International Centre for Dispute Resolution

New gTLD String Confusion Panel

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Re: 50 504 00272 13

    COMMERCIAL CONNECT, LLC, OBJECTOR

    and

    ECOMMERCE, INC., APPLICANT

String: <.ECOM>

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EXPERT DETERMINATION

The Parties:

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

The Applicant is Ecommerce, Inc. and is represented by Jonathan G. Polak, Diane D. Reynolds and Michael Zach Gordon, Taft Stettinius & Hollister LLP, One Indiana Square, Suite 3500, Indianapolis, IN 46204 USA.

The New gTLD String Objected To:

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

Prevailing Party:

The <u>Applicant</u> has prevailed and the Objection is <u>dismissed</u>.

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

Procedural History of this Case:

By letter dated March 18, 2013, the International Centre for Dispute Resolution ("ICDR") acknowledged receipt of the Objection. By letter dated April 4, 2013, ICDR found certain administrative deficiencies in the Objection and gave Objector an opportunity to correct these. By letter dated April 11, 2013, ICDR subsequently found the earlier deficiencies rectified, and registered the Objection for processing. By letter dated April 17, 2013, ICDR directed Applicant to file its Response to the Objection. Applicant timely filed its Response to the Objection on or about May 17, 2013. By letter dated May 24, 2013, ICDR acknowledged timely receipt of the Response to the Objection and determined that the Response complied with Article 11 of the *New gTDL Dispute Resolution Procedure* and the applicable Dispute Resolution Service Provider ("DRSP") Rules. By letter dated June 18, 2013, ICDR appointed the undersigned to serve as the neutral expert ("Expert") in this matter.

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

Objector is a gTLD applicant for: .shop. Objector has standing to make its Objection pursuant to Module 3 of the ICANN gTLD Applicant Guidebook on the grounds of String Confusion.

Factual Background:

Applicant has applied for the potential .ecom gTLD. Objector has applied for the potential .shop gTLD.

The Parties' Contentions:

Objector: Objector contends that the gTLD (".ecom") 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 because the .ecom gTLD application is similar either visually, aurally, or has a similar meaning.

Applicant: Applicant contends that the Objector failed to provide evidentiary support for the contentions summarized above, and that the Objection failed to demonstrate that Applicant's gTLD .ecom has a significant probability of causing a likelihood of confusion in the mind of the average, reasonable internet user.

Discussion and Findings:

Based on the record presented, I make the following findings concerning this dispute:

Objector has failed to demonstrate it is probable that Applicant's gTLD .ecom will cause a likelihood of confusion to arise in the mind of the average, reasonable internet user as specified in the ICANN *gTLD Applicant Guidebook,* Module 3, Section 3.5.1. Objector also failed to demonstrate either that internet users will be unable to distinguish between the gTLD's ".shop" and ".ecom" when using the internet, or that they will be confused into believing that these two gTLD's are either the same or interchangeable.

More specifically, the Objection failed to demonstrate that the ".shop" and ".ecom" gTLD's are visually similar, phonetically or aurally similar, or that they have similar meanings. Rather, Applicant demonstrated persuasively that the two terms are both visually and phonetically dissimilar. The Objection substantially undercut its own contention that the two gTLD's have similar meanings: Objector listed 19 words that allegedly have a similar meaning to .shop, but none of the words listed included ".ecom" or "commerce" or any similar variants of those terms. As presented, the Objection failed to demonstrate the two gTLD's convey confusingly similar meanings or that reasonable internet users are likely to be confused by them.

For these reasons, I find that Objector failed to satisfy the standard required by applicable ICANN guidance to establish a probability of string confusion.

Determination:

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

DATED this 15th day of August, 2013

Thomas J. Brewer

Sole Expert Panelist