



# 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-0900264
<b>Complainant:</b>	Wistron Corporation
<b>Respondent:</b>	Zhongshan Zhaojun Du

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### 1. The Parties and Contested Domain Name

The Complainant is Wistron Corporation (纬创资通股份有限公司), of 21F, 88, Sec. 1, Hsin Tau Wu Road, Hsichih, Taipei Hsien 221, Taiwan, R.O.C..

The Respondent is Zhongshan Zhaojun Du, of No. 15 Baolongzhao Street, Xiaolan Town, Zhongshan City, Guangdong P Zhongshan, China.

The domain name at issue is <纬创资通.com> (the "**Contested Domain Name**"), registered by Respondent with Web Commerce Communications Limited, of Lot 2-2, Incubator 1, Technology Park Malaysia, 57000 Kuala Lumpur, Malaysia (the "**Registrar**").

### 2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "**ADNDRC**") on 14 August 2009. On 26 August 2009, the ADNDRC transmitted by email to the Registrar a request for verification on the identity and details of the registrant of the Contested Domain Name. On 3 September 2009, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. Having confirmed that the Internet Corporation for Assigned Names and Numbers ("**ICANN**") Uniform Domain Name Dispute Resolution Policy (the "**Policy**" or "**UDRP**"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "**Rules**"), and the ADNDRC Supplemental Rules to the ICANN UDRP and Rules (the "**Supplemental Rules**") applied to the Contested Domain Name and that the language of the proceedings were to be in English, the ADNDRC transmitted by email to the Respondent a formal notification of commencement of proceedings on 22 September 2009. In accordance with Article 5(5) of the Supplemental Rules, the proceedings were deemed to have commenced on 22 September 2009.

In accordance with paragraph 5(a) of the Rules and Article 6(a) of the Supplemental Rules, the due date for Response was 12 October 2009. The Respondent did not submit any

response. Accordingly, the ADNDRC notified the Complainant of the Respondent's default on 14 October 2009.

On 16 October 2009, the ADNDRC notified the parties that Gabriela Kennedy was appointed as the sole panelist in this matter. The Panel finds that the appointment was made in accordance with paragraphs 6 and 7 of the Rules and Articles 8 and 9 of the Supplemental Rules.

### **3. Factual background**

The Complainant is one of the world's largest ODM (original design manufacturer) companies producing design, manufacturing and after sales services for computer, information and communication products. The Complainant's clients include world-renowned electronics companies and brands such as Sony, Hewlett Packard and Dell.

The Complainant is listed on the Taiwan stock exchange and its operations extend beyond Taiwan to include China, Japan, the Philippines, the Netherlands and the United States. The Complainant's revenue in 2008 was US\$130 billion. In June 2009 the Complainant was ranked eighth in BusinessWeek's Infotech 100, a ranking of technology companies worldwide based on shareholder return, return on equity, total revenues and revenue growth.

The Complainant has registered the "纬创" mark in traditional Chinese in respect of classes 9, 40 and 42 in Taiwan and in both traditional and simplified Chinese in China in respect of classes 9 and 40.

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

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Contested Domain Name is confusingly similar to the trade marks and service marks in which the Complainant has rights.
- ii. The Contested Domain Name is identical to "纬创资通" in which the Complainant has common law rights.
- iii. The Respondent has no right or legitimate interests in the Contested Domain Name as it has not provided any information asserting such right or interest; the Respondent has no registered trade marks in Taiwan and China for the mark "纬创资通" and has not been authorised by the Complainant to register any domain name; the Respondent has not used the Contested Domain Name since it was registered over 2 years ago; and the Complainant has been unable to find any connection between "纬创资通" and the Respondent from the WHOIS database.
- iv. The Contested Domain Name was registered in bad faith as a separate Panel reached such conclusion in a different domain name dispute between the same parties involving the <纬创资通.cn> domain name. The Contested Domain Name was registered by the Respondent shortly after registration of <纬创资通.cn>. Furthermore, a domain name registered in good faith should be used as soon as possible but the Respondent has failed to use the Contested Domain Name at all. In addition to this, as the complainant's marks are well-known in

both Taiwan and China, the Respondent must have been aware of this and therefore registered the Contested Domain Name in bad faith.

## B. Respondent

The Respondent did not reply to the Complainant's contentions.

Paragraph 14(b) of the Rules provides that where a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as it considers appropriate. Accordingly, the Panel may draw inferences from the Respondents' failure to submit a Response in accordance with paragraph 5(a) of the Rules as it considers appropriate.

## 5. 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

The Panel agrees with the Complainant that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded (*Rohde & Schwarz GmbH & Co. KG v. Perthshire Marketing, Ltd*, WIPO Case No. D2006 0762)).

The Panel notes that the words "纬创资通" are the first four Chinese characters of the Complainant's trade name, and that "纬创" is the most distinctive element of the Contested Domain Name (as "资通" is simply a commonly used colloquial term in Taiwan referring to information and communications). The Panel also notes that "纬创" has no meaning and would only generally be used in reference to the Complainant. Use of "纬创" in conjunction with "资通" in the Contested Domain Name would therefore very likely cause confusion as to the association of the said domain name with the Complainant and the products and services it provides.

Furthermore, it is well-established that the incorporation of the entirety of a mark in which Complainant has rights amounts to confusing similarity between the mark and the disputed domain name: *EAuto, L.L.C. v. Triple S. Auto Parts d/b/a Kung Fu Yea Enterprises, Inc.* (WIPO Case No. D2000-0047) and *Hoffmann-La Roche Inc. v. Tamiflu Shop* (WIPO Case No. D2006-0308).

Accordingly, the Panel finds that the Contested Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights in satisfaction of paragraph 4(a)(i) of the Policy.

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

In the absence of any evidence submitted by the Respondent to demonstrate that the Respondent:

- (a) used, or made demonstrable preparations to use, the Contested Domain Name in connection with a bona fide offering of goods or services;
- (b) has been commonly known by the Contested Domain Name; or
- (c) is making a legitimate noncommercial or fair use of the Contested Domain Name without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's "纬创" mark,

it is open to the Panel to infer that the Respondent does not dispute the Complainant's assertions.

In view of the absence of such evidence and the Complainant's contentions as set out at subparagraph (iii) at section 4A above, and noting also that in such circumstances as aforesaid, where a domain name is not in use it is open to the Panel to conclude that the Respondent had no rights or legitimate interests in the domain name (*Expedia, Inc. v. Miles Pennella* (WIPO Case No. D2001 1416)), the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy in respect of the Contested Domain Name.

## **C) Bad Faith**

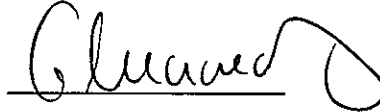
The Panel refers to the Complainant's contentions at paragraph (iv) above at 4A, and although the Panel does not agree with the Complainant's contention that a domain name registered in good faith should be used as soon as possible, the Panel finds that in view of the lack of apparent right and legitimate interest of the Respondent in the Contested Domain Name, the incorporation of the first four characters of the Complainant's name and also the Complainant's "纬创" mark in the Contested Domain Name combined with the Respondent's registration of <纬创资通.cn>, it is clear that as set out at paragraph 4(b)(ii) of the Policy that the Respondent registered the Contested Domain Name in order to prevent the Complainant from reflecting its mark and/or trade name in a corresponding domain name.

It is clear from the evidence put before the Panel that the Complainant's business and its "纬创" mark are well known and for the aforementioned reasons, it is clear that the Contested Domain Name is referring to the Complainant. The obvious implied reference to such a well-known brand by a party with no connection to the brand has been consistently found to be an indicator of opportunistic bad faith, even where the disputed domain name is not in use: *Parfums Christian Dior v Javier Garcia Quintas and Christiandior.net* (WIPO Case No. 2000 0226). Furthermore, the lack of use of a domain name that is not backed up by any legitimate rights and interests and that coincides with a well-known or renowned trademark owned by someone else is indicative of bad faith (see: *LACER, S.A. v Constanti Gómez Marzo* (WIPO Case No. D2001-0177)).

The Panel therefore finds that the Contested Domain Name was registered and used in bad faith in accordance with paragraph 4(a)(iii) of the Policy.

**6. Decision**

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Contested Domain Name <纬创资通.com > be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'G. Kennedy', is written over a horizontal line. The signature is cursive and extends to the right of the line.

Gabriela Kennedy  
Panelist

Dated: 28 October 2009