

## International Centre for Dispute Resolution

### New gTLD String Confusion Panel

---

Re: 50 504 00266 13

Commercial Connect LLC, OBJECTOR

and

CORE Association, APPLICANT

String: رازلب (translated to English as dotBazaar or dotMarket)

---

### **EXPERT DETERMINATION**

#### **The parties**

The Objector is Commercial Connect LLC, of 1418 South 3<sup>rd</sup> Street, Louisville KY 40208, which is represented by Jeffrey S. Smith of the same address.

The Applicant is CORE Association, of World Trade Center II, 29 route de Pre-Bois, CH – 1215 Geneva, Switzerland, which is represented by Werner Staub

#### **The New gTLD String Objected To**

The new gTLD string applied for and objected to is: رازلب (dotBazaar or dotMarket)

#### **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 (“Guidebook”) 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 DRP 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) of the Procedure states that “String Confusion Objections shall be administered by the International Centre for Dispute Resolution”.

## **Procedural History of this Case**

The Objector, Commercial Connect LLC, submitted an objection on March 13, 2013, asserting that the application for رازابه filed by IDN xn--mgbab2bd (which it was alleged means dotBazaar or dotMarket) so nearly resembles the .shop TLD that it is probable that confusion will arise in the mind of the average, reasonable internet user “because the .bazaar or .market gTLD application is similar either visually, aurally, or has a similar meaning, because bazaar or a market is simply another word for shop.”

The DRSP acknowledged receipt by letter dated March 18, 2013, advised the Objector of a procedural deficiency by letter dated April 4, 2013, further advised Objector by letter dated April 11, 2013 that the procedural deficiency had been rectified, and by letter dated April 17, 2013, invited Applicant to file a Response to the Objection. Applicant thereafter filed a Response (the file received by the undersigned contains two versions of the Response which appear to differ only in minor respects).

By letter dated May 24, 2013, the DRSP advised the parties that it would proceed with the appointing of an Expert. By letter dated June 13, 2013, the DRSP advised the parties that it had appointed the undersigned as the Expert for this matter.

## **Basis for Objector’s Standing to Object based on String Confusion**

Section 3.2.2 of the Guidebook specifies the requirements for standing to object to an applied-for gTLD on the basis of string confusion, namely, that an objection may be filed by (a) an existing TLD operator or gTLD applicant in the current round, or (b) in certain circumstances where an IDN ccTLD Fast Track request has been submitted. This case involves the former ground.

Objector is a gTLD applicant in the current round, and therefore has standing to object.

## **Parties’ Contentions**

### **Objector**

The undersigned Expert has been provided with Objector’s online filing demand and what appears to be a form objection in blank (i.e., one that does not identify the Applicant challenged). From these documents, and Objector’s 2012 application for the .SHOP gTLD, Objector’s contentions can be summarized as follows:

1. Objector is the only remaining and active applicant from the 2000 round for the .shop string; in the online demand, Objector states that it is the “only remaining approved and active applicant for .shop in the 2000 round”;
2. The gTLD filed by Applicant “so nearly resembles the .shop TLD that it is probable that confusion will arise in the mind of the average, reasonable internet user;”
3. The رازابه (or .bazaar or .market) string gTLD application is similar either visually, aurally, or has a similar meaning because a bazaar or a market is simply another word for shop.
4. There are errors in the Guidebook with respect to visual similarity.

### **Applicant**

Applicant denies each of Objector’s contentions. In particular, Applicant contends:

1. Objector was not approved or selected in the 2000 round. No .shop application at that time – including one from this Applicant – was selected. Moreover, Objector’s contention with respect

to the 2000 round is irrelevant to this proceeding, which concerns only the likelihood of confusion between the two strings here at issue.

2. The differences between the strings are such that, not only is it not probable that confusion will arise in the mind of the average, reasonable internet user, but also confusion is impossible.
3. There is no visual or aural similarity of the two strings, and the meanings of the two strings are different.
4. There is no error in the Guidebook. Visual similarity is not the sole criterion to be taken into account. The issue in this proceeding is the probable confusion (or not) in the mind of the average, reasonable internet user.

## Discussion and Findings

Section 3.5 of the Guidebook provides the following general principles that govern this determination: First, the objector bears the burden of proof. Second, an expert deciding a string confusion objection may find string confusion “where a string so nearly resembles another that it is likely to deceive or cause confusion.” The Guidebook elaborates as follows:

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. *Id.*, section 3.5.1 (emphasis added).

I first address the argument that there is an error in the Guidebook (contention number 4 above). This argument is set forth in what I have referred to as a form objection in blank (a pdf file bearing the name 502013000266\UNTYPED\50-504-T-000266-13.UNTYPED.7627426.pdf among the documents provided to me). I confess that I find Objector’s argument on this point somewhat confusing, but that is of no import to the final determination here. As Applicant points out, Objector wrote to an ICANN vice president on this issue in March 2013, and received a response stating that ICANN was unable to assist Objector further on this point. I too am unable to assist Objector on this point, as I am without jurisdiction to decide whether errors were made in the Guidebook. My jurisdiction is limited to determining whether the strings could give rise to probable confusion among average, reasonable internet users.

To the extent Objector argues that it is entitled to some preferential treatment by virtue of having applied for the .shop string in the 2000 round (contention number 1 above), I find that Objector has failed to present evidence of, much less carry its burden of proving, any such entitlement. Objector does assert that, from 2004 to the present, it has been active in obtaining supporters for its .shop cause, and has in excess of 15,000 members representing over \$650 trillion in annual revenues that support its application for .shop. Assuming all of that is true, it does not address the issue of possible or probable confusion with the Applicant’s رازابه string. Stated otherwise, dismissing the objection here does not affect Objector’s ability to proceed with its .shop business model, assuming it prevails in an ICANN Module 4 string contention procedure with other applicants (if any) for the .shop designation.

I now address contentions 2 and 3 together. On these points, I find that Objector has provided no real evidence of potential confusion, and simply asserted ultimate conclusions. In contrast, Applicant has submitted comprehensive and persuasive arguments that there is no probability of confusion between the .shop and برازا strings among average, reasonable internet users.

First, to state the obvious, there is no visual similarity between the strings – they are completely different in form, language and characters. So too, there is no aural or phonetic similarity.

Lastly, even if one considers how the رازابه string may be translated into English, not necessarily a typical approach for the average, reasonable internet user, the meaning of “shop” and “رازابه” are different. “رازابه”, it is agreed, means bazaar or market. In its application, Objector asserts that .shop “is globally recognized and exists in excess of twenty different languages all with the same meaning: ‘a building or room stocked with merchandise for sale: a store.’ This is not the case for other closely related words, like store and buy ...” Answer to question 16 in Application by Objector submitted to ICANN and originally posted on June 13, 2012 (emphasis added). As Applicant sets forth, this is the Oxford Dictionary definition of the noun “shop.” The noun “market” on the other hand is defined as “a regular *gathering of people* for the purchase and sale of provisions, livestock, and other

commodities” (emphasis added), and “an area or arena in which commercial dealings are conducted.” “Bazaar” is defined as a market in a Middle Eastern country.

The words “shop” on the one hand, and “bazaar” and “market” on the other, are thus seen as different: A market (in the noun sense) may be seen as a collection of shops, but in the main is a *gathering of people*. At best, the words as nouns are related in a vague way.<sup>1</sup> Applicant argues that this vague relationship is like the relationship between a clarinet and an orchestra – in some occasions, clarinets are used in orchestras, but they are also used in other circumstances, such as combos, quartets, ensembles, etc. They do not mean the same thing, nor are the words likely to cause confusion. I agree with this analogy. Or, stated in the terminology of standard set forth in the Guidebook, “[m]ere association, in the sense that the string brings another string to mind, is insufficient to find a likelihood of confusion” among average, internet users. Accordingly, I find that it is not probable that, if confronted with both the .shop string and the بازار string, confusion will arise in the mind of the average, reasonable internet user.

#### **Determination**

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

The Applicant has prevailed and the Objection is dismissed.

August 12, 2013



Charles R. Ragan

Sole Expert Panelist

---

<sup>1</sup> The English verb forms of “shop” and “market” are virtual antonyms: “Shop” as a verb means to “visit one or more stores or websites to *buy* goods;” “market” as a verb means “to *advertise* or promote”. Thus, “shop” represents the “buy” side of a commercial transaction, and “market” represents the “sale” side.