

ADMINISTRATIVE PANEL DECISION

Case No. DCN-1600688

Complainant:	Sasol Limited
Respondent:	JiaShiKang Trading Co., Ltd. (深圳市佳实康商贸有限公司)
Domain Names:	<sasol-wax.cn>, <sasol-wax.com.cn>
Registrar:	Beijing new network Digital Information Technology Co., Ltd. (北京新网数码信息技术有限公司)

1. Procedural History

The Complaint was filed with the Hong Kong International Arbitration Centre (the "Centre") on May 10, 2016. On May 11, 2016, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Centre verified that the Complaint satisfied the formal requirements of the CNNIC Domain Name Dispute Resolution Policy (the "Policy"), the Rules of Procedure under the Policy (the "Rules"), and the Centre's Supplemental Rules (the "Supplemental Rules").

In accordance with Article 5 of the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 26, 2016.

On May 26, 2016, the Centre sent an email communication to the parties in both Chinese and English regarding the language of the proceeding. It noted that the Complainant had requested English be the language of the proceeding in its Complaint on May 10, 2016. The Respondent did not file any submission regarding the language of the proceeding.

In accordance with Article 17 of the Policy, the due date for Response was June 15, 2016. No Response was received by that date. Accordingly, the Centre notified the Respondent's default on June 16, 2016.

The Centre appointed Douglas Clark as the sole panelist in this matter on June 23, 2016. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with Article 29 of the Rules.

2. Factual background

The Complainant is a South African integrated chemicals and energy company. It produces and supplies fuel and chemical components around the globe.

The Complainant owns a Chinese trademark for the word mark "SASOLWAX" in Class 1, registered under the number No. 5577935 on 28 October 2009; a trademark for the Mandarin translation of the word mark SASOLWAX in Class 2, registered under the number No. 5545533 on 14 October 200, and a trademark for the stylized mark SASOL in Class 42, registered under the number No.3017835 on 28 January 200. It also holds trademark for the mark SASOL WAX in numerous other jurisdictions.

Furthermore, the Complainant owns multiple domain names for SASOL, including <sasolwax.cn>, <sasolwax.com.cn> and <沙索蜡.org> (SASOLWAX in Chinese).

The Respondent is a Chinese company.

The disputed domain names were both registered on April 15, 2015.

The disputed domain names do not resolve to any webpage.

3. Parties' Contentions

A. Complainant

i. Identical or Confusingly Similar

The Complainant contends that the disputed domain names <sasol-wax.cn> and <sasol-wax.com.cn> are identical to the SASOLWAX trademark and confusingly similar to the Complainant's SASOL trademark and.

ii. No rights or legitimate interests

The Complainant has no association with the Respondent and has never authorized or licensed the Respondent to use its trademarks, nor is the Respondent commonly known by the domain names. As such, the Complainant contends that it has made a prima facie case that the Respondent had no rights or legitimate interests in the domain names, and the burden shifts to the Respondent to prove otherwise.

iii. Registered or used in bad faith

Before acquiring the disputed domain name, it is highly likely the Respondent was aware of the Complainant's rights in the mark SASOL. It, therefore, acquired the disputed domain name to take unfair advantage of the Complainant, disrupt the Complainant's business, create confusion among

consumers and prevent the Complainant from using the domain names for a legitimate business purpose.

B. Respondent

The Respondents did not reply to the Complainant's contentions.

4. Discussion and Findings

A. Language of Proceeding

Article 8 of the Rules provides that:

"Unless otherwise agreed by the Parties or determined in exceptional cases by the Panel, the language of the domain name dispute resolution proceedings shall be Chinese. The Panel may order that any documents submitted in languages other than Chinese be wholly or partially translated into Chinese."

The Complainant requested the language of the proceeding be English on the grounds that: (1) it conducts its business primarily in English and it would be unduly burdensome on the Complainant should the proceeding be conducted in Chinese; (2) the fundamental principle of the domain name dispute mechanism is to allow for disputes to be resolved by fair and expeditious means – translating the complaint would add time and cost to the proceedings; (3) panels should not put an excessive burden on the parties.

As noted, above, the Centre wrote to the Respondent specifically in relation to the language of proceedings in Chinese and English seeking its response on this issue. The Respondent did not respond to the Complainant's request.

The final determination of the language of the proceeding lies with this Panel. Article 31 of the Rules gives the Panel a broad discretion with regard to the conduct of the proceeding, bearing in mind that the proceeding shall take place with due expedition and reasonable expense.

Accordingly, the Panel notes the following factors may affect its decision on language: first, the disputed domain name clearly copies the trademark SASOLWAX containing the English word "wax". Second, the Respondent had been notified the Claimant's case against it and was invited to make submissions by the Centre through emails in both English and Chinese while it simply showed no interest in objecting to the Claimant's request.

On the other hand, the Panel also notes that the grounds advanced by the Claimant are not wholly satisfactory: there is no cogent proof that the Respondent has competency in understanding English – no evidence that they have conducted business or exchanged correspondence in English whatsoever. It is the Claimant who has the burden to provide such evidence to the panel who is not in a position to conduct fact-finding by itself.

Notwithstanding this, the Panel has to balance the questions of fairness to both parties with consideration of cost and expedition, taking into account all the relevant circumstances of the case. The fact that the merits are strongly in favour of the Complainant and the Respondent's default in objecting to the Claimant's language request are both strong factors to be considered. The Respondent has also defaulted in defending these proceedings. The Panel therefore determines to accept the Complaint in English. It would have accepted any submissions from the Respondent in Chinese.

As the only pleading before the Panel is in English, the Panel will render its decision in English.

B. Substantive Issues

Article 8 of the Policy provides that the Complainant must prove the following three elements to make out a successful case::

- i. The disputed domain name is identical with or confusingly similar to the Complainant's name or mark in which the Complainant has civil rights or interests;
- ii. The disputed domain name holder has no right or legitimate interest in respect of the domain name or major part of the domain name;
- iii. The disputed domain name holder has registered or has been using the domain name in bad faith.

Article 7 of the Policy states that the Complainant and the Respondent shall bear the burden of proof for their own claims. Article 31 of the Rules states that if the Respondent does not submit a Response, the Panel shall, in absence of exceptional circumstances, decide the dispute based upon the Complaint only. Following careful deliberation, the Panel determines that:

Identical or Confusing Similarity

The disputed domain names <sasol-wax.cn> and <sasol-wax.com.cn> are, other than the hyphen, identical to the Complainant's trademark SASOLWAX: the incorporation of the hyphen does not alter this fact.

The first part of Article 8 of the Policy is therefore satisfied.

Rights or Legitimate Interests of the Respondent

Article 10 of the Policy provides that:

Before receiving the complaint, any of the following circumstances may be evidence of the rights to and legitimate interests in the domain name:

- i. Your use of the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- ii. You have been commonly known by the domain name, even if you have

- acquired no trademark or service mark rights;
- iii. You are making a legitimate noncommercial or fair use of the domain name, without intent of or commercial gain to misleadingly divert consumers.

The Complainant has established a prima facie case that the Respondent has no rights or legitimate interests in the domain names. The Respondent is neither associated with the Complainant nor authorized or licensed by it to use its trademarks. There is no evidence to show that it has been commonly known by the domain names or the domain names were used for noncommercial purposes.

The Respondent has not responded to assert any rights or legitimate interests in the disputed domain names. Accordingly, none of the circumstances in Article 10 of the Policy are, therefore, present in this case.

The second part of Article 8 of the Policy is, therefore, satisfied.

Registered or Used in Bad Faith

Under Article 8 of the Policy, the Claimant is required to prove the disputed domain name was either registered or used in bad faith. The Panel finds that the disputed domain names were registered in bad faith. It is therefore unnecessary to decide whether they were used in bad faith.

The Complainant Company was established in 1950 in South Africa. The Respondent is located in China where the Complainant has been conducting local business since 2007. The trademark of the Complainant, "SASOL", is an invented word and "WAX" describes the Complainant's product. It is highly improbable that the Respondent would have independently thought up the combination of SASOL-WAX matching the Complainant's mark without knowing their business. In fact, the Respondent would have been aware of the Complainant's marks when carrying out a domain availability search on the website of the Respondent's Registrar. A reverse Whois search on the Respondent's email address identified additional domain names it has registered targeting the Complainant, including <shasuola.com>, phonetic Mandarin pronunciation of "沙索蜡" – the Chinese translation of SASOLWAX which has been registered by the Complainant in China.

The registrations of the disputed domain names in this case therefore fall with paragraph (iii) of Article 9 of the Policy that "the disputed domain name holder has registered or acquired the domain name for the purpose of damaging the Complainant's reputation, disrupting the Complainant's normal business or creating confusion with the Complainant's name or mark so as to mislead the public".

The third part of Article 8 of the Policy is, therefore, satisfied.

5. Decision

For all the foregoing reasons, in accordance with Article 14 of the Policy and Article 37 of the Rules, the Panel orders that the disputed domain names <sasol-wax.cn>, and <sasol-wax.com.cn> be transferred to the Complainant.

Douglas Clark
Sole Panelist
Date: July 11, 2016