



(Kuala Lumpur Office)  
**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	AIAC/ADNDRC-1218-2023
<b>Complainant:</b>	<b>HLX Sdn Bhd (previously known as GuoLine eMarketing Sdn Bhd</b>
<b>Respondent:</b>	<b>Allen</b>
<b>Disputed Domain Name:</b>	<GEMFLVE.com>

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

The Complainant is HLX Sdn Bhd (previously known as GuoLine eMarketing Sdn Bhd, of Level 32, Menara Hong Leong, No.6 Jalan Damanlela Bukit Damansara 50490 Kuala Lumpur. The Complainant's authorized representative is Mr. Brian Law / Ms. Shazreen Sher of Unit 12-01, Tower 8, Avenue 5, The Horizon Phase 2, Bangsar South, No.8, Jalan Kerinchi, 59200, Kuala Lumpur, Malaysia.

The Respondent is Allen.

The domain name at issue is <GEMFLVE.com> (the "Disputed Domain Name"), registered by the Respondent on 7 August 2020.

**2. Procedural History**

The Complaint was filed with the Kuala Lumpur Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") on 15<sup>th</sup> August 2023.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"). In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceeding commenced on 17<sup>th</sup> August 2023. According to Article 5 of the Rules, the Respondent was required to submit a Response (the Response Form R and its Annexures) on or before 6<sup>th</sup> September 2023. The Respondent has not filed a Response in accordance with the Supplemental Rules within the required period of time. On 7<sup>th</sup> September 2023 the Centre notified the parties the proceeding would be continued on default of the Respondent.

The Centre appointed Mr. Solomon Lam as the sole panelist in this matter on 11<sup>th</sup> September 2023. Mr. Solomon Lam has confirmed his availability to act as a panelist and his ability to act independently and impartially between the parties to this dispute.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute.

### **3. Language of this proceeding**

The Complaint has been submitted in English. Therefore, this proceeding shall be conducted in English.

### **4. Factual background**

The Complainant, previously known as GuoLine eMarketing Sdn Bhd, is the registered and / or common law proprietor of the GEMFIVE Marks, including its variants and extensions used in relation to various goods and services in Malaysia, Brunei, Singapore, Japan, Korea, Thailand, Philippines, and Vietnam. GEMFIVE was an e-commerce marketplace which is a horizontal platform owned and operated by the Complainant.

### **5. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions can be summarized as follows:

#### **(i) The Disputed Domain Name is Identical or Confusingly Similar**

The Complaint says that:

- a. The Disputed Domain Name <<https://gemflve.com/>> incorporates the word "GEMFLVE", which is extrinsically visually, phonetically and conceptually similar to that of the Complainant's GEMFIVE Marks;
- b. The Disputed Domain Name is used as an e-commerce platform, offering services identical to the registered classes of services of the Complainant's GEMFIVE Marks, which include advertising, online trading services, online marketplace (Class 35), distribution of consumer goods (Class 39), and / or e-commerce platform and online market place (Class 42). As such, the public is likely to draw immediate inference to the Complainant when accessing the website containing the Disputed Domain Name due to the nature of the Disputed Domain Name which is displayed as an e-commerce marketing platform. This fact suggests a deliberate attempt of the Respondent to take advantage of the Complainant's well-established reputation and exploit the Complainant's brand recognition to confuse visitors;
- c. In addition to the above, as part of the website under the Disputed Domain Name, the Respondent had used the mark "GEMFLVE", which is, once again, virtually, phonetically and conceptually similar to the GEMFIVE Marks. In this regard, it is apparent that the Respondent is utilising the domain name and designing their website to emulate that of the Complainant's GEMFIVE platform. The Respondent's deliberate choice to adopt a similar domain name and website display suggests an intention to create visual and navigational similarities with the Complainant's online presence.

The trademark registrations and extensive use of the GEMFIVE Mark by the Complainant and the Hong Leong Group both in Malaysia and internationally, it is clear that consumers and public at large would come to immediately associate the GEMFIVE Marks with the Complainant and the Hong Leong Group's products and services.

In view of the goodwill and reputation garnered by the Complainant in respect of the GEMFIVE Marks, coupled with the use of the Infringing Mark, any members of the public visiting the Disputed Domain Name would be confused or deceived into the mistaken belief that:

- a. The Complainant and / or the Hong Leong Group have endorsed, sanctioned and / or allowed the participation of the Respondent in the creation of the website under the Disputed Domain Name; or
- b. The Disputed Domain Name was created and / or associated with the Complainant and / or the Hong Leong Group and / or the GEMFIVE Marks; or
- c. The Complainant and / or the Hong Leong Group is responsible for the creation of the Disputed Domain Name as the Disputed Domain Name evidently contains the word "GEMFLVE" and / or the Infringing Mark, when this is not the case.

Therefore, the element that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has right is satisfied.

**(ii) The Respondent has no rights or legitimate interests in the Disputed Domain Name**

The Complainant contends that the Respondent has no legitimate interest in registering and / or holding the Disputed Domain Name due to the following reasons:

- a. The Disputed Domain Name have caused or will inevitably cause confusion, deception and mislead members of the trade and public due to the identical nature of the Disputed Domain Name with the GEMFIVE Marks.
- b. The Respondent is not commonly known or associated with the Disputed Domain Name registered and acquired by him. Moreover, the Respondent has not acquired the trademark of the 'GEMFLVE' Mark.

Furthermore, the GEMFIVE Marks had been used and registered as early as 9 March 2015, which precedes the Respondent's registration of the Disputed Domain Name. Hence, the Respondent cannot claim prior rights or legitimate interests in the Disputed Domain Name as the use and / or registration of the GEMFIVE Marks have preceded the registration of the Disputed Domain Name.

In light of the association of the Complainant with the Hong Leong Group, coupled with the marketing materials, and media coverage garnered by the Complainant's GEMFIVE website through the years of 2015 to 2017, the Respondents ought to be aware of the nature of the use of the GEMFIVE Marks in the GEMFIVE website.

The mere registration of the Disputed Domain Name does not establish the Respondent's rights or legitimate interests in the Disputed Domain Name.

Moreover, it is unlikely that any other entity, including the Respondent, would be commonly known by the Disputed Domain Name or to be commonly associated to the GEMFIVE Marks, in accordance with **paragraph 4(c)(ii) of the ICANN Uniform Domain Name Dispute Resolution Policy (“Policy”)**.

**(iii) No Bona Fide Offering of Services / Use of the Disputed Domain Name in Bad Faith**

The Complainant states that the Respondent’s knowledge of the Complainant’s reputation and nature of the Complainant’s goods and services can be established based on the following reasons:

- a. As an affiliate of the world-renowned Hong Leong Group, has operated an e-commerce commercial marketplace under the GEMFIVE Marks for a number of years, and has garnered its fair share of attention in relation to the same.
- b. In this regard, the Complainant finds it unlikely that the Respondent would have coincidentally registered and / or used and / or incorporating mark that is visually, phonetically and conceptually similar to the Complainant’s GEMFIVE Marks under the Disputed Domain Name, all while providing identical services, as earlier executed by the Complainant.

In the ‘About Us’ column on the Respondent’s website, it appears that the website lacks substantial and reliable information, and the ‘after-sales service line’ provided by the Respondents appears to be an invalid email address without an operational email server. Further, the customer service phone number, +6011 6130 5596, as provided on the Respondent’s website appears to be directed to a user which is unrelated to the disputed domain, and there have been several reports associating this phone number with suspected scams. These circumstances undoubtedly raise significant doubts on the trustworthiness of the business and further support the fact that the Respondent is acting in bad faith by using a confusingly similar domain name and engaging in the same nature of business as the Complainant’s to ride on the Complainant’s reputation.

As such, the Respondent’s use of the Disputed Domain Name is neither legitimate nor in good faith and is a blatant attempt to usurp and / or misappropriate the Complainant’s goodwill and / or commercial reputation, by mirroring the Complainant’s trade and services. It is clear and evident that the Respondent has intentionally attempted to attract for commercial gain from the internet users who misspelled the Complainant’s trademark as the domain.

The Complainant asserts that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name as the Respondent is not related, affiliated nor part of the Complainant and / or Hong Leong Group.

Due to the Disputed Domain Name, the businesses and trades of the Complainant and / or the Hong Leong Group would likely be negatively affected as it would tarnish not only the goodwill and reputation of the Complainant but that of Hong Leong Group as well, given that when accessing the Disputed Domain Name, the members of the public would likely be confused into believing that the Disputed Domain Name belongs or is controlled by the Complainant and / or the Hong Leong Group when this is not the case. Paragraphs 4(b)(iii) and (4)(b)(iv) of the Policy are satisfied.

B. Respondent

The Respondent has not filed a Response (the Response Form R and its Annexures) in accordance with the Supplemental Rules.

**6. Findings**

The 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 must be 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**

On the evidence before the Panel, the Complainant has established rights in the "GEMFIVE" mark through its registration and long use as in Malaysia and Asia since 2015.

The Panel considers that the generic top-level domain <.com> shall be disregarded (see e.g. *Pomellato S.p.A. v. Richard Tonetti*, WIPO Case No. D2000-0493). Therefore, the identifiable part of the Disputed Domain Name is "GEMFLVE".

"GEMFIVE" and "GEMFLVE" are very similar, particularly when the "L" in "GEMFLVE" is typed in small letter "gemflve". Therefore, the Panel accepts that the identifiable part of the Disputed Domain Name "GEMFLVE" is confusing similar with the Complainant's mark.

Therefore, the Panel finds that Article 4(a)(i) of the Policy is satisfied.

**B) Rights and Legitimate Interests**

Even the Respondent did not produce any evidence to support its rights and legitimate interests in using the Disputed Domain Name, the Complainant is still required to prove that the Respondent has no rights and legitimate interests (*Neusiedler Aktiengesellschaft v. Kulkarni*, WIPO Case No. D2000-1769).

As mentioned above, the Panel accepts that the Complainant has rights in the "GEMFIVE" mark in Malaysia and Asia. This pre-dated the registration of the Disputed Domain Name.

There is no evidence suggesting that the Respondent has any rights or legitimate interests to "GEMFIVE" or "GEMFLVE".

Therefore, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Panel finds that Article 4(a)(ii) of the Policy is satisfied.

### **C) Bad Faith**

From the contents of the website run by the Respondent through the Disputed Domain Name, it holds out as an eshop selling different variety of products under the name "GEMFLVE". It is obvious that the Respondent used the Disputed Domain Name intentionally to attract Internet users to the website for commercial gain by creating a likelihood of confusion with the Complainant's mark. The businesses and trades of the Complainant would likely be negatively affected. These are the situations stated under Article 4(b)(iii) and (iv) of the Policy.

The Panel finds that the Respondent has registered and used the Disputed Domain Name in bad faith for the purposes of Article 4(a)(iii) of the Policy.

### **7. Decision**

The Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. The Panel orders the Disputed Domain Name <GEMFLVE.com> be transferred to the Complainant.



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Solomon Lam  
Sole Panelist

Dated: 18<sup>th</sup> September 2023