



# ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-0900266
<b>Complainant:</b>	Wistron Corporation
<b>Respondent :</b>	Jorge Augusto Gonzalez

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### 1. The Parties and Contested Domain Name

The Complainant is, Wiston **Corporation**, of **No.7**, Hsin An Road, Science-Based Industrial Park, Hsinchu Taiwan, R.O.C. (the Complainant).

The Respondent is Jorge Augusto Gonzalez, of Victor Chavarri 19, 3 puerta 8, Oviedo, Asturias, Spain (the Respondent).

The domain name in dispute is <wistron.tel>, registered by the Respondent with Tesys Internet SL (the Registrar), of C/ Barrera no 22, de Logrono, 26005 (La Rioja), Spain.

### 2. Procedural History

On 04 September 2009, pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”), the Rules of the Uniform Domain Name Dispute Resolution Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules (the ADNDRC Supplemental Rules, the Complainant submitted a complaint to the office of the Asian Domain Name Dispute Resolution Centre and elected that this case be dealt with by a sole panelist. On 09 September 2009, the Asian Domain Name Dispute Resolution Centre sent to the complainants by email an acknowledgement of the receipt of the complaint and on the same date sent the Registrar a request for verification. On 09 September 2009, the Registrar confirmed that it was the Registrar of the domain name in dispute and that the Respondent was the registrant of the domain name in dispute.

On 18 September 2009, the ADNRC requested from the Complainant a translation of the complaint form in the language of the Registration Agreement being Spanish as notified by the Registrar and on 23 September 2009 the Complainant forwarded the complaint in both English and Spanish languages.

On 02 October 2009 the ADNRC received from the Complainant the payment of the filing fee, and on that date notified the Respondent of the commencement of action.

On 27 October 2009 the Respondent submitted a Response to the ADNRC written in Spanish but accompanied with a covering letter written in English language.

On 27 November 2009 ADNRC notified the parties that the Panel in this case had been selected with Ike Ehiribe acting as sole panelist. The Panel appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules.

On 27 November 2009, also, the Panel received from ADNRC the case papers via email.

On 01 December 2009 the Panel issued a direction that the Respondent’s response written in Spanish be translated into English language and on 13 December 2009 issued a further direction extending the time within which to deliver the decision to 21 December 2009 in order as to provide ADNRC with sufficient time to translate the Respondent’s response and to give the Respondent sufficient time to approve the translation before onward transmission to the Panel.

On 15 December 2009, the Panel received the translated version of the Respondent's response from Spanish to English.

### **3. Factual Background**

#### *For the Complainant*

The Complainant is a corporation with headquarters in Taiwan and branch offices and factories across, Asia, North America and Europe. The Complainant employs approximately 30,000 employees worldwide and engages primarily in the design and manufacture of notebook PCs, Desktop systems, Server and Storage systems, handheld devices, networking and Communications products. The Complainant's revenue for the year 2008 is stated to be approximately US \$13.5B. The Complainant has also been listed and recognised in a number of Asian Business publications and for instance, has been ranked No. 1 for Taiwan Information Technology and No.8 for Global Information Technology worldwide.

The Complainant has since 2001 applied and registered the "wistron" trademark in the field of computer hardware, computer software, computer peripherals, display, OEM services, ODM services multimedia, telecommunication products, network systems etc. in the United States, Taiwan, Philippines, Mexico, Japan, Hungary, EU, China and Benelux. The copies of the registration certificates and trademark applications are attached at Annex 1. The Complainant has also forwarded the list of trademarks and domain names which the Complainant registered at Annex 2, and asserts, that not only do they have trademark rights, but also common law rights.

On 10 April 2009, the Respondent registered the disputed domain name "wistron.tel". The trademark "wistron" is the Complainant's trademark and the Complainant has not authorized the Respondent to use its trademark in Taiwan or in any other jurisdiction.

#### *For the Respondent*

The Respondent confirms that there is a company called "Wistron Corporation". The Respondent further confirms that he registered and created "wistron.tel" and that it is used in good faith. The Respondent denies the claims of the Complainant and confirms that his research, creation, innovation and promotion of the "tel" technology in Taiwan of which he is the first user, creator and developer has legitimate rights and interests that can be explained from different perspectives. The Respondent states further that when he created "wistron.tel" he did not receive any type of monetary profit or compensation of any kind and that no type of data has been used in a fraudulent form or to the detriment of the Complainant and elaborates further that he has incurred both personal costs both of a monetary nature and in terms of his personal time as well as psychological nature as he had to deal with absurd situations within the scope of academic researchers in Chung Hua University.

The Respondent states further that both Chung Hua University and Wistron are together with many other developers, integrating wider elements which among other things represent Taiwanese National Innovation System and the development of the first Incubator Company in the world that has applied this technology: the Innovation and Incubation Centre of the Chung Hua University.

The Respondent emphasises that through its work and research, the Complainant has indirectly benefited from its activities, therefore it is fair and necessary to decide the best way to share the future and present profits generated through the work of the Respondent.

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

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name "wistron.tel" is identical to the Complainant's trademark and service mark "wistron" in which the Complainant has registered rights. The Complainant contends further that since the disputed domain name wholly incorporates the Complainant's trademark

“wistron” and despite the addition of the gTLD , “tel” the first element of the policy has been satisfied in that the disputed domain name is identical or confusingly similar to a trademark or Service mark in which the Complainant has rights.

- ii. The Respondent has no rights or legitimate interests in respect of the domain name, in that the Respondent has never applied or registered any “wistron” trademark in any country. Secondly, the Complainant never authorized the Respondent to use the trademark “wistron”. Thirdly, there is no evidence that the Respondent ever intends to process the legitimate business or other activities by using the disputed domain name in good faith.
- iii. The Respondent registered the domain name “wistron.tel” and is using it in bad faith. The contact information displayed on the Respondent’s website is all copied from the Complainant’s website “wistron.com” except a Skype telephone number. Therefore the Respondent has registered the disputed domain name to gain commercial fees from Skype telephone calls and to attract commercial gain by creating a likelihood of confusion or misleading internet users to the Respondent’s website who may confuse the website as being affiliated to or endorsed by the Complainant’s trademark.

#### B. Respondent

The Respondent’s contentions may be summarized as follows:

- i. The disputed domain name was registered on 10 April 2009 together with other domain names selected and created for the research purposes of the Respondent at the Universities of Chung Hua and Chiao Tung in the city of Hsinchu where a thesis is currently being researched. The first time the Respondent became aware of the interest of the Complainant in the domain name was when he received communication from the ADNDRC on 02 October 2009.
- ii. That there was no intention whether illegitimate or malevolent of using information in the possession of the Respondent to harm the activities of the Complainant and neither did the existence of the “wistron.tel” impede or disrupt the business activities of the Complainant. The Complainant has benefitted indirectly without having to work or pay any money to get any of the benefits.
- iii. That the Complainant would have saved a lot of money if it had simply been kind enough to send an email message to the Respondents expressing its interest in the facts instead of starting an extremely expensive process and direct attack by administrative proceedings against the Respondents. The Respondent further believes that he has legitimate interest in the ownership of the disputed domain name and that his interest in research work and new technologies could prove mutually beneficial to both the Respondent and the Complainant if there was a desire for joint cooperation.

### 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 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) Language of the Proceedings.

The Panel observes that the complaint in this case was filed in English, while the registration agreement for the disputed domain name is in Spanish. Although the Complainant later filed a Spanish version of the

complaint, the Respondent later on filed a response in Spanish. The Respondent later insisted that the language of the proceedings should be in Spanish since the registration agreement of the disputed domain name was in Spanish.

According to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the registration agreement unless the Panel decides otherwise having regard to the circumstances of the proceedings. Paragraph 11 (b) empowers the Panel to order that any document submitted in language other than the language of the administrative proceeding be translated into the language of the proceeding. In effect the Panel is entitled to exercise its discretion in deciding whether a language other than that of the registration agreement will be the language of the administrative proceedings. Therefore in the circumstances of this case, the Panel took the view that the appropriate language of the proceedings should be English Language. In arriving at this conclusion, the Panel was satisfied that despite the assertions of the Respondent there was sufficient evidence that he understood the English Language quite well. For instance the Respondent a research student at the International Programs Department of the Chung Hua University in Taiwan had written to the ADNDRC centre in English language on 27 October 2009 apologising for the delay in responding and revealed that he had been in hospital due to influenza. Secondly, the document downloaded from the Respondent's website had contact and other manufacturing details written in English but definitely not in Spanish. Thirdly, the Respondent's response in Spanish had four exhibits attached to it all written in English language at pages 14, 15, 16 and 17. Therefore, in consideration of the foregoing circumstances, and in the interest of fairness, to all parties including the Complainant, the Centre, the Panel and the Respondent, the Panel decided that the English shall be the language of the administrative proceedings.

The Panel in support of this decision relied on earlier WIPO cases such as *Viacom International Inc. v. Sung Wook Choi* and *M Production* WIPO Case No. D2000 -1114 and *Groupe Industriel Marcel Dassault, Dassault Aviation v. Mr. Minwoo Park* WIPO Case No. D2003-0989. Where the Respondents' assertions in both cases, that Korean language be deemed the language of the administrative proceedings since Korean Language was the language of the registration agreement of the disputed domain name; were rejected by the Panels in preference for English Language. See also *Coloplast A/S v. Thomas Sugar* WIPO Case No. D2009 - 1005 where the Respondent's preference for Danish language was also rejected for similar reasons.

#### **B) Identical / Confusingly Similar**

The Panel without any hesitation, finds on the facts as submitted by the Complainant and undisputed by the Respondent, that the domain name <wistron.tel> is identical or confusingly similar to the Complainant's registered "wistron" trademark. The Panel is satisfied as the Complainant contends, that the addition of the gTLD, "tel" does not defeat the Complainant's first claim of confusing similarity. See generally, in this regard *Mediaset S.p.A v. Antonio Esposito, S.C.A. Service Controll Access, Amata International Network Co. Ltd* WIPO Case No. D2009-0026. See also *PT Mustika Ratu Tbk v. Quandev* Case No. HK 0900256.

#### **C) Rights and Legitimate Interests**

The Respondent has failed to provide any evidence or circumstances required to establish that it has rights or legitimate interests in the disputed domain name within the ambit of Paragraph 4 (c) of the Policy. The Complainant in the Panel's view has successfully established that the Respondent has no authority or licence to use the Complainant's registered trade mark or service marks. See generally *Croatia Airlines d.d. v. Modern Empire Internet Ltd* WIPO Case No. D2003- 0455.

The fact that the Respondent is engaged in research activity with the Chung Hua University in Taiwan does not in any way or form entitle the Respondent to engage in the unauthorized use of the Complainant's registered trademark. Furthermore, the Panel finds that the repeated reference to difficulties the Respondent may have had with the academic staff of the Chung Hua University with his research projects has no relevance to, or bearing upon the Complainant's well founded claim.

#### **D) Bad Faith**

The Panel equally finds without hesitation that the Respondent registered the disputed domain name in bad faith. In arriving at this conclusion, the Panel has taken into account the fact that the Complainant has registered several related trademarks and domain names since 2001 worldwide in Asia Europe and North America, before the Respondent decided to register the disputed domain name in April 2009. Contrary to the

assertions of the Respondent, the onus is on the Respondent to ensure that the disputed domain name is not used in violation the Complainant's registered trademark rights.

More significantly, the Respondent does not in any way refute the Complainant's assertion that the contact details displayed on its website are all copied from the Complainant's website. Equally, the Respondent does not deny the assertion that the disputed domain name was registered to create confusion in the minds of internet users who might be misled into thinking that the Respondent's website is associated with, affiliated with or endorsed by the Complainant's trade mark. The Panel has further taken into account the Respondent's belated belief that the disputed domain name could be transferred to the Complainant if only they complied with a number of conditions as further evidence of utmost bad faith use of the disputed domain name. The same finding is also made in relation to the Respondent's suggestion that there ought to be a means of exploring how the Respondent can share in the profit generated by the Complainant from its use of its own trademark. The Panel has drawn adverse inferences from the conduct and assertions of the Respondent; and by finding that the Respondent knew or ought to have known that they were using the disputed domain name in violation of the Complainant's registered rights. In this regard, see the often cited case of *Telestra Corporation Limited v. Jeon* WIPO Case No. D2001- 1161 where a Respondent's eventual advice to the centre that he would transfer the disputed domain name in that case to the Complainant and an offer to sell the domain name for profit were found, among others factors, to be indicative of bad faith registration and use. See in further support of this contention *Philip Securities Pte Ltd v. Yue Hoong Leong* Case No. HK -0900249.

## 6. Decision

For all the foregoing reasons, the Panel decides that the disputed domain name <wistron.tel>, shall be transferred to the Complainant forthwith.

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Ike Ehiribe  
Sole Panelist

Dated: 20 December 2009