingly similar to the Complainant’s registered ASSAB trade marks and the Complainant’s unregistered product trade marks or trade names in particular ASSAB’s “ASP 30”, and “ASP 60” (Attachment X). The UDRP does not require trademarks or trade names to be registered with Registration Authorities for the legitimate rights and interests to subsist. See WIPO’s Final Report on the Internet Domain Name Process, April 30, 1999, paragraphs 149-150. Further, when a registrant chooses to apply for the registration of a domain name, the registrant must represent and warrant, among other things, neither the registration of the domain name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party.

From the general trade mark or unfair competition law perspective, a third party’s legal rights in a trade mark or trade name may subsist even without registration with Registration Authorities, particularly if the third party has invested considerable time, effort, and money in establishing the association between the unregistered trade mark or trade name and its goods or services over a long period.

The Panel finds that the disputed domain name is confusingly similar to a trade mark or trade name in which the Complainant has rights, satisfying paragraph 4(a) (i) of UDRP.

B) Rights and Legitimate Interests

After years of commercial use, the ASSAB trade marks and the trade names of ASP 23, ASP 30 and ASP 60 products have acquired the recognition of the relevant sector of the public. The Complainant and the Respondent have no prior connection. The ASSAB trade marks and ASP products’ trade marks or trade names are not terms commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate it has been commonly known by the disputed domain name.

Nobody has any right to represent his or her goods or services as the goods or services of somebody else. The contents of the introductory and other pages including featured photographs between the Complainant’s website: www.assab-china.com and the Respondent’s website: www.asp0.com are virtually the same. However, the Complainant has not licensed or otherwise permitted the Respondent to use the disputed domain name or use any domain name incorporating the dominant part of the Complainant’s registered trade marks or unregistered trade names.

The Panel rules that the Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent has to discharge the evidential burden in demonstrating it has rights or legitimate interests in respect of the disputed domain name.

It is trite rule that the mere registration of the disputed domain name by the Respondent itself is not sufficient to prove that it owns rights and legitimate interests. Intentional copyright infringement and passing off the goodwill and reputation of others, which is contrary to the object and purpose of UDRP, cannot derive any rights or legitimate interests.

In this matter, the Panel finds no evidence that would tend to establish that the Respondent has rights to or legitimate interests in respect of the disputed domain name. The Panel draws the irresistible inference that the Respondent is not using the disputed domain name on a non-commercial or fair use basis without intent to misleadingly divert the relevant sector of the public to its operation. On the contrary, the Respondent is using the disputed domain name to tarnish the goodwill and reputation of the Complainant's trade marks or trade names.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, satisfying paragraph 4 (a) (ii) of UDRP.

C) Bad Faith

It is trite rule that use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services.

From the evidence available, particularly regarding the Respondent's website design, layout and content which were apparently copied from that of the Complainant's website, the Complainant has demonstrated a bad faith attempt of the Respondent to mimic the look and feel of the Complainant's website, to confuse and deceive the relevant sector of the public for the Respondent's own commercial gain. Further, the Respondent has provided no evidence to demonstrate use of the disputed domain name registered on 5 August, 2018 in good faith.

The Panel draws the irresistible inference that the Respondent must have prior knowledge of the Complainant's "ASSAB" Marks and its products' trade marks or trade names. The Panel takes the view that the Respondent, by registering the disputed domain name, is a dishonest misappropriation of the Complainant's registered trade marks and unregistered trade marks or trade names, making the Respondent's cybersquatting an instrument of fraud.

The Panel therefore finds that the Respondent's domain name has been registered and is being used in bad faith, satisfying paragraph 4 (a) (iii) of UDRP.

6. Decision

For all the foregoing reasons, the Panel concludes that the Complainant has provided sufficient proof of its contentions, has proved each of the three elements of paragraph 4 of UDRP with respect to the disputed domain name and has established a case upon which the relief sought must be granted. The Panel therefore orders that the registration of the disputed domain name <asp0.com> be transferred to the Complainant.

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Sole Panelist: Peter Cheung SBS

Date: 8 May 2019