

International Centre for Dispute Resolution

New gTLD String Confusion Panel

Re: 50 504 T 00254 13

Commercial Connect LLC

OBJECTOR

And

Global eCommerce TLD Asia Limited

APPLICANT

String: <.网店>

EXPERT DETERMINATION

The parties

The Objector is Commercial Connect, LLC., of 1418 South 3rd Street, Louisville, KY, 40208, USA represented internally by Jeffrey S. Smith.

The Applicant is Global eCommerce TLD Asia Limited of 12F, Daily House, 35-37 Haip[ong Road, Hong Kong, China, represented internatlly by Rebecca Y. Chan.

The New gTLD String Objected To

The new gTLD string applied for and objected to is: <.网店>

Prevailing Party

The Applicant has prevailed and the Objection is dismissed.

The New gTLD String Confusion Process

Module 3 of the ICANN gTLD Applicant Guidebook contains Objection Procedures and the New gTLD Dispute Resolution Procedure ("the Procedure").

Article 1(b) of the Procedure states that "The new gTLD program includes a dispute resolution procedure, pursuant to which disputes between a person or entity who applies for a new gTLD and a person or entity who objects to that gTLD are resolved in accordance with this New gTLD Dispute Resolution Procedure".

As expressed in the Guidebook, and the Procedure, there are four (4) grounds to object to the registration of new gTLDs. One of these grounds expressed String Confusion, as described in the Procedure Article 2(e)(i): **"(i) 'String Confusion Objection' refers to the objection that the string comprising the potential gTLD is**

confusingly similar to an existing top-level domain or another string applied for in the same round of applications."

Article 3(a) states that "String Confusion Objections shall be administered by the International Centre for Dispute Resolution".

Procedural History of this Case

1. On March 13, 2013, pursuant to the Procedure, the Objector filed with the International Centre for Dispute Resolution ("ICDR"), an ICANN gTLD String Confusion Objection that is the subject of this proceeding.
2. On March 18, 2013 the ICDR acknowledged receipt of the Objection and advised the parties that pursuant Article 9 of the Procedure it would conduct an administrative review of the Objection .
3. On April 11, 2013 the ICDR advised the Objector that it had conducted the administrative review and that after rectifying deficiencies previously set forth, the Objection complied with Articles 5-8 of the Procedure and with the ICDR Supplementary Procedures for String Confusion Objections (Rules) ("the applicable ICDR Rules") and that accordingly the Objection would be registered for processing.
4. On April 17, 2013, the ICDR advised the parties that the Applicant was invited to file a Response to the Objection.
5. On May 24, 2013 the Applicant filed its Response to the Objection.
6. On May 24, 2013, the ICDR advised the parties that it had conducted an administrative review of the Response to the Objection and noted that the Response complied with Article 11 of the new gTLD Dispute Resolution Procedure and with the applicable ICDR Rules.
7. On June 17, 2013 and pursuant to Article 13 of the Procedure, the ICDR appointed The Honourable Neil Anthony Brown QC as an Expert in this matter ("the Expert"). Prior to accepting appointment, the Expert, pursuant to Article 1 of the applicable ICDR Rules and to ensure compliance with Article 13(c) of the Procedure, declared to the ICDR that there were no circumstances likely to give rise to justifiable doubts as to his impartiality and independence. The Expert has satisfied himself that he was properly appointed.
8. Each party made its advance payment of Costs pursuant to Article 14 of the Procedure.

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9. On August 22, 2013, the Objector asked for permission to submit additional information and on August 30, 2013 the Applicant advised the ICDR that it did not consent to that request. On September 17, 2013 the ICDR advised the parties that it had provided the Expert with the Objector's request to submit additional information to the Applicant's Response. On September 20, 2013 the Expert decided to grant the Objector's request to submit additional information, such information to be submitted by September 24, 2013 and the Applicant to submit its reply only September 27, 2013. On September 27, 2013 the Objector submitted its additional information to the ICDR. On October 7, 2013 the Applicant submitted to the ICDR its reply to the Objector's additional information. For administrative reasons the ICDR accepted both submissions as being timely received and the Expert has taken them into account in his deliberations.

Basis for Objector's Standing to Object based on String Confusion

Section 3.2.2. of Module 3 of the Guidebook provides that objectors must satisfy standing requirements to have their objections considered. Section 3.2.2.1 of that Module provides *inter alia* that in the case of a string confusion objection, "(a)ny gTLD applicant in this application round may file a string confusion objection to assert string confusion between an applied-for gTLD and the gTLD for which it has applied, where string confusion between the two applicants has not already been found in the Initial Evaluation. That is, an applicant does not have standing to object to another application with which it is already in a contention set as a result of the Initial Evaluation."

The Objector is an applicant in the current round of applications for the gTLD <.shop> and string confusion between the Objector and the Applicant has not been found in the Initial Evaluation. The Objector therefore has standing to make the present objection.

Factual Background

1. This is a proceeding to determine whether the proposed generic Top Level Domain 网店 is confusingly similar to the applied for generic Top Level Domain (gTLD) <.shop>. It is brought pursuant to Module 3 of the gTLD Applicant Guidebook ("the Guidebook") approved on June 20, 2011 and as updated on June 4, 2012 by the Internet Corporation For Assigned Names and Numbers ("ICANN"), the Procedure and the applicable ICDR Rules.
2. The Parties are Commercial Connect LLC a United States company ("the Objector") which is the Objector and Global eCommerce TLD Asia Limited, a Hong Kong company ("the Applicant") which is the Applicant for the new gTLD 网店 and hence the Respondent in this proceeding.

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3. The Objecter is the applicant in the current round of applications for the proposed gTLD <.shop>. It argues that the string of the proposed 网店 TLD applied for by the Applicant is confusingly similar to the string of the applied for TLD <.shop>. The Applicant maintains that the string of the proposed 网店 TLD is not confusingly similar to the string <.shop>.

Parties' Contentions

Objector

In its Objection the Objector made the following contentions.

1. It was incorporated in the year 2000 for the purpose of obtaining a new Generic Top Level Domain, namely <.shop> and has been actively pursuing that objective since then.
2. Its submission then discusses the history of ICANN's deliberations on new gTLDs, the development of the Applicant Guidebook, the sections of the Guidebook devoted to string similarity, an alleged mistyping in the Guidebook on the treatment of confusingly similar, the String Similarity Panel and string confusion in general.
3. The Objector submits that it has standing to object pursuant to Module 3 Section 3.2.2 of the Guidebook on the grounds of string confusion.
4. The Objector then submits that the proposed gTLD so nearly resembles the <.shop> TLD that confusion will arise in the mind of the average, reasonable internet user because the disputed gTLD application is similar either visually, aurally, or has a similar meaning.

Objector's Additional Information

In its Additional Information the Objector made the following contentions.

1. The IDN gTLD is confusingly similar to the Objector's <.shop> gTLD string. The IDN gTLD has the same meaning as <.shop>, such that the concurrent use of both gTLDs will make it probable that confusion will arise in the mind of the average reasonable internet user.
2. Section 3.5.1 of the Applicant Guidebook provides guidance for the dispute resolution process for string similarity and Section 2.2.1.1.3 states that confusion may be caused by the visual or aural similarity, or similarity of meaning between the two applied for gTLDs.
3. With respect to the Objector's <.shop>, the word shop may be used as a noun or a verb. Applicant describes its IDN gTLD as having the same meaning as shop. The Applicant admits that the IDN webstore gTLD will become a global platform for Chinese speaking customers to shop online and its application

refers to shops and shoppers, shopping and bringing “shops and shoppers” into the Chinese internet marketplace and serving the Chinese language community. Thus the concurrent use of the two gTLDs will result in probable confusion by the average reasonable internet user because the two strings have virtually the same meaning. The average internet user would not be able to differentiate between the two strings and in the absence of some other external information would have to guess which of the two strings contains the information the user is looking to view.

4. The use of foreign characters is not a sufficient basis to differentiate two strings with essentially the same meaning when the IDN string is translated from one language to the other. The use of the Chinese language is growing rapidly.
5. Thus if the two gTLDs are not placed in the same contention set each may register as a gTLD resulting in confusion in the mind of the average , reasonable internet thereby threatening the stability of the internet that ICANN has been tasked with preserving.

Applicant

1. The Objector has not provided a detailed explanation of the validity of the objection nor any evidence to support why the objection should be upheld.
2. No reason is given why the two strings are confusingly similar.
3. According to the algorithm used in the String Assessment Tool, the similarity between the 网店 (.webstore) TLD and <.shop> is 0%.
4. The two applications are targeting different markets and as the users are likely to be using different keyboards, there is no probability that any user confusion will arise.
5. Chinese linguistic advice obtained by the Applicant is that the 网店(.webstore) TLD means ‘web shop’ or ‘online shop’ and is pronounced “wang-dian” in Mandarin. There is therefore no aural similarity.
6. The meanings are also different, as <.shop> means a bricks and mortar retail outlet, whereas the 网店(.webstore) TLD means a website.
7. The Objector’s submission concerning an alleged mistyping in the Guidebook on the treatment of confusingly similar is incorrect and has been rejected by ICANN.
8. The Objection is an abuse of process. No evidence has been submitted to show confusing similarity despite the Objector having the burden of proof. The burden of proof has not been met as the Objector has not shown confusing similarity or a probably likelihood of user confusion.

Applicant's Reply to Objector's Additional Information

1. The Objector's argument seems to be that the actions of customers (to purchase goods or services) in each namespace is the same and that, therefore, the gTLDs have the same meaning and consequently a probability of confusion.
2. But the definition of string confusion is stated clearly in Section 3.5.1 of the Guidebook and the process should be confined to that test, which is whether a string so clearly resembles another that it is likely to deceive or cause confusion.
3. The Applicant has not, as alleged by the Objector, described its IDN gTLD as having the same meaning as shop. There are clear and substantive differences between the two, as the IDN gTLD includes the Chinese character for 'web', 'net' or 'network', which are not present in 'shop'. The two strings do not have the same meaning.
4. The Objector wrongly contends that "foreign characters" is not a sufficient basis for differentiation. That submission overlooks the fact that TLD applied for is in Chinese for Chinese language users.
5. In any event when shop is translated into Chinese it does not become the TLD applied for as it is a different word.
6. Moreover, the new gTLD program is designed to promote diversity and expand the use of languages other than English. The Objection militates against this objective.
7. The average internet user will not be confused. Chinese internet users will not be confused as they already use English on the internet and are in fact not confused.
8. The likelihood of confusion must be probable for the Objector to succeed. There is no proof of this. The fact that both will function as shopping sites, goes beyond string confusion and in any event association is not a ground for string confusion.

Discussion and Findings

1. **Burden of proof.** The first matter to be considered is which party bears the burden of proof. In this matter the burden of proof is on the Objector. That would be so as a matter of general principle even without any specific provision in the ICANN documents governing this proceeding; the proceeding concerns an attempt by the Objector to dislodge the Applicant/ Respondent from its prospective entitlements and rights under the

application for a new gTLD under the new TLD arrangements and the burden of making out a case for doing so must rest on the party who wishes to achieve it.

2. But even apart from general principles, the relevant provision in the ICANN Guidebook makes it clear beyond doubt that the burden of proof is on the Objector. That conclusion is drawn from Section 3.5 of Module 3 in the Guidebook, which provides, among other things, that "The objector bears the burden of proof in each case". The onus is therefore on the Objector to prove its case.
3. The same proposition is stated again in the section of the Guidebook devoted to procedures, namely the Attachment to Module 3. That procedure provides as follows:

Article 20. Standards

- (a) For each category of Objection identified in Article 2(e), the Panel shall apply the standards that have been defined by ICANN.
 - (b) In addition, the Panel may refer to and base its findings upon the statements and documents submitted and any rules or principles that it determines to be applicable.
 - (c) The Objector bears the burden of proving that its Objection should be sustained in accordance with the applicable standards."
4. But the question instantly arises: if the burden of proof is on the Objector, what does the Objector have to prove? The answer to that question is contained in the provisions in the Guidebook relating to certain standards that must be applied in these proceedings. That requirement comes about because, first, Article 20 of the Procedure requires the Panel to apply the standards defined by ICANN. Secondly, Section 3.5 of Module 3 of the Guidebook provides for certain "Dispute Resolution Principles (Standards)" and Section 3.5.1 of the Module contains the standards to be applied in cases of String Confusion Objections. Those standards are as follows:

"3.5.1 String Confusion Objection

A DRSP panel hearing a string confusion objection will consider whether the applied-for gTLD string is likely to result in string confusion. String confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion. For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user. Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion."

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5. Thus, in the present case, to comply with the standards, the Objector must prove that the applied for 网店 TLD is likely to result in string confusion with the gTLD for which it has applied, namely <.shop> and within the meaning articulated in the standard. In particular, the standard requires the Objector to prove that string confusion is "likely to result." This does not weaken the burden on an Objector, but strengthens it.
 6. The provisions of the Guidebook just referred to and dealing with standards then gives an indication of when it is likely that a string confusion has arisen. Module 3, Section 3.5.1 provides that:

"For a likelihood of confusion to exist, it must be probable, not merely possible that confusion will arise in the mind of the average, reasonable Internet user."
 7. Thus, a mere possibility of string confusion is not enough and the time-honored criterion of "probably" must be satisfied; moreover, the probability of confusion must have arisen in the mind of the average, reasonable Internet user.
 8. The notion of probability is not confined to Section 3.5.1 of Module 3. It has previously been invoked in the definition of "similar" which appears on two occasions in the Guidebook. The first occasion is in Module 1, Section 1.1.2.10 where it is said:

"In this Applicant Guidebook, 'similar' means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone." (Module 1, Section 1.1.2.10).

The second occasion is in Module 2, Section 2.2.1.1 where the same definition appears:

"In this Applicant Guidebook, 'similar' means strings so similar that they create a probability of user confusion if more than one of the strings is delegated into the root zone."
 9. But the test of whether it is probable that confusion will arise in the mind of the average, reasonable Internet user must be applied judicially and it is not enough to conclude that some-one, somewhere will probably be confused by the string. The test is made more specific than that by requiring that the probable confusion must be in the mind of "the average, reasonable internet user." The task of the Expert in the present proceeding is therefore to place itself in the position of the average, reasonable internet user and to assess whether such a person would probably be confused by the proposed string.
 10. Then, in this analysis of principles, the question arises: what is string confusion? To that question the answer is given, as has been noted, in Section 3.5.1 of Module 3, namely that "(s)tring Confusion exists where a string so nearly resembles another that it is likely to deceive or cause confusion."
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11. Finally, the standards add another cautionary rule in interpreting the Module and in assisting Experts to decide whether in a given case, a likelihood of confusion has been established. This is achieved by reminding the Expert that just because an object reminds one of something else, does not mean that the observer is confused between the two. It does this by providing: "Mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion." Logically, that is a correct statement and a timely reminder, as is well illustrated by the observation of the court in *In re Ferrero*, 479 F.2d 1395, 1397 (CCPA 1973) that:

"Seeing a yellow traffic light immediately 'calls to mind' the green that has gone and the red that is to come, or vice versa; that does *not* mean that confusion is being caused. As we are conditioned, it means exactly the opposite."

12. Putting all of these criteria together clarifies the task of the Expert and shows the obligations of an Objector in these proceedings. Those obligations are that the Objector:
- (a) must prove its case;
 - (b) must do so on the balance of probabilities and must therefore show that string confusion will probably occur; noting that
 - (c) it is not enough to show that string confusion is a possibility; and
 - (d) what the Objector has to prove is that string confusion is likely to result; and
 - (e) it must prove that the string confusion is likely to arise in the mind of an average, reasonable Internet user;
 - (f) the state of string confusion that must exist for the Objector to succeed is where "a string so nearly resembles another that it is likely to deceive or cause confusion";
 - (g) finally, that task will not be assisted by showing that the string brings another string to mind.

13. The starting point in this inquiry consists of the terms of the objection itself.

The Objection is:

"String Confusion Objection – The applied-for gTLD string is confusingly similar to an existing TLD or to another applied for gTLD string in the same round of applications."

As has been noted, "similar" has in effect been defined in two provision in the Guidebook ,Module 1, Section 1.1.2.10 and Module 2, Section 2.2.1.1, namely : "In this Applicant Guidebook, 'similar' means strings so similar that they create a

probability of user confusion if more than one of the strings is delegated into the root zone."

14. The applied for string is 网店. The TLD applied for by the Objector is <.shop>. The question is therefore whether the string 网店 is confusingly similar to the string <.shop>. The Determination of this Expert is that the string 网店 is not confusingly similar to the string <.shop>. That is so for the following reasons.
15. There are essentially two questions which, to some extent overlap, but they are nevertheless two questions. The first question that arises is whether the two strings are similar, as defined in the Guidebook. The second question is if the two strings are similar, are they confusingly so?
16. As to the first question, the answer is that the two strings are not similar, within the generally accepted meaning of the word 'similar.' There is no similarity between them. For a start, the applied for TLD 网店 is in the Chinese language and the Objector's proposed TLD, <.shop> is in the English language. That makes it very unlikely that there will be any similarity between the two and even less likely that an internet user would think that they were similar.
17. Moreover, it is clearly ICANN's intention that in interpreting whether the two strings are similar, the Expert should use the definition of 'similar' that has been mandated in the Guidebook and repeated. The question is therefore whether the two strings are so similar that they create the probability of user confusion. The Expert's view on that question is that the two strings are not similar, as they will not probably give rise to user confusion. Indeed, there is in the opinion of the Expert, not only no probability that the two strings will give rise to user confusion, but no practical possibility that this will occur. Users will recognize that one of the strings is in the Chinese language and one of them is in the English language and that that difference means that they should regard the two strings as different, as they are. Internet users are now very well aware that, on the internet, even small differences in spelling and meaning are significant and that they mean different things, will lead to different destinations such as websites and email destinations and will carry consequences, such as whether communications are genuine and reach their correct destinations. This state of awareness must be enhanced when the internet user sees that the two strings are in different languages, especially two languages as different as Chinese and English. Internet users have become increasingly aware of such differences and are now mature and sophisticated enough to realize it, when they are being presented with such differences; indeed, internet users are so astute to such matters that they now look for them to ensure as best they can that they are not being misled or deceived. There will therefore, in the opinion of the Expert, be no probability of user confusion if the two strings are delegated into the root zone and no real possibility of user confusion.

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18. The second question is whether, if the two strings are similar, are they confusingly similar? The Expert has already held that the two strings are not similar, but even if they were, the Expert finds that they are not confusingly similar. The string 网店 is not confusingly similar to the string <.shop>. In particular, the opinion of the Expert is that the Objector has not discharged its burden and its Objection therefore fails.
19. We have already seen from the Guidebook and the standards that must be applied that the Objector must show:
- (a) that the new gTLD 网店 is likely to result in string confusion;
 - (b) that the confusion must arise in the mind of the average, reasonable internet user ; that
 - (c) string confusion will be said to have arisen where a string so nearly resembles another that it is likely to deceive or cause confusion; bearing in mind that mere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion.
19. Taking each of these requirements in turn and applying the standards specified in Section 3.5.1 of Module 3:
- (a) In the opinion of the Expert, having considered the totality of the evidence and the submissions, the proposed new gTLD is not likely to result in string confusion. Indeed, there is no real possibility that it will do so. It must be borne in mind that the Guidebook admonishes against finding that there is a mere possibility and then drawing from that finding the conclusion that a possibility makes something likely or probable, as it clearly does not. In the present case, however, the Objection fails at the first hurdle, as the notion that the TLD will result in string confusion is speculative at best and is not so in any real or practical sense. The conclusion must therefore be, *a fortiori*, that there is no likelihood of string confusion. That is so because the reader and the user will appreciate the fact that the words that constitute the strings are in two different languages and that consequently they may well mean different things, as they do. In the case of those internet users familiar with the Chinese language, the unchallenged evidence is that those persons will give the Chinese words their actual meaning, which is predicated by the Chinese symbols for 'web', 'net' and 'network'. They would therefore instantly realize that this connotes a space on the internet where goods and services may be acquired from an internet enterprise. They would also instantly appreciate that such a notion is different from the English word 'shop' which connotes a bricks and mortar establishment , albeit one with an internet address. English language users who are familiar with the Chinese language would reach the same conclusion. English language users who are not familiar
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with the Chinese language would be faced with one TLD in Chinese and one in English and it is fanciful to suggest that they would go ahead with any transaction on the internet without knowing the meaning of one of the two TLDs presented to them. It is therefore not likely that the presence of the Chinese language TLD would lead to confusion and any such result is so speculative that it can only be described as not possible in any real or practical sense.

- (b) Moreover, it must be remembered that when the standard provides that the Objection can succeed only when the new TLD is “likely to result in string confusion” it means “string confusion” as defined. Section 3.5.1 defines string confusion as such a state of resemblance between the two strings “that it is likely to deceive or cause confusion.” The opinion of the Expert, having considered the totality of the evidence and the submissions, is that the resemblance between the two strings in question will not deceive or cause confusion among users as there is virtually none. That is so because internet users familiar with both languages will appreciate that the words making up the TLDs are different, that they have their own meanings, that they are being used as separate TLDs which by necessity must be different and they will also draw on their own experiences of using the internet. That experience tells them that differences in spelling, let alone differences in spelling that constitute different words and differences in language, have immense consequences when it comes to website addresses, domain names, email addresses, passwords and elsewhere and that a change of one letter or a change in punctuation, let alone a change in language will probably mean the difference between using the internet successfully or not. Because of that experience and because of the times when they have been frustrated in the use of the internet, users are now permanently on the look out for such differences and will be particularly astute to take notice of them. There must especially be so when one of the TLDs is in a different language. There is therefore an air of unreality in the argument that internet users will think that two proposed new TLDs in different languages are actually the same as or associated with each other or that there is some connection such that they will be deceived or confused between the one and the other.
- (c) The Expert also specifically holds, having considered the totality of the evidence and the submissions, it is unlikely that string confusion will result in the present case in the mind of the average, reasonable internet user for reasons already given. It is also one of the characteristics of average, reasonable internet users that they are now, probably more than ever, on their guard and likely to be curious about similarities in spelling and what they signify and particularly when they are confronted with different languages. Moreover, the average, reasonable internet user is by definition familiar with the internet and

the suggestion that internet users will not be able to tell one TLD from another in a different language, sells their knowledge short and is unjustified. Accordingly, no confusion will arise in the present case in the mind of the average, reasonable internet user between 网店 and <.shop>.

- (d) The Expert also finds, having considered the totality of the evidence and the submissions, that the string 网店 does not so nearly resemble another that it is likely to deceive or cause confusion.
 - (e) For reasons of completeness, the Expert also finds on the balance of probabilities and in the present context, that the string 网店 does not bring the string <.shop> to mind, but that if it did, it is by virtue of the express words of the standard insufficient to find a likelihood of confusion.
20. The Panel will now deal with a number of other arguments that have been raised and a number of other issues that have arisen during the proceeding and which are relevant to the Expert's Determination.
- 1. First, the Objector's case is deficient in that none of its submissions have been supported by evidence. That makes it very difficult for the Expert to conclude that the Objector has established its case on the balance of probabilities and the Expert finds that it has not done so.
 - 2. The Objector has argued that the IDN gTLD has the same meaning as <.shop>. That is not a conclusion that can be reached on the evidence. The only evidence adduced on this issue was brought forward by the Applicant and it is to the contrary. The evidence was described as Chinese linguistic advice and it was to the effect that the TLD 网店 means 'web shop' or 'online shop'. The Expert takes this to be the equivalent of the commonly used word 'website'. This shows that the meaning of the Applicant's applied for TLD is in effect a business conducted on the internet for buying goods and services. That is different from the meaning of the Objector's TLD, which is the establishment normally understood as a shop, which is a physical establishment, albeit that it has an internet address, which most businesses have. At the very least, the Expert is not prepared to find on the balance of probabilities that the two TLDs have the same meaning.
 - 3. The Objector has also submitted that the Applicant has admitted that the Applicant has described its IDN gTLD as having the same meaning as 'shop'. The Applicant has denied this. The Expert can find nothing to support the Objector's contention and it would indeed be a strange thing for the Applicant to do.
 - 4. The unchallenged evidence is also that the Applicant's TLD is pronounced "wang-dian" in Mandarin. It is clear that this is very different from the pronunciation of the word 'shop'. The Expert

therefore agrees with the submission of the Applicant that there is no aural similarity between the two and so finds.

5. The Objector has submitted that the use of foreign characters is not a sufficient basis to differentiate two strings with essentially the same meaning when the IDN string is translated from one language to the other. The Applicant has replied to this submission by observing that the Objector overlooks the fact that TLD applied for is in Chinese for Chinese language users. The Expert agrees and the fact that the TLD will by definition be utilised by Chinese language users, together with the fact that the Objector's TLD is in the English language is the very reason why there will be no string confusion. Moreover, as the Applicant has submitted and no challenge has been made to the submission, when the English word 'shop' is translated into Chinese, the result is not the TLD applied for, but a different word.
 6. There is also the fundamental point that one of ICANN's motivations in proposing the new structure is to encourage diversity in the languages used on the internet. The Objector's position is inimical to that aim and the Applicant's position supports it.
21. For all of the foregoing reasons, the Objector has not discharged its burden in this proceeding.

Determination

Therefore, the Applicant has prevailed and the Objection is dismissed.

October 12 2013

A handwritten signature in black ink, appearing to read 'Neil Anthony Brown', with a stylized, flowing script.

The Honourable Neil Anthony Brown QC

Sole Expert Panelist