



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2301850
Complainant:	Bafang Electric (Suzhou) Co., Ltd.
Respondent:	Guillaume Fleury
Disputed Domain Name(s):	<e-bafang.com>

1. The Parties and Contested Domain Name

The Complainant is Bafang Electric (Suzhou) Co., Ltd., of No.6, Dongli Road, Suzhou Industrial Park, China.

The Respondent is Guillaume Fleury, of 14 Rue Guy de Laval, 53000, Laval, France.

The domain name at issue is <e-bafang.com>, registered by Respondent with BookMyName, of 8 Rue De La Ville L'evêque, 75008, Paris, France.

2. Procedural History

Allbright Law Offices (Suzhou) on behalf of their client Bafang Electric (Suzhou) Co. Ltd, submitted a revised complaint form to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC" or the "Centre"), in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules"), and ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "ADNDRC Supplemental Rules"). The previous submission of 14 December 2023 contained some deficiencies in formalities which were rectified in the later submission.

The Complainant selected to have the case decided by a single-member Panel and after confirmation of my ability to determine the matter independently and impartially on 13 January 2024 I was appointed the sole Panelist for this domain name dispute. The Centre had received the required filing fee from the Complainant and confirmed the receipt of the Complaint. On 15 December 2023 the Centre notified the Registrar of the domain name in dispute, BookMyName, of the filing of the Complaint. On the 10 January 2024 Complainant submitted an application for a ruling to be in English. On 11 January 2024 the Centre sent the Written Notice of Complaint to the Respondent which gave Respondent the option to choose a three-man panel as well as raising the issue of the choice of language.

The Panelist finds that the Administrative Panel is properly constituted and appointed in accordance with the Rules and the Supplemental Rules.

The Panelist has not received any further requests from the Complainant or the Respondent regarding other submissions, waivers or extensions of deadlines. There is no need to hold any in-person hearings for deciding the Complaint as provided for in Paragraphs 12 and 13 of the Rules.

3. Language of the Proceedings

According to Article 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 Registration Agreement of the disputed domain name <e-bafang.com> is French. However, the Complainant requested to change the language of proceedings from French to English or to have the decision rendered in both English and French. This issue was raised by an email of 11 January 2024.

On 11 January 2024 the Respondent responded in an email in English which, as detailed further, sought to explain the use of the disputed domain name. There was no express confirmation at that time that he consented to the application but it was clear from its content and the nature of the response that

- a) Respondent has an excellent command of the English language;
- b) he seeks to have the matter resolved expeditiously and expressed contrition with an explanation as regards how the complaint arose.

On 16 January 2024 Respondent in an email expressed support for the proceeding to be in English in order to facilitate a speedy resolution and to demonstrate his willingness to engage constructively in the process and as a gesture of good faith.

Article 11(a) of the Rules allows the Panellist to make the final determination on the language of the proceedings of the dispute and, in the absence of the later concession by Respondent of 16 January, I would have exercised my discretion, having regard to Respondent's earlier response, which response is set out further in this Decision, that the language is English. However, in the circumstances, I can make that order on consent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Complainant, Bafang Electric (Suzhou) Co. Ltd., says that the disputed domain name <e-bafang.com> is "highly" similar to the BAFANG registered trademarks and its domain name <bafang-e.com>. There is extensive evidence provided of the ownership of many trademarks which the Complainant has worldwide, some of which go back to 2012. It has

extensive rights in the name and the disputed domain name has a similarity which could cause confusion. Bafang Electric (Suzhou) Co. Ltd, was founded in 2003 and is engaged in the research and development of core technologies for electric bicycles and two-wheeled vehicles, including motors, controllers, batteries, instruments, sensors and other drive systems. With multiple core technologies for drive systems, it is a global A-share listed company engaged in the research and manufacturing of electric drive systems, with the Complainant's stock abbreviation being "Bafang Share", with the stock code "603489". The Complainant's main business is electric drive components and complete systems, including various high-end motors, controllers, HMIs, batteries and sensors. The company is positioned in the high-end market and has introduced leading European industrial design concepts. It is well known for its high quality and has an important position in the international market as one of the leading suppliers of drive systems in the industry.

The Complainant says that the Respondent has no legitimate right or claim to the domain name <e-bafang.com> and that it was registered and was being used in bad faith.

The disputed domain name <e-bafang.com> refers to the website "Best Ebike Conversion Kit Bafang". Seen in a prominent position at the top of the homepage of the disputed domain name website was the word "BAFANG", identical to the icon used on the Complainant's official website and to the Complainant's registered trademark. The goods approved for use by the Complainant's registered trademark include batteries, rechargeable batteries for electric vehicles, electric motors for land vehicles, electronic display screens for displaying numbers, etc., which were the goods sold on the disputed domain name website.

The disputed domain name website had misappropriated images from the Complainant's own website <bafang-e.com>, which are copyrighted by the Complainant and are used for promoting and selling Complainant's products. The disputed domain name website also called itself "BAFANG" under the heading "ABOUT" and misappropriated the Complainant's company profile and photographs and used the Complainant's news and information articles under the heading "BLOG". At the same time, the disputed domain name website displayed various links which, when clicked, displayed introductions of the Complainant's relevant model products accompanied by a third-party purchase icon. The disputed domain name website also prominently displayed the Complainant's products with models on the homepage. The Complainant's "BAFANG" series of trademarks was used in the product display pictures, with purchase icons attached below the product. After clicking on the purchase icons, the disputed domain name website resolved to a third-party purchase website.

Complainant says that the Respondent registered the disputed domain name in order to mislead consumers into believing that the Respondent's website was operated by the Complainant or under the Complainant's authorisation in order to attract consumers to visit the disputed domain name and to profit by directing them to Amazon or AliExpress shops to purchase products through the links. Further that the Respondent registered the disputed domain names in order to confuse the public as to the source of the products and services on the disputed domain name and the Complainant's marks, which are identical or very similar, in an attempt to intentionally attract internet users to visit the disputed domain name website or other online URLs in order to gain a commercial advantage. It is in those circumstances, they say, that the Respondent's registration or use of the disputed domain name was in bad faith and malicious.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent gave an immediate response and in an email of 11 January 2024 sets out his explanation and an apology – its terms are helpful to explain why this Decision can be given briefly and expeditiously.

“Dear Sir,

I hope this message finds you well. I am reaching out to address the recent dispute over the domain name <e-bafang.com>. Firstly, I want to extend my sincerest apologies for any inconvenience or confusion that may have arisen from my actions.

It's important for me to clarify that my intention was to make known and celebrate the products of Bafang. I have great respect and admiration for their products, and my goal was to share this enthusiasm with others. However, I now understand that my choice of domain name could have been misinterpreted, and for that, I am truly sorry.

To rectify this situation, you already transferred the domain name to your control, and the associated website has been taken down.

I want to assure you that it was never my intention to harm or infringe upon the rights and reputation of Bafang. My actions were driven by a desire to share my positive views about their products, albeit not in the most appropriate way. I understand the importance of respecting intellectual property and brand identity, and I will ensure that my future actions reflect this understanding.

In compliance with the requirements set forth in the Notice, I have duly completed the Response Form R along with its necessary Annexes (form attached to this email). The completed form encapsulates my detailed response, adhering to the stipulated guidelines and within the prescribed timeframe.

Thank you for considering my apology and request for resolution.

Sincerely,
Guillaume Fleury”

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following: (i) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and (iii) that the disputed domain name has been registered and is being used in bad faith. The domain name at issue is <e-bafang.com>.

The Panel holds that the Complainant has established element (i), that the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, namely BAFANG and its own domain name, <bafang-e.com>.

B) Rights and Legitimate Interests

The Complainant has asserted that the Respondent does not have any legitimate interest in the registration of the disputed domain name. The domain name does not appear to be in use for any bona fide offering of goods or services other than for the Respondent being a reseller of the Complainant's products. There has been no evidence that there was an agreement for Respondent to be an authorised reseller or to make use of the disputed domain name for that purpose.

The Panel therefore holds that the Complainant has established element (ii) of paragraph 4(a) of the Policy.

C) Bad Faith

In considering bad faith, the assertion for Complainant that the disputed domain name was registered and used in "bad faith" is met by the response from Respondent that he is apologetic and it was not his intention to do so. There appears to be no question that he was aware of the domain name owned by the manufacturer and distributor of the technological products which he so admires.

Paragraph 4(b)(iv) of the Policy sets out that

"(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."

Respondent has not denied that he used this disputed domain for commercial gain and does not dispute the allegations as to the use of the Complainant's trademark and

products. Further, there is no dispute that there existed links to third party vendors. It is evident that there was a profit element to the benefit of the Respondent by the use of the disputed domain name. I fully appreciate that the Respondent has shown remorse and says that he did not register the name in bad faith. By that, I take him to say that he did not have any malevolent intent. To me, that is a question of degree and that the circumstances, to an independent and impartial observer, would indicate that it was improper to have done so such that it reaches the level of bad faith. That is not to say that one has to have approached the exercise of registering such a similar domain name in bad faith but if the consequence is that one has a name so confusingly similar and that it is being used for commercial advantage, the conclusion must be that it is being used in bad faith.

Respondent says in his Response – *“my intention was to make known and celebrate the products of Bafang. I have great respect and admiration for their products, and my goal was to share this enthusiasm with others. However, I now understand that my choice of domain name could have been misinterpreted.”*

In light of Complainant’s established trademarks and the uncontroverted use of those on the website for the Respondent’s financial gain, the Panel concludes that the Respondent’s use of the domain name was in bad faith.

6. Decision

The Panel determines that the Complainant has proven its case and demonstrated its rights and legitimate interests such that paragraph 4 (a) (i), (ii), and (iii) of the Policy are satisfied. Accordingly, the Panel requires that the disputed domain name <e-bafang.com> be transferred to the Complainant.



Jeffrey Elkinson
Panelist

Dated: 22 January 2024