



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	HK-1901220
<b>Complainant(s):</b>	Guangzhou Automation Technology Co., Ltd. TIS Smarhome Co., Limited.
<b>Respondent:</b>	Hadi Hosseini
<b>Disputed Domain Name(s):</b>	< tisfactory.com >

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### 1. The Parties and Contested Domain Name

The First Complainant is Guangzhou Automation Technology Co., Ltd., of No.10 Heping Road, Second Building, Apt 201, Huijiang Village, Dashi Street, Panyu District, Guangzhou, China. The Second Complainant is TIS Smarhome Co., Limited., of Kiu Fu Commercial Building, 20th Floor Apt a, No. 300 Lockhart Road, Wan Chai, HK. The First Complainant and the Second Complainant are related companies.

The Respondent is Hadi Hosseini, of No.15,4th floor, moghaddas ardebili st., zaferanie, tehran, iran, tehran, tehran, ir, 1987915111.

The domain name at issue is <tisfactory.com>, registered by the Respondent with 1API GmbH.

### 2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (Hong Kong) (the “Centre”) on 12 February 2019, in accordance with the Uniform Domain Name Dispute Resolution Policy, adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October 1999 (the “Policy”), the Rules for Uniform Domain Name Dispute Resolution Policy, adopted by the ICANN on 30 October 2009 (the “Rules”) and the ADNDRC Supplemental Rules (the “Supplemental Rules”) effective from 21 July 2015. The Complainants selected to have the case decided by a single member Panelist.

On 12 February 2019, the Centre transmitted by email to 1API GmbH (the Registrar of the Disputed Domain Name) a New Case Notification, requesting for registrar verification in connection with the domain name at issue. On the same day, the Centre confirmed the receipt of the Complaint.

On 12 February 2019, the Registrar verified that the Disputed Domain Name was registered with it on 14 May 2018, the registrant was Hadi Hosseini, the Policy was applicable to this dispute, and the language of the registration agreement for the Disputed Domain Name was English.

On 13 February 2019, the Centre sent the Complainants a Notification of Deficiencies of the Complaint, referring to that 1) The information of the Respondent in the Complaint is different from the Whois information provided by the Registrar; and 2) The remedies sought is unclear in the Complaint Form, and requiring the Complainants to rectify the above deficiency within 5 calendar days (on or before 18 February 2019). On 15 February 2019, the Complainants filed the amended complaint with the Centre.

On 22 February 2019, the Centre confirmed the Complainants' compliance with the Policy and its Rules, and sent the Respondent a Written Notice of Complaint, requiring the Respondent to file a Response within 20 days (by or before 14 March 2019), in accordance with Paragraph 5 of the Rules and the Supplemental Rules. The proceedings formally commenced on 22 February 2019. The Respondent failed to file a Response within the required period of time. On 15 March 2019, the Centre sent to the Complainants and Respondent a Notice of Respondent in Default.

On 3 April 2019, the Centre sent a Notice of Panelist Appointment to the candidate panelist, Mr. Matthew Murphy, requesting his to confirm with the Centre his availability to act as a Panelist in this matter and if so, whether he was in a position to act independently and impartially between the parties. After confirmation, Mr. Matthew Murphy was appointed by the Centre as the sole Panelist in this matter. A decision should be issued by and before 18 April 2019.

### **3. Factual background**

#### *For the Complainants*

The Complainants claim that TIS Smarhome Co., Limited was founded in June 11, 2012, and Guangzhou Automation Technology Co., Ltd. was founded in January 28, 2015. The two Complainants provided industry-wide automatic products for families. With over 70 kinds of wired or wireless home automatic products, the Complainants innovatively offers latest and affordable solutions for all the family automation, to satisfy all the needs in life and constructions.

The Complainants claim that they already obtained many product certifications, and got a number of patents and registered these patents under Guangzhou Automation Technology Co., Ltd. The Complainants have sold their products to Pakistan, Kuwait, Turkey, India, etc. through exclusive agents or distributors and participated in a wide range of exhibitions around the world.

The Panel notes that the Complainants filed the PRC registration certificate materials for the trademark TIS under Registration No. 15486744 in relation to the goods in class 9 (the registrant is the Second Complainant). Further, the Panel also notes that the Complainants have registered and used many domains, such as tiscontrol.com, tissmarhome.com, tisknx.com, tis-bus.com, tis-air.com, knxtis.com.

The Complainants filed a series evidence, including product certifications, notarial patent certifications, procurement and sales contracts, photos in exhibitions, and nomination for the Edison Award, to show the reputation of the Complainants and their TIS brand.

#### *For the Respondent*

The Respondent, Hadi Hosseini, registered the Disputed Domain Name on 14 May 2018. The Respondent did not provide any submissions or evidence.

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

A. Complainants

The Complainants' contentions may be summarized as follows:

- (i) the Disputed Domain Name is identical or confusingly similar to a trade mark or service mark in which the Complainants have rights; and

It is claimed that the disputed domain "tisfactory.com" is highly similar to the Complainants' trademark "TIS", the Complainants' trade name and the Complainants' prior domains. The Complainants hold the prior trademark and trade name rights of "TIS". In the disputed domain "tisfactory.com", ".com" is gTLD, thus should be considered in confusing similarity test. The core part of the disputed domain is "tisfactory", which can be a source indicator. Moreover, "factory" is a fixed word, it can only express the location where the products were produced. In "tisfactory", "factory" is a generic word, thus "tis" should be the crucial part of the whole disputed domain. To be compared with the mark "TIS" over which the Complainants' own prior rights, the crucial part of the disputed domain "TIS" is totally the same. The combination of the Complainants' core brand "TIS" and "factory" is confusing to consumers and Internet users, in that they may take "tisfactory" as the production site of the Complainants' products. The Complainants registered a series of domains which use "TIS" as the core part, such as "tiscontrol.com" "tissmarthome.com", and actually used "tissmarthome.com" in their business. The disputed domain also complies with the naming habit of the domains that have been registered by the Complainants — — "tis" plus a generic word(s), such as factory. In this situation, the disputed domain can easily cause confusion.

It is claimed that the use of disputed domain will easily cause actual confusion. "TIS" has its unique origins. It comes from "Technology Intelligent System", meaning that the two Complainants are devoted to research and development in relation to automatic home systems. "TIS" is a fanciful word, it has inherent distinctiveness. The most crucial part of disputed domain is "TIS", which is totally the same with the Complainants' mark "TIS". Besides, the Complainants also registered some domains which included "tis", like "tiscontrol.com" "tissmarthome.com" as mentioned above. The two domains mentioned above are already used by the two Complainants as the tool to promote goods or services. The disputed domain not only is highly similar to the domains that the Complainants actually use, the content in the disputed domain website also copies the webpage from the Complainants' websites. As a result, the disputed domain will cause confusion among consumers and Internet users, and divert Internet traffic from the Complainants' website. Further, the disputed domain will damage the Complainants' legitimate rights.

- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and

The Respondent has no trademark rights regarding the contested domain name. The Respondent does not have obvious record of trademark registration for TIS related trademarks or any at all. Thus, no trademark rights regarding "tisfactory.com" can be considered for the Respondent.

The Respondent has no other rights regarding the contested domain name. There is no relationship between the Respondent and the Complainants, the Complainants also did not authorize the Respondent to use "TIS" in any form.

(iii) the Disputed Domain Name has been registered and is being used in bad faith.

The registration date of the disputed domain is May 14, 2018, which is much later than the time that the Complainants used and registered (January 21, 2016) the mark “TIS”, and the registration date of “tiscontrol.com” (March 4, 2017). Also, the Complainants did not authorize anyone to use the mark “TIS”. The Respondent arbitrarily used “TIS” as the core part of domain, without justification. Besides, the Respondent apparently wanted to attract Internet users for commercial gain by creating a “fake” website. The “fake” website has a domain name and webpages, similar to those of the Complainants’ official website.

The business that the webpage of disputed domain directs to, is of the same type as the Complainants’ main business. Besides, the Respondent publicly declared that the Complainants are counterfeits of its business. The disputed domain name has caused complaints from many of the Complainants’ distributors and has produced actual confusion.

The Respondent uses “TIS” as the main part of disputed domain name, and uploaded a warning notice on its website, stole the relevant information from the Complainants’ website (tissmarthome.com), and publicizes tiscontrol.com /tissmarthome.com owned by the Complainants are fake, and even claims that they are the official factory in China, claiming that Dadhah Pardzi Ava Co is not an agent in Iran, and claims Hooshmand Exiss is the real agent. These facts have hindered the Complainants from promoting their products and services through the authentic official website.

B. Respondent

The Respondent has not asserted any claims, defenses or contentions.

## 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.

### A) Identical / Confusingly Similar

The Panel finds that the Complainants own the rights in the “TIS” trademark in China, as per the PRC trademark registration certificate materials filed by them. Further, the Complainants have established the use and reputation of their TIS brand in China and some other countries.

In the Disputed Domain Name, “.com”, the domain extension, “should be ignored in the judgement of confusion” - see *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd.*, WIPO Case No. DZ006-0762 - whilst “tisfactory” completely contains the “TIS” trademark in which the Complainants enjoy relevant rights. Considering the extensive use and reputation of the Complainants’ TIS mark, the Panel concurs with the Complainants’

relevant claims and concludes that “tis” is the distinctive element of “tisfactory” in the Disputed Domain Name, and addition of the common word “factory” to “tis” would easily make people think that the website linked to the Disputed Domain Name is operated by or related to a factory under the “TIS” brand owned by the Complainants, and would particularly make people think that the Disputed Domain Name is an official or authorized domain name of the Complainants.

Based on the above, the Panel concludes that the Complainants own the rights in TIS trademark, as required under Paragraph 4(a)(i) of the Policy, and the Disputed Domain Name is confusingly similar to such trademark.

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

The Complainants assert that the Respondent does not own any registered trademark/trade name or any other legitimate rights associated with “TIS”.

Considering the distinctiveness and reputation of the Complainants’ TIS mark, the Complainants’ assertion above is “sufficient to constitute a prima facie showing of absence of rights or legitimate interests in the Domain Name on the part of the Respondent”, and “the evidentiary burden therefore shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that domain name” - see *Do The Hustle, LLC v. Tropic Web*, WIPO Case No. D2000-0624; *Conforama Holding v. Ying Liu*, WIPO Case No. D2010-0094.

In view of the fact that the Respondent failed to submit any evidence in respect of its legitimate interest in the Disputed Domain Name or its main sector, the Panel concludes that the Respondent has no legitimate interest in the Disputed Domain Name or its main sector, and accordingly the Complainants’ Complaint meets the requirements of Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

Upon years of use and/or advertisement of the TIS trademark by the Complainants, the trademark had already gained certain reputation in and beyond China, before the registration of the Disputed Domain Name, so it is reasonable to infer that the Respondent knew about its existence when registering the Disputed Domain Name - see *Banca Sella S.p.A. v. Mr. Paolo Parente*, WIPO Case No. D2000-1157; *Expedia, Inc. v. European Travel Network*, WIPO Case No. D2000-0137. No argument has been submitted by the defaulting Respondent in order to counter these findings. The Panel concludes that the Disputed Domain Name has been registered in bad faith.

Regarding use of the Disputed Domain Name, the Panel notes that the Disputed Domain Name is used by the Respondent to set up and operate a website that is apparently highly similar to the Complainants’ official websites and on the website created by the Respondent, a TIS mark that is completely the same as the Complainants’ TIS trademark device is used. The Respondent’s use of the Disputed Domain Name in this way, shows that it has intentionally attempted to attract Internet users to its website, by creating a likelihood of confusion with the Complainants’ mark as to sources of products and services sold on the website and specific relationship between the Respondent and the Complainants. Therefore, the Panel finds the Respondent’s such use consists with the situation referred to in Paragraph 4(b)(iv) of the Policy. It is noted that the Respondent failed to submit any evidence showing its factual or contemplated use in good faith, the Panel concludes that the Disputed Domain Name has been used by the Respondent in bad

faith (see *Telstra Corporation Limited v Nuclear Marshmallows*, WIPO Case No.D2000-0003; *Espirito Santo Financial Group S.A. v. Peter Colman*, WIPO Case No.D2001-1214).

**6. Decision**

Pursuant to Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, this Panel orders that the Disputed Domain Name < tisfactory.com > be transferred to the First Complainant.

*Matthew Murphy*

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Matthew Murphy  
Panelist  
Dated: 12 April 2019