



Asian Domain Name Dispute Resolution Centre

hong kong

**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.:</b>	<b>HK-1901286</b>
<b>Complainant:</b>	<b>World Trade Centers Association, Inc</b>
<b>Respondent:</b>	<b>keyun zhen</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;wtcachina.com&gt;</b>

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

The Complainant is World Trade Centers Association, Inc, of 115 Broadway, Suite 1202, New York, NY 10006, U.S.A..

The Respondent is keyun zhen, of leishen road nali District, Guangdong, Haizhu, 510200, China.

The domain name at issue is <wtcachina.com>, registered by the Respondent with GoDaddy.com, LLC; Registrar Abuse email: [abuse@godaddy.com](mailto:abuse@godaddy.com) and Contact Tel No.: +1.4806242505.

**2. Procedural History**

On 28 August, 2019, the Complainant's authorized representative, Dorsey & Whitney of Suite 3008, One Pacific Place, 88 Queensway, Hong Kong, submitted the Complaint with Annexures, in English, against the Respondent's registration of the disputed domain name <wtcachina.com> to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) (the Hong Kong Office), in accordance with the Uniform Domain Name Dispute Resolution Policy (UDRP) adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on 24 October, 1999, the Rules for UDRP (the Rules) approved by the ICANN Board of Directors on 28 September, 2013, and ADNDRC's Supplemental Rules for UDRP (Supplemental Rules) effective from 31 July, 2015. The Complainant requested a single person panel.

On 29 August, 2019, the Hong Kong Office transmitted via email in English to GoDaddy.com, LLC (the Registrar) requesting the Registrar to verify: (1) that the disputed domain name was registered with GoDaddy.com, LLC, (2) whether the Respondent is the current registrant or holder of the disputed domain name, (3) whether ICANN's UDRP applies to the Complaint of the disputed domain name, (4) what was the language of the Registration Agreement of the disputed domain name, (5) the respective dates of the registration and expiration of the disputed domain name, (6) that the disputed domain name would not be transferred to another holder during the pending administrative proceeding for a period of 15 business days after such

proceeding is concluded pursuant to paragraph 8 of UDRP, and (7) the relevant information of the disputed domain name from the Registrar's Whois database.

On 30 August, 2019, the Registrar responded to the Hong Kong Office providing the requested particulars, confirming the applicability of UDRP and the language of the Registration Agreement was English. On 3 October, 2019, the Hong Kong Office informed the Complainant that the Complaint was administratively compliant.

On 3 October, 2019, the Hong Kong Office sent to the Respondent a written notice in English, informing the Respondent, among others, that it had to submit a Response within 20 days i.e. on or before 23 October, 2019 in accordance with Article 5 of the Rules and the Supplemental Rules; and that English be used as the language of the proceeding.

The Hong Kong Office did not receive a Response from the Respondent in respect of the Complaint by the due date. On 24 October, 2019, the Hong Kong Office notified the Parties of the Respondent's default.

On 4 November, 2019, the Hong Kong Office appointed Mr Peter Cheung as the Sole Panelist in the present dispute, who confirmed that he was available to act impartially and independently between the Parties in this matter. The Panel finds that the Administrative Panel was properly constituted and appointed in accordance with the Rules and the Supplemental Rules.


### **3. Factual background**

World Trade Centers Association, Inc., the Complainant, was incorporated in 1969 and "WTCA" is the acronym of its name and its trademark. Headquartered in New York, U.S.A., it is a non-profit, non-political association that aims to unite business entities, trade associations, universities, and government agencies to enhance international trade and promote economic development and foreign investments through the establishment and operation of an extensive WTCA network.

The Complainant has over 200 registrations and applications for trademarks containing the terms "WTCA", "WTC" and "WORLD TRADE CENTER" throughout the world covering a wide range of goods and services.

The Complainant's trademark registrations for the "WTCA" and "WTC" marks as standalone marks in the United States, China, Hong Kong, Taiwan, Europe, and the United Kingdom covering a wide range of goods and services are provided in the following table (collectively, the "WTCA Marks"). Except for "WTC" in Classes 36, 37, and 39 in China, all of such marks were registered before 24 October, 2018, i.e. the registration date of the Disputed Domain Name. In any event, all of those marks were filed prior to the registration date of the Disputed Domain Name.

Among others, the Complainant has a valid and subsisting trademark registration for the "WTCA" mark as a standalone mark in the United States, which was first used since 25 January, 1970, in relation to "*association services, namely, fostering and promoting international business and trade relationships*" in Class 35.

	Jurisdiction	Trade Mark	Reg. No.	Reg. Date	Class No.
1.	United States	WTCA	4857631	November 24, 2015	35
2.	United States	WTC	1749086	January 26, 1993	42
3.	China	WTC	20207841	October 21, 2017	6
4.	China	WTC	20207840	July 28, 2017	8
5.	China	WTC	20207839	October 21, 2017	9
6.	China	WTC	20207838	October 14, 2017	14
7.	China	WTC	20207837	October 14, 2017	16
8.	China	WTC	20207836	October 14, 2017	18
9.	China	WTC	20207835	July 28, 2017	21
10.	China	WTC	20207833	July 28, 2017	28
11.	China	WTC	1969067	December 28, 2012	35
12.	China	WTC	19485777	March 21, 2019  Application date: March 31, 2016	36
13.	China	WTC	23655439	November 28, 2018  Application date: April 19, 2017	37
14.	China	WTC	20207832A	August 28, 2017	37
15.	China	WTC	1959527	January 21, 2013	38
16.	China	WTC	20207831	April 28, 2019  Application date: June 6, 2016	39
17.	China	WTC	1983918	December 21, 2012	41
18.	China	WTC	2002027	November 7, 2012	42
19.	Hong Kong	WTC	2005B00730A	August 27, 2002	35, 38, 41, 42
20.	Hong Kong	WTC	303797083AA	June 3, 2016	6, 8, 9, 14, 16, 18, 21, 25, 28, 37
21.	Hong Kong	 WTC WTC	302758979	October 8, 2013	35, 36, 38, 41, 42, 43
22.	EU	WTC	012783411	May 14, 2015	35, 36, 38, 41, 42, 43
23.	UK	WTC	EU012783411	May 14, 2015	35, 36, 38, 41, 42, 43

- **Exhibit C** - True and correct copies of trademark records and/or Certificates of Registration evidencing Complainant’s ownership of the relevant trademark registrations for the WTCA Marks in the United States, China, and Hong Kong.
- **Exhibit D** - A selected list of the relevant trademark registrations for “WTCA”, “WTC” and “WORLD TRADE CENTER” in the United States, China, Hong Kong, Europe, and the United Kingdom.

#### 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:**

Since at least as early as 1969, the Complainant has continuously used the “WTCA”, “WORLD TRADE CENTER” and “WTC” as standalone marks in identifying itself and/or its goods and services, including education services such as organizing seminars and other training programs covering various international business activities. To date, over 300 licensees of the WTCA in nearly 90 countries have used the WTCA Marks to serve more than 750,000 international organizations and businesses worldwide.

In addition to trademark registrations, the Complainant owns registrations for the domain names <wtca.org> and <wtca.cn>. The Complainant has used the domain name <wtca.org> since at least as early as 1995 to operate its website, as well as the domain name <wtca.cn> to operate its Chinese website since 2013, to actively promote and advertise its goods and services under the “WTCA” and “WTC” marks.

Domain Name	Date of Registration
Wtca.org	May 18, 1995
Wtca.cn	October 11, 2013

- (a) **Exhibit E** - Copies of WHOIS records evidencing the Complainant’s ownership of the domain names <wtca.org> and <wtca.cn>.
- (b) **Exhibit F** - Selected printouts of the <wtca.org> website with the “WTCA” mark being annotated in red square brackets.
- (c) **Exhibit G** - Selected printouts of the <wtca.cn> website with the “WTCA” mark being annotated in red square brackets.

Through the long-term, continuous, and widespread advertising, promotion, and use of the WTCA Marks by the Complainant and its licensees, the WTCA Marks have become widely known, and have become uniquely identified as the Complainant since the 1960s. In fact, the name “WTCA” is so unique and consists of such rare and distinctive combinations of English letters that the general public including those in China will only associate them with the WTCA, i.e. the Complainant. This is evident by the results of various Internet searches.

- (d) **Exhibit H** - Relevant printouts of Internet searches against “WTCA” on Google and Baidu (the most popular search engine in China).

In addition to those registered rights, the Complainant has expended enormous amount of time, effort and money in promoting and advertising its goods and services bearing the WTCA Marks and protecting its global brand to benefit its licensees since the 1970s in various jurisdictions including the United States and China throughout the years. Just in China alone, WTCA's licensees include WTC Anyang, WTC Beijing, WTC Shanghai, China WTC, WTC Chongqing, WTC Dandong, WTC Fuzhou, WTC Kunming, WTC Nanjing, WTC Nansha, WTC Quanzhou, WTC Suzhou, WTC Tianjin, WTC Yongjia, and WTC Zhengzhou.

- (e) **Exhibit I** - Relevant printouts of WTCA's licensees in China showing use of the WTCA Marks.

As a result of the Complainant's over 50 years of use of the WTCA Marks, the general public have come to know and recognize the WTCA Marks (and particularly, "WTCA") such that the public immediately recognize goods and services bearing the "WTCA" and/or "WTC" marks as originating from the Complainant, i.e. the WTCA. Given that the Complainant has been using the domain names of <wtca.org> and <wtca.cn> as its official websites, "WTCA" as the domain name of the email address for its employees, and the "WTCA" mark to identify itself in commerce since the 1960s, the "WTCA" mark functions as both a trademark and a trade name which has acquired distinctiveness or secondary meaning.

- (f) **Exhibit J** - Copies of the decisions, *Elan, LLC v. Al Perkins*, FA1705001731999 (Forum June 26, 2017), holding that there is common law trademark rights in the trade name "ELAN STUDIO" of the complainant and finding confusing similarity when the respondent combined the complainant's "ELAN SUTDIO" to form the disputed domain name <elanstudionola.com>, and (b) *Nu Mark LLC v. Bui, Long*, D2013-1785 (WIPO December 22, 2013), holding that the complainant's visually distinctive spelling of "NU Mark" has become a distinctive identifier of the complainant and its product, and finding confusing similarity when the respondent combined the complainant's trade name "NU MARK" to form the disputed domain name <numarkcigs.com>.

In sum, there can be no doubt that the Complainant enjoys prior rights in its WTCA Mark, particularly the "WTCA" mark as a standalone mark. Given also the terrorist attack on 11 September, 2001, the worldwide fame of WTCA is indisputable.

In this case, the Disputed Domain Name is identical with or confusingly similar to the WTCA Marks. It incorporates "WTCA" or "WTC" in its entirety. The addition of "china" to the distinctive portion of the Disputed Domain Name does not draw a reasonable Internet user's attention away from the fact that the principal element of the Disputed Domain Name is identical to Complainant's "WTCA" or "WTC" mark, as it only indicates that the Disputed Domain Name is related to China. Prior panels have held that the addition of geographic terms does not negate confusing similarity but often tends to emphasize it, and is irrelevant to consider in the determination of Paragraph 4(a)(i) of the Policy (see *Elan, LLC v. Al Perkins*, holding that the addition of "nola", which is a popular name for New Orleans, is not sufficient to negate confusing similarity in the disputed domain name <elanstudionola.com>, attached as **Exhibit J**).

In fact, the addition of "china" in this case further increases the likelihood of confusion due to the Complainant's notable presence in China, as the general public are likely to believe that the Disputed Domain Name relates to the Complainant's official website in China and would further divert Internet users away from the Complainant's official Chinese website at <wtca.cn>.

In relation to the gTLD suffix, Section 1.11 of the *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition* (“[WIPO Jurisprudential Overview 3.0](#)”) states that the applicable TLD in a domain name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

Given the worldwide renown, long-term use and established registered and common law rights in the WTCA Marks, and the fact that the Disputed Domain Name incorporates the Complainant’s visually distinctive spelling of “WTCA” or “WTC” verbatim plus the word “china”, the Disputed Domain Name is therefore identical with or confusingly similar to Complainant’s “WTCA” or “WTC” mark and infringes upon the Complainant’s prior legal rights. Therefore, the Complainant satisfies the first requirement stipulated under Paragraph 4(a) of the Policy.

**ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:**

As discussed above, the most distinctive element in the Disputed Domain Name is “WTCA”, which is a widely known indicia of the Complainant. In contrast, the Respondent does not have any rights or legitimate interests in respect of the Disputed Domain Name. Noting the difficulty of proving a negative, prior panels have found that a complainant’s burden of proof on this element is light.

- (g) **Exhibit K** - A copy of the decision *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, D2003-0455 (WIPO, August 21, 2003).

According to the WHOIS database, the registrant of the Disputed Domain Name is one “keyun zhen”, which appears to be an individual that does not have any relationship with anything related to the WTCA, and has never been authorized to identify itself as “WTCA” or “WTC”, nor licensed to use the Complainant’s WTCA Marks. The Respondent is not and has not been commonly known by the Disputed Domain Name.

The Respondent’s website that is set up using the Disputed Domain Name (“**Respondent’s Website**”) references the name “School of Management Science and Engineering” (“**SMSE**”), alongside a logo of a Chinese university named as ShanDong Technology and Business University (“**S**DTBU”).

- (h) **Exhibit L** - True and correct printouts of the Respondent’s Website. Note that many of the links are inaccessible upon clicking on them.

SDTBU is a public university in Shandong Province, China, and SMSE is one of the departments at SDTBU. However, the Complainant’s further searches revealed that the official website of SMSE is set up at <gc.sdtbu.edu.cn> (under the official website of SDTBU at <www.sdtbu.edu.cn>), which has a second-level domain name of *edu.cn* regulated by the China Education and Research Network Information Centre (“**CERNIC**”) which is reserved only for educational institutions in China (“**S**DTBU’s **W**ebsite”).

While the Respondent’s Website has used the logo of SDTBU and copied a large portion of the layout, contents and information from SDTBU’s Website, the Respondent does not appear to have any relationship with SDTBU or SMSE. Moreover, while SDTBU’s Website has been kept up to date to 2019, the recent updates are not found in the Respondent’s Website, and many tabs (or sub-pages) in the Respondent’s Website are actually inaccessible upon clicking on them. As

such, it is more likely than not that the Respondent has used SDTBU's logo and the copyrighted webpages of SDTBU's Website without the authorization of SDTBU or SMSE. In any event, the contents of the Respondent's Website as copied from SDTBU's Website did not refer to any of the WTCA Marks, and the name of SDTBU does not appear to have any relationship whatsoever with "WTCA", "WTC" or the Complainant. This further confirms that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name, and the Disputed Domain Name is not registered and used in good faith.

- (i) **Exhibit M** - Printouts of several selected webpages of SDTBU's Website with contents that are being copied by the Respondent in the Respondent's Website.

Based on the foregoing, there is *prima facie* evidence to prove that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant satisfies the second requirement stipulated under Paragraph 4(a) of the Policy, and the Respondent bears the burden of proofing that it has such rights or legitimate interests.

- (j) **Exhibit N** - A copy of the decision *Mr. Price Group Limited v. Registration Private, Domains By Proxy, LLC / Mr Price*, D2019-0878 (WIPO, July 9, 2019).

**iii) The Disputed Domain Name has been registered and is being used in bad faith:**

As mentioned above, the Complainant is a renowned association with over 50 years of history and its distinctive WTCA Marks have become very well-known due to its long term and extensive use. On the other hand, the Respondent does not appear to have any rights or interest in registering and/or using the Disputed Domain Name. The Disputed Domain Name was only registered in October 2018 and contains the WTCA Marks in its entirety. Given the fame and reputation of the Complainant and the WTCA Marks globally including China, it is virtually impossible for the Respondent to have selected the Disputed Domain Name without knowing same. The Respondent should have been well aware of the Complainant and the WTCA Marks prior to registration, and the Disputed Domain Name has clearly been registered and is being used in bad faith.

- (k) **Exhibit O** - Copies of two (2) decisions, namely: *Victoria's Secret et al v. Sherry Hardin*, Case No. FA 96694 (NAF, March 31, 2001) and *America Online, Inc. v. Anson Chan*, D2001-0004 (WIPO, February 22, 2001) which show that it has been widely held by previous panels that evidence of bad faith registration "*includes actual or constructive knowledge of a commonly known mark at the time of registration.*"
- (l) **Exhibit P** - A copy of *Cellular One Group v. Paul Brien*, D2000-0028 (WIPO March 10, 2000) which finds bad faith where a domain name contains a complainant's trademark which has been in use for a substantial time prior to the registration of the disputed domain name.

In fact, the Complainant has sent two letters to the Respondent at the registered email address of [customary0@gmail.com](mailto:customary0@gmail.com) regarding the Disputed Domain Name on 14 December, 2018 and 18 January, 2019. However, no reply has ever been received by the Complainant. If the use of the Disputed Domain Name and the posting of SDTBU's logo and copyrighted webpages of SDTBU's Website on the Respondent's Website as mentioned above were indeed authorized by SDTBU, SDTBU would have provided a reply to the Complainant. The Respondent's failure to respond to the Complainant's repeated demand letters and continued registration and use of the Disputed Domain Name after having actual notice of the WTCA Marks constitutes bad faith.

- (m) **Exhibit Q** - True and correct copies of correspondence sent from the Complainant to the Respondent regarding the Disputed Domain Name.

By registering and using the Disputed Domain Name, the Respondent has prevented the Complainant from using its marks in a corresponding domain name, and disrupted the business of the Complainant. Worst still, it has also created confusion among the general public in respect of the relationship between the Respondent's Website, SDTBU and the Complainant. Specifically, some licensees or sponsors of the WTCA are universities, and the WTCA often organizes and conducts conferences, seminars, or workshops for educational purpose around the world, including the United States and China. For instance, in 2014, at the 18th China International Fair for Investment and Trade ("CIFIT") in Xiamen, China, the WTCA organized participants from Beijing University and Tsinghua University to participate at the WTCA Pavilion and the WTCA China Forums at CIFIT. The Complainant also owns trademark registrations in Class 41 relating to education services in China and Hong Kong. As such, featuring a university like SDTBU at the Respondent's Website would further increase the likelihood of confusion since the activities featured on the Respondent's Website are closely related to the services offered by the Complainant, and/or confuse the public into thinking that the Respondent or SDTBU is a licensee or sponsor of the WTCA when in fact this is not the case.

- (n) **Exhibit R** - Selected printouts of WTCA's official website regarding its university sponsors and CIFIT.

The Complainant submits that no reasonable explanation was offered by the Respondent for its continued registration and use of the Disputed Domain Name. The only conclusion can be drawn is that the Respondent has done so with the obvious intent to trade on the Complainant's goodwill in its WTCA Marks, and lead Internet users into believing that the Disputed Domain Name and/or Respondent's Website or the business and activities referred to therein are associated with, endorsed or sponsored by the Complainant in some way, or that the Respondent's use of the Disputed Domain Name is authorized by the Complainant, or to attract Internet traffic by capitalizing on the association of "WTCA" with the Complainant's WTCA Marks, and further keep the Disputed Domain Name from being used by the Complainant. Use of the Disputed Domain Name merely intended to divert the public to the Respondent's Website cannot be considered as a bona fide offering of goods and services (see *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, attached as **Exhibit K**). Consequently, the Respondent's refusal to transfer and/or continued registration and use of the Disputed Domain Name are clear acts of bad faith.

The Complainant submits that all of the contents on the Respondent's Website are copied from SDTBU's Website but such contents are not up-to-date and many of the links in the Respondent's Websites are inaccessible. As such, it is more likely than not that the Respondent has used SDTBU's logo and copyrighted webpages of SDTBU's Website without authorization. If that is the case, the Respondent may have infringed the trademark rights and copyright of SDTBU. Such infringing use of the Disputed Domain Name might even be attributable to the Complainant which would tarnish not only the goodwill accumulated in the WTCA Marks, but also disrupt the business of the WTCA and its relationship with its current licensees and sponsors in China. These are further evidence that the Disputed Domain Name is being used in bad faith.

Furthermore, such use of the Disputed Domain Name by the Respondent constitutes a breach of the Registration Agreement, under which Respondent warrants that the Disputed Domain Name



does not infringe the intellectual property rights of anyone else. The Respondent's breach of that warranty divests it of any and all rights in the Disputed Domain Name.

- (o) **Exhibit S** - A copy of the decision *Milwaukee Radio Alliance, L.L.C. v. WLZR-FM Lazer*, D2000-0209 (WIPO, June 5, 2000).

In sum, the Respondent's registration and use of the Disputed Domain Name are clearly acts done in bad faith described in Paragraph 4(b) of the Policy, and satisfy the third requirement stipulated under Paragraph 4(a) of the Policy. Therefore, the registration for the Disputed Domain Name should be transferred to the Complainant.

## B. Respondent

The Respondent is keyun zhenan of leishen road nali district, guangdong haizhu 510200 China. It uses the contact email "customary0@gmail.com" when registering the domain name on 24 October, 2018. The Respondent did not file any Response in reply to the Complainant's contentions.

## 5. Findings

### Language of the Proceedings

Under Article 11 of the Rules, the Panel has the authority to determine the language of the proceedings having regard to the circumstances. Article 10(b) of the Rules provides that the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

The general rule is that the parties may agree on the language of the administrative proceeding. In the absence of this agreement, the language of the Registration Agreement shall dictate the language of the proceeding. However, the Panel has the discretion to decide otherwise having regard to the circumstances of the case. The Panel's discretion must be exercised judicially in the spirit of fairness and justice to both parties taking into consideration matters such as command of the language, time and costs. It is important that the language finally decided by the Panel for the proceeding is not prejudicial to either one of the parties in his or her ability to articulate the arguments for the case.

Where a respondent does not respond to the complainant's communications (and thus it was not possible for the complainant to come to an agreement on the issue of the language of the proceeding), and the material facts of the proceeding are generally in English (eg, disputed domain name, the language of the respondent's and the complainant's websites, the services provided in the websites, etc), the proceedings should be in English. This is so even if the respondent is on record not a native English speaker, if persuasive evidence has been adduced to suggest that the respondent is conversant and proficient in the English language. The objective is to ensure the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

Upon weighing all the relevant and special circumstances of the Parties, the Panel determines that it is appropriate for the Panel to exercise its discretion to conduct the proceeding in English.

As to the main substantive issue of this matter, the UDRP provides, at Paragraph 4(a) (Applicable Disputes), 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**

The Complainant has over 200 registrations and applications for trademarks containing the terms "WTCA", "WTC" and "WORLD TRADE CENTER" throughout the world covering a wide range of goods and services.

The Complainant has trademark registrations for the "WTCA" and "WTC" marks as stand-alone marks in the United States, China, Hong Kong, Taiwan, Europe, and the United Kingdom covering a wide range of goods and services (collectively, the "WTCA Marks"). Except for "WTC" in Classes 36, 37, and 39 in China, all of such marks were registered before 24 October, 2018, i.e. the registration date of the Disputed Domain Name. In any event, all of those marks were filed prior to the registration date of the Disputed Domain Name.

Among others, the Complainant has a valid and subsisting trademark registration for the "WTCA" mark as a stand-alone mark in the United States, which was first used since 25 January, 1970, in relation to "*association services, namely, fostering and promoting international business and trade relationships*" in Class 35.

The Complainant demonstrated that since at least as early as 1969, the Complainant has continuously used the "WTCA", "WORLD TRADE CENTER" and "WTC" as stand-alone marks in identifying itself and/or its goods and services, including education services such as organizing seminars and other training programs covering various international business activities. WTCA has over 300 licensees in nearly 90 countries and they have used the WTCA Marks to serve more than 750,000 international organizations and businesses worldwide.

Through the long-term, continuous, and widespread advertising, promotion, and use of the WTCA Marks by the Complainant and its licensees, the WTCA Marks have become widely known, and have become uniquely identified as the Complainant since the 1960s. The Panel takes notice that the name "WTCA" is so unique and consists of such rare and distinctive combinations of English letters that the general public including those in China will only associate them with the WTCA, i.e. the Complainant. This is corroborated by the results of Internet searches.

In addition to trademark registrations, the Complainant owns registrations for the domain names <wtca.org> and <wtca.cn>. The Panel takes notice that the Complainant has used the domain name <wtca.org> since at least as early as 1995 to operate its website, and the domain name <wtca.cn> to operate its Chinese website since 2013, to actively promote and advertise its goods and services under the "WTCA" and "WTC" marks.

In addition to those registered rights, the Panel notes that the Complainant has expended enormous amount of time, effort and money in promoting and advertising its goods and services bearing the WTCA Marks and protecting its global brand to benefit its licensees since the 1970s in various jurisdictions including the United States and China throughout the years. Just in mainland China alone, WTCA's licensees include WTC Anyang, WTC Beijing, WTC Shanghai, China WTC, WTC Chongqing, WTC Dandong, WTC Fuzhou, WTC Kunming, WTC Nanjing, WTC Nansha, WTC Quanzhou, WTC Suzhou, WTC Tianjin, WTC Yongjia, and WTC Zhengzhou.

As a result of the Complainant's over 50 years of use of the WTCA Marks, the Panel takes notice that the general public have come to know and recognize the WTCA Marks, and the goods and services bearing them as originating from the Complainant.

As the Complainant has been using the domain names of <wtca.org> and <wtca.cn> as its official websites, the "WTCA" as the domain name of the email address for its employees, and the "WTCA" mark to identify itself in commerce since the 1960s, the Panel accepts that the "WTCA" mark functions as both a trademark and a trade name which has acquired distinctiveness or secondary meaning.

The Panel agrees that the Complainant enjoys prior rights in its WTCA Mark, particularly the "WTCA" mark as a stand-alone mark. Given also the terrorist attack on 11 September, 2001, the Panel takes notice that the worldwide fame of WTCA is indisputable.

The disputed domain name <wtcachina.com> contains two elements: "wtcachina" and the generic top-level domain ".com". It is trite rule that the generic top-level domain name suffix "com" is technical in nature, does not have any proprietary significance, cannot confer any distinctiveness and is incapable of differentiating the disputed domain name from others' proprietary rights, and as such, is disregarded under the first element confusing similarity test.

Trademarks are not case sensitive. The potential distinctive elements of the disputed domain name are "wtca" or "wtc". The dominant part are the letters "wtca" or "wtc" which are identical to the Complainant's trade marks and trade names of "wtca" or "wtc" respectively. The addition of "china" or "achina" as the case may be to the distinctive portion of the Disputed Domain Name does not draw a reasonable Internet user's attention away from the fact that the principal element of the Disputed Domain Name is identical to the Complainant's "wtca" or "wtc" trade marks and trade names, as it only indicates that the Disputed Domain Name is related to China. It is a well-established rule that the addition of geographic terms does not negate confusing similarity but often tends to emphasize it, and is irrelevant to consider in the determination of Paragraph 4(a)(i) of UDRP.

The Panel takes the view that considering the Disputed Domain Name as a whole, the addition of the non-distinctive letters "china" at the end of "wtca", or "achina" at the end of "wtc", identical or confusingly similar to the Complainant's "wtca" or "wtc" trade marks and trade names, does not confer to the whole a new meaning and does not dispel confusing similarity between the Disputed Domain Name as a whole and the Complainant's proprietary trade marks and trade names.

The Panel takes notice that the addition of "china" or "achina" in this case further increases the likelihood of confusion due to the Complainant's notable presence in China, as the general public are likely to believe that the Disputed Domain Name relates to Complainant's official

website in China and would further divert Internet users away from Complainant's official Chinese website at <wtca.cn>.

The Complainant has demonstrated that it owns the trademark registrations for the "WTCA" and "WTC" marks in various jurisdictions, long before the Respondent applied to register the Disputed Domain Name on 24 October, 2018.

When a registrant chooses to apply for the registration of a domain name, the registrant must represent and warrant, among other things, neither the registration of the domain name nor the manner in which it is directly or indirectly used infringes the legal rights of a third party. In this case, the Disputed Domain Name is either identical or is confusingly similar to the Complainant's registered "wtc" and "wtca" trade marks and trade names.

Given the worldwide renown, long-term use and established registered rights in the WTCA Marks, and the above facts, the Panel finds that the Disputed Domain Name is either identical or confusingly similar to a trade mark or a trade name in which the Complainant has rights, satisfying paragraph 4(a) (i) of UDRP.

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

The most distinctive element in the Disputed Domain Name is "WTCA", which is a widely known indicia of the Complainant.

The Panel notes that according to the WHOIS database, the registrant of the Disputed Domain Name is one "keyun zhen", which appears to be an individual that does not have any relationship with anything related to the WTCA, and has never been authorized to identify itself as "WTCA" or "WTC", nor licensed to use the Complainant's WTCA Marks. The Panel accepts that the Respondent is not and has not been commonly known by the Disputed Domain Name.

The Panel notes that the Respondent's website that is set up using the Disputed Domain Name ("Respondent's Website") references the name "School of Management Science and Engineering" ("SMSE"), alongside a logo of a Chinese university named as ShanDong Technology and Business University ("SDTBU"). The Panel notes that SDTBU is a public university in Shandong Province, China, and SMSE is one of the departments at SDTBU. The Complainant's further searches revealed that the official website of SMSE is set up at <gc.sdtbu.edu.cn> (under the official website of SDTBU at <www.sdtbu.edu.cn>), which has a second-level domain name of *edu.cn* regulated by the China Education and Research Network Information Centre ("CERNIC") which is reserved only for educational institutions in China ("SDTBU's Website").

The Panel notes further that while the Respondent's Website has used the logo of SDTBU and copied a large portion of the layout, contents and information from SDTBU's Website, the Respondent does not appear to have any relationship with SDTBU or SMSE. Moreover, while SDTBU's Website has been kept up to date to 2019, the recent updates are not found in the Respondent's Website, and many tabs (or sub-pages) in the Respondent's Website are actually inaccessible upon clicking on them. As such, the Panel accepts that it is more likely than not that the Respondent has used SDTBU's logo and the copyrighted webpages of SDTBU's Website without the authorization of SDTBU or SMSE. In any event, the contents of the Respondent's Website as copied from SDTBU's Website did not refer to any of the WTCA Marks, and the name of SDTBU does not appear to have any relationship whatsoever with "WTCA", "WTC" or the Complainant.

As proving a negative is always difficult, it is a well-established rule that a Complainant's burden of proof on this element is light. The Panel rules that there is *prima facie* evidence to prove that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. Since the Complainant satisfies the second requirement stipulated under Paragraph 4(a) of UDRP, it is up to the Respondent to discharge the evidential burden in demonstrating it has rights or legitimate interests in respect of the Disputed Domain Name.

The Respondent did not file any Response in reply to the Complainant's contentions.

It is trite rule that the mere registration of the Disputed Domain Name by the Respondent itself is not sufficient to prove that it owns rights and legitimate interests. Intentional copyright infringement and passing off the goodwill and reputation of others, which is contrary to the object and purpose of UDRP, cannot derive any rights or legitimate interests.

The Panel takes notice that after years of commercial use, the "wtca" and "wtc" trade marks and trade names have acquired the recognition of the relevant sector of the public. The Complainant and the Respondent have no prior connection. The wtca and wtc trade marks and trade names are not terms commonly used in the English language. Further, the Respondent has submitted no evidence to demonstrate it has been commonly known by the Disputed Domain Name.

Nobody has any right to represent his or her goods or services as the goods or services of somebody else. The Complainant has not licensed or otherwise permitted the Respondent to use the Disputed Domain Name or use any domain name incorporating the dominant part of the Complainant's registered trade marks and trade names.

The Panel considers that there is no evidence that would tend to establish that the Respondent has rights to or legitimate interests in respect of the Disputed Domain Name. The Panel draws the irresistible inference that the Respondent is not using the Disputed Domain Name on a non-commercial or fair use basis without intent to misleadingly divert the relevant sector of the public to its operation. On the contrary, the Respondent is using the Disputed Domain Name to tarnish the goodwill and reputation of the Complainant's trade marks and trade names.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, satisfying paragraph 4 (a) (ii) of UDRP.

### **C) Bad Faith**

Paragraph 4 (b) (Evidence of Registration and Use in Bad Faith) of UDRP provides that for the purposes of Paragraph 4 (a) (iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

- (i) *circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or*
- (ii) *you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or*

- (iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor, or*
- (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.*

The Panel takes notice that the Complainant is a renowned association with over 50 years of history and its distinctive WTCA Marks have become very well-known due to its long term and extensive use. On the other hand, the Respondent does not appear to have any rights or interest in registering and/or using the Disputed Domain Name. The Panel notes that the Disputed Domain Name was only registered on 24 October 2018 and contains the WTCA Marks in its entirety. Given the fame and reputation of the Complainant and the WTCA Marks globally including China, the Panel considers that it is virtually impossible for the Respondent to have selected the Disputed Domain Name without knowing it. The Respondent should have been well aware of the Complainant and the WTCA Marks prior to registration, and the Panel accepts that the Disputed Domain Name has clearly been registered and is being used in bad faith.

By registering and using the Disputed Domain Name, the Panel accepts that the Respondent has prevented the Complainant from using its marks in a corresponding domain name, and disrupted the business of the Complainant. Worst still, it has also created confusion among the general public in respect of the relationship between the Respondent's Website, SDTBU and the Complainant. Specifically, some licensees or sponsors of the WTCA are universities, and the WTCA often organizes and conducts conferences, seminars, or workshops for educational purpose around the world, including the United States and China. The Panel notes further, the Complainant also owns trademark registrations in Class 41 relating to education services in China and Hong Kong. As such, featuring a university like SDTBU at the Respondent's Website would further increase the likelihood of confusion since the activities featured on the Respondent's Website are closely related to the services offered by the Complainant, and/or confuse the public into thinking that the Respondent or SDTBU is a licensee or sponsor of the WTCA when in fact this is not the case.

As no reasonable explanation was offered by the Respondent for its continued registration and use of the Disputed Domain Name, the Panel infers that the Respondent has done so with the obvious intent to trade on the Complainant's goodwill in its WTCA Marks, and lead Internet users into believing that the Disputed Domain Name and/or the Respondent's Website or the business and activities referred to therein are associated with, endorsed or sponsored by the Complainant in some way, or that the Respondent's use of the Disputed Domain Name is authorized by the Complainant, or to attract Internet traffic by capitalizing on the association of "WTCA" with the Complainant's WTCA Marks, and further keep the Disputed Domain Name from being used by the Complainant. It is a trite rule that use of the Disputed Domain Name merely intended to divert the public to the Respondent's Website cannot be considered as a bona fide offering of goods and services. Accordingly, the Panel considers the Respondent's refusal to transfer and/or continued registration and use of the Disputed Domain Name are clear acts of bad faith.

The Panel also notes that all of the contents on the Respondent's Website are copied from SDTBU's Website but such contents are not up-to-date and many of the links in the

Respondent's Websites are inaccessible. As such, it is more likely than not that the Respondent has used SDTBU's logo and copyrighted webpages of SDTBU's Website without authorization. If that is the case, the Respondent may have infringed the trademark rights and copyright of SDTBU. Such infringing use of the Disputed Domain Name might even be attributable to the Complainant which would tarnish not only the goodwill accumulated in the WTCA Marks, but also disrupt the business of the WTCA and its relationship with its current licensees and sponsors in China. The Panel accepts that these are further evidence that the Disputed Domain Name is being used in bad faith.

Furthermore, such use of the Disputed Domain Name by the Respondent constitutes a breach of the Registration Agreement, under which the Respondent warrants that the Disputed Domain Name does not infringe the intellectual property rights of anyone else. The Panel agrees that the Respondent's probable breach of that warranty divests it of any and all rights in the Disputed Domain Name.

It is trite rule that use which intentionally trades on the fame of another cannot constitute a "bona fide" offering of goods or services. Further, the Respondent has provided no evidence to demonstrate use of the disputed domain name registered on 24 October, 2018 in good faith. The Panel draws the irresistible inference that the Respondent must have prior knowledge of the Complainant's "wtca" and "wtc" trade marks and trade names. The Panel takes the view that the Respondent, by registering the Disputed Domain Name, is a dishonest misappropriation of the Complainant's registered trade marks and trade names, making the Respondent's cybersquatting an instrument of fraud.

The Panel therefore finds that the Respondent's domain name has been registered and is being used in bad faith, satisfying paragraph 4 (a) (iii) of UDRP.

## 6. Decision

For all the foregoing reasons, the Panel concludes that the Complainant has provided sufficient proof of its contentions, has proven each of the three elements of paragraph 4 of UDRP with respect to the Disputed Domain Name and has established a case upon which the relief sought must be granted. The Panel therefore orders that the registration of the Disputed Domain Name <wtcachina.com> be transferred to the Complainant.

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Sole Panelist: Peter Cheung SBS 

Date: 15 November, 2019