

Decision for dispute CAC-UDRP-105425

Case number CAC-UDRP-105425

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Domain names ksbvalve.com

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization KSB SE & Co. KGaA

Complainant representative

Organization Convey srl

Respondent

Name Shen Zhen Shi Kai Shi Bi Fa Men You Xian Gong Si

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the trademark KSB which is registered as a word mark for goods and services in numerous countries all over the world, including in China, such as:

- International word mark KSB, registered on 12 July 1996 under No. 662585 for goods and services of the classes 06, 07, 09, 11, 37, 41, 42;
- International combined mark KSB, registered on 26 April 1974 under No. 407021 for goods and services of the classes 06, 07, 11, 17;
- International combined mark KSB SUPREMESERV, registered on 19 December 2018 under No. 1466266 for goods and services of the classes 37, 38, 41, 42;
- International combined mark KSB SUPREMESERV, registered on 19 December 2018 under No. 1463039 for goods and services of the classes 37, 38, 41, 42;
- International combined mark KSB B, registered on 14 July 1997 under No. 679050 for goods and services of the classes 06, 07, 09, 11, 37, 41, 42.

FACTUAL BACKGROUND

According to the Complainant is a leading supplier of pumps, valves and related systems for building services, industry and water

transport, waste-water treatment and power plant processes. The Complainant asserts that the sign KSB consists of the acronyms of the founders' surnames: Johannes Klein, Friedrich Schanzlin and Jakob Becker.

The Complainant states that it has presence on all continents with its own sales and marketing organizations, manufacturing facilities and service operations. The Complainant further states that the region Asia-Pacific is its second-largest market and that the Complainant has become one of the most important suppliers of technically advanced pumps, valves and services in China.

The disputed domain name <ksbvalve.com> was registered on 24 June 2016.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

The Panel accepts the Complaint in English, because based upon the Complainant's contentions, which were not disputed by the Respondent (who was notified about the complaint in both English and Chinese), the Panel finds it fair and equitable to both parties.

According to CAC's information, the Respondent accessed the online case file and viewed the Complaint on May 19, 2023. No Response or email from the respondent was received by the CAC.

PRINCIPAL REASONS FOR THE DECISION

- 1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.**

According to the Complainant, the mere addition of the generic word VALVE to the KSB trademark in the disputed domain name does not prevent customers from recognizing the Complainant's KSB trademark. In fact, it rather enhances the impression that the disputed domain name is confusingly similar to the trademark of the Complainant as the word is related to the Complainant's products for which the trademark is used. Moreover, the Complainant demonstrates that the disputed domain name resolves to a website offering for sale valves.

Consequently, the Complainant believes that it is likely that the public will mistakenly assume that the Respondent has a certain

degree of association with the Complainant.

The generic Top-Level Domain extension of the disputed domain names, in this case “.com”, is typically disregarded under the confusing similarity test, as it is a standard requirement for registration.

Therefore, the Complainant concludes, and the Panel agrees, that the disputed domain name is confusingly similar to the Complainant’s trademark.

2. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant states that it has not granted authorization or a license to the Respondent to make any use of the Complainant’s trademark in the disputed domain name or in any other manner.

Moreover, the Complainant contends that by using the disputed domain name, the Respondent intends to trade on the Complainant’s trademarks by intentionally attempting to attract users to its website who are looking for the Complainant and its products by misleading them about the source or affiliation of its website.

According to the Complainant, the Respondent intends to compete with the Complainant and attempts to pass off as the Complainant’s branch in China. Moreover, the Complainant believes that the Respondent is exploiting the fame and the notoriety of the Complainant by using the KSB trademark in the disputed domain name for the purpose of creating an ambiguous link between its business and the Complainant.

The Panel finds that the Complainant has shown that the Respondent has not made legitimate use of the disputed domain name for a bona fide offering of goods or services. In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the domain name.

3. The disputed domain name was registered and is being used in bad faith:

The Complainant asserts that it is been using the KSB trademark in China since 1994 and has 7 branches and more than 30 service centers in that country. The Complainant argues that, given the distinctiveness and well-known character of the KSB trademark and the intensive use of it for many years in the sector of pumps, valves and related services worldwide, it is impossible that the Respondent would not have had actual knowledge of the Complainant’s trademark at the time of the registration of the disputed domain name in 2016.

Moreover, as the KSB trademark consists of the acronym of the initial letters of the Complainant’s founders, the Complainant considers that it is unlikely that the disputed domain name was chosen by the Respondent without having the Complainant’s trademark in mind. In addition, the Complainant believes that, given that the Respondent operates in the same sector as the Complainant, the Respondent should have known the Complainant’s trademark.

The Complainant further asserts that the disputed domain name refers to a website where the Respondent’s products are offered for sale and that this use of the disputed domain name demonstrates that the Respondent’s sole purpose is to disrupt the Complainant’s normal business in China and create confusion with the Complainant’s name or trademark in order to mislead the public with the intent to exploit, for commercial gain, the internet traffic destined for Complainant.

Finally, the Complainant alleges that the Respondent did not reply to the cease-and-desist letter sent by the Complainant’s legal representative. The Complainant refers to past panels that have held that such behaviour implies bad faith (WIPO Case No. D2018-1576 Accor and SoLuxury HMC v. Ayman Morsy, Vcreation).

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has registered and used the disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **ksbvalve.com**: Transferred

PANELLISTS

Name	Tom Heremans
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DATE OF PANEL DECISION 2023-06-20

Publish the Decision
