



## ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE (BEIJING OFFICE)

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### Decision Submission

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Decision ID	DE-0800174
Case ID	CN-0800193
Disputed Domain Name	www.boschhk.com
Case Administrator	lvyang
Submitted By	Peter Bullock
Participated Panelist	

Date of Decision	07-07-2008
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### The Parties Information

<b>Claimant</b>	boschhk .com
<b>Respondent</b>	GUANG ZHOU BOSCHHID AUTO SUPPL

### Procedural History

The Complainant is Robert Bosch GmbH of Stuttgart, Germany. The Respondent is an individual named Zheng Yanlong who, on obtaining the contested domain gave an address at guang zhou, Guangdong, CN 510000. The contested domain name is "boschhid.com" ("Disputed Domain"). The Registrar of the Disputed Domain Name is Web Commerce Communications Limited.

A Complaint, made pursuant to the Uniform Domain Name Dispute Resolution Policy ( "UDRP" ) implemented by the Internet Corporation for Assigned Names and Numbers ( "ICANN" ) on 24 October 1999, and under ICANN Rules for UDRP and Asia Domain Name Dispute Resolution Center ( "ADNDRC" ) Supplemental Rules for UDRP, was received by ADNDRC Beijing Office on 2 April 2008. 3 April 2008, the ADNDRC Beijing Office requested the Registrar by email for the provision of information at their WHOIS database in respect of the Disputed Domain Name, and the registration information was confirmed by the Registrar on 4 April 2008.

On 17 April 2008, ADNDRC Beijing Office transmitted the Complaint to the Respondent by email.

On 28 April 2008 ADNDRC Beijing Office notified the Complainant by email that the Complaint was reviewed and forwarded to the Respondent and confirmed with the parties and Registrar by email that the captioned case was formally commenced. ADNDRC Beijing Office also requested the Respondent to file a Response within the 20 days scheduled time.

On 29 May 2008, having received no response from the Respondent, the Center notified both parties that the hearing will take place by default.

On 16 June 2008, ADNDRC Beijing Office gave notice to the potential candidate of the Panelist Mr. Peter Bullock, requesting him to confirm whether he would accept the appointment as a Panelist for this case, and if so, whether he could maintain impartiality and independence between the parties in this case.

Having received a declaration of impartiality and independence and a statement of acceptance from Mr. Peter Bullock, ADNDRC Beijing Office informed by email the parties that Mr. Peter Bullock would be the sole Panelist of this case and transferred the files of this case to the Panel formally on 19 June 2008.

On 19 June 2008, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 3 July 2008.

The language of the proceeding is English, as being the language of the Domain Name Registration and Service Agreement, pursuant to Paragraph 11(a) of the Rules, and also in consideration of the fact that there is no express

agreement to the contrary by the Parties.

## Factual Background

### For Claimant

The Complainant was founded in 1886 and is headquartered in Stuttgart, Germany. It is a leading global supplier of automobile technology, industrial and building technology and consumer goods. Since at least 2001 it has achieved a high ranking in Fortune magazine's world's top 500 enterprises. It claims to be growing to be amongst the top 100 companies in China, employing more than 14,000 highly qualified professionals in China in its fields.

The mark "BOSCH" ("Mark") derives from the name of the Complainant's founder Robert Bosch. The Complainant's first trade mark filing was in 1900. Presently, the Complainant is the proprietor of 64 trademarks in Germany and has registered "BOSCH" widely in approximately 200 countries and regions including the United Kingdom, USA, Japan and Hong Kong.

The Complainant has registered the trade mark "BOSCH" in Classes 7, 9, 10, 12 and 19 in China and has since then added numerous other trade mark registrations in China which remain effective.

The Complainant's claim is based primarily on the contention that the Disputed Domain is confusingly similar to the Mark.

### For Respondent

The Respondent first registered the Disputed Domain on 25 November 2005.

## Parties' Contentions

### Claimant

The Complainant asserts that the Disputed Domain (boshhid.com) is confusingly similar to that section of the public (prospective customers of the Respondent's business selling Xenon automobile lights) to which the website where the Disputed Domain resolves is directed. The Complainant further asserts that boshhid is an abbreviated form of a kind of BOSCH automobile Xenon-headlamp and HID has a special professional meaning.

The Complainant further alleges that the Respondent has no rights or legitimate interests in respect of the Disputed Domain because:

- the Complainant has neither authorized nor licensed the Respondent to use the trade mark "BOSCH";
- following investigation, the Complainant has confirmed that the Respondent is neither a distributor nor an agent of the Complainant;
- the Complainant has never authorized the Respondent to register the Disputed Domain;
- the distinctive part of the domain name (presumably "BOSCH") has been used in order to generate click through revenue for the Respondent; in which case the Respondent is using the Complainant's trade mark to exploit it for financial gain relating to directed internet traffic.

Finally, the Complainant alleges that the Disputed Domain has been registered and used in bad faith. In support the Complainant relies on the following:

- the Disputed Domain resolves to a website selling counterfeited BOSCH Xenon lights and navigation instruments. BOSCH HID products are not sold by BOSCH at all in China, for safety reasons, which further demonstrates the illegitimate nature of the Respondent's business
- although the Respondent's website uses the names "BOSHI" and "baishi" (which are not identical to BOSCH) these names are similar enough to cause confusion to users of the website
- in addition to "BOSHI" and "baishi" the website use the word "BOSCH", which shows a clear intention to associate the Respondent's products with the Complainant's trade mark "BOSCH".

### Respondent

The Respondent did not file a Response within the stipulated time.

## Findings

### A. Respondent in Default

The Rules, Paragraph 5(e) provide that: "If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint." The Panel finds no exceptional

circumstances to exist, and will proceed to determine the dispute based upon the Complaint.

#### B. Discussion and Findings

According to Paragraph 4a of the Policy which is applicable hereto, the Complainant has the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in which the complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith.

#### Identical / Confusingly Similar

The Disputed Domain is confusingly similar to the Mark, in which the Complainant has rights covering a large number of jurisdictions. It wholly incorporates the Complainant's Mark, and the explained refers to a particular BOSCH product line. This contention is corroborated by the Respondent's website, which offers HID lighting products with reference to a "BOSCH HID" trade name (in the contact and copyright details posted on the website).

The Panel finds the Complainant has satisfied the first condition under Paragraph 4(a) of the Policy.

#### Rights and Legitimate Interests

The Complainant has alleged that the Respondent has no right or legitimate interest in respect of the Disputed Domain. Clearly the Complainant does have a legitimate interest in the Mark "BOSCH ", and the Panel can fathom no possible legitimate connection or interest between the Respondent and the Disputed Domain. The Respondent has not answered these allegations and the Panel has no reason to doubt the veracity of the Complaint.

There is no similarity between the Respondent's name (Zheng Yanlong) and the Mark.

Furthermore, there is unrefuted evidence that BOSCH HID products are not legitimately for sale in China. In light of the above, the Respondent's use in this case does not qualify as a legitimate or bona fide use of the Disputed Domain.

Accordingly, the Panel finds that the Complainant has satisfied the second condition under Paragraph 4(a) of the Policy.

The Panel makes no finding in respect of the Complainant's suggestion that the website uses the Mark in order to generate click through revenue for the Respondent.

#### Bad Faith

On the Complainant's evidence, the Complainant does not (for safety, or regulatory, reasons) sell its HID lighting products in China, and it may therefore be arguable whether the Complainant would succeed in showing that the Respondent registered the Disputed Domain primarily for the purpose of disrupting the business of BOSCH, its competitor (as envisaged by Paragraph 4(b)(iii) of the Policy). Nevertheless the following circumstances show a very strong case that (as envisaged by Paragraph 4(b)(iv) of the Policy):

"by using the domain name, [the Respondent] intentionally attempted to attract, for commercial gain, internet users to [the Respondent's] website or other on-line location, by creating a likelihood of confusion with the Complainant's work as to the source, sponsorship, affiliation, or endorsement of [the Respondent's] website or location or of a product or service on [the Respondent's] website or location":

- (1) the Complainant's trade mark has a strong reputation and is widely known in China (not least owing to the Complainant's substantial labour force in China);
- (2) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the Disputed Domain;
- (3) the Disputed Domain resolves to a website selling counterfeit or otherwise unauthorized BOSCH products;
- (4) the said website used BOSCH, BOSCH HID, BOSHI and baishi alongside one another in a way likely to cause confusion to Chinese speaking (and other) users of the website.

#### Status

www.boschhk.com

Domain Name Transfer

#### Decision

Based on the above analysis, the Panel decides that: (1) the Disputed Domain is confusingly similar to a mark in which the Complainant has rights; (2) the Respondent has no right or legitimate interest in respect of the Disputed Domain; and (3) the Respondent has registered and has used the Disputed Domain in bad faith. Accordingly, pursuant to Paragraph 3 (c) of the Policy, and at the Complainant's request, the Panel decides that the Disputed Domain boschhid.com should be transferred to the Complainant.

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