



Asian Domain Name Dispute Resolution Centre

beijing

## **ADMINISTRATIVE PANEL DECISION**

**Case No. CN-1801177**

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**Complainant: WiseTech Global Limited**

**Respondent: Jonese Jonese**

**Domain Name: wisetech-global.com**

**Registrar: Web Commerce Communications Limited dba WebNic.cc**

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### **1. Procedural History**

On 12 June 2018, the Complainant submitted a Complaint in English to the Beijing Office of the Asian Domain Name Dispute Resolution Center (the ADNDRC Beijing Office) and elected this case to be dealt with by a three-person panel, in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy) and the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) approved by the Internet Corporation for Assigned Names and Numbers (ICANN), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the ADNDRC Supplemental Rules) approved by the ADNDRC.

On 12 June 2018, the ADNDRC Beijing Office sent to the Complainant by email an acknowledgement of the receipt of the Complaint and transmitted by email to ICANN and the Registrar, Web Commerce Communications Limited dba WebNic.cc, a request for registrar verification in connection with the disputed domain name.

On 12 June 2018, the Registrar transmitted by email to the ADNDRC Beijing Office its verification response, confirming that the Respondent is listed as the registrant and providing the contact details.

On 21 June 2018, the ADNDRC notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced. On the same day, the ADNDRC Beijing Office transmitted the Written Notice of the Complaint to the Respondent, which informed that the Complainant had filed a Complaint against the disputed domain name and the ADNDRC Beijing Office had sent the complaint and its attachments through email according to the Rules and the Supplemental Rules. On the same day, the ADNDRC Beijing Office notified ICANN and registrar, Web Commerce Communications Limited dba WebNic.cc, of the

commencement of the proceedings.

On 9 July 2018, the Respondent submitted an Application to postpone the deadline of response. The Respondent submitted a Response to the ADNDRC Beijing Office on 15 July 2018. The ADNDRC Beijing Office transmitted the Response to the Complainant on 16 July 2018.

On 20 July 2018, the Complainant submitted the Counter Statement to the Response. The ADNDRC Beijing Office transmitted the Counter Statement to the Respondent.

Having received a Declaration of Impartiality and Independence and a Statement of Acceptance from Ms. Xue Hong, Mr. Lian Yunze and Mr. David L. Kreider, the ADNDRC Beijing Office notified the parties on 31 July 2018 that the Three-Member Panel in this case had been selected, with Ms. Xue Hong as the Presiding Panelist, Mr. Lian Yunze and Mr. David L. Kreider as co-panelists. The Panel determines that the appointment was made in accordance with Paragraph 6 of the Rules and Articles 8 and 9 of the Supplemental Rules.

On 31 July 2018, the Panel received the file from the ADNDRC Beijing Office and should render the Decision within 14 days, i.e., on or before 14 August 2018

Pursuant to Paragraph 11 (a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the current disputed domain name Registration Agreement is English, thus the Panel determines English as the language of the proceedings.

## **2. Factual Background**

### **A. The Complainant**

The Complainant in this case is WiseTech Global Limited. The registered address is Unit 3a, 72 O'Riordan street, Alexandria NSW 2015 Australia. The authorized representative in this case is Lee and Li - Leaven IPR Agency Ltd..

### **B. The Respondent**

The Respondent in this case is Jonese Jonese. The registered address is Taiwan. The authorized representative in this case is Mr. Hsiang-Chuan (Jerry) LIN.

The Respondent is the current registrant of the disputed domain name "wisetech-global.com", which was registered on 19 May 2017 according to the WHOIS information. The registrar of the disputed domain name is Web Commerce Communications Limited dba WebNic.cc.

### 3. Parties' Contentions

#### A. The Complainant

(i) The disputed domain name is identical or confusingly similar to a trademark or service mark, and domain name in which the complainant has rights;

a) The Complainant had prior legal rights to use the registered trademark "WiseTechGlobal":

<u>Trademark</u>	<u>Reg. No.</u>	<u>Class</u>	<u>Designated Goods/Service</u>	<u>Jurisdiction</u>	<u>Validity Term</u>
_____	1452720	9, 42	Class 9: Computer software; computer software for business purposes; computer software products; computer software programs Class 42: Computer software development; development of computer software; development of software; hosting of software as a service (SaaS)	Australia	2011/10/7-2021/10/7
<u>WiseTechGlobal</u>	1452729	9, 42	Class 9: Computer software; computer software for business purposes; computer software products; computer software programs Class 42: Computer software development; development of computer software; development of software; hosting of software as a service (SaaS)	Australia	2011/10/7-2021/10/7
_____	1182670	9, 42	Class 9: Computer software; computer software for business purposes; computer software products; computer software programs Class 42: Computer software development; development of computer software; development of software; hosting of software as a service (SaaS)	Madrid Registration (designating USA, EU, Japan, Singapore, etc.)	2013/9/3-2023/9/3
<u>WiseTechGlobal</u>	TMA964,957	9	Computer software,	Canada	2017/3/17-2032/3/17

			comprising database management, record creation, document creation, data transfer and data sharing functions, for use in the logistics industry, namely, freight forwarding companies, transportation brokers, airline carriers, ocean carriers, shippers, trucking companies and warehouse facilities.		
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As mentioned above, the Complainant had obtained the registrations of the trademarks “ \_\_\_\_\_ ” and “WiseTechGlobal” in Australia and Canada, and successfully designated its Madrid registration “ \_\_\_\_\_ ” IR No. 1182670 to the USA, Japan, the European Union, and Singapore before the registration date of the disputed domain name, i.e. May 19, 2017. The prominent part of the disputed domain name is highly similar to the aforementioned trademarks.

The registration dates of the aforementioned trademarks precede the registration date of the disputed domain name. The main portion of the disputed domain name “wisetech-global” is highly similar to the prior "WiseTechGlobal" trademarks owned by the Complainant and also includes the trade name of the Complainant. The registration and the use of the disputed domain name will cause confusion and misrecognition, misleading the relevant consumers into thinking that the website under the disputed domain name belongs to the Complainant.

The Complainant has prior domain name of "wisetechglobal. com", registered on 7 March 2011. Please refer to Attachment 10. Please note that the registrant's name of "wisetechglobal. com" shown in WHOIS records is "WiseTechGlobal Pty Ltd", which is a former name of the Complainant. In Attachment 5, it is noted that the Complainant changed its name to WISETECHGLOBAL PTY LTD on the fifth day of May 2011.

b) The Complainant has domain name "wisetechglobal.com", registered on registered on 7 March 2011. The registrant's name of "wisetechglobal.com" is the former company name of the Complainant. In Attachment 5, it is noted that the Complainant changed its name to WISETECHGLOBAL PTY LTD on the fifth day of May 2011. The domain name "wisetechglobal.com" is registered far earlier than the registration of the disputed domain name. The main part of the disputed domain name is confusingly similar to the Complainant's domain name "wisetechglobal.com".

c) The Complainant has the legal trade name right to the words “WiseTechGlobal”. As early as May 5, 2011, the Complainant started to use “WiseTech Global” as its trade name in commercial activities. This fact is also reflected by the Complainant’s

Certificate of Incorporation issued by the Australian government. (Please refer to Attachment 5.) The registration date of the disputed domain name is May 19, 2017, and the date of establishment of the Taiwanese company **WISETEH GLOBAL CO., LTD.** is February 17, 2017. (Please refer to Attachment 1 and Attachment 2). Both the date of establishment of the Taiwanese company WISETEH GLOBAL CO., LTD. and the registration date of the disputed domain name are far later than the date when the Complainant used "WiseTech Global" as its trade name in the business activities. Considering that the main part of the disputed domain name is extremely similar to the main part of the complainant's trade name, the use of the disputed domain name will lead the relevant public to mistakenly believe that the website hosted under the disputed domain name belongs to the Complainant and will result in confusion and misidentification.

(ii) The Respondent have no rights or legitimate interests in respect of the disputed domain name; and

The Respondent, or the Taiwanese company WISETEH GLOBAL CO., LTD., does not enjoy legitimate rights over the main part of the disputed domain name.

The Complainant had never authorized the Respondent or WISETEH GLOBAL CO., LTD. to use the "\_\_\_\_\_" or "WiseTechGlobal" trademarks, or domain name the same or similar to "wisetechglobal.com".

The registration date of the disputed domain name was May 19, 2017 (Attachment 2), which came after the registration dates of the trademarks "\_\_\_\_\_" No. 1452729 and "WiseTechGlobal" No. 1452720 in Australia, and also after the date when the Complainant's said trademarks were registered/protected in other countries and regions. Also, the registration date of the disputed domain name came after the registration date of the Complainant's domain name "wisetechglobal.com".

In addition, the Taiwanese company WISETEH GLOBAL CO., LTD. was established on February 17, 2017 (Attachment 1). It is six years after the date of registration of domain name "wisetechglobal.com", or the date when the Complainant started to use "Wisetech Global" as its trade name, i.e May 5, 2011 (Attachment 5). The establishment of the Taiwanese company WISETEH GLOBAL CO., LTD. is later than the registration date of the Complainant's domain name "wisetechglobal. com".

Therefore, the Respondent, or the Taiwanese company WISETEH GLOBAL CO., LTD., does not have any prior civil rights on the major part of the disputed domain name.

(iii) The disputed domain name has been registered and used in bad faith.

Since the disputed domain name is confusingly similar to the Complainant's prior trademarks, domain name, and trade name, the disputed domain name will prevent the Complainant from reflecting its registered trademark in a corresponding domain

name. Thus, the disputed domain name is registered in bad faith and constitute circumstances of Paragraph 4b(ii) of Uniform Domain Name Dispute Resolution Policy.

According to the Complainant's own official website [www.wisetechglobal.com](http://www.wisetechglobal.com), the main business of the complainant is developing cloud-based software solutions for the international and domestic logistics industries. (Attachment 8 and 9) According to the content of the website hosted under the disputed domain name, the Respondent, or the Taiwanese company WISETEH GLOBAL CO., LTD., provides IoT service, which is related to logistic in Internet (Attachment 7). Thus, the services provided by both parties are closely related or overlapped. They are competitors in a same industry. The disputed domain name will disrupt the business of the Complainant, and is registered in bad faith and constitute circumstances of Paragraph 4b(iii) of Uniform Domain Name Dispute Resolution Policy.

In addition, the website hosted under the disputed domain name describes the services similar to the designated goods and services covered by the Complainant's prior trademarks. We hereby list the services displayed on the website hosted under the disputed domain name and the designated goods/services covered by the Complainant's prior trademarks as follows:

<u>Services shown on the website being hosted under the disputed domain name</u>	<u>Designated goods/services covered by the Complainant's prior trademarks</u>
<p>the disputed domain name: <a href="http://wisetech-global.com">wisetech-global.com</a></p> <p>The main services include the provision of total solutions for the Internet of Things, mainly providing IoT consulting services, assisting in the customization of security modules for applications, and customizing and testing smart SIM cards;</p> <p>The main products include GPS tracker, smart watch, smart terminal block</p> <p>Please refer to Attachment 4.</p>	<p>prior trademarks:" ", "WiseTechGlobal"</p> <p>Class 9: Computer software; computer software for business purposes; computer software products; computer software programs</p> <p>Class 42: Computer software development; development of computer software; development of software; hosting of software as a service (SaaS)</p> <p>Please refer to Attachment 3.</p>

As the disputed domain name is confusingly similar to the Complainant's own domain name [wisetechglobal.com](http://wisetechglobal.com), and services provided are related, the disputed domain name is creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement. The location as indicated in the disputed domain name will confuse the internet user that the Respondent, or the Taiwanese company WISETEH GLOBAL CO., LTD. has any business relationship with the Complainant in Taiwan. Thus, the disputed domain name is registered in bad faith and constitute circumstances of Paragraph 4b(iv) of Uniform Domain Name Dispute Resolution Policy.

Furthermore, the Complainant had promoted and used its prior trademarks in Taiwan

extensively before the registration date of the disputed domain name, including but not limited to the participation in the exhibition organized by the FIATA (International Federation of Transport Associations) held in Taipei, Taiwan from September 8, 2015 to September 13, 2015. (Please refer to Attachment 6: the copies of orders of the Complainant's booth and other necessities for its participation in the 2015 FIATA exhibition and translations thereof)

The complainant's participation in the FIATA exhibition held in Taipei in 2015 was continuously and widely reported by the local media and became very prevailing news. The company WISETEH GLOBAL CO., LTD. is a company in Taiwan whose registered address is in Taipei. It should know the Complainant and its prior trademark rights. Considering the originality of the Complainant's prior trademarks, the Respondent's registration and use of the disputed domain name was obviously based on the knowledge of the Complainant's prior trademark rights and was taking advantage of the Complainant's reputation and goodwill in order to obtain improper benefits.

The disputed domain name should be transferred to the Complainant.

In response to the respondent's denial of all the claims made against them, we "WiseTech Global" would like to emphasize that we have been a registered company with trademark registration in Australia far before the Respondent created their company. We have been using the domain name "wisetechglobal.com", since 7 March 2011 and using the name Wisetech, since 5 May 2011. And for the Respondent's denial, we have the following statements that we wish may express to the panel:

1. The disputed domain name "wisetech-global.com" is confusingly similar to any average person or even people from the same or similar industry, the only difference in the name is a simple "-", which is not a distinguishing feature, and would cause serious confusion to the related internet and software industry.
2. Besides the Respondent's website, there is no information other than Mr. Jerry Lin using the title on his LinkedIn page while using the search term "Wisetech global Taiwan", not to mention the term "Wisetech global" on Google or Bing. The other claims made by the Respondent are irrelevant and fail to explain why the name Wisetech was chosen in the first place, years after the Complainant created the name and became a leading business in the supply chain software.
3. The only part that the Respondent mentioned about its English name, is that they claim that the Chinese name 智融科技 is fully the same as of the English name Wisetech global. In fact, The term 智融科技 does not translate into Wisetech global directly, and the Respondent does not use its Chinese name anywhere else besides its business registration in Taiwan, this shows the fact that the Respondent is trying to

the use the Complainant's name and is trying to gain interests, and the act of using the name Wisetech global is intentional.

4. The three elements for a complainant under UDRP proceeding are: (1) The domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (2) The registrant does not have any rights or legitimate interests in the domain name; and (3) The domain name has been registered and the domain name is being used in "bad faith". The Respondent has failed to address the clear violation of the elements as explained in the original complaint.

To sum up, the decision of the case should focus on the elements stated above. It is clear that the Complainant has registered the name Wisetech Global as its trademark before the Respondent's company was even created; they are not completely different businesses, they are both in the computer technology business, the Respondent lists a whole range of businesses, including the manufacturing of transportation vehicles, internet services, computer software, hardware manufacturing and a whole range of computer related businesses on its company registration to the Ministry of Economic Affairs, which are overlapping with the Complainant's registered businesses in Taiwan.

Also, the Respondent's English and Chinese name have no correlation; the additional information provided by the Respondent has nothing to do with the elements stated above.

Therefore, we believe the panel can reach a considerate decision based on the information provided and rule in favor to the Complainant.

## **B. The Respondent**

The Respondent Denies all the Complaints which the Complainant addressed in the Complainant's form.

1.) The Respondent's domain name is NOT identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

A.) There is NOT any Complainant's trademark, service mark and tradename registered and approved in Taiwan Before the date when the Respondent registered his trade name and domain name and started to operate his IoT business in Taiwan. It is as evidenced by Complainant's listed registered countries for his trademark that is NOT included any record in Taiwan.

B.) The Respondent's domain name, wisetech-global.com, with " -- " between wisetech and global is apparently NOT identical to the Complainant's one, wisetechglobal.com.



C.) Furthermore, the Respondent's website wisetech-global.com does NOT resemble the Complainant's one wisetechglobal.com in any manner. Obviously, the style, design, mission, business, product names, functionality and so on are inherently Different and definitely NOT likely to confuse. Please refer to the evidences from the Home Page of the Respondent's and Complainant website as attachment ( 1. ) and ( 2. ) respectively.

D.) Whichever Service and Product the Respondent offer is totally Different from that the Complainant does. Moreover, the Industry the Respondent is engaged in is NOT similar to that the Complainant is.

E.) The Respondent offers the Total solutions of IoT, Internet of things, in IoT industry, to help enterprises transform into IoT Smart enterprises like the GE model. The Respondent's IoT service and product is integrating from Consultancy service, Hardware solution, Software solution to Technical integration and Testing solutions. Please find the evidence as attachment ( 3. ): Respondent's Service and Product in IoT Industry snapped screen shot from Respondent's website.

But the Complainant Only provides very specific application Software for very focused clients on Freight Forwarders niche industry, which has been exactly proved by the Complainant's leading Software product called Cargowise, clearly addressing his specific business nature related to Cargo. Please the evidence as attachment ( 4. ): The screen snapshot from Complainant'a Home page of webiste

F.) The registered location of the Complainant and the Respondent is in the Different Continent. The Complainant is in Australia and the Respondent is in Taiwan.

2.) The Respondent firmly has legal rights of the domain name "wisetech-global.com" as UDRP Policy 4(c) (i) with the following facts and evidences:

A.) Before the dispute notice to the Respondent, what the Respondent has been using his domain name and trade name is in full connection with a bona fide offering of goods or services. Please find the facts with evidences addressed from B.) to i.) as below:

B.) The founder and CEO of the Respondent, Mr. Jerry (Hsiang-Chuan) LIN, is the expert of IoT wise technologies and he is also the SIA, Senior Industrial Advisor, for the International Financial Institute EBRD, European Bank for Reconstruction and Development, especially expertise on IoT wise technologies and smart cities related projects. Please refer to [www.ebrd.com](http://www.ebrd.com). Mr. Jerry LIN has been often invited by EBRD Taipei to make speeches to share his expertise and insights on IoT smart applications and Smart cities. Please find the Agenda of the EBRD's conferences as attachment ( 5. ).

C.) Mr. Jerry LIN has always had his higher-goal mission in his mind, to make our Globe Greener by applying IoT Wise technologies. Thus, he decided to establish a

company in Taiwan in last Feb. 2017 to contribute his expertise to help the Enterprises and Cities to Transform into Smart enterprises and Smart cities, which will result in substantially saving energy for our Globe. This is the reason why the Respondent called English trade name as “WiseTech Global Co., Ltd.” and registered domain name as “wisetech-global.com”, which exactly demonstrate the Respondent’s mission is to apply IoT Wise Technologies to achieve our Smart Globe. Moreover, the meaning of the Respondent’s trade name and domain name related to “WiseTech Global” is fully the same as that of his Chinese one called 智融全球 有限公司.

D.) There is NO the Same or Similar trademark, trade name and service mark related to the word “WiseTech Global” which had ever been registered and approved in Taiwan BEFORE the Respondent formally registered his English trade name “WiseTech Global Co., Ltd.” and got Legal approval from the MOEA, Taiwan’s government on May 16, 2017. Please find the evidence of the Respondent’s English Trade name Registration Details as attachment ( 6. ) approved and recorded by MOEA, Taiwan’s government website ( <https://fbfh.trade.gov.tw/rich/text/indexfbOL.asp>)

E.) Based on the approved English Trade name “WiseTech Global Co., Ltd.”, the Respondent accepted the advice from his website designer and operator, Webtech, to represent to register domain name wisetech-global.com on May 19, 2017 after Webtech checked and confirmed with his business expertise that the domain name “wisetech-global.com” was Available to register without any conflict.

F.) The Respondent offers the Total solution of IoT Wise technologies from consultation, both hardware and software design, integration and testing, Global connectivity to back-end management and services called COFFEE. Please find the evidences as the website [www.wisetech-global.com](http://www.wisetech-global.com) .

G.) The Respondent is allying with world-class companies such as Telenor Connexion and Vdafone and for IoT Wise Global Applications. Please find the evidences as attachment ( 7. and 8.)

H.) The Respondent is helping Taiwan’s world-class companies like Dlink ([www.dlinktw.com.tw](http://www.dlinktw.com.tw)) and Adlink ([www.adlinktech.com](http://www.adlinktech.com)) to transform into IoT Wise Global services like GE model. Please find the evidences as the attachment ( 8 ).

I.) In a nut shell, what the purpose for the Respondent to establish the company called WiseTech Global Co, Ltd. and to register Domain name “www.wisetech-global.com” is exactly applying the emerging IoT wise technologies to help the enterprises to transform into Smart enterprises and reach his services globally.

3.) The Respondent's domain name was NOT registered and being used in Bad faith as the following facts with evidences:

A.) The Respondent's domain name was NOT registered primarily for the purpose of Selling, renting, or otherwise transferring the domain name registration to the Complainant because the Respondent has already refused the Complainant several times when the Complainant asked the Respondent to sell the Respondent's domain name and tradename.

B.) Furthermore, as above 2.) clearly addressed, the Respondent's domain name has been registered and used in very Good faith as it is fully evidenced from the Respondent's motivation, expertise, mission, industry, emerging technologies, business nature, service and product, to the world-class allied partners and clients the Respondent has been seriously evolving in.

C.) The Respondent had Never heard or known about any trademark, tradename and domain name related to "WiseTech Global" Before the Respondent registered his domain name and tradename since the Complainant is apparently NOT a Notable company and even located in different continent, Oceania.

D.) The Respondent's domain name was NOT registered in order to prevent the Complainant from reflecting its registered trademark in a corresponding domain name since the Respondent and Complainant are NOT Competitors and NOT in the Same industry. The Respondent is in the Emerging IoT industry and the Complainant is in the Traditional Freight Forwarders industry respectively. Moreover, the Complainant can NOT provide any evidence to prove the Respondent's conduct on it.

E.) The Respondent is engaged in the Emerging IoT Industry, but the Complainant is engaged in Traditional Freight Forwarder industry. Apparently, the Respondent and Complainant are NOT in the same and even similar industry. Thus, the Respondent and Complainant are NOT the Competitors and the Respondent's domain name was clearly NOT registered by the Respondent primarily to disrupt the Complainant's business.

F.) Please find the evidences as attachment ( 1 and 2. ): Respondent's Service and Product in IoT Industry V.S. the Complainant's one in Freight Cargo industry respectively snapped screen shots from the Homepage of each website.

G.) Furthermore, whichever Service and Product the Respondent provides is totally Different from that the Complainant does. The Respondent is applying the Emerging IoT wise technologies to offer the Total solutions of IoT, Internet of things, in IoT industry, to help enterprises transform into IoT Smart enterprises like the GE model. The Respondent's IoT service and product is integrating from Consultancy service, Hardware solution, Software solution to Technical integration and Testing solutions. Please find the evidence as attachment ( 3.): Respondent's Service and Product in IoT

Industry snapped screen shot from Respondent's website.

But the Complainant provides very specific application Software Only for very focused clients in Traditional Freight Forwarders industry, which has been exactly proved by the Complainant's leading Software product called Cargowise, clearly addressing the Complainant's specific business nature related to Cargo as evidenced shown attachment ( 4. ).

H.) As above addressed and evidenced that the Respondent and Complainant are NOT in the same and even similar industry and do NOT offer the same and even similar services and products, the Respondent's domain name was NOT possible to be registered by the Respondent in an intentional attempt to attract for commercial gain or by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement.

I.) The Complainant had NOT registered any trademark and tradename related to "WiseTech Global" in Taiwan Before the Respondent legally registered WiseTech Global Co.,Ltd.. Thus, there is NO concrete evidence and motivation shown to prove what the Complainant said in the Complainant's form as " ...the Complainant had promoted and used its prior Trademark extensively in Taiwan....".

J.) Moreover, what the Complainant evidenced as Complainant's attachment (6.) that he attended FIATA World Congress 2015 Taipei is exactly demonstrated again Three Facts as follows:

1.) The Complainant is engaged in the Freight Forwarder industry since The Complainant has joined the "FIATA" called international federation of Freight Forwarders Associations"

2.) FIATA World Congress 2015 was mainly a series of Meetings and focused on Specific Freight Forwarders' Members only but definitely NOT a big Exhibition opening for all the Public. Please find the evidence as attachment ( 9. ) that the FIATA 2015 Taipei's official Facebook only attracted 668 specific visitors to click and there was found very Few reports about the event inside the webpage, NOT to mention, it was possible to wisely report any specific Participant like the Complainant in the Freight Forwarders.

3.) Thus, it is apparently NOT True what the Complainant said in the Complainant's form as " ...the Complainant's participation in the FIATA 2015 held in Taipei was continuously and wisely reported by local media and became very prevailing news..."

K.) Therefore, even the people engaging in the same Freight Forwarder industry are NOT possible to know every company's tradename and trademark like the Complainant's ones, NOT to mention, the Respondent in the totally different IoT industry had ever had any knowledge of the Complainant Before he registered his tradename and domain name.

4.) The Respondent is asking the Panel to make a finding of Reverse Domain Name Hijacking as (Rules, Paragraph 15(e)) with the following substantial evidences:

A.) The Respondent legally registered his company in Taipei, Taiwan on Feb. 17, 2017 got the approval of his English trade name "WISETECH GLOBAL CO., LTD." by the Bureau of Foreign Trade under MOEA, Ministry of Economic Affairs, Taiwan's government on May 16, 2017 and then formally registered his domain name wisetech-global.com on May 19, 2017. Please find the evidences as the Respondent's English trade name approval details from MOEA, Taiwan shown the attachment ( 6 ).

B.) The Complainant in Australia acquired a Taiwanese's company called ProLink to complement the Complainant's market in Taiwan, China and Asia formally announced on Aug. 11, 2017. Please find the evidence as the Complainant's formal press release shown as attachment ( 10. )

C.) And then the Complainant in Australia registered a new company and applied a new English trade name in Taiwan called "WiseTech Global (Taiwan) Limited" on Aug. 10, 2017 but got the approval till this year on Jan. 31, 2018. Please find the evidence as the Complainant English Trade Name Registration and Approval Details from MOEA, Taiwan shown as attachment ( 11. ).

D.) Apparently, the Complainant's Taiwan company called "WiseTech Global (Taiwan) Limited" approved on Jan. 31, 2018 is more than Eight months AFTER the Respondent's company called "WISETECH GLOBAL CO., LTD." on May 16, 2017. Not to mention, the Complainant ever got any trademark or/and service mark approved in Taiwan Before the Respondent registered his tradename and domain name.

E.) However, from last June in 2017 till now, the Complainant has taken a course of many actions to bring this case to harass and threaten the Respondent into giving him the Respondent's domain name, even English tradename by all means, which includes:

a.) The Chairman of the Complainant's Taiwan office is Mr. Andrew Cartledge. The Chairman's secretary Ms. Nana Huang called the Respondent to ask to buy the Respondent's domain name at least two times around last June in 2017 but the Respondent refused it.

b.) The Complainant hired one of the most Expensive law firms in Taiwan Lee and Li Law Firm ( <http://www.leeandli.com.tw/EN/000000001.htm> ) and drafted a legal letter to the Respondent twice on Apr. 11 and May 2, 2018. The Complainant's legal letter was elaborating a Untrue story and threatening a legal trademark battle which would cost tens and furthermore could make the founder and CEO of the Respondent take the criminal responsibilities. Please find the evidence of the Complainant's First legal letter to the Respondent as attachment ( 12. ).

c.) The Respondent tried his best to feedback and explain what the Complainant addressed was NOT true with a legal letter on May 15, 2018. Please find the Respondent's feedback legal letter as the evidence shown as attachment (13.),

d.) The Complainant's lawyer Ms. Audrey Liao asked the Respondent's representative lawyer Mr. Ted Shen to provide an offer to sell the Respondent's domain name to the Complainant around May 20, 2018, but the Respondent refused the Complainant's proposal again.

e.) After less than one week, on May 24, 2018, the Complainant hired again the same most expensive law firms in Taiwan (Lee and Li Law Firm) to draft his 2nd legal letter to the Respondent to further threaten the Respondent could being interviewed by Police office and then charged with criminal responsibilities to the jail if the Respondent did NOT

i.) immediately remove his own Trade name, domain name, email names and all related to "wisetech global"

ii.) immediately change his English name and correct his company's legal registration records on the MOEA, Taiwan's government.

iii.) issue a guarantee letter to ensure the Complainant's rights from now on. Please find the evidence of the Complainant's 2nd legal letter as attachment (14. )

f.) On Jun. 21, 2018, the Complainant submitted his Complaint letter to ADNDRC to ask transfer the Respondent's domain name to the Complainant.

F.) Based on the Complainant's a course of actions as above mentioned, including asking the Respondent to sell his Trade name and domain name several times, warning twice the Respondent to remove all his names related to "wisetech global" with two threatening legal letters, Disputing the Respondent's domain name to ADNDRC, apparently, the Complainant has been doing all his best to highly harass and threaten the Respondent to give the Complainant his legally registered Domain name, tradename, email names and all the rest ones related to "wisetech global" without any doubt. In this case, all the Complainant's done actions, behavior and mindset is exactly demonstrated that the Complainant has engaged in Reverse Domain Name Hijacking as the Complainant is using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name.

1.) The Complainant's registered trademarks in some countries does NOT mean that the Complainant automatically and certainly has the rights of the trademarks in the rest of the countries in the world.

2.) The Complainant registered some English Words as "wisetech global" to be part of his tradename in his specific Freight Forwarders industry. It does NOT mean the Complainant automatically and certainly has the Exclusive rights to Claim that all the other companies in the world in all the other industries or offering different service and

product do NOT have rights to use the English words “wisetech global” as their related tradename, service mark or domain name.

3.) The purpose of the Uniform Domain Name Dispute Resolution Policy is against to any “Cybersquatter”. With so many clear evidences shown, apparently, the Respondent is definitely NOT a Cybersquatter since the Respondent is always with very Good faith to build up the company, register his domain name and tradename and seriously operate and develop his business. However, the Complainant has intentionally used his abundant resources to continuously harass and threaten the Respondent to give him the Respondent’s related domain name and tradename. In summary, the Complainant is with the Bad Faith intentionally and the Complainant is engaged in “Reverse Domain Name Hijacking” with very clear evidences.

The Respondent respectfully requests that the Administrative Panel denies the remedy requested by the Complainant.

#### **4. Discussions and Findings**

Paragraph 4(a) of the Policy provides that in order to be entitled to a transfer of the disputed domain name, the Complainant shall prove the following three elements:

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

Paragraph 4(b) of the Policy states that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- (i) Circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the respondent has intentionally attempted to attract,

for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

#### **A. Identity or Confusing Similarity**

Pursuant to the Policy, paragraph 4(a)(i), a complainant must prove that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The evidence provided by the Complainant shows that the mark "WiseTechGlobal" has been registered by WISETECHGLOBAL PTY LTD in Australia since 2011 in class 9 and 42 with registration No. 1452729, covering the goods or services of computer software; computer software for business purposes; computer software products; computer software programs; computer software development; development of computer software; development of software; hosting of software as a service.

The Complainant proves that WISETECHGLOBAL PTY LTD was its previous company name recorded in the official document. The registration date of the Complainant's above-mentioned mark is earlier than May 19, 2017 when the disputed domain name was registered.

The Panel therefore finds that the Complainant enjoys the rights in the registered mark "WiseTechGlobal". Although the Response contends that the Complainant has no trademark registration in the region of Taiwan, the Panel finds that the Complainant does not have to acquire any trademark right in the location of the Respondent to be comply with the Policy, paragraph 4(a)(i). Since the Complainant has sufficiently proved that it has the trademark rights in Australia and other countries, the contention of the Response is not tenable.

The disputed domain name "wisetech-global.com" consists of "wisetech-global" and ".com". Apart from the generic top-level domain name ".com", the main part of the disputed domain name, "wisetech-global", is apparently similar with the Complainant's registered marks "WiseTechGlobal" visually, phonetically and semantically. The Panel cannot find that the disputed domain name substantially differs from the Complainant's marks merely because of a generic and non-distinguishable dash mark added in between "wisetech" and "global".

Having regarded all above, the Panel finds that the disputed domain name <wisetech-global.com> is confusingly similar to the Complainant's registered trademarks "WiseTechGlobal". Accordingly, the Complainant has proven the first element required by paragraph 4(a) of the Policy.

#### **B. Rights or Legitimate Interests of the Respondent**

The Complainant contends that the Respondent has no rights or legitimate interests in



the disputed domain names. The Response, however, refutes the Complainant's contentions.

The Panel notes that the Respondent's name that's been confirmed by the Registrar is "Jonese Jonese" with the registered address "Taiwan". The Response, although submitted in the name of the Respondent, bases all its contentions on the rights and legitimate interests of another company whose name is "智融全球有限公司" (in Chinese) or "WiseTech Global Co., Ltd." (in English). The Panel notes that "WiseTech Global Co., Ltd." is wrongly spelled as "WISETEH GLOBAL CO" in the Complaint, although the Complainant submits the evidence of the company registration information with the correct name. The typo in the Complainant does not affect the Panel's factual assessment.

Based on the registration information confirmed by the Registrar, the Panel finds that WiseTech Global Co., Ltd. is not the registrant organization of the disputed domain name. Its name cannot be found anywhere in the registration information.

The Panel notes that the Response fails to make any reference to the Respondent "Jonese Jonese" all through its contents. The Respondent was not mentioned even in a single sentence of the Response. It's completely unclear to the Panel whether the Respondent is equivalent to or being represented by "WiseTech Global Co., Ltd.". Given that the Response does not prove any right or legitimate interests that the Response "Jonese Jonese" may enjoy in the disputed domain name, the whole Response may be deemed irrelevant.

Notwithstanding the above discoveries, the Panel is willing to grant a leniency toward the Response primarily because the Complainant does not contend the identity of the Respondent both in the Complaint and the Supplementary submission. It seems that the Complainant concedes that the Respondent is equal to "WiseTech Global Co., Ltd." because the Complainant refers to the "Respondent, or the Taiwanese company WiseTech Global Co., Ltd." in the Complaint. The Panel, therefore, assess the Parties' submissions accordingly.

The Respondent contends that it has been using the disputed domain name in full connection with a bona fide offering of goods or services" before receiving the dispute notice. The Panel notes that the Respondent should prove that it's been using the disputed domain name in connection with offering of goods or services in good faith under the Policy, paragraph 4(c)(i). Based on the submissions from both Parties, the Panel finds that "WiseTech Global Co., Ltd." does use the disputed domain name to offer goods or services before being noticed of this dispute. The key issue to be proved in this regard is whether "WiseTech Global Co., Ltd." uses the domain name in connection with a bona fide offering of goods or services as required by the Policy, paragraph 4(c)(i).

It's undisputed that "WiseTech Global Co., Ltd." and the disputed domain name were registered in the region of Taiwan later than the registration dates of Complainant's marks "WiseTechGlobal" and "WiseTech Global & device".

The Panel finds that the Respondent's contentions on its good faith are unpersuasive in the following aspects.

As stated in the Response, the Respondent or "WiseTech Global Co., Ltd." or its founder has the high expertise on the Internet of Things (IoT). As a company specializing in the Internet technologies, the Respondent or "WiseTech Global Co., Ltd." should have been aware of the previous marks and brands that have been used on the Internet in the same or similar field of businesses. The most sensible and easiest way to prevent the potential conflict is to search online to see whether "WiseTech Global" or similar name has been used by the others or not. The Complainant's website at "www.wisetechglobal.com" has been in use since 2011, on which the Complainant's marks "WiseTech Global" are repeatedly shown. When WiseTech Global Co., Ltd. was established and the disputed domain name was registered in 2017, the Respondent or WiseTech Global Co., Ltd. should be able to find out the preexisting Complainant's marks and related business very easily through a simple Internet search. If the Respondent or WiseTech Global Co., Ltd. did not even conduct such a minimum degree of due diligence before offering goods or services through the disputed domain name, it does not fulfill the duty of care as a reasonable Internet business and the willful blindness defeats its contentions on good faith.

As mentioned in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0), the panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark through noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark.

If the Respondent or WiseTech Global Co., Ltd. had found the Complainant's website at "www.wisetechglobal.com", it should have known that the Complainant's marks and the related businesses are sufficiently similar with those of the Respondent or WiseTech Global Co., Ltd. The Complainant's marks "WiseTechGlobal" and "WiseTech Global & device" are registered on software products and services and used on "cloud-based software solution for international and domestic logistic industries" as stated on the Complainant's website at "www.wisetechglobal.com". Meanwhile, the "Respondent offers the Total solution of IoT Wise technologies from consultation, both hardware and software design, integration and testing, Global connectivity to back-end management and services called COFFEE", as stated in the

Response. An objective assessment of the businesses from both Parties shows that they overlap with respect to the services of software solution on the Internet.

In addition, the Complainant's "WiseTechGlobal" that combines "wise", "tech" and "global" as one word and capitalizes the first letter of each word is not a generic term in English but the marks with distinctiveness. It is therefore unpersuasive that "WiseTech Global" is adopted in the Respondent's company name and "wisetech-global" in the disputed domain name coincidentally. An intentional imitation of the Complainant's marks may be inferred thereof.

Furthermore, the website at the disputed domain name shows that the Respondent or WiseTech Global Co., Ltd. does not limit its business to the region of Taiwan. The captioned website is solely in English (not in the official language of the region of Taiwan) and emphasizes its partnership with the "World-Class IoT Company". Given that the Respondent or WiseTech Global Co., Ltd. deliberately include "Global" in both the company name and the disputed domain name, it shows the business of the Respondent or WiseTech Global Co., Ltd. is operating globally. Even though the Complainant has not registered its marks in the region of Taiwan, the Respondent or WiseTech Global Co., Ltd.'s global operation through the disputed domain name is inevitably conflicting with the Complainant's marks and related business.

Basis of the all above discoveries, the Panel finds that the Respondent fails to prove that the Respondent or "WiseTech Global Co., Ltd." uses the disputed domain name in connection with a bona fide offering of goods or services as required by the Policy, paragraph 4(c)(i). Therefore, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain names <wisetech-global.com>. Accordingly, the Complainant has proven the second element required by paragraph 4(a) of the Policy.

### **C. Bad Faith**

The Complainant contends that the Respondent registered and is using the disputed domain names in bad faith. The Respondent makes its rebuttals.

Based on the Parties' submissions, the Panel finds that the disputed domain name that is confusingly similar with the Complainant's marks is being used for the website that is offering, for commercial gain, the goods or services similar with the Complainant's. The Panel also finds that the disputed domain name is intentionally used to create the confusion between the Complainant and the Respondent on proof that the Respondent "knew or should have known" about the preexistence of the Complainant's marks. The same conclusion was also made in the following cases in which the respondent "knew or should have known" about the existence of the complainant's trademark prior to registering the domain name (SembCorp Industries Limited v. Hu Huan Xin, WIPO Case No. D2001-1092, The Nasdaq Stock Market, Inc. v. H. Pouran, WIPO Case No. D2002-0770, Maori Television Service v. Damien

Sampat, WIPO Case No. D2005-0524, Digital Spy Limited v. Moniker Privacy Services and Express Corporation, WIPO Case No. D2007-0160, The Gap, Inc. v. Deng Youqian, WIPO Case No. D2009-0113).

Based on what's been discovered, the Panel finds that the Complainant proves that the Respondent or WiseTech Global Co., Ltd. intentionally uses the disputed domain name to attract, for commercial gain, internet users to its website, by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website, which is the evidence of bad faith provided in the Policy, paragraph 4(b)(iv).

Since the Panel finds that it is adequate to conclude that the Respondent has registered and is using the disputed domain names in bad faith under the Policy, paragraph 4(b)(iv), the Complainant has successfully proven the third element required by paragraph 4(a) of the Policy.

#### **D. Reverse Domain Name Hijacking**

The Respondent contends that the Complainant conducts the reverse domain name hijacking.

Under the Rules, the Paragraph 15 (e), the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding, if, after considering the submissions, finding that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder.

In finding of Reverse Domain Name Hijacking, the Panel should assess whether the Complainant has the actual intent to deprive a registered domain-name holder of a domain name in bad faith. As mentioned in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (WIPO Jurisprudential Overview 3.0), the reasons articulated by panels for finding RDNH include: (i) facts which demonstrate that the complainant knew it could not succeed as to any of the required three elements – such as the complainant's lack of relevant trademark rights, clear knowledge of respondent rights or legitimate interests, or clear knowledge of a lack of respondent bad faith such as registration of the disputed domain name well before the complainant acquired trademark rights, (ii) facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database, (iii) unreasonably ignoring established Policy precedent notably as captured in this WIPO Overview – except in limited circumstances which prima facie justify advancing an alternative legal argument, (iv)

the provision of false evidence, or otherwise attempting to mislead the panel, (v) the provision of intentionally incomplete material evidence – often clarified by the respondent, (vi) the complainant’s failure to disclose that a case is a UDRP refiling, (vii) filing the complaint after an unsuccessful attempt to acquire the disputed domain name from the respondent without a plausible legal basis, (viii) basing a complaint on only the barest of allegations without any supporting evidence.

Based on the Complainant’s submissions, the Panel finds that none of the above reasons may be found in the Complaint. The Complainant does enjoy the trademark rights and provide plenty of evidence regarding the Respondent’s cybersquatting. The Complainant seeks to transfer the disputed domain name from the Respondent for the intent of protecting its trademark right and interests, rather than depriving in bad faith of the Respondent’s domain name registration. Although the Respondent contends that the Complainant took harassing actions against it, the Panel finds that no proof to support the Respondent’s contention. What the Complainant does is the legitimate actions not harassment in law.

Therefore, there is no reason for the Panel to find Reverse Domain Name Hijacking against the Complainant.

## 5. Decision

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <wisetech-global.com>, be transferred to the Complainant.

\_\_\_\_\_  
(Signature)

Xue Hong

\_\_\_\_\_  
(Signature)

(Name in Print)

\_\_\_\_\_  
(Signature)

(Name in Print)

Dated: 13 August 2018