



Asian Domain Name Dispute Resolution Centre

hongkong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2001412</b>
<b>Complainant:</b>	<b>Ningbo Zhongzhe Mushang Holding Co. LTD</b> (宁波中哲慕尚控股有限公司)
<b>Respondent:</b>	<b>Xiang Ma</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;gxgmall.com&gt;</b>

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

The Complainant is Ningbo Zhongzhe Mushang Holding Co. LTD, of 628 Jinyuan Road, Yinzhou District, Ningbo City, Zhejiang Province, China.

The Respondent is Xiang Ma, of Sa Da Shi 1, A Shen Dun 2, Hebei, China.

The domain name at issue is gxgmall.com, registered by Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd.Suite 219 Scottsdale, AZ 85260.

**2. Procedural History**

Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“Centre”) electronically on December 18, 2020; the Centre received payment on January 5, 2021.

On December 22, 2020, GoDaddy.com, LLC confirmed by e-mail to the Centre that the Disputed Domain Name was registered with GoDaddy.com, LLC and that the Respondent, Xiang Ma, is the current Registrant of the Disputed Domain Name. GoDaddy.com, LLC has verified that Respondent is bound by the GoDaddy.com, LLC registration agreement which is in English language and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN’s Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”).

On December 22, 2020, the Centre notified the Complainant with the WHOIS information of the Disputed Domain Name and the Language of Registration Agreement being English, and request the Complainant to revise the complaint. On December 22, 2020, the Complainant submitted the revised complaint in English language to the Centre.

On December 23, 2020, the Centre served the Complaint and all Annexes, including \Written Notice of the Complaint, setting a deadline of January 12, 2021 by which Respondent could file a Response to the Complaint, via e-mail.

On January 13, 2021, the Centre confirmed no Response was received within the deadline.

On January 13, 2021, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the Centre serve a panelist appointment notice to Mr. Paddy Tam. On the same day, having declared no conflict of interests between the parties, Mr. Paddy Tam is appointed as the Panelist. The Panelist shall render a decision on or before January 27, 2021.

### **3. Factual background**

#### **A. Complainant**

Since its inception, the Complainant has adopted an integrated omni-channel business model, taking advantage of online and offline advantages to provide customers with a seamless and consistent shopping experience and improve efficiency in inventory management, supply chain management, product selection and logistics. in terms of new retail integration, the complainant is superior to other brands in the industry and becomes the leader among many brands.

The Complainant first launched the flagship GXG brand product in 2007. Since then, the Complainant has introduced lots of different fashion brands and recorded its annual turnover of 3.7 billion RMB in 2019.

#### **B. Respondent**

The Respondent is an individual in Hebei, China.

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

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. "GXG" is the core brand of the Complainant, which was identified as "well-known trademark" by the State Administration for Industry and Commerce in 2014. "GXG" brand is jointly created by Gill and Green brothers, and represents its two product lines, Gill: Urban Business Travel series; Green: Urban Street Holiday casual Style collection; Therefore, these elements are used in the LOGO. The X in the middle represents Gill and Green series: urban street holidays and urban business trips are intermingled with each other to make these young gentlemen dress up as fashionable, confident and dazzling as stars; The "GXG" logo is actually Gill Mix Green.

The Complainant has built a series of brands around "GXG", which is well known in the industry and has objectively formed a close corresponding relationship with the complainant. Apart from the suffix ".com ", the disputed domain name "gxgmall.com" is mainly identified as "gxgmall", and "Mall" is a

common English word, which is not used as a reference here. The remainder of the name is identical to the complainant's core trademark "GXG". In this case, at least the main features of the "GXG" trademark can be identified in the disputed domain name, which the complainant believes is liable to cause confusion among consumers.

At the same time, the Complainant has already used such domain names as "Gxgglobal.com" and "Gxgggroup.com" before the application for the disputed domain name. According to the Complainant, the domain name "gxgmall.com" in dispute points the domain name to gambling pornography websites, and the core element of the domain name "GXG" is likely to cause confusion among consumers.

- ii. The Complainant investigated on the official website of China Trademark Office in the name of the respondent "Xiang Ma" in this case, but no trademark application was found under the name of the respondent.

The Complainant has never directly or indirectly authorized respondent to use the "GXG" trademark and domain name in any form.

The Respondent is referred to as "Xiang Ma", and obviously it is impossible for him to have the relevant right of name with respect to "GXG".

- iii. The registration time of the disputed domain name "Gxgmall.com" is 2020-10-19, which is much later than the time when the Complainant used and applied for the trademark "GXG".

The Complainant has established a close correspondence with the trademark "GXG" and the trademark has a high visibility. There is little chance of a contested domain name being coupled to it, the Respondent knew or should have known the Complainant's trademark, the act of applying for a domain name was in bad faith. For the above purposes only, the Complainant believes that the act of applying for a domain name by the Respondent is subject to clause 4.b of the Policy, namely, the fact that the disputed domain name has been "maliciously registered".

The Respondent registered the disputed domain name and applied it to the gambling pornography website to guide visitors to click on the advertisements and videos on the page, so as to obtain corresponding benefits. Complainant maintains that the respondent has maliciously used the disputed domain name "Gxgmall.com", which satisfies Policy 4B (IV): by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

To sum up, the main identification part of the disputed domain name is very similar to the Complainant's "GXG" trademark, which is enough to cause confusion among consumers; The Respondent does not have a legitimate interest in the disputed domain name; And the Respondent has bad faith in the

registration or use of the disputed domain name. The behavior of the Respondent has seriously violated the legitimate rights and interests of the Complainant. In accordance with the relevant provisions and for the above reasons, the Complainant requests the panel to determine that the domain name in question "Gxgsmall.com" shall be transferred to the Complainant.

B. Respondent

The Respondent has not filed an official response within the required period.

**5. Findings**

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.

**Preliminary Issue – Language of Proceeding**

The Panel notes that the Registration Agreement is written in English as confirmed by the domain registrar and the Complaint was filed in both English and Chinese. Respondent did not file any official response.

The Panel is bilingual and is well equipped to deal with the proceeding in both Chinese and English.

Having considered the circumstances and in absence of an agreement between the parties, the Panel determines that the language requirement has been satisfied through the English language Complaint, and decides that the language of proceeding to be English.

**A) Identical / Confusingly Similar**

To satisfy the first element under Policy ¶ 4(a), a Complainant needs to prove its rights in a trademark and the domain name is identical and/or confusingly similar to the trademark.

First, the Complainant claims rights in the GXG mark through its registrations of the Trademarks with the China National Intellectual Property Administration (CNIPA) (e.g. Reg. No. 3083564, registered on January 29, 2002 et al.). By virtue of its trademark registrations, Complainant has proved that it has rights in the mark under Para. 4(a) of the Policy. See *Liberty Global Logistics, LLC v. damilola emmanuel / tovary services limited*, FA 1738536 (FORUM Aug. 4, 2017) (“Registration of a mark with the USPTO sufficiently establishes the required rights in the mark for purposes of the Policy.”). Accordingly, the Panel accepts that the Complainant has the registered Trademark rights in the GXG mark.

Second, the Complaint claims that the additional term “mall” does not distinguish the domain name from Complainant’s core trademark GXG. The Panel accepts that the additional term does not alter the underlying trademark or negate the confusing similarity and it does not sufficiently differentiate the disputed domain name from that trademark. In addition, the Panel also finds that the “.com” generic top-level domain (“gTLD”) is irrelevant when establishing whether or not a mark is identical or confusingly similar for the purposes of Policy ¶ 4(a)(i). See *Bytedance Ltd. v. Domain Administrator*, See *PrivacyGuardian.org / Nguyen Daong*, D2020-2843 (WIPO December 22, 2020) (“*The fact that the term “business” is associated with the Complainant’s brand only serves to confirm the confusing similarity between the disputed domain names and the Complainant’s trademark.*”).

Respondent makes no cognizable arguments with regards to Para. 4(a)(i) of the Policy.

For the foregoing reasons, the Panel finds the Complainant has satisfied Para. 4(a)(i) of the Policy.

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

To satisfy the second element under Para. 4(a) of the Policy, the Complainant must first make a *prima facie* case that the Respondent lacks rights and legitimate interests in the domain name, and the burden of prove then shifts to the Respondent to show it does have rights or legitimate interests. See *Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); see also *Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014) (“*Under Policy ¶ 4(a)(ii), Complainant must first make out a prima facie case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests*”).

Complainant argues Respondent lacks rights or legitimate interests in the Disputed Domain Name as the Respondent does not have any trademark application with the CNIPA. In addition, the Complainant claims that it has never directly or indirectly authorized the Respondent to use the GXG trademark and domain name in any form and it is impossible for the Respondent to have any relevant right of name with respect to the GXG trademark.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and the Respondent has not rebutted the assertion.

For the foregoing reasons, the Panel finds the Complainant has satisfied Para. 4(a)(ii) of the Policy.

## **C) Bad Faith**

To satisfy the third element under Para. 4(a) of the Policy, the Complainant must prove both the registration and use of the domain name is in bad faith.

First, Complainant argues Disputed Domain Name was registered much later than Complainant's prior use and application of the GXG trademark and the Respondent had constructive or actual knowledge of Complainant's GXG trademark at the time of registration of the Disputed Domain Name. Although panels have generally not regarded constructive notice as sufficient for a finding of bad faith, actual knowledge of Complainant's mark prior to registering is adequate to find bad faith under Para. 4(a)(iii) of the Policy. See *Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (FORUM Feb. 6, 2014) (“*The Panel notes that although the UDRP does not recognize ‘constructive notice’ as sufficient grounds for finding Policy ¶ 4(a)(iii) bad faith, the Panel here finds actual knowledge through the name used for the domain and the use made of it.*”); *Yahoo! Inc. v. Butler*, FA 744444 (FORUM Aug. 17, 2006) (finding bad faith where the respondent was “well-aware” of the complainant's YAHOO! mark at the time of registration). Considering the prior trademark registration, reputation of the brand and the location of both parties, the Panel agrees with the Complainant and finds that the Respondent likely have actual knowledge of Complainant's mark, demonstrating bad faith registration under Para. 4(a)(iii) of the Policy.

Second, the Complainant contends that the Respondent uses the Disputed Domain Name in bad faith because Respondent solves the Disputed Domain Name to a website with gambling and pornographically content together with advertisement for commercial gain. The Panel is of the view that using of a domain name similar to a famous brand to resolve to illicit content evinces trademark tarnishment and use of domain name in bad faith as per Para. 4(a)(iv) of the Policy. See *国泰君安(香港)有限公司；国泰君安证券股份有限公司 诉 lihua xiao*, HK-1901257 (ADNDRC September 24, 2019) (“*至于对争议域名的使用，诚如 UPRP 在先判例所述，‘尽管很多成人内容网站是合法的且构成善意提供商品或服务，但当该等网站所有人本身并不拥有注册商标或普通法意义上的商标权利而使用他人商标作为域名（或元标签）时，这显然不构成善意提供商品或服务，因为其使用该等商标作为域名或元标签的唯一原因就是，吸引那些原本想要寻找与该商标相关的商品或服务而非色情网站的客户。该等对商标的使用会造成消费者的混淆或对该商标的淡化，而这正是商标法所力图阻止的。因此，这种造成或试图造成违反法律的行为是无法被认定为善意的’。见：*Motorola, Inc. 诉 NewGate Internet, Inc.*，WIPO 案件编号 D2000-0079。在本案中，被投诉人擅自使用投诉人的商标注册为域名并在相应的网站上提供色情网站和线上博彩网站链接以期凭借“点击付费”获利的行为，不仅涉嫌违反中国《商标法》及《反不正当竞争法》的有关规定，还涉嫌违反中国在网络管理等方面的法律法规。因此，被投诉人对争议域名的使用已构成恶意使用。*”). See also Article 3.12 of WIPO Overview 3.0 (“*Noting that noncommercial fair use without intent to tarnish a complainant's mark is a defense under the second element, using a domain name to tarnish a complainant's mark (e.g., by posting false or defamatory content, including for commercial purposes) may constitute evidence of a respondent's bad faith.*”) Accordingly, the Panel agree that Respondent tarnishes Complainant's well-known trademark and attempted to commercially benefit off Complainant's mark in bad faith under Para. 4(a)(iv) of the Policy.

For the foregoing reasons, the Panel finds the Complainant has satisfied Para. 4(a)(iii) of the Policy.

## 6. Decision

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

Accordingly, it is Ordered that the Disputed Domain Name <**gxgmall.com**> be **TRANSFERRED** to the Complainant.

(Chinese version)

投诉人已根据《统一域名争议解决政策》第 4 条的规定证实全部三种情形同时具备，专家组裁定本案投诉**成立**。

就此，争议域名<**gxgmall.com**>的注册应**转移**给投诉人。

A handwritten signature in black ink, appearing to read 'Paddy Tam', is centered on the page. The signature is written in a cursive style with a horizontal line underneath it.

Paddy Tam  
Panelist

Dated: January 15, 2021