



Asian Domain Name Dispute Resolution Centre

beijing

ADMINISTRATIVE PANEL DECISION

Case No. CN-2301570

Complainant: SHENZHEN CENTER POWER TECH.CO., LTD

Respondent: Chen Chen

Domain Name: center-power.com

Registrar: GoDaddy, inc.

1. Procedural History

On 7 August 2023, the Complainant submitted a Complaint in Chinese to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing 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 8 August 2023, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, GoDaddy, Inc., a request for registrar verification in connection with the disputed domain name.

On 11 August 2023, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details. The Registrar further pointed out that the language of the Registration Agreement is English.

On 11 August 2023, the ADNDRC Beijing Office informed the Complainant of the Respondent's information and language of the proceedings, and asked the Complainant to revise the Complaint.

On 18 August 2023, the Complainant submitted its revised Complaint.

On 21 August 2023, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced.

On the same day, the ADNDRC Beijing 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 Beijing Office had sent the Complaint and its attachments through both email and express according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, GoDaddy, Inc., of the commencement of the proceedings.

ADNDRC Beijing Office received a Response from SHENZHEN CENTER INDUSTRIAL CO., LTD on 10 September 2023. On 13 September 2023, the ADNDRC Beijing Office forward the Response to the Complainant and requested the Respondent to confirm whether the Response was submitted by the Respondent. On 15 September 2023, the Respondent confirmed the Response was submitted by the Respondent.

Since the Complainant elected this case to be dealt with by a one-person panel, the Respondent did not mention the Panel selection in accordance with the time period specified in the Rules, the ADNDRC Supplemental Rules, and the Notification, the ADNDRC Beijing Office informed the Complainant and the Respondent that the ADNDRC Beijing 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 Prof. Kun FAN, the ADNDRC Beijing Office notified the parties on 22 September 2023 that the Panel in this case had been confirmed, with Prof. 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 22 September, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 6 October 2023.

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. Moreover, both parties being Chinese, the Panel considers that the submission of annexes in Chinese language does not harm the rights of parties to a fair trial and, therefore, accepts the annexes in Chinese language.

2. Factual Background

A. The Complainant

The Complainant in this case is SHENZHEN CENTER POWER TECH.CO., LTD. The registered address is No. 9-12, 7th Floor, Block B, Building 7, Zone 2, Shenzhen Bay Science and Technology Ecological Park, Nanshan District, Shenzhen City, China. The authorized representative in this case is Yang Qin.

B. The Respondent

The Respondent in this case is Chen Chen. The address is Room 302, Building D, Commercial and Residential Building, Xitou Village, Xitou Community, Songgang Street, Baoan District, Shenzhen 518105, China. The Respondent is self-represented.

The Respondent is the current registrant of the disputed domain name “center-power.com”, which was registered on 24 July 2020 according to the Registrar’s confirmation. The Registrar of the disputed domain name is GoDaddy, Inc.

3. Parties’ Contentions

A. The Complainant

The Complainant, SHENZHEN CENTER POWER TECH.CO., LTD. (深圳市雄韬电源科技股份有限公司), founded in 1994, describes itself as a public company specialized in energy-related products such as lithium batteries and lead-acid batteries. The Complainant was listed on the Shenzhen Stock Exchange (stock code #002733) on 3 December 2014. The Complainant affirms that it has established research and production centers in China (Shenzhen, Wuhan, Hubei, Jingshan, Hubei, Datong and Guangzhou) and Vietnam, with branches or offices *inter alia* in Chinese mainland, Hong Kong, Singapore, India, Europe, and the United States. According to the Complainant, the Complainant has been honored with various awards in Chinese mainland.

The Complainant asserts that “Center Power” corresponds to its corporate name in English language. The Complainant also provides a trademark certificate delivered by the China National Intellectual Property Administration (CNIPA) for the following trademark:

Trademark name	CENTERPOWER
Trademark number	1497947
Application date	6 July 1999
Registration date	28 December 2010
Nice classification	9

The Complainant contends that *“Both the trade name ‘CENTER POWER’ and trademark ‘CENTERPOWER’ are not conventional English words but are original creations by the Complainant, with strong distinctiveness”*. The Complainant further affirms that *“Through the Complainant’s extensive and longstanding use, the ‘CENTERPOWER’ brand has gained significant influence not only in China but also worldwide”*.

The Respondent registered the disputed domain name on 24 July 2023.

The Complainant sustains that:

1. the disputed domain name “center-power.com” is identical to the Complainant’s trade name and its trademark “CENTERPOWER”; and
2. the Respondent has no right or legitimate interest in the disputed domain name; and
3. the Respondent:
 - registered the disputed domain name in bad faith;
 - is using the disputed domain name in bad faith since the Respondent is promoting batteries on the website to which the disputed domain name resolves, thus infringing its trademark rights;

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

B. The Respondent

SHENZHEN CENTER INDUSTRIAL CO., LTD submitted the following Response to the ADNDRC Beijing Office on 10 September 2023, *in extenso*:

“The domain name used by the Complainant is ‘vision-batt.com’. The product brand has Vision, SENRY, Euroba. Etc. We have never known or heard of any occasions where vision has used ‘center power””.

On 13 September 2023, the ADNDRC Beijing Office requested the Respondent to confirm whether the Response was submitted by the Respondent. On 15 September 2023, the Respondent confirmed.

4. Discussions and Findings

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the complainant shall prove the following three elements:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) The registrant has no rights or legitimate interests in respect of the disputed

domain name; and

(iii) The disputed 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. Identity or Confusing Similarity

Under Article 4(a)(i) of the Policy, the Complainant must demonstrate that the disputed domain name is identical or confusingly similar to a trademark on which the Complainant has rights.

According to the Complainant, the disputed domain name "center-power.com" is identical to the Complainant's trade name and its trademark "CENTERPOWER".

The Respondent did not discuss the identity or the confusing similarity between the dispute domain name and the Complainant's business identifiers.

The distinctive part of the disputed domain name "center-power.com" is "center-power". It is high similar to the trademark "CENTERPOWER", since the addition of a hyphen separating the two words that compose the trademark does not in itself avoid the confusing similarity.

Moreover, with rare exceptions that do not apply in this case, it is well established that the top-level domain of the disputed domain name, in this case ".com", may be disregarded for the purposes of assessment under the first element, as it is viewed as a standard registration requirement.

Furthermore, the Complainant adds that the products promoted on Respondent's website are identical to those designated by the trademark certificate concerning the CENTERPOWER trademark, namely products in Class 9 of the Nice Classification, and more precisely batteries. The Panel considers this argument superfluous in the analysis of the first element. On the other hand, the Panel will take this argument into consideration in the analysis of Respondent's good or bad faith.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, and that the requirement of Article 4(a)(i) of the Policy is satisfied.

B. Rights and Legitimate Interests of the Respondent

Under Article 4(a)(ii) of the Policy, the Complainant must demonstrate that the Respondent “*ha[s] no rights or legitimate interests in respect of the domain name*”.

While the overall burden of proof rests with the Complainant, UDRP panels recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the Respondent. As such, where the Complainant makes a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of proof shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

In the present case, in order to satisfy the requirements of article 4(a)(ii) of the Policy, the Complainant has submitted only the following paragraph, quoted *in extenso*: “*Evidence provided by the Complainant demonstrates that the Respondent and the entity operated thereby do not have any rights or legitimate interests in the disputed domain name. On the contrary, despite being aware of the Complainant’s rights in the longstanding trade name “CENTER POWER” and registered trademark “CENTERPOWER”, the Respondent intentionally registered and used the disputed domain name without any regard, displaying malicious intent*”.

The Panel reminds the Complainant that in UDRP proceedings, the burden of proof lies with the Complainant, who is expected to produce a legal argumentation specifically elaborated to convince the Panel of the merits of its complaint. In the present case, the Complainant only asserts that the Respondent does not have any rights or legitimate interests in the disputed domain name and does not provide a single legal argument to convince the Panel that the Respondent was not entitled to register a domain name composed of the two generic words “center” and “power”.

The Complainant contends that “[*b*]oth the trade name ‘CENTER POWER’ and trademark ‘CENTERPOWER’ are not conventional English words but are original creations by the Complainant, with strong distinctiveness”. The Complainant further affirms that “[*t*]hrough the Complainant’s extensive and longstanding use, the

'CENTERPOWER' brand has gained significant influence not only in China but also worldwide". However, the Panel finds that the words "center" and "power" are both generic words in the English language and their combination to form a trademark called "CENTERPOWER" for batteries made for the industrial sector does confer such a trademark a "*strong distinctiveness*". On the contrary, the association of the words "center" and "power" could describe the function of a battery. The Panel would be inclined to consider "CENTERPOWER" descriptive since:

- on the one hand, the word "center" refers to "*a source from which something originates*" (Merriam Webster), or "*the source of an influence, action, force*" (Collins); and
- on the other hand, the word "power" refers to the "*the rate at which energy is used, or the ability to produce energy*" (Cambridge), "*energy that can be collected and used to operate machines*" (Britannica), "*a source or means of supplying energy*" (Merriam Webster), "*energy, especially electricity, that is obtained in large quantities from a fuel source and used to operate lights, heating, and machinery*" (Collins).

Nevertheless, the Complainant provided the certificate of a registered trademark issued by the China National Intellectual Property Administration, without restriction as to the material scope of the trademark. Furthermore, given the nature and objectives of the present proceeding, the Panel does not have the power to consider the validity of a registered trademark. The Panel also highlights that both parties being Chinese and subjects to the same legal framework, CNIPA's decisions are binding on both Parties, which leads the Panel to consider, unless proven otherwise, that the Complainant owns in China an exclusive trademark right on the expression "CENTERPOWER" that provides the Complainant with the right to exclude third parties from using this trademark in a way that infringes its intellectual property rights.

Consequently, since the Complainant did not authorize the Respondent to use its CENTERPOWER trademark (especially in relation with the promotion or sale of batteries), the Respondent is not in a position to argue that it could have a right or legitimate interest in the disputed domain name.

Moreover, the Respondent has not raised the question of the genericity or descriptiveness of the Complainant's business identifiers to sustain that it could have rights or legitimate interests in the disputed domain name. Indeed, in its Response, the Respondent did not even assert that it had a right or a legitimate interest in the disputed domain name.

Accordingly, the Panel considers, on one hand, that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and, on the other hand, that the Respondent did not refute the Complainant's assertions. Therefore, the Panel finds that the Respondent has no

rights or legitimate interests in the disputed domain name.

To conclude on the second requirement, the Panel finds that the Complainant has satisfied the second condition in paragraph 4(a) of the Policy.

C. Bad Faith

Under Article 4(a)(iii) of the Policy, the Complainant must demonstrate that: 1) the Respondent has registered the disputed domain name in bad faith; and 2) the Respondent is using the disputed domain name in bad faith.

1. The Respondent has registered the disputed domain name in bad faith

The Complainant contends that its “CENTERPOWER” trademark has acquired a high reputation and, therefore, the “*Respondent should have been aware of the prior existence of the Complainant's trademark and trade name but failed to take reasonable avoidance measures*”. The Complainant provides strong evidence that the Complainant's trademark has acquired a high reputation in the battery industries to such an extent that it is not plausible that the Respondent was not aware of it on the day the Respondent registered the disputed domain name. Moreover, the content of the webpages to which the disputed domain name resolved demonstrated that the Respondent was positioning itself as a competitor in the battery sector. As the Complainant is a major player in the sector, particularly in China, the Panel does not accept the Respondent's assertion that the Respondent was not aware of the Complainant's trademark. Indeed, it is very likely that the disputed 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 disputed domain name independently. Prior panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous trademark by an unaffiliated entity can by itself create a presumption of bad faith. On the basis of the evidence provided by the Complainant, the Panel considers, on the balance of probabilities, that the Respondent knew of the Complainant's trademark when registering the disputed domain name, in order to more easily capture market share by relying on the reputation of the Complainant's trademark. Therefore, the trademark was registered in bad faith.

2. The Respondent is using the disputed domain name in bad faith

On the 4 October 2023 (drafting of the present decision), the website to which the disputed domain name resolved has been emptied: only a single page remains containing the following message “*网站正在维护中!*”, which means “*The website is under maintenance!*”. Nevertheless, the Complainant submitted several screenshots of the webpages that were previously online, the disputed domain name resolved to a website containing several webpages promoting products for the sector of industrial batteries. The Panel notes that, in its reply of 13 September 2023, confirmed on 15

September 2023, the Respondent did not contest the validity of the evidence submitted by the Complainant. The Panel therefore considers it appropriate to proceed with the site comparison analysis based exclusively on the evidence produced by the Complainant. In this regard, the Panel observes that the general overall impression shows two similar sites. For example:

- the respective logos, both red in color and similar in size, are placed in the same place at the top left of the screen;
- the submenus and their icons are almost identical conceptually and visually;
- the list of promoted products is also almost identical;
- the home page of each site refers to a message promoting the idea of sustainable development: “Green our earth” on the Complainant's website and “Green makes the future” on the Respondent's website.

Such similarities, all together, persuade the Panel to consider, on the balance of probabilities, that the overall resemblance of the two websites cannot be considered as a coincidence. On the contrary, the panel considers that the Respondent deliberately used the disputed domain name to deceive customers and benefit commercially from the reputation of the Complainant. Thus, it is highly likely that, when facing the disputed domain name, Internet users looking for the Complainant and its CENTERPOWER products would consider that the disputed domain name originates from the Complainant and not from a third party. Therefore, the trademark is being used in bad faith.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third condition in paragraph 4(a) of the Policy.

5. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name, “center-power.com”, be transferred to the Complainant SHENZHEN CENTER POWER TECH.CO., LTD.



(Kun FAN)

Dated: 6 October 2023