



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2001380
<b>Complainant:</b>	Maxwell Electronics Limited
<b>Respondent:</b>	Lin Hua Hui (林华辉)
<b>Disputed Domain Name:</b>	<maxwell-electro.com>

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**1. The Parties and Contested Domain Name**

The Complainant is Maxwell Electronics Limited, of Unit B1, 13F United Centre, 95 Queensway, Admiralty, Hong Kong.

The Respondent is Lin Hua Hui (林华辉), of tian he qu ke hua jie 351 hao guang ke yuan 07 ji ji xie yu (中国广东省广州市天河区科华街351号广科院07级机械与电子工程学院510000).

The domain name at issue is <maxwell-electro.com>, registered by Respondent with Xin Net Technology Corporation (北京新网数码信息技术有限公司), of 中国北京经济技术开发区地盛西路1号数码庄园B1座三层100176.

**2. Procedural History**

On 28 July 2020, Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center (“Center”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy, approved by ICANN Board of directors on 30 October 2009 (“Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“Supplemental Rules”). The Center confirmed receipt of the Complaint on 29 July 2020. Complainant elected that a single panelist decide this case.

On 29 July 2020, the Center transmitted by email to the Registrar, Xin Net Technology Corporation, a request for registrar verification of the disputed domain name. On 30 July 2020, the Registrar transmitted by email to the Center its verification response, confirming that Respondent is listed as the Registrant and providing contact details as: telephone 86-132-67232231-0 and email 13267232231@163.com.

On 10 August 2020, the Center notified Complainant by email that the Complaint as originally submitted did not name Respondent as the Registrant. On 14 August 2020,

Complainant submitted timely, in accordance with paragraph 4 (b) of the Rules, the revised Complaint, with exhibits.

On 14 August 2020, the Center transmitted the Complaint and evidence to Respondent by email to Respondent's registered email addresses, requesting that Respondent submit a Response within 20 calendar days, further specifying the due date as being on or before 3 September 2020.

Since Respondent defaulted and did not mention the Panel selection in accordance with the time specified in the Rules, the Supplemental Rules, and the Notification, the Center informed Complainant and Respondent by email on 4 September 2020, that the Center would appoint a single-member panel to proceed to render the decision.

On 4 September 2020, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the Center notified the parties that the Panel in this case had been selected, with Mr. David L. Kreider acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rule 6 and Articles 8 and 9 of the Supplemental Rules. In accordance with the Rules, subject to exceptional circumstances, a decision for the captioned domain name dispute shall be rendered by the Panelist on or before 18 September 2020.

### **Preliminary Issue –Language of the Proceeding**

On 10 August 2020, Complainant requested the Panelist to exercise its discretion under UDRP Rule 11(a) to determine that these proceedings would be conducted in English. Pursuant to UDRP Rule 11(a), the Panel finds that persuasive evidence has been adduced by Complainant to suggest the likely possibility that Respondent is conversant and proficient in the English language. After considering the circumstances of the present case, the Panel decides that these proceedings should be conducted in English.

### **3. Factual background**

Complainant, Maxwell Electronics Limited, was established in Hong Kong in 1966 and is a major manufacturer of electronic flash units (strobos) for digital single-lens reflex (DSLR) cameras, wire and wireless remote-controlled electronic power panners for tripods and light-emitting diode (LED) magnifying glasses. In 1980, the Complainant relocated its factory to Dongguan in Mainland China. All of its photographic equipment and supplies are manufactured in its own factory, which provides a one-stop service from design, metal tooling, plastic moulding and plastic injection to assembly, quality control and packaging. Complainant's major markets include Africa, Asia, Germany, Nigeria, the United Kingdom and the United States. Complainant also developed its own brands, such as Maxwell, RoHS and CE.

On its part, the Respondent in these administrative proceedings has defaulted and failed to submit timely, or at all, a Response to the Complaint.

### **4. Parties' Contentions**

#### **A. Complainant**

Complainant's contentions may be summarized as follows:

**i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights:**

Complainant submits that Respondent's Disputed Domain Name is confusingly similar to Complainant's registered trademarks "MAXWELL" and its common law rights in the Maxwell brand and in the company name Maxwell Electronics Limited, which are protected under the law of passing off in Hong Kong. The only differences being the inclusion of "-ELECTRO". The Disputed Domain Name wholly incorporates Complainant's MAXWELL mark. The addition of the generic term "ELECTRO" does not alter the underlying trademark or negate the confusing similarity and does not sufficiently differentiate the Disputed Domain Name from the trademark.

**ii) The Respondent has no rights or legitimate interests in respect of the domain name:**

Complainant has not authorized the registration or use of the Disputed Domain Name. Moreover, there is no evidence that Respondent has been generally known by the Disputed Domain Name, or to suggest that Respondent has acquired any trademark rights in relation to the Disputed Domain Name. As such, Respondent has no rights to use the Disputed Domain Name.

Similarly, Respondent has no legitimate interests in respect of the Disputed Domain Name. The Domain Name is not being used in connection with either a *bona fide* offering of goods or services, or for a legitimate non-commercial or fair use. Instead, the Disputed Domain Name is being used to host a domain parking site. The website includes Complainant's real physical address, but also includes a false email address: mw@maxwell-electro.com. Complainant infers that the website is being used for directing Internet users to websites of Complainant's competitors and to communicate with Complainant's suppliers and/or customers as part of a purposeful attempt to create and foster a false affiliation, association, and/ or connection to Complainant to deceive Complainant's employees and customers into believing that the website to which the Disputed Domain Name resolves is operated and maintained by Complainant.

**iii) The Disputed Domain Name has been registered and is being used in bad faith:**

The Complaint alleges, and Complainant provides screenshots to support its allegations, that the website to which the Disputed Domain Name resolves displays prominently the name "Maxwell Electronics Limited", the same company name as Complainant's and that Respondent is thereby holding itself out to the public as Complainant. The subject website also contains information about Complainant and its Director, Mr. Daniel Yu Chung-Kwong, which is incorrect and misleading. For example, the subject website states that the CEO of "Maxwell Electronics Limited" is the only son of Mr. Daniel Yu Chung-Kwong, where in fact, Mr. Yu does not have a son. In addition, the subject website contains a photograph of Mr. Daniel Yu Chung-Kwong which has been copied from another publicly available website.

Respondent is using the "MAXWELL" mark and Complainant's company name in its entirety in the Disputed Domain Name and website. The clear intent is to lead consumers to believe that Respondent is the Complainant, when, in fact, it is some unknown individual or entity attempting to trade on Maxwell Electronic Limited's name and goodwill.

## B. Respondent

The Respondent in these administrative proceedings has defaulted and failed to submit timely, or at all, a Response to the Complaint.

## 5. Findings

For the reasons set out below Complainant succeeds in establishing that the grounds under the Policy are satisfied and accordingly that the Domain Name should be transferred from Respondent to Complainant.

## 6. Discussion

Complainant has rights to the “MAXWELL” trademark which it registered in Hong Kong on 19 November 1976, as well as common law rights in the “Maxwell” brand and in the company name “Maxwell Electronics Limited”, since approximately 1966, which are protected under the law of passing off in Hong Kong.

Respondent registered the Disputed Domain Name on 26 April 2019.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent’s domain name has been registered and is being used in bad faith.

### A) Identical / Confusingly Similar

Complainant argues that Respondent’s Disputed Domain Name is identical to Complainant’s MAXWELL mark pursuant to Policy ¶ 4(a)(i). The Disputed Domain Name incorporates the Complainant’s mark in its entirety. The Panel finds that the addition of a hyphen and the generic term “ELECTRO” does not alter the underlying trademark or negate the confusing similarity, nor does it sufficiently differentiate the disputed domain name from the trademark. Further, the addition of the generic top-level domain “.com”), a standard administrative requirement for domain name registration, is irrelevant in distinguishing a disputed domain name from an established mark. See *Microsoft Corp. v. Mehrotra*, D2000-0053 (WIPO Apr. 10, 2000) (finding that the domain name <microsoft.org> is identical to the complainant’s mark).

A review of screenshots taken of the Respondent’s website confirms the conclusion that the Respondent targeted Complainant with the intention of registering the Disputed Domain Name to create confusion and lead consumers to believe that the Respondent is the Complainant, when, in fact, it is some unknown individual or entity attempting to trade on Maxwell Electronic Limited’s name and goodwill. Therefore, pursuant to Policy ¶ 4(a)(i), the disputed domain names are identical to Complainant’s MAXWELL mark.

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

### **B) Rights and Legitimate Interests**

Complainant alleges that Respondent has no rights or legitimate interests in the Disputed Domain Name. Once Complainant makes a prima facie case in support of its allegations, the burden then shifts to Respondent to prove it has rights or legitimate interests in the Disputed Domain Name pursuant to Policy ¶ 4(a)(ii). Based on the arguments made in the Complaint, the Panel finds that Complainant has established a prima facie case in support of its contentions. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA 741828 (Forum Aug. 18, 2006) (holding that the complainant must first make a prima facie case that the respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name).

Respondent's Disputed Domain Name resolves to a website that displays prominently the name "Maxwell Electronics Limited", the same company name as the Complainant, and also contains information about the Complainant and its director, Mr. Daniel Yu Chung-Kwong, which is incorrect and misleading. The subject website states that the CEO of "Maxwell Electronics Limited" is the only son of Mr. Daniel Yu Chung-Kwong, when in fact, Mr. Yu does not have a son. In addition, the subject website contains a photograph of Mr. Daniel Yu Chung-Kwong which has been copied from another publicly available website. Finally, Respondent's website lists Complainant's actual physical address, but provides a false email address. Respondent is attempting to pass itself off as Complainant by creating a likelihood of confusion in order to divert Internet users to Respondent's Disputed Domain Name. The Panel finds that such registration and use of an identical domain name is neither a *bona fide* offering of goods and services pursuant to Policy ¶ 4(c)(i), nor a legitimate non-commercial or fair use pursuant to Policy ¶ 4(c)(iii). See *Jim Williams v. Louis Smith*, FA0904001257389 (Forum May 28, 2009) (Respondent is attempting to pass itself off as Complainant by creating a likelihood of confusion in order to divert Internet users to Respondent's disputed domain names. The Panel finds that such registration and use of identical domain names is neither a bona fide offering of goods and services pursuant to Policy ¶ 4(c)(i), nor a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)).

Respondent's WHOIS registration is evidence that Respondent is not commonly known by the Disputed Domain Name, in that the Registrant is listed as "Lin Hua Hui (林华辉)." Without further evidence to the contrary, the Panel finds that Respondent is not commonly known by the Disputed Domain Name pursuant to Policy ¶ 4(c)(ii). See *Braun Corp. v. Loney*, FA 699652 (Forum July 7, 2006) (concluding that the respondent was not commonly known by the disputed domain names where the WHOIS information, as well as all other information in the record, gave no indication that the respondent was commonly known by the disputed domain names, and the complainant had not authorized the respondent to register a domain name containing its registered mark).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

### **C) Bad Faith**

Complainant contends that Respondent is using the Disputed Domain Name to direct Internet users to websites of Complainant's competitors and to communicate with the Complainant's suppliers and/ or customers, in a purposeful attempt to create and foster a false affiliation, association, and/ or connection to Complainant to deceive Complainant's employees and

customers into believing that the website to which the subject Domain Name resolves is operated and maintained by Complainant. The Panel finds that this constitutes bad faith use and registration pursuant to Policy ¶ 4(a)(iii). See *Monsanto Co. v. Decepticons*, FA 101536 (Forum Dec. 18, 2001) (finding that the respondent's use of <monsantos.com> to misrepresent itself as the complainant and to provide misleading information to the public supported a finding of bad faith).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

## 7. Decision

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

It is ORDERED that the <maxwell-electro.com> domain name be **TRANSFERRED** from Respondent to Complainant.



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David L. Kreider  
Panelist

Dated: 7 September 2020