IN THE MATTER OF A COMPLAINT PURSUANT TO
THE CANADIAN INTERNET REGISTRATION AUTHORITY
DOMAIN NAME DISPUTE RESOLUTION POLICY

Dispute Number:	DCA-1852-CIRA
Domain Name:	wilsonamplifiers.ca
Complainant:	Wilson Electronics, LLC
Registrant:	Ni Su
Registrar:	Rebel.ca Corp.
Panelist:	Jerry Yulin Zhang
Service Provider:	British Columbia International Commercial Arbitration Centre ("BCICAC" or the "Centre")

DECISION

The PARTIES

1. Complainant is Wilson Electronics, LLC, at the corporate address of 2890 E. Cottonwood Parkway #325, Cottonwood Heights, UT 84121, represented by Brett D. Ekins, Esq. of the law firm Jones Waldo Holbrook & McDonough.

2. Respondent is Ni Su, 10654 82 Ave #167, Edmonton, AB T6E 2A7, at the email address of defaultacct3@gmail.com.

The DOMAIN NAME AND REGISTRAR

3. The disputed domain name is <wilsonamplifiers.ca> (the "Disputed Domain Name"), which was created on September 20, 2015. The registrar is Rebel.ca Corp.

GOVERNING RULES AND POLICY

4. This proceeding is governed by the CIRA Domain Name Dispute Resolution Policy, Version 1.3 (August 22, 2011) (hereinafter referred to as "CDRP" , or the "Policy") and the CIRA Domain Name Dispute Resolution Rules, Version 1.5 (July 28, 2014) (the "Rules"). Paragraph 1.1 of the Policy states that the purpose of the Policy is to provide a forum in which bad faith registrations of domain name in the dot-ca country code top level domain name registry operated by the CIRA (the "Registry") will be dealt with relatively inexpensively and quickly. Paragraph 1.8 of the Policy states, in part, that the version of the Policy in effect at the time a Proceeding is initiated will apply to the Proceeding. In relation to the Rules, Paragraph 1.2 of the Rules states that the version of the Rules in effect at the time a Proceeding is initiated will apply to the Proceeding.

PROCEDURAL HISTORY

5. On February 28, 2017, the Complainant filed the Complaint in accordance with the Policy and the Rules.

6. On March 3, 2017, BCICAC, as the Service Provider, advised the Complainant of the administrative compliance with the CIRA' s requirements under Paragraph 4.2 of the Rules, and at the same time sent a Notice of the commencement of the Proceeding as of March 3, 2017. The letter enclosed a copy of the Complaint in accordance with Paragraphs 2.1 and 4.3 of the Rules for the attention of Ni Su at the address 10654 82 Ave #167, Edmonton, AB T6E 2A7 with email at defaultacct2@gmail.com.

7. In accordance with Paragraph 4.4 of the Rules, the date of commencement of the Proceeding is March 3, 2017. The Complaint with the attachments were filed exclusively by email, and the Centre delivered the Complaint to the Registrant only by email.

8. The Registrant has 20-day period (by March 23, 2017) within which the Response is to be filed under Paragraph 5 of the Rules. No Response was filed within the said period. Accordingly, as permitted under Paragraph 6.5 of the Rules, the Complainant elected to convert the panel from a panel of three to a single arbitrator.

9. The Centre appointed Mr. Jerry Yulin Zhang as the Sole Arbitrator in this matter on March 28, 2017. Mr. Zhang accepted the appointment by way of executing the document entitled "Acceptance of Appointment as Arbitrator and Statement of Independence and Impartiality" and undertook to act independently and impartially on March 30, 2017.

10. A Procedural Direction was issued to the Parties by the Sole Arbitrator on March 30, 2017, which sets out the dates for further submissions to be made by the Parties by April 9, 2017. The time for further submission was reminded, in accordance with Paragraph 1.3 (e) of the Rules, to fall on April 10, 2017 as April 9 falls on a Sunday.

11. The Complainant filed further submissions, including a Power of Attorney issued in favor of Brett Ekins, of the law firm of Jones Waldo Holbrook & McDonough, executed by the Chief Financial Officer of the Complainant; a copy of the Registration Certificate for the Trademark "WILSON" No. TMA648128; evidence of use of the said trademark "WILSON" in CANADA, and copies of the cases cited in the Complaint.

12. Registrant did not file a Response, nor any further submissions as required under the Procedural Direction of March 30, 2017.

13. On April 14, 2017, the Tribunal requested a clarification for particular information and by order, also extended the time limit for the Award to April 28, 2017.

14. On April 15, 2017, the Complainant responded to the request for particular information with the requested details of the information, being the print out the lookup of the domain name showing the registration date of September 20, 2015.

CANADIAN PRESENCE

15. Paragraph 1.4 of the Policy requires the Complainant to have Canadian presence unless it owns a Canadian trademark. The paragraph states: "The person initiating a Proceeding (the "Complainant") must, at the time of submitting a complaint (the "Complaint"), satisfy the Canadian Presence Requirements for Registrants (the 'CPR') in respect of a domain name that is the subject of the Proceeding unless the Complaint relates to a trade-mark registered in the Canadian Intellectual Property Office ('CIPO') and the Complainant is the owner of the trade-mark." Complainant states and has provided evidence to support the fact that Complainant is the owner of a Canadian trademark "WILSON" Registration No. TMA648128, registered with the Canadian Intellectual Property Office (CIPO) on September 15, 2005. Hence, the Panel finds that the Complainant has satisfied the Canadian Presence Requirements under the Policy.

FACTS

16. Complainant is a company owning the trademark registration "WILSON" (Reg. No. TMA648128) (the "Mark") in Canada in regard to the goods of "wireless personal communication equipment, namely, cellular and 2-way radios and antennas for cellular and 2-way radios." The trademark was registered on September 15, 2005, and was used in Canada since at least as early as January 16, 2000 on wares.

17. Respondent registered the Disputed Domain Name on September 20, 2015 with the registrar Rebel.ca Corp. The registration will expire on September 20, 2017.

POSITION OF THE COMPLAINANT

18. Complainant takes the following positions in its Complaint:

a) The Disputed Domain Name is confusingly similar to the Mark. The text of the Disputed Domain Name is identical in appearance, sound and meaning to the Mark. The Disputed Domain Name is composed of the words "wilson" and amplifiers" , and the TLD ".ca" . The word "amplifier" is a generic term for the goods sold by the Registrant at the website operated at the Disputed Domain Name. The confusing similarity is harmful to Complainant because the goods sold at the Registrant' s website – antennas, signal amplifiers, and related products – are identical to the goods sold by the Complainant under the Mark. In addition, the Registrant sells goods under the brands of Complainant' s competitors, including SURE CALL antennas, which caused additional harm to the Complainant' s business, due to possible mistaken identification of goods.

b) The registrant has no legitimate interest in the Disputed Domain Name. None of the circumstances identified under Paragraph 3.4 of the Policy exist in this case.

c) The Registrant registered the Disputed Domain Name in bad faith. By way of intentionally attempting to attract, for commercial gain, Internet users to its website, the Registrant committed bad faith registration of the Disputed Domain Name.

19. The Registrant did not file any Response, within the time period as required in accordance with the Rules.

20. Complainant requests that the Panel issue a decision that the registration for the Disputed Domain Name be transferred from the Registrant to the Complainant.

DISCUSSION

21. Pursuant to Paragraph 4.1 of the Policy, to succeed in the Proceeding, the Complainant must prove, on a balance of probabilities, that:

    (a) the Registrant' s dot-ca domain name is Confusingly Similar to a Mark in which the Complainant had Rights prior to the date of registration of the domain name and continues to have such Rights; and

    (b) the Registrant has registered the domain name in bad faith as described in paragraph 3.5; and

    (c) the Complainant must provide some evidence that the Registrant has no legitimate interest in the domain name as described in paragraph 3.4 of the Policy.

22. Paragraph 4.1 of the Policy further states that even if the Complainant proves (a) and (b) and provides some evidence of (c), the Registrant will succeed in the Proceeding if the Registrant proves, on a balance of probabilities, that the Registrant has a legitimate interest in the domain name as described in paragraph 3.4 of the Policy.

A) CONFUSINGLY SIMILAR

23. Paragraph 3.3 of the Policy states:

    "In determining whether a domain name is "Confusingly Similar" to a Mark, the Panel shall only consider whether the domain name so nearly resembles the Mark in appearance, sound or the ideas suggested by the Mark as to be likely to be mistaken for the Mark."

24. The Disputed Domain Name' s core wordings are two portions: "Wilson" and "amplifiers" . Under Paragraph 1.2 of the Policy, it is provided that for the purposes of the Policy, "Domain Name" means the domain name excluding the ".-ca" suffix and the suffixes associated with all third and fourth level domain names accepted for registration by CIRA. In this case, in considering whether the Disputed Domain Name is Confusingly Similar to the Complainant' s Mark, the ".-ca" suffix should be excluded.

25. "Wilson" can be a personal name, and can be generically used. If, due to culture influence, one does not want to take the initiative to file a complaint, one needs at least to be able to defend his or her own rights when a complaint is filed against him or her. In this case, the wording "Wilson" is complained to be the same as the Mark of the Complainant "WILSON" (the "Mark"). The Respondent simply did not make any response or defense in the case. The Panel finds that the principal portion of the Disputed Domain Name, "Wilson" , is the same, in appearance and sound, as the Complainant' s Mark "WILSON" .

26. In examining the whole of the Disputed Domain Name, <wilsonamplifiers.ca>, one would note that addition of the wording "amplifiers" to the Mark "WILSON" . Complainant submits that mere addition of generic name to the Mark leaves the Disputed Domain Name confusingly similar to the Mark. *Oakley v. Zhou Yayang, CIRA Case No. 00188* (finding likelihood of confusion where domain name merely added generic terms to a trademark.).

27. Complainant further submits the Registrant' s use of the Disputed Domain Name at the website on goods – antennas, signal amplifiers, and related products - that are identical to the Complainant' s goods for the Mark. Complainant provided notarized evidence of Internet website pages to show that Registrant used the Disputed Domain Name on identical or similar goods to what Complainant is using. This creates confusion to the consumers that the Registrant' s website is somehow affiliated with or

sponsored by the Complainant based on the similarity of the Disputed Domain Name with the Mark and their use on identical or similar goods.

28. The Panel finds that, on balance of probabilities, the Complainant' s argument is relatively convincing in regard to the likelihood of confusion. The Registrant' s use of the Disputed Domain Name on identical or similar goods will likely lead to confusion to the consumers that the Disputed Domain Name is affiliated with the owner of the Mark and therefore likely cause such to be mistaken for the Mark. The Panel therefore finds that the Disputed Domain Name is Confusingly Similar to the registered trademark in which the Complainant has prior right.

29. It is also noted that the Complainant continues to have such prior rights in the Mark "WILSON" in relation to the goods identified in the proceedings.

B) NO LIGITIMATE INTEREST IN THE DOMAIN NAME

30. Complainant analyzed Paragraph 3.4 of the Policy and argued that none of the circumstances described in such paragraph is available. Paragraph 3.4 of the Policy states that any of the following circumstances, if found by the Panel based on evidence presented, shall demonstrate that the Registrant has a legitimate interest in a domain name:

    (a) the domain name was a Mark, the Registrant used the Mark in good faith and the Registrant had Rights in the Mark;

    (b) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was clearly descriptive in Canada in the English or French language of: (i) the character or quality of the wares, services or business; (ii) the conditions of, or the persons employed in, production of the wares, performance of the services or operation of the business; or (iii) the place of origin of the wares, services or business;

(c) the Registrant registered the domain name in Canada in good faith in association with any wares, services or business and the domain name was understood in Canada to be the generic name thereof in any language;

(d) the Registrant used the domain name in Canada in good faith in association with a non-commercial activity including, without limitation, criticism, review or news reporting;

(e) the domain name comprised the legal name of the Registrant or was a name, surname or other reference by which the Registrant was commonly identified; or

(f) the domain name was the geographical name of the location of the Registrant' s non-commercial activity or place of business.

31. The Paragraph further states that in paragraph 3.4(d) "use" by the Registrants includes, but is not limited to, use to identify a website.

32. In the Complainant' s view, there is no legitimate interest on the part of the Registrant in this case.

33. The Registrant failed to make any response or defense. This affirms that there is nothing to be contested regarding the assertion that the Disputed Domain Name involves no legitimate rights or interest of the Registrant. Notarized evidence shows that Registrant used the website for sales in connection with amplifiers, products that are identical or similar to the products for sale by the Complainant in this case. Hence, it is apparent that Registrant is using the website for commercial purposes, and the circumstances described in paragraph 3.4 (d) does not apply in this case. No evidence was available in this case in relation to any other circumstances as described in paragraph 3.4 of the Policy. It is reasonable to conclude that there is no legitimate right on the part of the Registrant on the Disputed Domain Name, which was created more

than 15 years after the time of first use of the Mark by the Complainant in Canada. In other words, the Complainant clearly had prior right to the Mark in Canada when the Disputed Domain Name involving the Mark was created in September 2015.

C) REGISTRATION OF DOMAIN NAME IN BAD FAITH

34. Complainant referred to Paragraph 3.5 (d) of the Policy, as evidence of bad faith. Paragraph 3.5 (d) provides as follows:

> "The Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant's website or other on-line location, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant's website or location or of a product or service on the Registrant's website or location."

35. Pursuant to Paragraph 3.5 of the Policy, any of the following circumstances "shall be evidence that a Registrant has registered a domain name in bad faith":

(a) the Registrant registered the domain name, or acquire the Registration, primarily for the purpose of selling, renting, licensing or otherwise transferring the Registration to the Complainant, or the Complainant's licensor or licensee of the Mark, or to a competitor of the Complainant or the licensee or licensor for valuable consideration in excess of the Registrant's actual costs in registering the domain name, or acquiring the Registration;

(b) the Registrant registered the domain name or acquire the Registration in order to prevent the Complainant, or the Complainant's licensor or licensee of the Mark, from registering the Mark as a domain name, provided that the Registrant, alone or in concert with one or more additional persons has engaged in a pattern of registering domain names in order to prevent persons who have Rights in Marks from registering the Marks as domain names;

(c) the Registrant registered the domain name or acquired the Registration primarily for the purpose of disrupting the business of the Complainant, or the Complainant' s licensor or licensee of the Mark, who is a competitor of the Registrant; or

(d) the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant' s website or other on-line location, by creating a likelihood of confusion with the Complainant' s Mark as to the source, sponsorship, affiliation, or endorsement of the Registrant' s website or location or of a product or service on the Registrant' s website or location.

36. Complainant submits that it has continuously sold antennas for radios and cell phones in Canada under the Mark since 2000. Complainant has never authorized or licensed Registrant to use the Mark in any manner. In 2005, the Complainant registered the Mark with the Canadian Intellectual Property Office. Registrant' s registration and use of the Disputed Domain Name in 2015 clearly and obviously attempted to attract to its website consumers who are interested in shopping on the Internet for "WILSON" brand amplifiers. By using the word "WILSON" in the Disputed Domain Name, Registrant creates the mistaken impression that the Disputed Domain Name is associated with the Complainant' s business. This meets the requirement of bad faith as espoused in Paragraph 3.5 (d) of the Policy.

37. Notarized evidence of website pages shows that Registrant used the Disputed Domain Name <wilsonamplifiers.ca> for selling products identical or similar to the Complainant' s products for commercial purposes. According to Paragraph 3.5 (d) of the Policy, the Panel finds that this apparently constitutes a circumstance of bad faith.

DECISION

38. In conclusion, the Panel finds that the Complainant has prior trademark right in the Mark "WILSON", as supported by its Canadian Trademark Registration No. TMA648,128. The Panel finds that the Disputed Domain Name <wilsonamplifiers.ca> is Confusingly Similar to the Mark owned as prior right by the Complainant, and that pursuant to the above-mentioned provision of the Policy, the Registrant has registered the Disputed Domain Name in bad faith.

ORDER

39. Based on the above reasoning, in accordance with Paragraph 4.3 of the Policy, the Panel orders that the registration <wilsonamplifiers.ca> should be transferred to the Complainant Wilson Electronics, LLC.

Sole Panelist

Jerry Yulin Zhang

Date: April 26, 2017