



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.</b>	<b>HK-1700957</b>
<b>Complainant:</b>	<b>Queen's University at Kingston</b>
<b>Respondent:</b>	<b>Nanjing Thia Media Co. Ltd.</b>
<b>Disputed Domain Name:</b>	<b>&lt; queensu.net &gt; &amp; &lt; queensuniversity.net &gt;</b>

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### 1. The Parties and Disputed Domain Name

The Complainant is Queen's University at Kingston of University Secretariat and Legal Counsel, Suite F300 Mackintosh-Corry Hall, 68 University Avenue, Kingston, Ontario K7L 3N6.

The Respondent is Nanjing Thia Media Co. Ltd. of No.15 Fengji Avenue, Yuhuatai District, Nanjing, Jiangsu Province, 210000, China.

The domain names at issue are < queensu.net > & < queensuniversity.net > (“Disputed Domain Name”).

The Registrar is Chengdu West Dimension Digital Technology Co. Ltd. of Room A005, Floor 4, Tianxiang Building, No. 90, Wanhe Road, Qingyang District, Chengdu 610 067, PRC.

### 2. Procedural History

On 27 March 2017, 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 Supplemental Rules”), the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HKO”) and elected that this case be dealt with by a sole panelist. On the same day, the ADNDRC-HKO sent to the Complainant by email an acknowledgement of the receipt of the Complaint and sent to the Registrar a request for verification. On the same day, the Registrar transmitted by email to the ADNDRC-HKO its verification.

On 6 April 2017, the ADNDRC-HKO sent to the Complainant by email a Notification of Deficiencies of the Complaint.

On 10 April 2017, the Complainant filed a Supplemental Complaint.

On 11 April 2017, the ADNDRC-HKO sent a Notification of Commencement of Proceedings (“the Notification”) to the Respondent. The Notification gave the Respondent 20 days to submit a Response (i.e. on or before 1 May 2017).

No formal Response was submitted to the ADNDRC-HKO by the Respondent.

On 2 May 2017, the ADNDRC-HKO advised both parties of the failure of the Respondent to submit a Response to the Complaint within the stipulated time period and that a Panelist for the case would shortly be appointed by the ADNDRC-HKO.

On 4 May 2017, the ADNDRC-HKO sent an email to FONG Ho Yin enquiring from him whether he could act and if so whether he could act independently and impartially in the matter in question.

On 5 May 2017, FONG Ho Yin confirmed that he was willing to act and if appointed would act independently and impartially. On the same day, the ADNDRC-HKO notified the parties that FONG Ho Yin had been appointed as a sole panelist by the ADNDRC-HKO.

### 3. Factual Background

For the Complainant

The Complainant is the owner of over 100 registered trade marks in various countries and regions throughout the world. The trade mark registration covers university services such as providing and operating post-secondary educational facilities, which have been used in Canada since at least as early as 1905. The registration also covers various goods including, but not limited to, school supplies, clothing, and display materials. Registered trade marks of the Complainant in Canada include the following:

Trade mark	Registration No.	Date of Registration	International Class	Specification of Goods or Services
QUEEN'S UNIVERSITY	TMA313635	25 April 1986	16, 18, 21, 24, 25, 26, 27, 35, 38, 41	Paper and printed goods; Leather and artificial leather goods; Household goods and glass; Textiles and textile goods; Clothing, footwear, headgear; Sewing and decorative items including slide fasteners; Floor coverings; Advertising, marketing, promotional and business; Telecommunications; Education and entertainment
QUEEN'S	TMA312424	25 April 1986		
	TMA762037	9 March 2010	6, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 28, 35, 36, 41, 42,	Common metals; Electrical, scientific and teaching apparatus and software; Environmental control items; Precious

	TMA764413	19 April 2010	43, 45	and semi-precious metals, and jewellery; Paper and printed goods; Leather and artificial leather goods; Furniture, mirrors, articles not included in other classes; Household goods and glass; Textiles and textile goods; Clothing, footwear, headgear; Sewing and decorative items including slide fasteners; Games, toys and playthings, sporting articles; Advertising, marketing, promotional and business; Insurance and financial; Education and entertainment; Computer and scientific; Accommodation, food and drink; Personal and legal
	TMA764523	20 April 2010	6, 9, 11, 14, 16, 18, 20, 21, 24, 25, 26, 28, 35, 41	Common metals; Electrical, scientific and teaching apparatus and software; Environmental control items; Precious and semi-precious metals, and jewellery; Paper and printed goods; Leather and artificial leather goods; Furniture, mirrors, articles not included in other classes; Household goods and glass; Textiles and textile goods; Clothing, footwear, headgear; Sewing and decorative items including slide fasteners; Games, toys and playthings, sporting articles; Advertising, marketing, promotional and business; Education and entertainment
	TMA761584	2 March 2010		
	TMA764522	20 April 2010		

(collectively, the "Trade Marks").

The Complainant has a strong presence on social media sites such as Facebook, Twitter, and Instagram. As of April 21, 2016, the Queen's University Facebook page, which references the QUEEN'S UNIVERSITY Marks, had over 57,900 likes, its Instagram page (@queensuniversity) had approximately 13,700 followers, and its Twitter page (@queensu) had approximately 41,200 followers. These social media pages are accessible to Canadians and Internet users worldwide.

The Complainant also has a number of educational audio podcast series, which are available to consumers globally free-of-charge through the online iTunesU platform. Most of its podcast series incorporate the well-known QUEEN'S UNIVERSITY official mark and trade-mark in their titles, for example: *Explore Queen's by Queen's University*, *Social Sciences & Humanities: Lectures, Debates, Forums by Queen's University*, and *Business: Lectures, Debates, Forums by Queen's University*.

The Complainant brand is also very well known outside of Canada. The Queen's University student body is comprised of students from over 105 countries, and the university also has a robust international exchange program that offers 180 opportunities in 50 countries around the world. Included among its international exchange partners are world-renowned universities such as the Institut d'Études Politiques de Paris-Sciences Po and the Université de la Sorbonne in France, Fudan University in China, the National University of Singapore, ESADE Business School in Spain, the University of Sydney in Australia, and numerous others.

For the Respondent

On 18 April 2014, the Respondent through the Registrar registered the Disputed Domain Name.

The Respondent has not filed any Response to these proceedings.

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

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

##### **1. The Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights**

The Complainant in this dispute, Queen's University at Kingston (referred to as "Queen's University"), is one of Canada's oldest and most reputable degree-granting universities. It was founded in 1841 and officially changed its name to "Queen's University at Kingston" in the early 1900s. The Complainant is commonly referred to or simply known as "Queen's", "Queen's University" or "Queen's U" whereby "U" is short for university. Today, Queen's University enrolls nearly 20,000 full-time undergraduate students and approximately 4,000 full-time graduate students, with many more enrolled in part-time programs. The university employs over 8,000 faculty and staff members.

Queen's University has built a strong brand among Canadians and internationally. The Queen's University student body is comprised of students from over 105 countries, including many from China and Hong Kong. The university also has a robust international exchange program that offers opportunities in 50 countries around the world. The Queen's University brand is further strengthened through, among other things, its web and social media sites. The Complainant registered the queensu.com domain name on 26 January 1999 and the queensu.ca domain name on 6 October 2000, which are and have been accessible since their registration. The Trade Marks are prominently displayed at the top of the website homepage and on virtually all of its sub-pages.

Under Paragraph 4(a)(i) of the Uniform Policy for Domain Name Dispute Resolution, approved by the ICANN on 24 October 1999, the Complainant must show that it owns rights in and to the "QUEEN'S" and/or "QUEEN'S UNIVERSITY" marks and that the Disputed Domain Names are identical or confusingly similar to that mark. The Complainant satisfies both elements.

The Complainant owns prior registered and common law trade mark rights in the "QUEEN'S" and "QUEEN'S UNIVERSITY" marks. The Complainant has registered the "QUEEN'S" and "QUEEN'S UNIVERSITY" marks for a variety of goods and services, including but not limited to, education. All of these trade mark registrations were obtained prior to the Respondent's registration of the Disputed Domain Names on 18 April 2014.

The Disputed Domain Names <queensu.net> and <queensuniversity.net> are identical or confusingly similar to the Complainant's "QUEEN'S" and "QUEEN'S UNIVERSITY" marks. The Disputed Domain Names contain two elements: (i) "QUEENSU" / "QUEENSUNIVERSITY" and (ii) the top-level domain ".net".

It is well established that the top-level domain ".net" does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the "confusing similarity" element (*PRL USA Holdings, Inc. v. Spiral Matrix*, WIPO Case No. D2006-0189).

The distinctive part of the Disputed Domain Name <queensuniversity.net> is therefore "QUEENSUNIVERSITY", which is identical to the Complainant's "QUEEN'S UNIVERSITY" mark, save for the apostrophe in the word QUEEN'S (which cannot be reflected in a domain name).

For the Disputed Domain Name <queensu.net>, the distinctive part is "QUEENSU", which is confusingly similar to the Complainant's "QUEEN'S" and "QUEEN'S UNIVERSITY" marks. Except for the apostrophe in the word QUEEN'S (which cannot be reflected in a domain name), <queensu.net> contains the entirety of the "QUEEN'S" mark. Further, it incorporates the Complainant's distinctive abbreviation "Queen's U" in its entirety, and is phonetically and visually identical to the first element of the Complainant's "QUEEN'S UNIVERSITY" mark. As the WIPO Panel previously observed in *Swinburne University of Technology v. Swinner a/k/a Benjamin Robert Goodfellow* (WIPO Case No. DAU2004-0003), a disputed domain name was held to be confusingly similar to the complainant's mark as it "incorporates an apparently distinctive, non-descriptive abbreviation of the Complainant's mark", which is "phonetically and, as presented visually, the first element of the Complainant's mark, and so more likely to be distinctively associated with the mark and the Complainant's name".

Accordingly, Internet users who see the domain name <queensu.net> or <queensuniversity.net> are bound to mistake it for the Complainant's Trade Marks, it is obvious that the Respondent is trying to exploit the goodwill associated with the Complainant's Trade Marks for their own benefit.

**2. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.**

Under Paragraph 4(a)(ii) of the Policy, the Complainant initially must establish that the Respondent lacks any rights or legitimate interests in the Disputed Domain Names. Being a limited liability company named "Nanjing Thia Media Co. Ltd", the Respondent clearly does not own prior name rights to the Disputed Domain Names. The Complainant further confirms that the Respondent is not contracted by or otherwise affiliated with the Complainant, and the Complainant has never licensed or authorised the Respondent to use the Trade Marks in the Disputed Domain Names. This is sufficient to establish a *prima facie* case on this factor to shift the burden of proof to the Respondent to prove that they have rights or legitimate interests in the Disputed Domain Names. *WIPO Overview 2.0*, § 2.1 and cases cited therein.

According to the WHOIS data, the Respondent registered the Disputed Domain Names on 18 April 2014, long after i) the Complainant first started using the names QUEEN'S and QUEEN'S UNIVERSITY; ii) registration of the Trade Marks; and iii) the registration dates of the Complainant's domain names queensu.com and queensu.ca, on 26 January 1999 and 6 October 2000, respectively. Given its use of QUEEN'S UNIVERSITY for over a century, clearly the Complainant owned the rights in the QUEEN'S UNIVERSITY Marks well before the Respondent registered the Disputed Domain Names.

Further, the Disputed Domain Name <queensu.net> resolves to a website in Simplified Chinese apparently providing information and consulting services about admission to Queen's University, with the Complainant's Trade Marks appearing prominently at the top of the homepage and almost all of the sub-pages, including "QUEEN'S UNIVERSITY" and the official university emblem. The website under <queensu.net> also contains detailed information about Queen's University, including its background and history, news, course information and photos of the university campus.

It would appear that by using the Disputed Domain Name <queensu.net>, the Respondent holds itself out as the Complainant to Internet users and aims to profit by offering and/or providing consultancy services to Chinese students interested in enrolling in Queen's University. The Complainant has neither authorised nor consented to the use of the Trade Marks by the Respondent. In fact, the Complainant offers and provides the same services to its prospective students.

The Respondent clearly has not used the Disputed Domain Names in connection with a bona fide offering of goods or services. Nor is the Respondent making a legitimate noncommercial or fair use of the Disputed Domain Names. Further, as will be discussed below in regards the Disputed Domain Name <queensu.net>, the fact that the Registrant seeks to attract Internet users through the Complainant's Trade Marks for their own commercial purposes demonstrates the lack of legitimate, non-commercial interest in, or fair use of the Disputed Domain Name (*GWS Technology (Shenzhen) Co., Ltd v. Jin Fan*, HK-1600884; *Accor v. Eren Atesmen*, WIPO Case No. D2009-0701). Therefore, the Respondent clearly has no rights or legitimate interests in respect of the Disputed Domain Names under Paragraph 4(a)(ii) of the Policy.

### **3. The Disputed Domain Name has been registered and being used in bad faith**

Under Paragraph 4(a)(iii) of the Policy, the Complainant must show that the Respondent registered the Disputed Domain Names, and is using the same, in bad faith. The Complainant submits that i) the Respondent has registered the Disputed Domain Names in order to prevent the Complainant from reflecting the Trade Marks in a corresponding domain name and the Respondent has engaged in such pattern, ii) the Respondent has used the Disputed Domain Name <queensu.net> to intentionally attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's Trade Marks, and iii) the Respondent has registered the Disputed Domain Name <queensu.net> primarily for the purpose of disrupting the Complainant's business.

The Complainant submits that, notwithstanding that there is an apparent lack of active use of the Disputed Domain Name <queensuniversity.net> (i.e. it does not resolve to a website), the circumstances of the case indicate that it is being used by the Respondent in bad faith. As explained above, save for the dot-net suffix, the Disputed Domain Name <queensuniversity.net> is identical to the Complainant's "QUEEN'S UNIVERSITY" mark. The WHOIS data reveals that, in addition to registering domain name <queensuniversity.net>, the Respondent had also registered <queensu.net> on the same day, which is clearly used by the Respondent in bad faith as elaborated below. Finally, as explained in the following paragraphs, there is evidence to suggest that the Respondent is engaged in a pattern of registering domain names to prevent trade mark owners from reflecting the marks in corresponding domain names. In the premises, the cumulative circumstances of the case are indicative of bad faith on the part of the Respondent.

*(a) Preventing the Complainant from reflecting its Trade Marks in a corresponding domain name*

The registration of the Disputed Domain Names are preventing the Complainant from registering its "QUEEN'S" or "QUEEN'S UNIVERSITY" mark as a dot-net domain name, for the following reasons:-

1. the Disputed Domain Name <queensu.net> is identical to the domain names queensu.ca and queensu.com currently used by the Complainant save for the dot-net suffix; and
2. the Disputed Domain Name <queensuniversity.net> is identical to the Complainant's "QUEEN'S UNIVERSITY" marks.

A reverse WHOIS search revealed that in addition to owning the Disputed Domain Names, the Registrant also owns over 200 domain names, some of which consist of the names of other universities (e.g. LINTONUNIVERSITY.ORG, NORTHWESTERNU.NET, SALFORDUNIVERSITY.NET, etc.) and are likely registered trade marks. The Registrant therefore has engaged in a pattern of registering domain names to prevent trade mark owners and other authorized persons from registering their marks as domain names.

*(b) Intentionally attempt to attract, for commercial gain, Internet Users by creating a likelihood of confusion*

The Complainant submits that by using the Disputed Domain Name <queensu.net>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to their website, by creating a likelihood of confusion with the Complainant's

Trade Marks as to the source, sponsorship, affiliation, or endorsement of their website. In fact, the Respondent through the Disputed Domain Name <queensu.net> holds itself out as the Complainant to Internet users to its website.

As stated above, the Disputed Domain Name <queensu.net> is identical to the domain names queensu.ca and queensu.com currently used by the Complainant save for the dot-net suffix. At the top of the website homepage and almost all of the subpages, the Complainant's Trade Marks, including "QUEEN'S UNIVERSITY" and the official university emblem, are prominently displayed. The website under the Disputed Domain Name <queensu.net> also contains detailed information about Queen's University, including its background and history, news, course information and photos of the university campus. The obvious inference and conclusion from the above is that the Respondent intentionally attempts to attract Internet users to their website by creating a likelihood of confusion with the Complainant's Trade Marks as to the source, affiliation or endorsement of the website under the Disputed Domain Name <queensu.net>.

The website under the Disputed Domain Name <queensu.net> also contains contact information for university application consultancy services, which have not been authorized by the Complainant. Therefore, by the registration and use of <queensu.net>, the Respondent is attempting to mislead Internet users, including prospective students, into believing that their website is connected to, endorsed by or otherwise associated with the Complainant. The Complainant notes that at the bottom of the homepage and sub-pages of <queensu.net>, there is a brief disclaimer that the website is not the official website of Queen's University and only provides consultancy services relating to program application at Queen's University. However, the Complainant submits that, in light of the confusingly similar domain name queensu.net, the unauthorised use of the Complainant's Trade Marks and the position and appearance of the disclaimer, the disclaimer is far from sufficient to dispel the likelihood of confusion. Further, the disclaimer is preceded by the following warning in Simplified Chinese: "*Without the written permission of Queen's University, no entity or person may reproduce or copy the contents of this website, otherwise we shall hold you liable*". The Complainant submits that the wording of the warning further strengthens the false impression that the website under the Disputed Domain Name <queensu.net> is connected to, endorsed by and/or otherwise associated with Queen's University, contrary to the fact. By using the Disputed Domain Name <queensu.net>, the Respondent consequently procures or attempts to cause prospective students and other persons who are or may be interested in applying to Queen's University to use the consultancy services offered by the Respondent, which are neither related to nor authorised by the Complainant.

*(c) Disrupting the business of a competitor*

The Complainant submits that the Respondent has registered the Disputed Domain Name <queensu.net> primarily for the purpose of disrupting the Complainant's business.

The Respondent is a "competitor" for the purposes of Paragraph 4(a)(iii) of the Policy, because the Disputed Domain Name <queensu.net>: (i) is identical to the Complainant's Trade Marks and the Respondent is capitalizing on confusion and competing for online traffic destined for the Complainant, and (ii) appears to be

promoting and/or offering education-related services similar to those offered by the Complainant.

The Respondent's ownership of the Disputed Domain Name <queensu.net> is disrupting the Complainant's business and harming the Queen's University brand by creating consumer confusion and preventing Queen's University students, alumni and other persons from easily accessing the university's website to obtain information about the university, access their student email or course information. Given the high reputation and recognition that Queen's University enjoys globally, the Respondent must be aware of the high risk of confusion by using the Disputed Domain Name <queensu.net>. As explained above, the obvious inference and conclusion is that the Respondent registered the Disputed Domain Name <queensu.net> to create a likelihood of confusion to and/or intentional mislead Internet users, including prospective students, into believing that it is connected to, endorsed by and/or otherwise associated with Queen's University, and thereby disrupting the Complainant's business and directing legitimate traffic away from the Complainant.

B. Respondent

The Respondent has not submitted any Response within the stipulated timeframe. Therefore, the Respondent is in default.

## 5. Findings

### 1. The Language of the Proceedings

The language of the Registration Agreement for the Disputed Domain Name is Chinese. Pursuant to Paragraph 11 of the Rules, in the absence of an agreement between the parties, or unless specified otherwise in the Registration Agreement, the language of the administrative proceedings shall be the language of the Registration Agreement i.e. Chinese.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceedings having regard to all the circumstances. In particular, it is established practice to take Paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceedings. In other words, it is important to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving disputed domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceedings: see **Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) Electrical Appliance Co. Ltd.**, WIPO Case No. D2008-0293; **Solvay S.A. v. Hyun-Jun Shin**, WIPO Case No. D2006-0593.

The Complainant has requested that English be the language of the proceedings for the following reasons:

(1) Under paragraph 10(b) of the Rules, 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

Complainant submits that it would be unfair to require the Complainant to translate the Complaint into Chinese for the following reasons:

(a) The Complainant is a foreign company which is not familiar with the Chinese language. There are lots of exhibits most of which are in English. It would cause tremendous costs, time and unfair prejudice to the Complainant by requiring it to provide Chinese translations of all the evidence.

(b) The domain names at issue < queensu.net > and < queensuniversity.net > are in the English language and they consist the trademark "QUEEN'S" with the letter "U" (which is the abbreviation for University) and "QUEEN'S UNIVERSITY".

(2) Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceedings. English should be used in the proceedings (even if the Registration Agreement was in Chinese) where:

(a) The Complainant communicates in English and would be prejudiced should it be required to translate the Complaint and participate in the proceedings in Chinese;

(b) Requiring the Complainant to translate the Complaint and exhibits into Chinese would cause unnecessary delay and involve significant costs.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs: see **Groupe Auchan v. xmxzl**, WIPO Case No. DCC2006-0004; **Finter Bank Zurich v. Shumin Peng**, WIPO Case No. D2006-0432.

The Respondent did not make any submissions to the language of the proceedings and did not object to the use of English as the language of the proceedings.

The Panel is of the view that there is no evidence to suggest that the Respondent is not conversant and proficient in the English language.

In view of the above, it is unlikely that the Respondent will be prejudiced, should English be adopted as the language of the proceedings.

Having carefully considered all the above matters, the Panel determines under Paragraph 11(a) of the Rules that English shall be the language of the proceedings.

## **2. Discussions and Findings**

Paragraph 4(a) of the Policy provides that the Complainant must prove that each of these three elements are present:

(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**

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

Based on the "QUEEN'S" and "QUEEN'S UNIVERSITY" registered trademarks of the Complainant, the Panel finds that the Disputed Domain Name is identical or confusingly similar to the Complainant's registered trademarks.

The Panel accepts that the Disputed Domain Name is identical or confusingly similar to the Complainant's "QUEEN'S" and "QUEEN'S UNIVERSITY" marks. The Disputed Domain Name composes of two elements: (i) "QUEENSU" / "QUEENSUNIVERSITY" and (ii) the top-level domain ".net".

No doubt, ".net" is a generic top-level domain name (gTLD) suffix. It is non-distinctive and is incapable of differentiating the Disputed Domain Name from the Complainant's registered trademarks: see **Pomellato S.p.A v. Tonetti**, WIPO Case No. D2000-0493. Hence, the gTLD ".net" is without legal significance as the use of a gTLD is technically required to operate domain names and it does not serve to identify the source of the goods or services provided by the registrant of a domain name.

The Panel accepts that the distinctive part of the Disputed Domain Name <queensuniversity.net> is therefore "QUEENSUNIVERSITY", which is identical to the Complainant's "QUEEN'S UNIVERSITY" mark, save for the apostrophe in the word QUEEN'S (which cannot be reflected in a domain name).

For the Disputed Domain Name <queensu.net>, the Panel accepts that the distinctive part is "QUEENSU", which is confusingly similar to the Complainant's "QUEEN'S" and "QUEEN'S UNIVERSITY" marks. Except for the apostrophe in the word QUEEN'S (which cannot be reflected in a domain name), <queensu.net> contains the entirety of the "QUEEN'S" mark. Further, it incorporates the Complainant's distinctive abbreviation "Queen's U" in its entirety, and is phonetically and visually identical to the first element of the Complainant's "QUEEN'S UNIVERSITY" mark.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(i) of the Policy.

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

The fact that the Complainant's adoption and first use of the registered trademarks predates the Respondent's Disputed Domain Name has the practical effect of shifting the burden of proof to the Respondent in establishing that it has legitimate rights and/or interests in the Disputed Domain Name: see **Amilcar Perez Lista d/b/a Cybersor**, WIPO Case No. D2003-0174.

As the Respondent is in default and has not filed any Response, in particular, the Respondent has not discharged the burden of proof under Paragraph 4(c) of the Policy.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

Paragraph 4 (b) of the Policy provides that:

“Evidence of Registration and Use in Bad Faith. 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.”

On the information before the Panel, the Panel finds that the Respondent registered the Disputed Domain Name in bad faith.

In reaching this conclusion, the Panel takes into account of a number of facts into consideration:

1. The Complainant has registered the "QUEEN'S" and "QUEEN'S UNIVERSITY" trademarks in Canada long before the Disputed Domain Name was registered.
2. The Complainant's "QUEEN'S" and "QUEEN'S UNIVERSITY" trademarks have been registered, advertised and used widely and intensively, and have become well-known amongst the Internet users globally and in Canada. It has been held that registration of a well-known trademark by a party with no connection to the owner of the trademark and no authorization and no legitimate purpose to utilize the mark reveals bad faith: see **The Caravan Club v. Mrgsale**, Case No. NAF/FA95314.
3. The Panel accepts that by registering the Disputed Domain Name, the Respondent has prevented the Complainant from registering a corresponding domain name reflecting its trademarks. As pointed out by the Complainant that a reverse WHOIS search revealed that in addition to owning the Disputed Domain Name, the Respondent also owns over 200 domain names, some of which consist of the names of other universities and are likely

registered trademarks. The Respondent therefore has engaged in a pattern of registering domain names to prevent trademark owners and other authorized persons from registering their marks as domain names.

4. The Panel accepts that by using the Dispute Domain Name <queensu.net>, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of its website, and the fact that the Respondent through the Disputed Domain Name <queensu.net> holds itself out as the Complainant to Internet users to its website.

5. The Panel also accepts that the Respondent registered the Disputed Domain Name <queensu.net> to create a likelihood of confusion to and/or intentional mislead Internet users, including prospective students, into believing that it is connected to, endorsed by and/or otherwise associated with Queen's University, and thereby disrupting the Complainant's business and directing legitimate traffic away from the Complainant.

Accordingly, the Panel is satisfied that the Complainant has complied with Paragraph 4(a)(iii) of the Policy.

## **6. Decision**

For the foregoing reasons, the Panel is satisfied that the Complainant has proved its case against the Respondent under Paragraph 4(a) of the Policy.

The Panel hereby orders that the Disputed Domain Name be transferred to the Complainant.

FONG Ho Yin  
Sole Panelist

Dated: 19 May 2017