



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.:	HK-2301743
Complainant:	Ecovacs Robotics Co., Ltd
Respondent:	wu jian
Disputed Domain Name:	<ecovacs.top>

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. Email: Terroir.zhang@chofn.com; Tel No: +86-512-66276290.

The authorised representative is Beijing Chofn Intellectual Property Agency Co., Ltd. Address 1217 12th Floor, No.68 West Road of North Fourth Ring, Haidian, Beijing 100081, China. Designated contact person is Zhang Lei. Tel No +86.18828055125. Email Terroir.zhang@chofn.com.

The Respondent is wu jian of 101QingchangAvenue, FuqingCity, FuzhouCity, BeiJin, China 350300. Email:nlrbl@163.com. Tel No: +86.059122166456.

The domain name at issue is <ecovacs.top>, registered by the Respondent with PDR Ltd of 15500 SW Jay St. #48732 Beaverton Oregon, 97006 US email: compliance@publicdomainregistry.com.

2. Procedural History

On 18 April 2023, the Complainant's authorized representative submitted the Complaint with Annexures, against the Respondent's registration of the disputed domain name <ecovacs.top> 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 18 April 2023, the Hong Kong Office transmitted via-email to the Registrar requesting the Registrar to verify: (1) that the disputed domain name was registered with PDR Limited, the Registrar, (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 18 April, 2023, 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 English.

On 30 May, 2023, the Hong Kong Office sent the Respondent a written notice of the Complaint, informing the Respondent, among others, that it had to submit a Response within 20 days i.e. on or before 19 June 2023 in accordance with Article 5 of the Rules and the Supplemental Rules.

The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by the due date. On 20 June, 2023, the Hong Kong Office notified the Parties of the Respondent's default.

On 23 June, 2023, 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

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 (Annex 4: The Complainant's subject qualification certificate).

Through the five-year layout of the international market, the Complainant has established European branch and American branch, and successfully explored the markets of more than 60 countries and regions, such as Japan, Spain, Switzerland, France, Canada, Czech Republic, Poland, Germany, Iran and Malaysia.

The Complainant has the prior rights of the trademarks "ECOVACS". The time of applying for the disputed domain name is much later than the time of applying and using the trademarks. The Complainant believes that the disputed domain name can easily lead to consumer confusion, the Respondent does not have legal rights to the disputed domain name, and the Respondent has malicious intent in the registration and use of the disputed domain name.

In order to protect the brand, the Complainant has been making advance arrangements to file trademark applications with national and regional trademark offices around the world. The Complainant has the exclusive right to use trademarks such as "Ecovacs" in class 3, 7, 9, 21 and 25. (Annex 5: Part of the trademark registration certificate of the Complainant).

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:

The Complainant is mainly dedicated to the research, development, manufacture and sales of home service robots, and is a key high-tech enterprise of China Torch Plan. In the first meeting of the International Working Group on Performance Testing and Evaluation Standards for Home Service Robots held in Suzhou, China in 2013, the Complainant, as the convener of the Working Group, led the formulation of international standards including Germany, the Netherlands, Italy and other member countries, making it the first time in the world to have a complete definition of home robots. (For specific product information, www.ecovacs.com refers).

The Complainant is the first company in the industry to obtain accreditation as a laboratory in China and has the world's only and most complete product line of home service robots. The Complainant's main business scope includes the research and development, design, production and sales of intelligent household equipment such as home service robots, cleaning small home appliances and related parts, and its products are mainly ground cleaning robots, air purification robots, automatic window cleaning robots, intelligent home service robots, B2B commercial field commercial service robots and solar panel cleaning robots.

The "ECOVACS" brand of the Complainant is a world leader in the design and R&D of home service robots. On May 28, 2018, the A shares issued by the Complainant were listed on the Shanghai Stock Exchange under the stock short name "ECOVACS" and the stock code "603486" (Annex 6: Reuters Information Display on Complainant A Shares). The Complainant's products have been widely recognized by consumers and the market for their absolute technical superiority and high-cost performance.

The Complainant's trademark "ECOVACS" was recognized as a well-known trademark by a court in China in 2019 (Annex 7: The Court rulings). And the "ECOVACS", the core logo of the Complainant's products, has won many international honors, (Annex 8: the Complainant's Honors). The Complainant's "ECOVACS" brand has a large market share in the global cleaning robot market.

The Complainant has built a distribution and service network covering major large and medium-sized cities in China through comprehensive offline and online development. For online sales area, the Complainant does it mainly through Tmall, Jingdong, Suning, Tesco, Amazon and other major mainstream e-commerce platform for unspecified groups of product output. The Complainant has held the number one brand position in the floor sweeper market within China for many years.

The Complainant has also adhered to and deepened its internationalisation strategy and improved its international market layout, from basing itself on the European market to developing the US market and then stimulating the potential of the Asia-Pacific market, forming a multi-channel

market competition pattern and helping the company to achieve healthy and perfect high-efficiency operations in the international competition. The Complainant has established sales subsidiaries in Germany, the United States and Japan, and has successfully explored the markets of more than 80 major countries and regions around the world.

By 2020, the "ECOVACS" brand revenue from overseas markets accounted for 30.44% of revenue, annual revenue of 7.234 billion RMB, up 36.17% year-on-year (Annex 9: Reported data from the Wall Street Journal). In particular, as early as 2006, The Complainant has commenced business activities in the United States (see Annex 5, the complainant's US trademark).

Based on the above, it can be seen that the Complainant has a high reputation and influence. As the Complainant's corporate name and core product trademark "ECOVACS" has been widely known to the public at home and around the world through years of actual use, promotion, and has become an outstanding representative of "intelligent manufacturing in China", enjoying high brand awareness and reputation among peers at home and abroad.

The Complainant submits 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 (Annex 10: WIPO Domain Name Decision_ D2017-0275 *Rexel Developpements SAS v. Zhan Yequn*). The disputed domain name "ecovacs.top" without the suffix ".top", the main identifying part is "ecovacs", which is identical to 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 trademark is normally considered confusing. The Complainant believes that the disputed domain name satisfies the determination criteria.

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

As the respondent is Chinese and the content of the website to which the disputed domain name points to 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 investigation, 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".

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

The Complainant believes that the registration time of the disputed domain name "ecovacs.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. 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 that the Respondent registered the disputed domain name in bad faith.

As 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 so the real users are even more unable to distinguish it (Annex 11: The page to which the disputed domain name points to). 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".

Remedies sought:

The Complainant requests that the disputed domain name should be transferred to the Complainant.

B. Respondent

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

5. Findings

As to the substantive issue of this matter, the UDRP provides, at Paragraph 4(a) (Applicable Disputes), that each of three findings must be made in order for a Complainant to prevail:

- i. the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The threshold for the identical or confusingly similarly test involves a reasoned but relatively straightforward comparison between the disputed domain name and the complainant's trademark. The assessment is a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark. See para.1.7 of WIPO Jurisprudential Overview 3.0.

The Disputed Domain Name <ecovacs.top> contains the letters or the invented word "ecovacs" and the generic top-level domain ".top". As to the generic top-level domain name suffix ".top", it 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, and as such, is disregarded under confusing similarity test. See para.1.11 of WIPO Jurisprudential Overview 3.0.

The Panel notes that the Complainant has demonstrated that it owns the trademark registrations for the "ECOVACS" trademarks around the world, particularly in China, US and Europe, long before the Respondent applied to register the Disputed Domain Name on 20 April, 2022.

Trademarks are not case sensitive. The Disputed Domain Name "ecovacs" may have two elements, "eco" or "vacs", or just one element "ecovacs". Its distinctive feature are the letters "ecovacs". The Disputed Domain name incorporates the entirety of the Complainant's "ECOVACS" trademarks and so is identical to them, or the dominant feature of the Complainant's "ECOVACS" trademarks is recognizable in the Disputed Domain Name. See para.1.7 of WIPO Jurisprudential Overview 3.0.

The Panel therefore finds that the Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; satisfying paragraph 4(a) (i) of UDRP.

B) Rights and Legitimate Interests

The Panel also notes that the Respondent is not authorized by the Complainant to use its "ECOVACS" trademarks.

While the Disputed Domain Name is being used in connection with a website used by the Respondent in a profit-making, commercial venture that offers the Complainant's products sold under the trademark "ECOVACS", the Panel takes the view that such an unlicensed or unauthorized use of the Complainant's trademark could never vest any right or legitimate interest in the Respondent.

As proving a negative is always difficult, it is a well-established rule that a Complainant's burden of proof on this element is light. The Panel rules that there is *prima facie* evidence to support that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. It is up to the Respondent to discharge the evidential burden to prove it has rights or legitimate interests in respect of the Disputed Domain Name. See para.2.1 of WIPO Jurisprudential Overview 3.0.

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

It is trite rule that the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to establish that it owns rights and legitimate interests. Intellectual property infringement including passing off the goodwill and reputation of others are contrary to the object and purpose of UDRP and cannot derive any rights or legitimate interests.

The Panel takes notice that the “ECOVACS” trademarks, first used in US on 10-10-2008, have acquired the recognition of the relevant sector of the public. The Complainant and the Respondent have no prior connection. The “ECOVACS” trademarks are not a term commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate that 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 Complainant has not licensed or otherwise permitted the Respondent to use the Disputed Domain Name or use any domain name incorporating the Complainant’s registered trademarks. The Panel considers that there is 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 trademarks.

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

Paragraph 4 (b) (Evidence of Registration and Use in Bad Faith) of UDRP provides that 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 Panel notes that the Disputed Domain Name was registered on 20 April, 2022 and contains the “ECOVACS” trademark in its entirety. Given the fame and reputation of the Complainant and the ECOVACS trademarks globally including China, the Panel considers that it is virtually impossible for the Respondent to have selected the Disputed Domain Name without knowing it. The Respondent should have been well aware of the Complainant and the “ECOVACS” trademarks prior to registration, and the Panel accepts that the Disputed Domain Name has clearly been registered and is being used in bad faith.

By registering and using the Disputed Domain Name, the Panel takes the view that the Respondent has prevented the Complainant from using its marks in a corresponding domain name, and disrupted the business of the Complainant. Worst still, it has also created confusion among the general public in respect of the relationship between the Respondent’s website and the Complainant’s. Such would further increase the likelihood of confusion since the products featured on the Respondent’s website are closely related to the products offered by the Complainant, and/or confuse the public into thinking that the Respondent is a licensee or sponsor of the “ECOVACS” trademarks when in fact this is not the case. See para.3.1 of WIPO Jurisprudential Overview 3.0.

As no reasonable explanation was offered by the Respondent for its registration and use of the Disputed Domain Name, the Panel infers that the Respondent has done so with the obvious intent to trade on the Complainant’s goodwill in its “ECOVACS” trademarks, and lead Internet users into believing that the Disputed Domain Name and/or the Respondent’s website or the business and activities are associated with, endorsed or sponsored by the Complainant in some way, or that the Respondent’s use of the Disputed Domain Name is authorized by the Complainant, or to attract Internet traffic by capitalizing on the association with the Complainant’s “ECOVACS” trademarks, further keeping the Disputed Domain Name from being used by the Complainant. Use of the Disputed Domain Name merely intended to divert the public to the Respondent’s website cannot be considered as a bona fide offering of goods and services. Accordingly, the Panel considers the Respondent’s continued registration and use of the Disputed Domain Name are clear acts of bad faith. See para.3.1 of WIPO Jurisprudential Overview 3.0.

It is trite rule that use which intentionally trades on the fame of another cannot constitute a “bona fide” offering of goods or services. Further, the Respondent has provided no evidence to demonstrate use of the disputed domain name registered on 20 April, 2022 is in good faith. The Panel takes the view that the Respondent, by registering the Disputed Domain Name, is a dishonest misappropriation of the Complainant’s registered trademarks, making the Respondent’s cybersquatting an instrument of fraud. See para.3.2 of WIPO Jurisprudential Overview 3.0.

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 <ecovacs.top> be transferred to the Complainant.

Sole Panelist: Peter Cheung SBS



Date: 5 July 2023