



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2201622
<b>Complainant:</b>	Ecovacs Robotics Co., Ltd.
<b>Respondent:</b>	wu jian
<b>Disputed Domain Name(s):</b>	<ecovacs-us.top>

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

The Complainant is Ecovacs Robotics Co., Ltd., of 108 Shihu West Rd, Wuzhong District Suzhou City, Jiangsu Province, China.

The Respondent is wu jian, of 101 Qingchang Avenue, Fuqing City, Fuzhou City, BeiJin, China 350300.

The domain name at issue is ecovacs-us.top, registered by Respondent with PDR Ltd.

**2. Procedural History**

On 17 May 2022, the Complainant submitted a Complaint in English to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Hong Kong Office) 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) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 18 May 2022, the ADNDRC Hong Kong Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, PDR Ltd, a request for registrar verification in connection with the disputed domain name.

On 19 May 2022, the Registrar transmitted by email to the ADNDRC Hong Kong Office its verification response, stating that wu jian is listed as the registrant and providing the contact details, and that English is the language of the Registration Agreement.

On 20 May 2022, the ADNDRC Hong Kong Office request the Complainant to revise their submission according to the WHOIS information provided by the Registrar. On 23 May 2022, the Complainant revised its submission.

On 30 May 2022, the ADNDRC Hong Kong Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Hong Kong Office had sent the complaint and its attachments through email according to the Rules and the Supplemental Rules. The same email was copied to the Complainant, ICANN and registrar, PDR Ltd.

The Respondent failed to submit a Response within the specified time period. On 20 June 2022, the ADNDRC Hong Kong Office notified the Respondent's default. Since the Respondent did not mention the Panel selection in accordance with the time specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Hong Kong Office informed the Complainant and the Respondent that the ADNDRC Hong Kong Office would appoint a one-person panel to proceed to render the decision.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Dr. Kun Fan, the ADNDRC Hong Kong Office notified the parties on 20 June 2022 that the Panel in this case had been selected, with Dr. Kun Fan acting as the sole panelist. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 20 June 2022, the Panel received the file from the ADNDRC Hong Kong Office and should render the Decision within 14 days, i.e., on or before 4 July 2022.

### **3. Factual background**

#### **A. The Complainant**

The Complainant in this case is Ecovacs Robotics Co., Ltd. The registered address is 108 Shihu West Rd, Wuzhong District Suzhou City, Jiangsu Province, China. The authorized representative in this case is Zhang Lei of Beijing Chofn Intellectual Property Agency Co., Ltd.

#### **B. The Respondent**

The Respondent in this case is wu jian. The registered address is 101QingchangAvenue, FuqingCity, FuzhouCity, BeiJin, China 350300.

The Respondent is the current registrant of the disputed domain name "ecovacs-us.top", which was registered on 20 April 2022 according to the WHOIS information. The registrar of the disputed domain name is PDR Ltd.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

**i) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the complainant has rights:**

Established in 1998, Ecovacs Robotics Co., Ltd. is one of the world's largest manufacturers of cleaning appliances, mainly dedicated to the development, manufacture and sales of home service robots, with the world's single most complete line of home service robots, to become a global pioneer in the home service robot industry, as well as the industry standard setter. Up to now, the complainant has the exclusive right to use trademarks such as "Ecovacs" in class 3, 7, 9, 21 and 25.

The complainant believes that when comparing the disputed domain name and the complainant's trademark in this case, the relevant comparison should only focus on the second-level part of the domain name (the main identifying part mentioned below) and the complainant's trademark. The complainant argues that the meaning of the suffix ".top" does not affect the determination of the first element in this case. The addition of the new generic Top-Level Domain ("gTLD") suffix ".top" does not have the capacity to distinguish the disputed domain name from the complainant's prior rights. The disputed domain name "ecovacs-us.top" removes the suffix ".top", and the remaining part is "ecovacs-us". The English word "us" is the name of the country of America that lacks significance, and this word is a commonly used word, which is not compared with the trademark in this case to determine confusion. Therefore, the main identifying part of the disputed domain name is "ecovacs", which is completely consistent with the complainant's English trademark "ECOVACS". With respect to the test of confusion under the first element, a disputed domain name whose primary identifying part contains all or at least one of the main features of a trade mark is normally considered confusing. The complainant believes that the disputed domain name satisfies the determination criteria.

In light of the above, the complainant submits that the Disputed Domain Name is confusingly similar to the complainant's trademark "ECOVACS".

***ii) The respondent has no rights or legitimate interests in respect of the domain name(s):***

As the respondent is Chinese and the content of the website to which the disputed domain name points shows an address in the United States, the complainant searched the trademark

database in China and the United States and confirmed that no trademark applications were found under the name of the respondent "wu jian".

According to the complainant's feedback, the respondent is not in the identity of the complainant's distributor or partner, and the complainant has never directly or indirectly authorized the respondent to use the "ECOVACS" trademark and domain name in any form.

The name of the respondent is "wu jian". Obviously, it is impossible for him to enjoy the relevant name rights for "ECOVACS".

In summary, the respondent does not have any rights or legitimate interest in the domain name.

***iii) The disputed domain name(s) has/have been registered and is/are being used in bad faith:***

The complainant believes that the registration time of the disputed domain name "ecovacs-us.top" was 2022-04-20, which was far later than the time when the complainant applied for and used the trademarks "ECOVACS" in the world. Before the disputed domain name was registered, the complainant's "ECOVACS" had already gained sufficient visibility in the world.

The complainant believes that the respondent applied for the domain name with malicious intent. The complainant is one of the world's largest manufacturers of cleaning appliances, The complainant has a high global profile in the world. As previously mentioned, the complainant was already recognized as a Chinese Well-known Trademark back in 2019(See Annex 7). The content of the website pointed to by the disputed domain name is basically the same as that of the complainant's official website. This clearly shows that the respondent knew or should have known the complainant's business name and trademark when registering the domain name, By the respondent's use of the disputed domain name, it is inferred in turn that the respondent registered the disputed domain name in bad faith.

In the case that the complainant's trademark is highly distinctive and well-known, there is almost no possibility of the disputed domain name being coupled with it. The complainant believes that the respondent's application for a domain name shall be governed by the

provisions of Article 4(b) of the "Policy", which is to determine the fact that the disputed domain name has been "maliciously registered".

The respondent's true intent in registering the Disputed Domain Name was to sell its products, and the respondent did not prominently display on its website that there was no affiliation between itself and the complainant.

The complainant is unable to identify whether the products sold by the respondent are counterfeit products, and then real users are even more unable to distinguish them. The respondent attracts Internet users to its website through the possibility of confusion with the complainant's trademark, and in such a way as to "hitchhike", "rub the traffic" and "rub the popularity". The complainant believes that the respondent has infringed the rights of others in order to obtain commercial benefits.

The complainant believes that the respondent's use of the Disputed Domain Name does not demonstrate sufficient "good faith" and the complainant believes that the above qualifies as "bad faith use" for purposes of Section 4(b)(iv) of the Policy: 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.

In summary, the major identifying aspects of the disputed domain name are sufficiently similar to the complainant's "ECOVACS" trademark to cause confusion for consumers. The respondent has no legitimate rights and interests in the disputed domain name. The respondent has acted in bad faith in the registration and use of the disputed domain name. The actions of the respondent have seriously infringed upon the lawful rights and interests of the complainant. Based on the above argument, the complainant requests the administrative panel appointed in this administrative proceeding that the disputed domain name "ecovacs-us.top" be transferred to the complainant.

#### B. Respondent

The Respondent did not file a response within the prescribed time limit.

## 5. Findings

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.

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.

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

(i) Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or

(ii) The respondent 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 the respondent has engaged in a pattern of such conduct; or

(iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

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

The Complainant has provided evidence that it is the owner of "Ecovacs" trademarks. The relevant trademarks were registered in China as early as 7 March 2020 (Complaint' Annex 5). The Respondent has not provided any contrary evidence. The Panel is satisfied that the Complainant's rights in the "Ecovacs" trademarks arose prior to the Respondent's registration of the domain name < ecovacs-us.top > on 20 April 2022.

The distinctive part of the disputed domain name < ecovacs-us.top > is “ecovacs”, which incorporates the entirety of the Complainant’s trademark “Ecovacs”. It only added a term “us”, which can be indicative of the United States, and lacks significance.

The Panel notes that WIPO Jurisprudential Overview 3.0 provides that “[w]here the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.” (WIPO Jurisprudential Overview 3.0, para 1.8). The Panel agrees with and will adopt the above standard to determine whether the disputed domain name is confusingly similar to the Complainant’s trademark.

The Panel considers that, when seeing the disputed domain name, if a potential consumer will reasonably believe the disputed domain name is registered by or closely linked to the trademark holder, then confusing similarity for the first element is established. When considering the aspect of confusing similarity, the Panel needs to take into account several factors. The more distinctive the prior rights are, the more likely it is for the disputed domain name to cause confusing similarity.

In the present case, the Complainant’s trademark “Ecovacs” is not a generic English word. “Ecovacs” comes from the name of the Complainant enterprise name, Ecovacs Robotics Co., Ltd., which was established in 1998, dedicated to the development, manufacture and sales of home service robots. The Panel believes that the addition of the term “us” would not prevent the confusing connection between the disputed domain name and Complainant’s trademarks “Ecovacs”.

The Panel therefore finds that the disputed domain name is confusingly similar with the Complainant’s trademark in which the Complainant has civil rights and interests.

Accordingly, the first condition of Article 4(a) of the Policy is satisfied.

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

It is well established that, once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the domain name at issue, the burden of evidence shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name.

In the present case, the Complainant argued that the complainant searched the trademark database in China and the United States and confirmed that no trademark applications were found under the name of the respondent wu jian; the Respondent was not in the identity of the Complainant’s distributor or partner, and the complainant had never directly or indirectly authorized the Respondent to use the “Ecovacs” trademark and domain name in any form.

The Complainant has therefore established a *prima facie* case that the Respondent does not have any rights or legitimate interests in the disputed domain name and thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to establish his rights or legitimate interests in the disputed domain names. The Panel also could not find any rights or legitimate interests under paragraph 4(c) of the Policy.

Accordingly, the Panel finds the Respondent has no rights or any legitimate interests in the disputed domain names and the second condition of paragraph 4(a) of the Policy has been fulfilled.

### **C) Bad Faith**

Under the third condition of the Policy, the Complainant must establish that the disputed domain name has been both registered and is being used in bad faith by the Respondent.

The Complainant has produced evidence to demonstrate to the satisfaction of the Panel that “Ecovacs” trademarks are distinctive, as the Complainant’s enterprise name. The Complainant has produced evidence to prove that the Complainant’s registered trademarks “Ecovacs” have gained a high reputation among the Chinese public in China and were recognized as Chinese Well-known Trademarks in 2019 (Complainant’s Annex 7). In such circumstances, it is very likely that the domain name has been selected with the Complainant’s brand in mind. It would be an extraordinary coincidence if the Respondent had come up with the domain name independently. The Panel is of the view that the Respondent knew or could not have been unaware of the Complainant’s trademark when registering the disputed domain name. Therefore, the disputed domain name was registered in bad faith.

The Complainant has also produced evidence to demonstrate to the satisfaction of the Panel that the contents of disputed domain name used by the Respondent are almost identical to the Complainant’s official website (Complainant’s Annex 11). The Panel finds that the Respondent’s use of the disputed domain name indicates an intent to create user confusion, so as to attract for commercial gain. It constitutes bad faith use under Paragraph 4(b)(iv) of the Policy, namely, “by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant’s mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location. ”

In light of the above, the Panel finds that the disputed domain name was registered and used in bad faith.

Accordingly, the third condition of Article 4(a) of the Policy is satisfied.

## **6. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name < ecovacs-us.top > be transferred to the Complainant Ecovacs Robotics Co., Ltd.



*Fan Kun*

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Kun Fan  
Panelists

Dated: 4 July 2022