



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

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| Case No. | HK-1600884 |
| Complainant: | GWS Technology (shenzhen) Co., Ltd |
| Respondent: | Jin Fan |
| Disputed Domain Name(s): | <gwstech.com> |

1. The Parties and Contested Domain Name

1.1 The Complainant is GWS Technology (shenzhen) co. Ltd, of No. 2 Plant, No.3 Building, Ailing Industrial Park, Tiantou Community, Pingshan Street Pingshan District Shenzhen (the “Complainant”) and represented by Li Junli of Beyond Attorneys At Law.

1.2 The Respondent is Jin Fan, of 1055 W. Hastings St. Vancouver, British Columbia Canada (the “Respondent”) and unrepresented.

1.3 The domain name at issue is <gwstech.com> the (“Disputed Domain Name”), registered by the Respondent with GODADDY.COM LLC, of 14455 N. Hayden Road 226 Scottsdale, AZ 85260, USA (the “Registrar”).

2. Procedural History

2.1 The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the “Centre”) on 19 August, 2016 and the Complaint was acknowledged by the Centre on the same date.

2.2 Upon receipt of a request for verification of the details of the registrant of the Disputed Domain Name from the Centre, the Registrar Go Daddy.com LLC, confirmed that the Respondent is listed as the registrant and confirmed the registrant’s contact details on 20 August, 2016. The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules for the Uniform Domain Name Dispute Resolution Policy (the “Rules”) and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

2.3 The Centre formally notified the Respondent of the Complaint and advised the Respondent of the prescribed twenty days deadline within which to file a response by 19 September, 2016. The Respondent failed to file a response to the Complaint.

2.4 The Centre appointed Mr. Ike Ehiribe as Sole Panelist in this matter on 23 September, 2016 and at the instance of the Panelist extended the time within which to render the decision.

3. Factual background

For the Complainant.

3.1 The Complainant owns the well-known trademark GWS registered in Canada in classes 9, 35 and 42 majorly for the production of LED panels, data processing equipment, outdoor and online advertising and television commercials etc. The Complainant is said to have been established in the year 2011 and owns the English trademark known as GWS. The Complainant is also said to be the world's leader and manufacturer of transparent LED panels and national high-tech products and owns well over twenty patented technologies. The Complainant's product types of GWS Technology includes XT, XW and XR series which are widely used in shop window advertising, chain restaurants, shopping malls, airport, museum, financial institutions, exhibitions and other premises of grand festival events, stage building, building curtain walls and other fields. The Complainant's client base is said to include Zara, Land Rover, Lamborghini, Chow Sang Sang, Wing Lung Bank Old Phoenix, Wanke Real Estate, American Max Theatres Canadian Blueshore Bank, NINE WEST, PRIMARK, MANGO, etc.

For the Respondent.

The Respondent is an individual with an address stated to be at No. 1055 W Hastings Street Vancouver, Canada. According to the WhoIs record attached to this proceeding the Respondent created the Disputed Domain Name <gwstech.com> on February 4, 2014 scheduled to expire on February 4, 2018.

4. Parties' Contentions

A. Complainant

The 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.

The Complainant asserts that the Disputed Domain Name <gwstech.com> is identical or confusingly similar to the Complainant's GWS trademark in which it has certain influence and strong distinctiveness in that: (i) the main body of the Disputed Domain Name <gwstech.com>,"gws" is confusingly similar to the registered trademark and English trade name "GWS" of the Complainant; (ii) the identification part of the main body of the Disputed Domain Name i.e."gwstech" wholly incorporates the English trademark and trade name of the Complainant and will certainly cause confusion in the minds of the public and Internet visitors and disrupt the Complainant's business; (iii) since 2011 the Complainant has been expanding its areas of influence and operations from the coastal region to Mainland China, and to Europe and to North America; (iv) in 2015 the Complainant established its Hong Kong Branch after registering same at the

Hong Kong Company registry and has since then developed and maintained its company website; (v) the Complainant normally uses its GWS trade name on its office building, product package, NetEase mailbox, and when uploading corporate videos onto Youku and YouTube; (vi) the Complainant has continued to invest heavily in publicity and advertisement for the reputation of its GWS trademark including participating in the famous DUTCH show in the year 2013; (vii) in the same year 2013 the Complainant registered its domain name as <gws-tech.com> and has been using the email address of admin@gws-tech.com since June 8, 2013 as its company email address.

- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name in accordance with paragraph 4(a)(ii) of the Policy.

The Complainant's case is that the Respondent has never been authorized, licensed or otherwise permitted by the Complainant to use the Complainant's trademark or trade name in any form whatsoever. Secondly, it is contended by the Complainant that the Respondent is intentionally using the Disputed Domain Name to attempt to attract for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation, or endorsement. Thirdly, as the Disputed Domain Name resolves to a website owned by the Respondent and displaying similar design styles copied from the Complainant's website; it is argued therefore, that such usage by the Respondent can never be described as a *bona fide* offering of goods and services as such activity involves outright infringement of the Complainant's registered trademark rights.

- iii. The Disputed Domain Name has been registered and is being used in bad faith.

The Complainant contends that the Respondent has definitely registered the Disputed Domain Name in bad faith and with malicious intentions. In the first instance the Complainant refers to the chronology of events with particular reference to massive development and expansion activities undertaken by the Complainant from 2011 to 2013 including expansion to North America where the Respondent is based. The Complainant therefore asserts that since the Respondent only registered the Disputed Domain Name in February 2014 well after the Complainant had taken considerable steps to publicise its trademark and trade name, it cannot possibly be argued by the Respondent that it was not aware of the prior existence of the Complainant's existing registered rights before deciding to create the Disputed Domain Name. Secondly, the Complainant argues that since the Respondent is in the same business as the Complainant and on September 5, 2014 changed the name of its company from Stylish Digital Ltd to GWS Design and Solutions Ltd and is in fact an agent of the Complainant, the Respondent must have deliberately registered the Disputed Domain Name with the intention of seeking commercial gain by taking advantage of the Complainant's "GWS" brand. In this regard, the Complainant alludes to the fact that it is highly possible for Internet visitors to mistake goods sold on the Respondent's website as emanating from the Complainant considering the ease with which the Complainant's prior domain name of <gws-tech.com> can be confused with the Respondent's Disputed Domain Name of <gwstech.com>. Thirdly, the Complainant submits that if the Respondent continues holding on to

the Disputed Domain Name, it will definitely obstruct and disrupt the Complainant's business aspirations which include carrying out further publicity and further expansion of its business online and abroad. The Complainant concludes by submitting that the Respondent's activity not only damages the Complainant's business reputation but also its normal operation activities.

B. Respondent

iv. The Respondent failed to file a response to the Complaint within the time stipulated in the rules.

5. Finding

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

A) Identical / Confusingly Similar

5.2 The Panel is undoubtedly satisfied that the Complainant has acquired prior established rights in the GWS trademark in a considerable number of jurisdictions including in Canada where the Respondent is domiciled. The Panel finds that the Complainant has adduced sufficient evidence indicating that the Complainant's trademark "GWS" has acquired worldwide reputation and recognition in the manufacture of transparent LED panels with the best resolution and brightness in the world and high-end technology products. The Panel is therefore, equally satisfied that the Disputed Domain Name <gwstech.com> created by the Respondent on February 4, 2014 is confusingly similar to the Complainant's trademark and in addition the Complainant's chosen domain name at <gws-tech.com>. Without any question, the Disputed Domain Name wholly incorporates the Complainant's "GWS" trademark as the dominant and most distinctive part of the Disputed Domain Name is the "gws" word. The Panel finds that the mere addition of the gTLD suffix ". com" does absolutely nothing to prevent a finding of confusing similarity. In arriving at this conclusion the Panel relies on the following previous cases which underline the insignificance of gTLD suffixes and generic terms when conducting a confusing similarity enquiry. Namely, *Promgirl LLC v. Weddingwhoo.com*, *Beijing Touchtel Tech. Co. Ltd*, HK-1500757; *Promgirl LLC v. Jack Zhang*, HK-1500814; *Alibaba Group Holding Limited v.*

B) Rights and Legitimate Interests

5.3 The Panel also finds that the Respondent has abysmally failed to adduce any evidence indicating that he has rights or legitimate interests in the Disputed Domain Name. The Respondent has not produced any evidence of authorization, permission or a license from the Complainant to use the Complainant's trademark under any circumstances, albeit, the Complainant admits that the Respondent is its agent. Secondly, the Panel finds that the Respondent has been intentionally utilizing the Disputed Domain Name to attract Internet visitors to its website for commercial gain by exploiting the confusion in the minds of Internet visitors as the Disputed Domain Name resolves to the Respondent's website which displays similarly crafted designs of the Complainant's website. The Respondent's activities in so far as it involves the infringement of the Complainant's protected rights and the diversion of potential customers from the Complainant's website cannot be described as the *bona fide* offering of goods and services nor a legitimate non-commercial or fair use of the Disputed Domain Name. See in particular a previous ADNDRC decision in *Promgirl LLC v. Changkang Wen*, HK-1500790 and in general an often-cited WIPO decision in *Oki Data Americas Inc. v. ASD Inc.*, WIPO Case No. D2001-0903.

C) Bad Faith

5.4 Now on the question of bad faith registration and use, the Panel finds without any hesitation that the Respondent deliberately registered the Disputed Domain Name in bad faith and has continued to engage in bad faith use. In arriving at this conclusion, the Panel has considered a number of irrefutable factors. First of all, the Panel has taken into account the chronology of events in this matter, considering that the Complainant was established in 2011 and by 2013 had embarked on a massive expansion and advertisement of its LED Panels and high-end technology products. The Respondent elected to create the Disputed Domain Name in February 2014, the Panel finds it inconceivable that the Respondent would not have been aware of the Complainant's extensive rights in, and worldwide reputation of, the "GWS" trademark before electing to create the Disputed Domain Name. Furthermore, the Panel does not only find that the Disputed Domain Name is confusingly similar to the Complainant's "GWS" trademark but that it also mirrors exactly the Complainant's domain name created in June 2013 at admin@gws-tech.com, except for the omission of the hyphen "-" between the words "gws" and "tech". Secondly, the Respondent changed its name from Stylish Digital Limited to GWS Design and Solutions LTD in September 2014. Thirdly, the fact that the Disputed Domain Name in itself resolves to the Respondent's website which displays similar designs from the Complainant's website confirms the deliberate and indeed bad faith or *mala fides* intentions of the Respondent; which is, clearly to benefit from the confusion in the minds of Internet visitors and potential customers of the Complainant for commercial gain. Finally, and in any event the Panel has drawn adverse inferences from the Respondent's failure to respond to this complaint and the attached exhibits.

6. Decision

6.1 For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel directs that the Disputed Domain Name <gwstech.com> be transferred to the Complainant forthwith.

Ike Ehiribe
Panelist

Dated: October 24, 2016