

New gTLD String Confusion Panel

Re: 50 504 T00244 13

**COMMERCIAL CONNECT, LLC,
OBJECTOR**

and

**ATOMIC FIELDS, LLC,
APPLICANT**

String: TLD: <.SUPPLIES>

EXPERT DETERMINATION

The Parties

The Objector is Commercial Connect, LLC, with its principal place of business at 1418 S. 3rd Street, Louisville, KY 40208, USA and is represented by Jeffrey S. Smith, 1418 S. 3rd Street, Louisville, KY 40208, USA.

The Applicant is Atomic Fields, LLC. with its principal base of business at 10500 N.E. 8th Street, Suite 350, Bellevue, WA 98004, USA and is represented by Daniel Schindler, Executive Vice President of Donuts, Inc. and Jonathan Nevett, Executive Vice President of Donuts, Inc.

The New gTLD String Objected To

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

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 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

The Objector filed its Objection and the Applicant has responded. Both parties have made written submissions in support of their positions.

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

The Objector has standing based on its being a gTLD applicant. *See* Applicant Guidebook, Module 3 (version 2011-09-9), Section 3.2.2.

Parties’ Contentions

Objector

In its initial Objection, the Objector offers no specific comments or evidence in support of its contention that “.SUPPLIES” is confusingly similar to its gTLD, “.SHOP.” The Objector’s filing demand refers to a number of words that it asserts have similar meanings to “shop.” “Supplies” is not among those listed by the Objector in its filing demand. The Objector asserts, with respect to this matter, “The gTLD filed by [Atomic Fields, LLC] 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 [.SUPPLIES] gTLD application is similar either visually, aurally, or has a similar meaning.” In its Supplemental Submission, Objector emphasizes what it contends is a similarity of meaning between the two gTLDs, pointing to instances in which the two terms can be used in similar ways, such as in house.supplier and house.shop. Objector’s Additional Response, page 3.

Applicant

The Applicant contends that the Objector fails to state fully the basis for its standing to object, asserting that the Objector neglects to state that it was not placed into a contention set with the Applicant's .SUPPLIES string.

The Applicant also contends that the Objector fails to prove the elements of similarity required to be shown for its Objection to be sustained. The Applicant asserts that there is no visual similarity between "supplies" and "shop" -- which it asserts are completely different words. The Applicant also points out that a visual similarity check of .SUPPLIES with .SHOP through ICAAN's String Visual Similarity Assessment Tool yielded a low score of 32%.

The Applicant also contends that the Objector fails to meet its burden of proof regarding the similarity of "shop" and "supplies" in sound, asserting that the words differ sharply from one another, so that it is far from probable that an average internet user who knows English could reasonably confuse "shop" with "supplies."

The Applicant also contends that the Objector fails to meet its burden of proof with respect to the meaning of "shop" as "supplies." The Applicant points to the varying dictionary definitions of each of the terms and the fact that one is plural and the other singular. More generally, the Applicant asserts that the Objection fails to show the high level of similarity needed to succeed with an objection and points out that the Objector makes arguments that are irrelevant to the elements of the Objection standard. With specific reference to the arguments made by the Objector in its Additional Submission, the Applicant contends that the word "shop" generally refers to the consumption of things and "supplies" focuses on the provision of things, arguing that one term would not even bring the other to mind, much less create an affirmative likelihood of possible deception or confusion. Applicant's Response to Objector's Additional Submission, pages 4 and 5.

Discussion and Findings

The Applicant contends that the Objector has no standing to present objections because it was not placed into a contention set with the Applicant's .SUPPLIES string. However, the Applicant Guidebook §3.2.2.1 provides that two types of entities have standing to object, one of them being "[a]ny gTLD applicant in this application round [which] 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. Both applicants are placed in a contention set and referred to a contention resolution procedure only if a gTLD applicant successfully asserts string confusion with another applicant. Accordingly, the Objector satisfies the requirements for asserting an Objection. Furthermore, the Applicant's contention is incorrect that the Objector fails to state

the basis for upholding the Objection, since the Objector states in its Objection, “as a gTLD applicant for .SHOP we have standing to object pursuant to Module 3, Section 3.2.2 on the grounds of string confusion.”

With respect to the merits of the Objection, the Panel examines the two words in question from the points of view of any visual similarity, aural similarity or similarity in meaning.

With respect to visual similarity, there is little question but that the two words are not visually similar. One has two syllables and the other has one. The Panel, applying the standard of examining the two words from the point of view of the average, reasonable internet user, concludes that it is not probable that such a user would find there to be confusion between the two terms from a visual point of view.

With respect to any aural similarity between the terms, the Panel finds little or no likelihood that confusion would exist between the sounds of the two words.

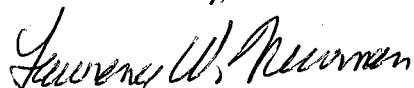
With respect to meaning, the Panel finds that there is no probability that the average, reasonable internet user will mistake the meaning of “shop” with the meaning of “supplies.” “Shop” carries with it the connotation of a place to make retail purchases, or, when used as a verb, for a consumer to seek out such purchases. “Supplies,” on the other hand, although it could have some connection with a shop, has a broad and different connotation of goods and materials that may be held for a variety of uses, including, as examples, raw materials for a factory or materiel for use in the military. According, the Panel finds little or no likelihood of there being confusion between the two terms with respect to meaning.

Consequently, the Panel rejects the Objection made by the Objector.

Determination

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

Dated: November 7, 2013



Lawrence W. Newman, Expert

Sole Expert Panelist