



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2401866
Complainant:	Shenzhen Growatt New Energy Co., Ltd.
Respondent:	Waqas Azfar
Disputed Domain Name(s):	<growattinverters.com>

1. The Parties and Contested Domain Name

The Complainant is Shenzhen Growatt New Energy Co., Ltd. 4-13/F, Building A, Sino-German (Europe) Industrial Park, Hangcheng Ave, Bao'an District, Shenzhen, 518000, China.

The Respondent is Waqas Azfar, of Johar Town, Lahore, Punjab, Pakistan.

The domain name in issue is <growattinverters.com>, registered on January 27, 2020 by the Respondent with NameCheap, Inc., of 4600 East Washington Street, Suite 305, Phoenix, AZ 85034, USA.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (the "Center") on January 23, 2024. On January 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name.

On February 7, 2024, the Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on February 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 27, 2024. The Respondent did not submit a response. Accordingly, the Center notified the Respondent's default on February 28, 2024.

The Center appointed Adam Samuel as the sole panelist in this matter on February 28, 2024. The Panel finds that it was properly constituted. The Panel has submitted the

Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

On March 1, 2024, three days after the due date for the Response, the Respondent emailed the Center, apologizing for the delay in replying and submitting a detailed Response to the Complaint, contradicting a key factual assertion made in the Complaint. The Respondent asserted that when he registered the disputed domain name, he was an authorized distributor of the Complainant. The Response did not contain any supporting evidence.

On March 5, 2024, the Panel issued a Procedural Order, on the basis of paragraphs 5(e) and 10(a) and (d) of the Rules. It noted the Respondent's failure to reply to the Complaint within the designated time but at the same time the seriously arguable nature of the Response if it was supported by credible evidence. The Panel determined that the email of March 1, 2024 was admissible. It ordered the Respondent to supply by March 19, 2024 all the evidence on which it wished to rely. It also ordered that the Complainant would have 14 calendar days from the Center's onward transmission to the Complainant of any evidence filed by the Respondent or March 19, 2024 whichever later to respond to that evidence and the assertions made in the Respondent's email to the Center of March 1, 2024.

The Respondent provided evidence to support the claims he had made in his email of March 1, 2024. The Complainant replied in an email dated March 18, 2024 enclosing the distributor agreement between the Complainant and the TCP International FZE. It also responded to the Complainant's allegations in that email.

3. Factual background

The Complainant is an energy company. It supplies inverters to households and businesses. It owns a UK trademark for GROWATT, registration number UK00910789527 registered on February 20, 2013 and US trademarks for GROWATT POWERING TOMORROW, registration number 4114604, registered on March 20, 2012 and GROWATT, registration number 6065635, registered on May 26, 2020.

Up until at least September 2023, the Respondent appears to have been either an employee or representative of TCP International FZE. It seems that the Respondent is now buying Inverters from TCP International FZE for resale.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant has prior rights to the GROWATT trademarks. The main identifying part of the disputed domain name is the Complainant's trademark GROWATT.
- ii. The Respondent has no trademarks or name rights to GROWATT. The Respondent registered the domain name when it knew or should have known of the Complainant's trademark and directed the domain name to a website related to the Complainant's business in clear bad faith.

- iii. The disputed domain name effectively impersonates or suggests sponsorship or endorsement by the owner of the trademark and does not constitute fair use. The Respondent is not the Complainant's distributor or partner. The Complainant has never directly or indirectly authorized the Respondent to use the trademarks Growatt and the corresponding domain names in any form.
- iv. The disputed domain name was applied for after the Growatt brand had already achieved a high level of global recognition. The Respondent knew or should have known at the time of registration of the domain name of the Complainant's trade name, trademark and bad faith in registering the domain name corresponding to the well-known trademark. This establishes the fact that the disputed domain name was registered in "bad faith".
- v. The content of the website to which the disputed domain name pointed overlapped with the project operated by the Complainant. The Respondent's use of the disputed domain name was to deliberately imitate the Complainant's GROWATT brand for profit.
- vi. The Respondent has not prominently stated his relationship with the Complainant on the webpage to which the disputed domain name resolves. From the content of the Respondent's website, consumers could easily be misled into believing that it is the Complainant's website. The Complainant has more than one dealer or distributor in Pakistan. The Respondent's registration and use of the disputed domain name is a clear attempt to corner the market in domain names reflecting the Complainant's trademark.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The Respondent's primary objective has always been to support local sales of genuine Growatt inverters in Pakistan. The Respondent is an authorized dealer of Growatt products. The Respondent's website states expressly its status as a distributor of the Complainant's products in Pakistan. It makes no false claims about the manufacturing of these products.
- ii. The Respondent's use of the disputed domain name has been solely for the purpose of facilitating sales and warranty claims for Growatt inverters. The Respondent has a longstanding partnership with the Complainant which extends beyond sales. For three years when the Complainant had no official presence in Pakistan, the Respondent operated a free repair service for the Complainant's products using parts supplied by the Complainant. The Respondent also used the support page on the website to which the disputed domain name resolves to deal with warranty claims. The Complainant was well aware of this.
- iii. The Complainant is acting unfairly in seeking to obtain the disputed domain name now that the Respondent no longer offers support services. If the Complainant had any concerns about the disputed domain name, it should have communicated them to the Respondent while the Respondent was offering free services to the Complainant's customers.

5. Findings

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

The disputed domain name consists of the Complainant's trademark, GROWATT, "inverters", the plural version of the name of one of its popular products and the generic top-level domain ("gTLD") ".com". The addition of the gTLD and the name of the Complainant's product to the Complainant's trademark does not detract from the confusing similarity between the disputed domain name and the Complainant's trademark. The Panel concludes that the dispute domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

B) Rights and Legitimate Interests

The Respondent argues that the Distributor Agreement between the Complainant and TCP International FZE and the close collaboration between the Complainant and Respondent gives him legitimate interests or rights in the disputed domain name.

In response to the Procedural Order, the Complainant issued a statement on March 13, 2024 saying that it had not entered into a dealer co-operation agreement with the Respondent. It goes on "Our company has never authorized the Respondent... to use the Growatt trademark in Pakistan or authorized the Respondent... to carry out any commercial or non-commercial activities in the name of our company in Pakistan."

On 14 March 2024, the Respondent submitted a considerable amount of evidence that shows that he was either an important employee or representative of TCP International FZE between 2020 and 2023.

On 11 September 2020, the Complainant emailed Jimmy Xia of the Respondent with TCP International FZE's "GROWATT Marketing Plan for 2020-21 in Pakistan. The email copies in Zaid Ahmed who is now a director of and was apparently involved in sales for TCP International FZE. On 12 September 2020, Jimmy Zia, then the Area Manager of Growatt New Energy Technology Co., Ltd (which appears to be a previous name of the Complainant and will be referred to hereafter as the "Complainant") emailed the Respondent in a way only consistent with the Respondent being at least a key individual in TCP International FZE. A waybill dated 24 November 2020 shows the Respondent as the person at TCP International FZE to whom a parcel was being addressed by the Complainant.

On 12 July 2021, Mr Xia emails the Respondent, Mr Ahmed and Mr Zaid to introduce to them Mr Qadir, the new marketing manager. Mr Xia ends “We look forward to the joint efforts of TCP and Growatt to create brilliant future together”. On 17 January 2022, Mr Xia, now a Sales Executive for the Complainant writes to the Respondent on first name terms, wishing him well and thanking him for information and supplying an answer presumably to a query in that message. On 29 March 2022, Mian Fahad of the Complainant emails the Respondent and Mr Zaid enclosing the Price Guidelines for the Complainant’s products and encouraging the “TCP Team” to support the Complainant’s brand at Solar Expo 2022. As he says “This would surely help use to grow our business reach”. The Respondent has also supplied to the Panel extensive messaging between himself and the Complainant, between 2021 and 2022, showing a close degree of co-operation between the two companies. None of these exchanges mentions the disputed domain name.

In response, the Complainant supplied a copy of what it described as “the latest agreement” between the Complainant and TCP International FZE. Unfortunately, it is undated. However, it seems reasonable to assume that it dates back at least as far as the beginning of relationship documented on the file between those companies.

As the Complainant accepts, the agreement says nothing about intellectual property rights or domain names. Under it, the distributor promises in close co-operation with the Complainant to promote the Complainant’s interests “with respect to the Markets and Projects”. The Distributor promises to “do its best efforts to support [the Complainant] in acquiring the Markets and Projects, stop entry of competitors and shall co-operate trustfully with [the Complainant]”. The “Project” is defined in clause 1.7 as the supply of the products specified in Appendix 1 to each customer. Clause 2 covers the remuneration that the Complainant was to pay TCP International FZE.

In a sense, the Complainant’s statement of March 13, 2024 is correct because the distribution agreement it had was with TCP International FZE, not the Respondent and, under the terms of the Distributor Agreement, TCP International FZE, did not act on behalf of the Complainant.

However, the Panel finds that the Respondent was acting on behalf of the Complainant’s distributor when he registered the disputed domain name and used it in that way up until his departure from TCP International FZE in September 2023. An email of March 27, 2024 from the Respondent to Mr Zaid of TCP International FZE in response to a suggestion made to the Center by the Complainant’s representative that a death threat had been issued either to TCP International FZE or the Respondent, suggests that the Respondent is still buying the Complainant’s products through TCP International FZE.

This evidence leaves a very difficult question for the Panel as to whether the Respondent has rights or legitimate interests in respect of the disputed domain name. This is particularly awkward bearing in mind the fact that Respondent is not the distributor named in the agreement between TCP International FZE and the Complainant and seems to have left the actual distributor in September last year.

However, the Panel’s conclusions under the third test render it unnecessary to decide whether the Respondent has rights or legitimate interests in respect of the disputed domain name.

C) Bad Faith

The dispute domain name was registered by the Respondent when he was the prime mover in the Complainant's distributor. The email exchanges show that he was working closely on behalf of TCP International FZE with the Complainant to promote the Complainant's products. Judging by the current website to which the disputed domain name resolves, the Respondent is continuing to do that.

The Contact Us page on that website makes it clear that there is a distinction between the Complainant as the manufacturer whose contact details are supplied and the Pakistan dealer with its email addresses for Service and Sales.

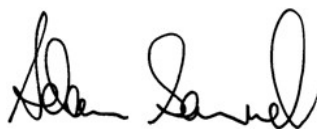
The Complainant has to prove bad faith in both registration and use of the disputed domain name. Its basic case presented in the Complaint collapsed once the Respondent showed his significant role in working with the Complainant to distribute the Complainants' products in Pakistan. The Procedural Order and the time given to the Complainant to respond to the Respondent's evidence might have enabled it to re-phrase or amend its Complaint as to the third element. It has not done so.

The Respondent's evidence shows that when he registered the disputed domain name, he was trying to help the Complainant and TCP International FZE to promote the Complainant's products. The Complainant must have been aware of the disputed domain name at some point between 2020 and 2022 when the two companies were working closely together. It found no reason to object to the use being put to the website.

For the above reasons, the Panel concludes that the Respondent did not register and has not used the disputed domain name in bad faith. The Complaint must, therefore, be dismissed.

6. Decision

The Panel denies the Complainant's request that the domain name <growattinverters.com> be transferred.



Adam Samuel

Dated: 4 April 2024