

## **ADMINISTRATIVE PANEL DECISION**

**NXP B.V. v. 深圳市南皇电子有限公司**  
**(Shenzhenshinanhuangdianziyouxiangongsi aka Shenzhen Nanhuang**  
**Electronics Co., Ltd.) and 深圳市耐智电子有限公司 (Shenzhen Naizhi**  
**Electronics co. Ltd.)**  
**Case No. D2022-0149**

### **1. The Parties**

The Complainant is NXP B.V., Netherlands, represented by Corsearch B.V., Netherlands.

The Respondents are 深圳市南皇电子有限公司 (Shenzhenshinanhuangdianziyouxiangongsi aka Shenzhen Nanhuang Electronics Co., Ltd.), China; and 深圳市耐智电子有限公司 (Shenzhen Naizhi Electronics Co. Ltd.), China.

### **2. The Domain Names and Registrar**

The disputed domain names <nxp-china.com>, <nxp-cn.com>, and <npxnex.com> are 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 January 17, 2022. On January 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 18, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on January 21, 2022.

On January 18, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On January 19, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

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 Respondents in Chinese and English of the Complaint, and the proceeding commenced on January 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 17, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on February 21, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on February 23, 2022. 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**

### **A. Complainant**

The Complainant is a company incorporated in the Netherlands. The Complainant is one of the largest semiconductor manufacturers in the world, with research and development activities and manufacturing facilities in Asia, Europe and the United States of America. The Complainant has more than 55 years of experience in semiconductors, and operations in over 35 countries with approximately 30,000 employees, and a posted revenue of USD 6.1 billion in 2015. The Complainant has 25 locations in China, including in Shenzhen, where the Respondents are located.

The Complainant is the owner of numerous registrations for its trade mark NXP (the “Trade Mark”) in jurisdictions worldwide, including several registrations in China, for example, registration No. G917998, with a registration date of December 29, 2006.

### **B. Respondents**

The Respondent 深圳市南皇电子有限公司 (shenzhenshinanhuangdianziyouxiangongsi aka Shenzhen Nanhuang Electronics Co., Ltd.) and the Respondent 深圳市耐智电子有限公司 (shenzhen naizhi electronics co. ltd.) are both companies incorporated in Shenzhen, China.

### **C. The Disputed Domain Names**

The disputed domain names <nxp-china.com>, <nxp-cn.com>, and <nxpnex.com> were registered on November 16, 2015, September 22, 2014 and June 5, 2017, respectively.

### **D. The Websites at the Disputed Domain Names**

The disputed domain names resolve to websites that promote the Respondents’ business as distributors of electronic products and components, reproduce the word and logo versions of the Trade Mark, claim to be the agents or domestic agents of the Complainant, and purportedly offer for sale a wide range of semiconductor chips of the Complainant and/or its competitors (the “Website(s)”). The Website at <nxpnex.com> also refers to the Nexperia company and offers Nexperia products.<sup>1</sup>

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<sup>1</sup> The Complainant asserts that Nexperia used to be the Standard Product Division of the broader company NXP B.V. Nevertheless, Nexperia became a standalone company in 2017.

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that the disputed domain names are identical or confusingly similar to the Trade Marks, the Respondents have no rights or legitimate interests in respect of the disputed domain names, and the disputed domain names were registered and are being used in bad faith.

### B. Respondent

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

## 6. Discussion and Findings

### 6.1 Consolidation of Respondents

Section 4.11.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)) provides as follows:

"Where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario."

The Complainant contends that there should be consolidation of the Respondents in the present proceeding, for the following reasons:

- (i) the disputed domain names were registered using the same Registrar;
- (ii) the Websites share the same telephone number belonging to one of the Respondents. This telephone number is also used in the Whois details for each of the disputed domain names;
- (iii) the Websites at the disputed domain names <nxp-cn.com> and <nxp-china.com> display an identical quick response (QR) code that leads to the same WeChat account page, belonging to one of the Respondents;
- (iv) the Respondents share the same legal representative, and the same person is listed as the individual contact person for each of the disputed domain names; and
- (v) the Respondent 深圳市耐智电子有限公司 (shenzhen naizhi electronics co. ltd.) is both the registrant of the disputed domain names <nxpnex.com> and <nxp-china.com> and the administrative contact for the disputed domain name <nxp-cn.com>.

For the above reasons put forward by the Complainant, the Panel concludes that there are sufficient grounds to support the conclusion that the disputed domain names are subject to common control and that consolidation would be fair and equitable to all Parties. Save where the context suggests otherwise, the Respondents will accordingly be referred to in this Decision as "the Respondent".

### 6.2 Language of the Proceeding

The language of the Registration Agreements for the disputed domain names is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the Parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness

to the Parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the Parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, for the following main reasons:

- (i) in a previous UDRP case of the Complainant against the Respondent involving similar facts and circumstances, the panel determined that English was the appropriate language of the proceeding;
- (ii) in several other UDRP proceedings against the Respondent, the panels decided that the language of the proceedings would be English; and
- (iii) requiring the Complainant to translate the Complaint into Chinese would lead to an undue burden being placed on the Complainant, and undue delay to the proceeding.

The Respondent did not file a response and did not file any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the Registration Agreements, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel finds there is sufficient evidence to suggest that the Respondent is conversant in the English language. The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

### **6.3 Substantive Elements of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain names incorporate the entirety of the Trade Mark (see [WIPO Overview 3.0](#), section 1.7) followed by the word/letters "china", "cn" (the commonly used acronym for "China" in respect of domain names), and "nex" (an abbreviation for "Nexperia", previously related to the Complainant, and presently a standalone company), respectively.

Where a relevant trade mark is recognisable within a disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under the first element (see [WIPO Overview 3.0](#), section 1.8).

The Panel therefore finds that the disputed domain names are confusingly similar to the Trade Mark.

#### **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in the disputed domain names:

- (i) Before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain names or names corresponding to the disputed domain names in connection with a *bona fide* offering of goods or services; or
- (ii) The respondent (as an individual, business, or other organization) has been commonly known by the disputed domain names even if the respondent has acquired no trade mark or service mark rights; or
- (iii) The respondent is making a legitimate noncommercial or fair use of the disputed domain names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain names or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain names, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain names or that the disputed domain names have been used in connection with a *bona fide* offering of goods or services. To the contrary, the Respondent has used the disputed domain names in order to purportedly offer for sale a wide range of chips produced by the Complainant and/or competitors of the Complainant on the Websites under the Trade Mark; and to falsely represent the Respondent as the agent of the Complainant and of its chips under the Trade Mark, contrary to the fact.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain names.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain names.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

### **C. Registered and Used in Bad Faith**

In light of the manner of use of the Websites set out in section 6.3B. above and considering the prior registration of the Trade Mark, the Panel finds that bad faith has been established under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain names have been registered and are being used in bad faith.

### **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <nxp-china.com>, <nxp-cn.com> and <nxpnex.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Date: March 9, 2022