

ADMINISTRATIVE PANEL DECISION

Robert Bosch (Pty) Ltd and Robert Bosch GmbH v. 马波 (ma bo)
Case No. D2023-2146

1. The Parties

The Complainants are Robert Bosch (Pty) Ltd, South Africa (the “First Complainant”), and Robert Bosch GmbH, Germany (the “Second Complainant”), represented by D.M. Kisch Inc., South Africa.

The Respondent is 马波 (ma bo), China, represented by 北京策略律师事务所, China.

2. The Domain Name and Registrar

The disputed domain name <bosch-angola.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 17, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Private registration) and contact information in the Complaint. The Center sent an email communication to the Complainants on May 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on May 19, 2023.

On May 17, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 19, 2023, the Complainants confirmed their request that English be the language of the proceeding. On May 20, the Respondent submitted a request that Chinese be the language of the proceeding. The Respondent sent further email communications on May 20 and 22, 2023.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent in Chinese

and English of the Complaint, and the proceedings commenced on May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. Pursuant to paragraph 5(b) of the Rules, the Respondent submitted a request on June 13, 2023 for an automatic extension of four (4) calendar days to submit the Response, and it reiterated its request that Chinese be the language of the proceeding. The Respondent submitted the Response on June 17, 2023. Accordingly, the Center notified the Acknowledgement of Receipt of Response on June 19, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 29, 2023. 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 Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainants are part of the Bosch Group of companies, which supplies automotive and industrial technology, consumer goods, and building technology. The group includes an Angolan affiliate named Robert Bosch Lda. The Second Complainant has registered multiple trademark registrations in multiple jurisdictions, including the following:

- International trademark registration number 265704 for BOSCH, registered on February 14, 1963, designating multiple jurisdictions, specifying goods in classes 6, 7, 8, 9, 10, 11, 12, 14, 17, 20, 21, and 26;
- International trademark registration number 313466 for BOSCH in a particular script, registered on May 18, 1966, designating multiple jurisdictions, specifying goods in classes 7, 8, 9, 11, and 21;
- Angolan trademark registrations numbers 001837, 001838, 001839, 001840, and 001841, all for BOSCH in a particular script, variously registered on July 28, 1998 and August 19, 1998, specifying goods in classes 20, 12, 11, 9, and 7, respectively; and
- International trademark registration number 946941 for a figurative mark (the “armature in a circle logo”) registered on October 16, 2007, designating multiple jurisdictions, specifying goods in classes 7, 9, and 11.

The Complainants have also registered domain names including <bosch.com> and <bosch.africa> that they use in connection with their global and African websites, respectively, where they provide information about themselves and their products.

The Respondent 马波 (ma bo) is an individual based in China who claims to be the deputy general manager of Mtall Africa Investment (SU) S.A. (“Mtall Africa”). Evidence provided by the Respondent demonstrates that Mtall Africa is an Angolan company registered in 2018 with a fiscal identification number and a business license to operate as a wholesaler. Its premises have also been certified as fit for business by the health authorities. Mtall Africa applied via an intermediary to Robert Bosch Lda for registration of its file in the Bosch system on December 17, 2019. In its application, Mtall Africa stated that its legal representative was Jianxun Guo, a Chinese national resident in Angola. Mtall Africa used the domain name <angobosch.com> in connection with a website offering for sale the Complainant’s products since November 2020. At the time of this Decision, that domain name redirects to the disputed domain name.

The disputed domain name was created on November 16, 2019. It resolves to a website in Portuguese for Mtall Africa that offers for sale a wide range of the Complainant’s power tool products. The website prominently displays a banner that reads “BOSCH Tecnologia para a vida. MTALL AFRICA, o agente oficial das Ferramentas Elétricas BOSCH em Angola” which may be translated as “BOSCH Technology for life. MTALL AFRICA, the official agent for BOSCH Power Tools in Angola”. The site prominently displays a logo for Mtall Africa and images of the Complainant’s products with prices in Angolan Kwanza. It offers delivery in

Luanda and provincial Angola. Although the website uses the BOSCH mark in plain type, it does not display the Complainant's BOSCH mark in a particular script nor the armature in a circle mark. Under the heading "Sobre nos" (meaning "About Us"), the website repeats the claim that Mtall Africa is the official agent for BOSCH Power Tools in Angola. According to evidence presented by the Complainant, Mtall Africa also promotes social media accounts on Facebook, Instagram, and Twitter that use the name "Bosch.Angola" and display the Complainant's marks, including BOSCH and the armature in a circle mark.

5. Parties' Contentions

A. Complainant

At the time of registering the disputed domain name, the Respondent was an authorized distributor, reseller and/or repair service operator of the Complainant in Angola although such authorization did not extend to the registration and/or use of a domain name incorporating the BOSCH mark. Upon learning of the registration of the disputed domain name, the Complainant attempted to resolve the matter amicably but, due to the Respondent's refusal to transfer the disputed domain name, the Parties' relationship has now been terminated. Although the Respondent is known to the Complainant, it is not related to the Complainant or any affiliate in any way and the Respondent is not authorized to use the BOSCH trademarks.

The disputed domain name is confusingly similar to the Complainant's BOSCH mark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register a domain name incorporating its BOSCH trademark. The Respondent is not an authorized distributor, reseller or repair services operator of the BOSCH-branded products. The website associated with the disputed domain name creates the illegitimate and false impression of an official commercial relationship between itself and the Complainant and/or that the website is endorsed by the Complainant, which it is not. The most obvious reason for the Respondent linking the disputed domain name in this manner was to attract the Complainant's attention in the hope of obtaining an offer to purchase the disputed domain name. As the Complainant's BOSCH-branded products are primarily distributed through official stores, as well as the fact that the Complainant does not endorse and/or authorize third parties, such as official/endorsed repair service operators, Internet users are clearly misled regarding the relationship between the Respondent's website and the Complainant. This false impression is amplified by the false statement at the top of the website that it is the official agent for BOSCH power tools in Angola.

The disputed domain name was registered and is being used in bad faith. The website is directed to Angola. It is evident from the Respondent's use of the disputed domain name that the Respondent knew of the Complainant's BOSCH trademark when registering the disputed domain name. It is also evident from the Respondent's use of the disputed domain name that the Respondent registered and used it with the intention to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's registered BOSCH trademark within the terms of paragraph 4(b)(iv) of the Policy. By reproducing the Complainant's registered trademark in the disputed domain name and the title of its website, the Respondent is clearly suggesting to any Internet user that the Complainant (or an affiliated dealer and authorized repair service operator of the Complainant) is the source of the website, which it is not. This suggestion is further supported by the Respondent's use of the Complainant's official product images and marketing materials, accompanied by a notice claiming copyright for the website and its contents. While, at the time of registration, the Respondent's website provided hyperlinks to the Complainant's Terms of use, Corporate Website, and cookie notice pages on the Complainant's official website – this does not offset the obvious risk that the Respondent could at any time use the disputed domain name to redirect Internet users to a website that is in no way associated with the Complainant. Lastly, the fact that the Respondent is using a privacy protection service to hide its identity may constitute a factor indicating bad faith.

B. Respondent

The Complainant holds rights in the BOSCH trademark but the Respondent was legally authorized by the Complainant to register and use the disputed domain name, to use the Complainant's trademark to set up the website associated with the disputed domain name, and to sell the Complainant's electric tools in Angola. The Respondent has obtained a good reputation for itself and for the Complainant in the Angolan market. However, the crucial requirement under the first element of the Policy is not confusion in the sense of trademark infringement but, rather, sufficient similarity between the disputed domain name and the trademark to constitute confusion.

The Respondent has rights and legitimate interests in respect of the disputed domain name. The Respondent uses the disputed domain name in connection with a *bona fide* offering of goods and services, as the Complainant's dealer/distributor. The Respondent satisfies the so-called *Oki Data* criteria as follows (i) the Respondent sells the Complainant's electric tool products through the website associated with the disputed domain name. The Respondent is an authorized dealer/distributor/repair service operator. The products sold on the Respondent's website are all purchased through the Complainant's official channels and have been reasonably authorized by the Complainant for sale. The Respondent submits invoices for sales it has made of the Complainant's products. In addition to online sales channels, the Respondent is also authorized by the Complainant to display, publicize and sell power tool products in supermarkets offline; (ii) the Respondent uses the website to sell only the Complainant's BOSCH electric tools. The Respondent has been selling the Complainant's power tools in Angola as the Complainant's authorized dealer since the website was launched. The Respondent has never represented or sold electric tool products or related services of other brands; (iii) the website associated with the disputed domain name clearly states the authorized dealer relationship between the Complainant and the Respondent and their supply chain relationship. It clearly states that it is "the official dealer of BOSCH electric tools in Angola" in a prominent position on the website. The website also links to the Complainant's official global and South African websites. The "About Us" section at the bottom of the webpage begins: "We are MTALL AFRICA, a BOSCH power tool distributor in Angola." It also states "We make progress together with BOSCH". This is sufficient to show that the Respondent operates in good faith and has a cooperative and authorized relationship with the Complainant; and (iv) the Respondent never "cornered the market" in domain names that included the BOSCH trademark.

When the disputed domain name was put into active use on November 27, 2020, the Respondent formally informed the Complainant by email, who gave a very high evaluation of the website launch in its email in reply. The Complainant has never expressly prohibited (or allowed) the Respondent to register or use the disputed domain name containing the Complainant's trademark. Rather, the Complainant clearly knew of and encouraged the Respondent to use the disputed domain name containing its BOSCH trademark to launch the website.

The Complainant's claim that the disputed domain name was registered in bad faith is baseless. First, the Respondent uses the disputed domain name with a website to sell the Complainant's electric tool products, which all bear the Complainant's trademark and logo. The Respondent displayed the Complainant's products on the website to better publicize and sell them. The Parties' relationship is that of producer and seller. Second, the Respondent's website is linked to the Complainant's official global and South African websites, which is actually better proof of the Parties' relationship. The Respondent also asked the Complainant to link from its official websites to the Respondent's website. As the Complainant's national/regional distributor, the Respondent has full rights and interests to use the disputed domain name with its website, which clearly states the relationship between the Parties. The Respondent has the full right to use the Complainant's official product images and related promotional materials as a dealer/distributor/maintenance service operator. Third, the use of privacy protection does not constitute bad faith, rather, it is due to the Registrar's compliance with the European Union General Data Protection Regulation. The Respondent does not use the disputed domain name in bad faith. The Parties are not competitors. None of the examples in paragraph 4(b) of the Policy apply.

6. Discussion and Findings

6.1 Procedural Issues

A. Consolidation: Multiple Complainants

The Complaint was filed by two Complainants against a single Respondent. Both Complainants form part of the same corporate group. The Second Complainant owns trademark registrations, including for BOSCH, that it evidently licenses the First Complainant to use. The Panel finds that the Complainants have a common grievance against the Respondent and that it is efficient to permit the consolidation of their complaints. Therefore, the Complainants are referred to below collectively as “the Complainant” except as otherwise indicated.

B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “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 Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that there is plenty of evidence showing that the Respondent is capable of communication in English as the disputed domain name is in Latin script, and the associated website includes a number of English words; whereas the Complainant has no knowledge of Chinese.

The Respondent requests that the language of the proceeding be Chinese. Its main arguments are that (i) there are no exceptional circumstances in this case that would justify the choice of a language other than the language of the Registration Agreement: the Parties have made no agreement regarding language and whether or not the Complainant can use Chinese is not a factor to take into consideration. The Complainant belongs to a well-known international company group that has many companies with tens of thousands, if not over 100,000 employees in China. Its claim not to understand Chinese is obviously not in line with the facts; (ii) the Complainant has submitted to the jurisdiction of the courts at the location of the principal office of the Registrar (*i.e.*, the courts in Beijing), which suffices to show that it is familiar with Chinese. Further, acceptance of the English version of the Complaint has created unfairness for the Respondent. The Complainant submitted nearly 500 pages of annexes in English in an effort to exploit the disadvantage of the Respondent, who is not familiar with English, behavior that is redolent of reverse domain name hijacking. The Complainant was under no time limit and had full capacity to translate the Complaint and annexes and resubmit them in Chinese. Instead, the Respondent had to process nearly 500 pages of materials in English and prepare the Response and annexes within a prescribed time limit. The Respondent, as an individual domain name holder not proficient in English, cannot defend himself and has had to expend considerable money, time and energy to hire professional translators, when these costs may be just a drop in a bucket for the Complainant. Lastly, the Complainant’s evidence only shows that the Respondent understands Chinese and Portuguese but not English.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); and *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that the Complaint and amended complaint in this proceeding were filed in English and the Response was filed in Chinese, with certain annexes in Portuguese accompanied by translations into Chinese. The very detailed content of the Response shows that the Respondent has in fact understood the

Complaint and availed itself of the opportunity to present its arguments. Therefore, the Panel considers that requiring the Complainant to translate the Complaint into Chinese would create an undue burden and delay whereas accepting both submissions as filed, without translation, does not cause prejudice to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English but that the Panel will accept the Response in Chinese, including the annexes in Portuguese with Chinese translations.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The above elements apply cumulatively; failure to demonstrate any one of them will result in denial of the Complaint.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the BOSCH mark.

The disputed domain name wholly incorporates the BOSCH mark. It adds a hyphen and the country name "Angola" but this addition does not prevent a finding of confusing similarity because the BOSCH mark remains clearly recognizable within the disputed domain name. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8.

The only other element in the disputed domain name is the generic Top-Level Domain ("gTLD") extension ".com". As a standard requirement of domain name registration, the addition of this element may be disregarded in the comparison with a trademark unless it has some impact beyond its technical function, which is not the case here. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Given the Panel's findings below regarding the third element in paragraph 4(a) of the Policy, it is unnecessary to consider the second element.

C. Registered and Used in Bad Faith

The third element in paragraph 4(a) of the Policy requires the Complainant to demonstrate that the disputed domain name has been registered and is being used in bad faith. The conjunctive "and" means that the Complainant must demonstrate both bad faith at the time of registration and bad faith subsequently. Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

- (iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] 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 [the respondent's] web site or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain name was created on November 16, 2019, years after the registration of the Complainant's BOSCH marks. The disputed domain name wholly incorporates the BOSCH mark and the country name "Angola" and it resolves to a website for Mtall Africa, which prominently claims to be the official agent for BOSCH Power Tools in Angola. The Complainant acknowledges that, at the time of registration of the disputed domain name, the Respondent was an authorized distributor, reseller, and/or repair service operator of the Complainant in Angola. Evidence submitted by the Respondent shows that Mtall Africa was indeed a customer of the Complainant from at least November 22, 2019, one week after the creation of the disputed domain name. Given the evidence of private correspondence between Mtall Africa and the Complainant annexed to the Response and the fact that the disputed domain name resolves to Mtall Africa's website, the Panel is willing to accept that the Respondent 马波 (ma bo) is associated with Mtall Africa. In these circumstances, the Respondent must have been aware of the Complainant and its BOSCH mark when he registered the disputed domain name.

However, the Complainant submits that its authorization of the Respondent did not extend to the registration and/or use of a domain name incorporating the BOSCH mark. Evidence submitted by the Respondent shows that Mtall Africa did not apply for registration of its file in the Complainant's system until December 17, 2019, one month after the registration of the disputed domain name. The Panel is unable to infer from the fact that the Respondent was reselling the Complainant's products prior to that date that the Complainant authorized or consented to the registration of the disputed domain name. Although the Respondent provides evidence of subsequent correspondence between the Complainant and Mtall Africa via an intermediary (from as early as July 15, 2020), this shows that their commercial relationship developed over time but it does not shed light on the circumstances that prevailed when the disputed domain name was registered. Ultimately, it is unnecessary for the Panel to reach a conclusion as to whether the disputed domain name was registered in bad faith in light of its findings below regarding the use of the disputed domain name.

As regards use, the disputed domain name resolves to a website for Mtall Africa, which prominently claims to be the official agent for BOSCH Power Tools in Angola and offers for sale the Complainant's products. Evidence submitted by the Respondent shows that on November 27, 2020, Mtall Africa, via an intermediary (Kelombe), informed the Complainant's Angolan affiliate Robert Bosch Lda that it had opened a BOSCH online store and invited the Complainant to visit it at "www.angobosch.com". The intermediary explained that Mtall Africa wished to establish the BOSCH online store as the most representative platform in Angola and looked forward to deepening its cooperation with the Complainant. The intermediary asked the Complainant to add Mtall Africa as an Official Authorized Agent on BOSCH's global website and to add the address of the online store in Angola. On December 2, 2020, the Complainant's Angolan affiliate replied, thanking the intermediary for this information, advising that the entire team at Bosch was very satisfied with this great step (by Kelombe), and undertaking to publicize and continue to support all good initiatives of this type. The evidence also shows that Mtall Africa still had an account with the Complainant's Angolan affiliate as recently as December 2022.

This evidence shows that the Complainant's Angolan affiliate expressly approved of Mtall Africa's registration and use of the domain name <angobosch.com>. Even though that is not the disputed domain name, it undermines the Complainant's allegation that it did not authorize the Respondent to register and/or use a domain name incorporating the BOSCH mark. It also shows that the Complainant's Angolan affiliate approved Mtall Africa's website, which was described as a BOSCH online store. Further, the Complainant's Angolan affiliate undertook to continue to support all good initiatives of this type. The Panel is unable to determine on the basis of the record that the use of the disputed domain name in connection with Mtall Africa's website is not an initiative of this type. The Panel has taken note that, unlike <angobosch.com>, the disputed domain name is a combination of the BOSCH mark and the complete geographical term "Angola", which clearly suggests affiliation with or endorsement by the Complainant, but the facts show that the Respondent has indeed been affiliated with and endorsed by the Complainant for approximately two years. Although the Complainant alleges that the Parties' relationship has now been terminated, it provides no evidence to substantiate that allegation, which the Panel cannot accept at face value because it is disputed.

The Panel further notes that the Complainant chose not to provide any evidence regarding its former relationship with Mtall Africa in the Complaint or amended Complaint, even though the disputed domain name resolves to that company's website.

The Complainant also alleges that the Respondent is using the disputed domain name to attract the Complainant's attention in the hope of obtaining an offer to purchase the disputed domain name. However, the Panel is unable to draw such an inference from the evidence presented.

For the above reasons, the Panel is unable to find on the basis of the record that the disputed domain name is being used in bad faith in terms of the Policy. Accordingly, the Complainant has failed to satisfy the third element in paragraph 4(a) of the Policy.

The Panel recalls that either Party is free to submit this dispute to a court of competent jurisdiction in accordance with the terms of paragraph 4(k) of the Policy.

D. Allegation of Unfairness to the Respondent

The Respondent alleges that the submission of the Complaint is redolent of reverse domain name hijacking. Specifically, it takes issue with the length of the annexes in English, which, it argues, are an effort to exploit the disadvantage of the Respondent, who is not familiar with English.

For the record, the Panel notes that the amended Complaint complies with the word limit in paragraph 11(a) of the Supplemental Rules. The Panel also notes that the amended Complaint contains nine annexes. Of these, the lengthiest contains screen captures of the Respondent's own website, and two others contain screen captures of the Complainant's global and African websites, with which the Respondent was familiar prior to this dispute. The other two lengthy annexes contain the Complainant's annual report and details of trademark registrations, five of which are in Portuguese. The Panel notes that the Respondent obtained an automatic extension of time to file the Response and that it succeeded in producing the very detailed Response by that extended deadline. In these circumstances, the Panel sees nothing that has caused unfairness to the Respondent, much less that would indicate that the Complaint was filed in bad faith, either in an attempt at reverse domain name hijacking or otherwise.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: July 13, 2023