International Centre for Dispute Resolution

New gTLD String Confusion Panel

Re: 50 504 00269 13

COMMERCIAL CONNECT LLC, OBJECTOR

and

DOT STORE GROUP LLC, APPLICANT

String: <.store >

EXPERT DETERMINATION

The parties

The Objector is Commercial Connect LLC located at 1418 South 3rd Street, Louisville, Kentucky, United States of America 40208 and is represented by Jeffrey S. Smith, President.

The Applicant is Dot Store Group LLC located at 5936 Limestone Road, Suite 101, Hockessin, Delaware, United States of America 19707, represented by Michael Louis Dister, President.

The New gTLD String Objected To

The new gTLD string applied for and objected to is: **<.store>** (the "Applied-for gTLD").

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 (the "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 ["DRP"], 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 the 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 express grounds is 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."**

Section 1.1.2.10 of the Guidebook entitled "String Contention" offers the following definition: "String Contention" refers to the scenario in which there is more than one qualified application for the identical gTLD string or for

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similar gTLD strings. In the 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.

Section 2.2 of the Guidebook, "Initial Evaluation" is defined as: "whether the applied–for gTLD string is so similar to other strings that it would create a probability of user confusion."

In Section 2.2.1.1 of the Guidebook, "String Similarity" is defined as: "This review involves a preliminary comparison of each applied-for gTLD string against existing gTLDs, Reserved Names and other applied-for strings. The objective of this review is to prevent user confusion and loss of confidence in the DNS (domain name system) resulting from delegation of many similar strings."

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

Procedural History of this Case

The Objection was filed with the ICDR on March 14, 2013 pursuant to the Procedure.

In accordance with Article 9 of the Procedure, the ICDR completed its review of the Objection and determined that the Objection complies with the requirements of the Procedure and the International Centre for Dispute Resolution Rules for New gTLD Dispute Resolution for String Confusion Objections (the "ICDR Rules").

In accordance with Article 11(a) of the Procedure, the ICDR formally notified the Applicant of the Objection, and the proceedings commenced. In accordance with Article 11(b) and relevant communication provisions of the Procedure, the Response was timely filed with the ICDR.

The ICDR appointed Richard W. Page as the Sole Panel Expert (the "Expert") in this matter on July 10, 2013. The Expert finds that he was properly appointed. The Expert has submitted his Expert's Oath and Conflicts Check, as required by the ICDR to ensure compliance with Article 13(c) of the ICDR Rules.

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

Objector was established in 2000 for the specific purpose of bringing the <.shop> gTLD to the Internet. Objector is the only remaining gTLD applicant to have made it completely through the approval process and is still considered active but has not received delegation for the <.shop> gTLD. Objector asserts that it has standing to object to the Applied-for gTLD pursuant to Module 3, Section 3.2.2 of the Guidebook on the grounds of String Confusion.

For the purposes of this Objection, the Expert finds that Objector as a pending applicant for the <.shop> gTLD has standing to assert its String Confusion Objection.

Factual Background

In the 2000 round, ICANN established various Considerations and Criteria for Assessing gTLD proposals which, unless specifically disputed in the Guidebook, are still valid in the round of gTLD applications. Objector has remained active is the round of gTLD applications. From 2004 to the present, Objector (with others) has been active in obtaining supporters for its <.shop> business plan which is to provide a safe and secure e-commerce experience which meets and exceeds that which is offered currently. To date there are in excess of 15,000 members which represent over $650 trillion in annual revenues that support Objector's application for <.shop>.

Parties' Contentions

Objector

Objector contends that the Applied-for gTLD, so nearly resembles the <.shop> gTLD that it is probable that confusion will arise in the mind of the average, reasonable Internet user because the <.store> gTLD application is similar either visually, aurally or in meaning.

Objector contends that Module 4 of the Guidebook affirms Objector's view that all similar strings, including visual, aural and same meaning similarity, should be in the same contention set. Module 4 states what is considered confusing and what should be grouped together as contention sets to be determined in this case by the dispute resolution teams. Objector provides a list of terms which have similar meaning to <.shop>, including boutique, market, mart, office, store and supermarket.

Objector asserts that at ICANN's board meeting in November 2000, the board commented that they liked Objector's application but felt that it was too soon for an e-commerce domain as the 2000 round was considered a proof of concept round. ICANN invited Objector to re-submit its application for <.shop>. Objector further asserts that ICANN stated that it would give consideration to Objector's application in a preferential manner.

In 2004, ICANN opened another round of gTLD applications, but made the requirement so strict by concentrating on sponsored domains that Objector was unable to apply for <.shop>. Because of this Objector was instrumental in helping to establish eCWR in 2004 which is an e-commerce Trade Union that helps to open communication channels and educate potential new e-commerce merchants. In addition, Objector wanted to use eCWR as a tool to develop a strict set of policies and standards for safe and secure e-commerce transactions.

On June 4, 2012, the final version of the Guidebook was released.

In Section 2.2.1.1 of the Guidebook "Review Performed" is defined as: "The String Similarity Panel's task is to identify **visual** string similarities that would create a probability of a user confusing..."

"For the initial evaluation, the proposed position is to keep the similarity assessment restricted to visual similarity only, especially in view of the complexities involved with assessing for example aural similarity, which can be invoked in the subsequent string similarity objection process. Final decision on similarity will be made by a panel, as string similarity algorithm outcomes are only indicative, not authoritative. Community discussions have made it clear that human assessment is a necessity."

Objector contends that Module 4 of the Guidebook affirms that all similar strings including visually, aurally and same meaning should be in the same contention set.

Objector concludes that the Applied-for gTLD so nearly resembles the <.shop> gTLD applied for by Objector that it is probable that confusion will arise in the mind of the average, reasonable Internet user because the <.store> gTLD being concurrently sought by Objector is similar either visually, aurally, or has a similar meaning.

By making this objection, Objector did not waive any other objections or recourse which may be legally available. Objector expressly retained all other objections and all other avenues of recourse including, but not limited to, the avenues prescribed by ICANN or the avenues which may be found in pursuing legal remedy in a court of competent jurisdiction.

Applicant

Section 2.2.1 of the Guidebook states the following: "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." Moreover, Section 2.2.1.1.1 of the Guidebook states that string similarity applies to "visually" similar strings.

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Applicant contends that contrary to Objector's assertions, <.shop> and <.store> are in no way "so similar" visually as to cause any confusion. No reasonable person could confuse the word "store" with the word "shop." And as a technology matter, having both gTLDs in the root will not result in any technical issues – according to Applicant's technical advisor, Neustar.

Applicant further contends that there are no objections from the String Similarity Panel or the GAC relating to the <.store> gTLD. The GAC addressed the plurality of certain string names such as <.car> and <.cars>. In these cases, the GAC determined that the strings should be put into the same string contention set. However, Section 2.2.1.1 of the Guidebook addresses the review of string similarities: "the visual similarity check that occurs during the Initial Evaluation is intended to augment the objection and dispute process (see Module 3, Dispute Resolution Procedures) that addresses all types of similarity."

Section 2.2.1.1.1 of the Guidebook, which addresses similarity to other applied-for gTLD strings, states the following: "All applied for gTLD strings will be reviewed against one another to identify any string similar strings. In performing this review, the String Similarity Panel will create contention sets that may be used in later stages of evaluation. A contention set contains at least two applied-for strings identical or similar to one another." ICANN has not notified Applicant of any issues regarding the similarity of <.store> to <.shop>.

Section 2.2.1.2 of the Applicant Guidebook addresses the Review Methodology for the String Similarity Panel. There is an "algorithmic score for the visual similarity between each applied-for-string and each other existing and applied-for TLDs and reserved names. The score will be an objective measure for consideration by the panel, as part of the process of identifying strings likely to result in user confusion." ICANN has not advised the Applicant of any issue relating to string similarity for the <.store> gTLD. In this Section and in Section 3.5.1 of the Guidebook, ICANN also set forth the STANDARD FOR STRING CONTENTION – "String confusion exists where a string so nearly resembles another visually that it is likely to deceive or cause confusion. For the 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." Based on ICANN's criterion for visual string confusions, Applicant again refutes Objector's claims.

According to the Guidebook, if an application passes the String Similarity review, it is still open to objection based on confusion relating to type of similarity (visual, aural or meaning). Applicant argues that it has already shown that visually the two words do not look like each other: "Store" has five letters and "shop" has four. The two words do not look similar in any regard, other that they both start with the letter "s." This is not enough to cause any confusion. If so, all applications with string starting with an "s" should be in the same contention set.

Aurally, the two words do not have any similarity other than the "s" sound that they both have. If so, all string applications starting with an "s" sound should be in the same contentions set. Currently in the root are <.co> and <.com>. ICANN has allowed both of these strings into the root and there in no confusion. These two strings have a similar look and sound, yet ICANN has allowed both of these strings to be in the root. If the existence of <.co> and <.com> does not result in Internet user confusion, then surely <.store> and <.shop> - which are for more dissimilar strings – would not do so either.

Applicant asserts that this objection is really based on the contention that "store" and "shop" have similar meanings. Applicant disagrees that confusion by an ordinary user of the Internet would result based on the respective meanings of the words "store" and "shop." Generically, a store and a shop are not the same thing, and the words do not have the same meaning to ordinary people. For example, someone would go shopping, not storing. One would go to a coffee shop, not a coffee store. One would go to the grocery store, not grocery shop. One would own a jewelry store, not a jewelry shop. Applicant asserts that these examples suffice to demonstrate that there really is no similarity in meaning to the average person. Applicant then reviews the definition of the word "store" more specifically.

Applicant sets forth the definitions from the Merriam-Webster Dictionary of the transitive verb "to store" and the noun "store." Applicant substitutes the transitive verb "to shop" in the examples of the transitive verb "to store" and shows that they are meaningless. Furthermore, "shop" is not listed among the synonyms for "store." Applicant then substitutes the noun "shop" in the examples for the noun "store" and shows that they also are not confusing.

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Applicant concedes that there is one definition of the noun store used as "a business establishment where usually diversified goods are kept for retail sale, such as a grocery store" in which a comparison can be made to a shop. Applicant presents several examples such as Macy's being a store, not a shop and Starbucks being a coffee shop not a coffee store. Applicant concludes that the two words simply are not similar enough to cause confusion to the average Internet User.

Applicant notes that the Merriam-Webster Dictionary has ten different definition of the word "store" and only one definition is similar to the word "shop." Applicant concludes that it would be actually harmful to Internet Users not to have both of these strings available in the root. There are many more uses of the word "store" than there are uses for the word "shop."

Applicant commented on Objector's assertions in the objection. Objector claims that it wants to use the string <.shop> as an e-commerce world on the Internet. Objector plans to use the <.shop> string based on the primary usage of the word "shop" as an action verb – I want to go to the "store" to "shop." Therefore, Objector wants to setup an e-commerce world where users can "shop" or "go shopping" on the Internet. This is not the focus of how Applicant would use the string <.store>. Applicant would establish a world in which STORES can build upon their brand names. Applicant is not focusing on the "shopping" aspects. Applicant will let the STORES who buy domain names from Applicant create their own "shopping site." Applicant wants Macy's to own <macys.store>; Apple to own <apple.store>; and Lego to own <lego.store>, so they can build upon their brand names. Applicant will let the STORES build the e-commerce sites in their own domains. This is very different that Objector's main focus – which is to have everyone "shop" in their world. Clearly there is a huge difference between the two approaches. Both strings are appropriate – and indeed necessary – for the Internet.

Objector also made many points about the past applications and the environment in the year 2000 since they were original applicants for <.shop>. Objector also brought up how they assumed ICANN would treat them and expand the Internet. Unfortunately for Objector, their view of what was going to happen did not come to pass. ICANN opened up the application process for all to participate in – with no special treatment for anyone on any basis. Applicant understands that Objector may be upset. However, no past Guidebook or alleged past "promise" should have any bearing on the outcome of the current process actually prescribed by the ICANN in the final Guidebook.

Discussion and Findings

The Expert now proceeds to compare the Applied-for gTLD <.store> with the pending application of Objector for the string <.shop> using each of the three types of similarity: visual, aural and meaning.

The visual similarity of the Applied-for String and the Objector's potential string was not sufficient to raise any concerns when the algorithm was applied. The algorithm analysis is not determinative, but can be considered by the Expert. Furthermore, the word "store" has five letters and "shop" has four. The two words do not look similar in any regard, other that they both start with the letter "s." This is not enough to cause any confusion. The Expert finds that there is insufficient visual similarity between <.shop> and <.store> to cause confusion.

The aural similarity is limited to the two string start with the "s" sound. Each has an internal "o" vowel, but one is short and the other long. This is not enough to cause any confusion. The Expert finds that there is insufficient aural similarity between <.shop> and <.store> to cause confusion.

The Expert finds that the words "store" and "shop" do have similarity of meaning: "a business establishment where usually diversified goods are kept for retail sale..." There are ten different definitions in the Merriam-Webster Dictionary of the word "store" and only one definition is similar to the word "shop." The Expert finds that there is insufficient meaning similarity between <.shop> and <.store> to cause confusion.

Determination

The Expert finds that, under the definition of "String Confusion Objection" set forth in DRP Article 2(e)(i), the string <.store> is not confusingly similar to the string <.shop>.

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

Richard W. Page
Sole Panel Expert
Date: August 14, 2013