



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400627
Complainant:	Alibaba Group Holding Limited
Respondents:	(1) Domains By Proxy, LLC; and (2) Jinbo Liu
Disputed Domain Name:	<tmall.company>

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holding Limited of Fourth floor, One Capital Place, P.O. Box 847, George Town, Grand Cayman, Cayman Islands, British West Indies, represented by Mayer Brown JSM of 16th - 19th Floors, Prince's Building, 10 Chater Road Central, Hong Kong.

The Respondents are (1) Domains By Proxy, LLC (“1st Respondent”) of DomainsByProxy.com 14747, N Northsight Blvd Suite 111, PMB 309, Scottsdale, Arizona 85260, USA; and (2) Jinbo Liu (“2nd Respondent”) of Hanjian, Putian, 351100, China.

The domain name at issue is <tmall.company> (the “Disputed Domain Name”), registered by the Respondents with GoDaddy.com LLC (“Registrar”) of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA.

2. Procedural History

(1) Pursuant to the Uniform Domain Name Dispute Resolution Policy (the “Policy”) adopted by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on October 24, 1999, a complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC” or the “Centre”) on 25 June 2014.

(2) On 26 June 2014, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the domain name at issue. On 27 June 2014, the Registrar provided the Centre with its verification response confirming that the registrant of the Disputed Domain Name is the 2nd Respondent; and that the Policy applies to the Disputed Domain Name. The Centre notified the Complainant, through its authorized representative, Mayer Brown JSM, of the information obtained from the Registrar.

(3) On 30 June 2014, an amended complaint (the “Complaint”) was filed with the Centre.

- (4) After having checked the Complaint and verified that it had satisfied the formal requirements of the Policy, the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules"), the Centre forwarded an official copy of the Complaint to the Respondents on 3 July 2014 and the proceedings commenced on the same date. The due date for Response was 23 July 2014.
- (5) On 21 July 2014 the 2nd Respondent filed with the Centre a Response to the Complaint.
- (6) On 29 July 2014 the Centre appointed Raymond HO as the single panelist in this matter after having obtained confirmation from the panelist that he shall be in the position to act impartially and independently between the parties before accepting the appointment. On the same date, the Centre transferred the file to the Panel.
- (7) The Panel finds that it was properly constituted.

3. Factual background

- (1) The Complainant is known as "Alibaba", or "阿里巴巴" in Chinese, and operates its business through a number of subsidiaries and affiliates (collectively, the "Group"). The Group was founded in 1999. It has since grown to become a global e-commerce operator with offices in about seventy cities across China, and in Hong Kong, Taiwan, Korea, India, Japan, Singapore, USA and Europe. In May 2003, the Group founded the brand "Taobao" (in Chinese "淘宝") at www.taobao.com (also known as "淘宝网" in Chinese), a Chinese language C2C internet retail platform. The Group, through its affiliates, operates two platforms, www.taobao.com and www.taobao.com.cn (collectively, "Taobao Websites") under the Taobao Marketplace. Other than the Taobao Marketplace, the Group also operates the platforms of Tmall.com (www.tmall.com), a B2C internet retail platforms for branded goods. In 2008, the Group introduced "Taobao Mall", a B2C platform accessible from its Taobao Marketplace, namely: <http://mall.taobao.com> or <http://mall.taobao.com.cn> ("Taobao Mall"). In 2010, the Group rebranded Taobao Mall as "Tmall" (in Chinese "天猫") (which is an abbreviation of the Complainant's "Taobao Mall" trade mark) giving it an independent website located at www.tmall.com (the "Tmall.com Marketplace"). For the year ending on 31 March 2013, the combined gross merchandise volume of Taobao Marketplace and Tmall.com Marketplace exceeded RMB 1 trillion. The Tmall.com Marketplace and Taobao Marketplace link to the Group's other online platforms, including Alibaba.com International and China Marketplaces (www.alibaba.com, www.alibaba.com.cn and www.1688.com); AliExpress (www.aliexpress.com); Alipay (www.alipay.com); Alimama (www.alimama.com); and Alibaba Cloud (Aliyun) (www.aliyun.com). The Complainant began using the "TMALL" brand in 2010.
- (2) The 1st Respondent is a proxy service provider. Based on the WHOIS database accessed by the Complaint on 25 June 2014, the 1st Respondent was the registrant organization of the Disputed Domain Name with a remark "registration private". Based on the WHOIS database subsequently accessed by the Claimant on 30 June 2014 and as confirmed by the Registrar, the 2nd Respondent is the registrant of the Disputed Domain Name.

- (3) The Disputed Domain Name was registered on 21 March 2014, expiring on 21 March 2015, i.e. for a one year period.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

(1) The Disputed Domain Name is identical and/or confusingly similar to trade or service marks in which the Complainant has rights

The Complainant has registered a number of trade marks comprising the "TMALL" trade marks around the world, including the following:

- USA trade mark "TMALL", registration number 4300001, classes 9, 16, 35, 38, 41 and 42, registered on 12 March 2013;
- European Union (CTM) trade mark "TMALL", registration number 010519395, classes 9, 16, 35, and 41, registered on 21 December 2013;
- Chinese trade mark "TMALL", registration number 8820963, class 9, registered on 21 November 2011;
- Chinese trade mark "TMALL", registration number 8820991, class 35, registered on 14 March 2014;
- Chinese trade mark "TMALL", registration number 8821002, class 38, registered on 28 January 2014;
- Hong Kong trade mark "TMALL", registration number 301756198, classes 9, 16, 35, 38, 41 and 42, registered on 5 November 2010;
- Hong Kong trade mark " ", registration number 302066940, classes 9, 16, 35, 38, 41 and 42, registered on 25 October 2011;
- Taiwan trade mark "TMALL ", registration number 100047013, classes 9, 16, 35, 38, 41 and 42, registered on 1 March 2012;

The Complainant also registered its "TMALL" trade mark with the Trademark Clearinghouse.

Copies of the registration certificates/extracts from the official trademark database for the above trade mark registrations, and evidence that the Complainant's "TMALL" trade mark has been registered with the Trademarks Clearinghouse, are annexed to the Complaint. The Complainant therefore submits that it has established that the Complainant has rights in the "TMALL" trade marks, most of which are prior to the registration of the Disputed Domain Name.

The Complainant further submits that Disputed Domain Name, <[tmall.company](#)>, incorporates the Complainant's "TMALL" trade mark in its entirety; and submits that it is well-established that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.company>, should be disregarded. See Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd, WIPO Case No. D2006-0762.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to its registered "TMALL" trade marks

in which the Complainant has rights or interests for the purposes of paragraph 4(a)(i) of the Policy.

(2) The Respondent has no right or legitimate interest in respect of the Disputed Domain Name

The Complainant asserts that since their first use in 2008, the “TMALL” trade marks have acquired distinctiveness through their extensive use in commerce by the Claimant and its affiliates, so that the “TMALL” trade marks, including the “TMALL” mark, are immediately recognisable to consumers as being associated with the Complainant, its affiliates, and their business. The Complainant submits that the "TMALL" mark is a coined term, and has no meaning in English or any other language other than in relation to the Complainant.

The Complainant points out that the Respondents registered the Disputed Domain Name on 21 March 2014, more than 6 years after the Complainant first started using its "TAOBAO MALL" trade mark, and about 4 years after it began using its "TMALL" trade mark. The Complainant has not licensed, consented to or otherwise authorized the Respondents' use of its “TMALL” trade marks in respect of the Disputed Domain Name.

The Complainant submits that given the fame of the “TMALL” trade marks, and that they are made-up words uniquely associated with the Complainant and their use predates the Respondents' registration of the Disputed Domain Name, the burden of proof is shifted to the Respondents in showing that the Respondents have rights and/or legitimate interests in the Disputed Domain Name (see PepsiCo, Inc v. Amilcar Perez Lista d/b/a Cybersor, WIPO Case No. D2003-0174). In the Complainant's submission, there is no evidence to suggest that the Respondents have been commonly known by the Disputed Domain Name.

The Complainant submits that the Respondents must have also received notice of the Complainant's rights in the "TMALL" trade mark when it sought to register the Disputed Domain Name, as the Complainant's "TMALL" trade mark was registered with the Trademark Clearinghouse prior to the registration of the Disputed Domain Name.

Based on the evidence obtained, the Complainant points out that the Disputed Domain Name does not appear to be actively in use; it simply resolves to a webpage that includes an index and links to ".ftquota" and "cgi-bin", and includes references to Apache and Open SSL software. The Complainant submits that such use cannot amount to a legitimate interest or right in the Disputed Domain Name. The Complainant also submits that even if the Respondent intends to use the Disputed Domain Name to resolve to an active website, any such use can never amount to a bona fide offering of goods or services or a legitimate non-commercial or fair use of the Disputed Domain Name. This is because the Disputed Domain Name is identical to the Complainant's well-known "TMALL" trade mark; the Respondent knew of the Complainant's rights in the "TMALL" trade mark (for the reasons stated above); and any use of the Disputed Domain Name will inevitably mislead users into believing that the Disputed Domain Name is associated with the Complainant and may divert users to the Disputed Domain Name, enabling the Respondents to make a commercial gain (see Paris Hilton v. Deepak Kumar, WIPO Case No. D2010-1364;

Madonna Ciccone p/k/a Madonna v Dan Parisi and "Madonna.com", WIPO Case No. D2000-0847; Viacom International, Inc., Paramount Pictures Corporation, and Blockbuster Inc. v TVdot.net, Inc. f/k/a Affinity Multimedia, WIPO Case No. D2000-1253; and Microchip Technology, Inc. v. Milo Krejcik and EDI Corporation, d/b/a Aprilog.com, WIPO Case No. D2001-0337). The Complainant submits that the Group's Tmall.com Marketplace enables companies to establish a presence on one of the Complainant's largest online platforms – therefore the Respondents' choice to register the generic domain name extension <.company> is not random and clearly shows an intention on the part of the Respondents to capitalize on the Complainant's goodwill, and so cannot amount to legitimate use.

Based on the above, the Complainant submits that the Respondents are precluded from arguing under paragraph 4(c) of the Policy that:

- (i) its use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name is in connection with a bona fide offering of goods or services; or
- (ii) it has been commonly known by the Disputed Domain Name; or
- (iii) it is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Complainant accordingly submits that it has proved that the Respondents have no right or legitimate interest in respect of the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy.

(3) The Disputed Domain Name has been registered and is being used by the Respondents in Bad Faith

The Complainant submits that the Disputed Domain Name has been registered and is being used by the Respondents in bad faith based on the following:

(a) The Respondents have no rights or legitimate interests in the Disputed Domain Name, which is in itself evidence of bad faith.

(b) The Disputed Domain Name does not reflect or correspond to either of the Respondents' own names nor the name of their organisations. The Complainant's "TMALL" trade mark is a coined term not commonly used in English or any other language independent of the Complainant's "TMALL" trade mark. This lends support to the presumption that: (i) the Respondents' registration of the Disputed Domain Name, which incorporates the word "tmall" in its entirety, was motivated solely to take advantage of the Complainant's reputation in the Tmall Trade Marks; and (ii) the Respondents knew about the Complainant and its "TMALL" trade marks at the time they registered the Disputed Domain Name (see Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Kil Inja, WIPO Case No. D2000-1409).

(c) Furthermore, the Complainant began using its "TAOBAO MALL" trade marks in 2008, and its "TMALL" trade marks in 2010 – which was, respectively, about 6 years and 4 years prior to the registration of the Disputed Domain Name. The "TMALL" trade marks have acquired distinctiveness through their extensive use by the Complainant in commerce, so that they are immediately recognisable to

consumers as being associated with the Complainant and its businesses. The 2nd Respondent is apparently based in China, where the Complainant and its “TMALL” trade marks are particularly well-known. In light of the worldwide fame of the “TMALL” trade marks, and the fact that the word "tmall" has no common meaning in English or any other language independent of the Complainant's "TMALL" trade marks, makes it inconceivable that the Respondents were not aware of the Complainant's “TMALL” trade marks at the time they registered the Disputed Domain Name.

(d) In addition, the Disputed Domain Name was registered by the Respondents only after the Complainant's "TMALL" trade mark was registered and validated by the Trademark Clearinghouse – so the Respondent must have received a trademark claims notice of Complainant's rights prior to its registration. See Alibaba Group Holding Limited v. Andreas Perschk, ADNDRC Case No. HKS-1400003; and Michael Page Recruitment Group Limited v. Tassanee Atsawasakundee, KTI Recruitment Consultants Co. Ltd, ADNDRC Case NO. HKS-1400001.

(e) It is clear that the Respondents’ registration and use of the Disputed Domain Name must involve mala fides where the registration and use of it was and continues to be made in the full knowledge of the Complainant's prior rights in the “TMALL” trade marks, and in circumstances where the Respondents did not seek permission from the Complainant, as the owner of the trade marks, for such registration and use. See Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co., WIPO Case No. D2000-0163.

(f) In such circumstances, it is reasonable to infer that the Disputed Domain Name was registered and is being used to: (i) mislead and confuse users into believing that the Disputed Domain Name is associated with the Complainant and its “TMALL” trade marks; (ii) to sell the Disputed Domain Name to the Complainant or its competitors, for profit; and/or (iii) to prevent the Complainant from registering domain names that correspond to its trade marks.

(g) As stated by the panel in Paris Hilton v. Deepak Kumar, WIPO Case No. D2010-1364, "it is use in bad faith...where the registrant is using the domain name in this manner because of its similarity to a mark or name of another person in the hope and expectation that that similarity would lead to confusion on the part of Internet users and result in an increased number of Internet users being drawn to that domain name parking page...the confusion that is usually relevant here is the confusion that draws the Internet user to the respondent's website in the first place (for example, confusion that leads an Internet user to type the domain name into his Internet browser). It does not matter that when the Internet user arrives at the pay-per-click site that it then becomes clear that the website is unconnected with the trade mark holder."

(h) The Complainant notes that paragraph 4(b) of the Policy only provides a non-exhaustive list of examples that may give rise to a finding of bad faith registration and use. However, other circumstances not expressly listed in paragraph 4(b) of the Policy may also constitute bad faith. It is well established that lack of active use of a disputed domain name (i.e. passive holding), does not in itself prevent a finding of bad faith – it depends on "whether, in all the facts and circumstances of this case, it can be said that the Respondent is acting in bad faith" (see Tesla Corporation

Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003 and Alibaba Group Holding Limited v. Song Bin, ADNDRC Case No. HK-1300494; and paragraph 3.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition). In this case, the Complainant contends that the Disputed Domain Name was registered and is being used in bad faith as: (i) its Tmall Trade Marks and Tmall.com Marketplace are well-known, particularly in China, where the Respondent is based; (ii) the Respondent's name is in no way connected to the Disputed Domain Name; (iii) Respondent has not been authorised by the Complainant to register and use the Disputed Domain Name, and the Respondent has no connection or relationship with the Complainant which could give rise to such authorisation; (iv) the Respondent must have been aware of the Complainant's Tmall Trade Marks for the reasons stated above; and (v) irrespective of the current or any intended use of the Disputed Domain Name, the Respondent knowingly registered and is using the Disputed Domain Name without the Complainant's permission. It is therefore inconceivable that any use of the Disputed Domain Name could be anything other than bad faith use.

(i) In these circumstances of blatant misappropriation of the Complainant's "TMALL" brand, there can be no possible grounds on which to find that the Respondents' registration and use of the Disputed Domain Name has been otherwise than in bad faith. As stated in Michael Page Recruitment Group Limited v. Tassanee Atsawasakundee, KTI Recruitment Consultants Co. Ltd, ADNDRC Case NO. HKS-1400001, "the respondent had actual knowledge of the complainant's trademark and brand and intended to capitalise on it by registering the domain name. That is so as there is no other plausible explanation for taking a prominent name, incorporating it in a domain name registered under one of the new gTLDs and using it or allowing it to be used in the manner described." The same reasoning applies in this case.

(j) Although use of a privacy or proxy registration service provider is not in and of itself an indication of bad faith, taking into account the circumstances outlined above, the Complainant submits that it is a factor that further indicates bad faith registration and use.

The Complainant accordingly submits that it has proved that the Respondents have registered and are using the Disputed Domain Name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent's contentions may be summarized as follows:

- (1) The 2nd Respondent contends that domain names and trade marks belong to two different systems; and trade mark right has a limitation of product coverage while the proprietary right of the domain name comes from the network technology itself. The 2nd Respondent therefore contends that it is an objective fact that it is impossible for a domain name to be parsed to two different servers. Therefore, the proprietary right of a domain name generated from the network technology cannot be extended to other fields except for domain names. The 2nd Respondent is of the view that it is unreasonable to ask others

not to make use of a domain name with other meanings just because of the existence of a trade mark.

- (2) The 2nd Respondent submits that the Disputed Domain name it registered conforms to the company name of the 2nd Respondent, namely, 特美全网络信息技术工作室 in Chinese. The 2nd Respondent contends that in this name: (Pinyin)特=Te (Pinyin) 美=Mei 全=All and it means TMALL COMPANY. Annexed to the Response is a copy of the Business Licence of 特美全网络信息技术工作室. The 2nd Respondent therefor submits that the Disputed Domain Name, <tmall.company>, conforms to the company name of the 2nd Respondent.
- (3) On the evidence of the website search undertaken by the Complainant on the Disputed Domain Name where it simply resolved to a webpage that includes an index and links to ".ftpquota" and "cgi-bin", the 2nd Respondent contends that those who have common sense of network would understand that it is a problem encountered during the allocation of the website, rather than an unreasonable use of the domain name.
- (4) In the 2nd Respondent's submission, the Complainant does not have any facts to prove that the Respondents registered the Disputed Domain Name in bad faith. The 2nd Respondent contends as follows:
 - (a) The 2nd Respondent does not mislead the consumers or tarnish the Complainant's trade marks and service identifiers for commercial benefits. The 2nd Respondent does not damage the reputation of the Complainant, as well as the normal business activities of the Complainant, or confuse the differences between the 2nd Respondent's name and the Complainant's name to mislead the public.
 - (b) The Complainant has asked the 2nd Respondent to sell the Disputed Domain Name to it for three times, which were be refused by the 2nd Respondent as he wants to make use of it for his own company. Annexed to the Response are copies of two emails from rwong.rachel@gmail.com dated 9 April 2014 and 8 May 2014 soliciting sale of the Disputed Domain Name.
- (5) The 2nd Respondent finally submits that his behavior of obtaining and using the Disputed Domain Name is based on his legitimate rights and it does not infringe on the legal rights of the Complainant.

5. Findings

The Panel has carefully considered all the evidence and the submissions by the Parties to these proceedings. The Panel finds that the 2nd Respondent is the registrant of the Disputed Domain Name that was initially registered by the 1st Respondent as a proxy service provider for the 2nd Respondent. The Panel has reviewed the "GoDaddy Registration Agreement" (annexed to the Complaint) that provides, inter alia, for the resolution of

domain name disputes and finds that the Policy is applicable to the Disputed Domain Name and is binding on the Respondents.

The Panel notes that the Policy provides, at Paragraph 4(a), that each of three findings must be made in order for the Complaint 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 Respondents do not dispute that the Complainant is the owner of the "TMALL" trade marks, as more particularly set out in the Complaint. The Panel finds that the Complainant has rights in the "TMALL" trade marks; and that most of these trade marks were registered prior to the registration of the Disputed Domain Name.

The Panel accepts the Complainant's submission that the Disputed Domain Name, <tmall.company>, incorporates the Complainant's "TMALL" trade mark in its entirety; and that it is well-established that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.company>, should be disregarded.

As the Respondents are bound by the GoDaddy Registration Agreement that incorporates the Policy, the Panel rejects the 2nd Respondent's contention that domain names and trade marks belong to two different systems; and that it is unreasonable to ask others not to make use of a domain name with other meanings just because of the existence of a trade mark. This contention is irrelevant in resolving the dispute in these proceedings.

The Panel therefore finds that the Complainant has proved that the Disputed Domain Name is identical and/or confusingly similar to its registered "TMALL" trade marks in which the Complainant has rights or interests for the purposes of paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Respondents do not dispute that the Complainant has not licensed, consented to or otherwise authorized the Respondents' use of its "TMALL" trade marks in respect of the Disputed Domain Name.

The Panel accepts the Complainant's submission that given the "TMALL" trade marks are well-known amongst the B2C internet retail community, and that they are made-up words uniquely associated with the Complainant and their use predates the Respondents' registration of the Disputed Domain Name for at least 4 years, the burden of proof is shifted to the Respondents in showing that the Respondents have rights and/or legitimate interests in the Disputed Domain Name.

Paragraph 4 (c) of the Policy provides that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the Respondents'] rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to [the Respondents] of the dispute, [the Respondents'] use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) [the Respondents] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) [the Respondents] are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

First, the Panel finds no evidence that before the notice to the Respondents of the present dispute, the Respondents' use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Dispute Domain Name in connection with a bona fide offering of goods or services.

Secondly, the Panel finds no evidence in support of the 2nd Respondent's submission that the Disputed Domain name conforms to the company name of the 2nd Respondent, namely, 特美全网络信息技术工作室, in Chinese. The Business Licence of 特美全网络信息技术工作室 annexed to the Response shows clearly that this company was only registered on 7 July 2014, more than three months after the registration of the Disputed Domain Name on 21 March 2014; and 4 days after the commencement of the present proceedings on 3 July 2014. The Panel therefore rejects the 2nd Respondent's submission that the Disputed Domain Name conforms to the company name of the 2nd Respondent as there is no evidence of its existence at the time the Disputed Domain Name was registered. In the circumstances, it is the unnecessary for the Panel to make any finding on the 2nd Respondent's contention that the Chinese words "特美全" in this company name means "TMALL COMPANY".

Thirdly, the Panel finds no evidence that the Respondents are making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's "TMALL" trademarks or service mark at issue.

The Panel therefore finds that the Complainant has proved that the Respondents have no right or legitimate interest in respect of the Disputed Domain Name for the purposes of paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Paragraph 4(b) of the Policy provides that for the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to

be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that [the Respondents] have registered or [the Respondents] have 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 [the Respondents'] documented out-of-pocket costs directly related to the domain name; or

(ii) [the Respondents] have 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 Respondents] have engaged in a pattern of such conduct; or

(iii) [the Respondents] have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, [the Respondents] have intentionally attempted to attract, for commercial gain, Internet users to [the Respondents'] 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 Respondents'] website or location or of a product or service on [the Respondents'] website or location.

First, the Panel finds that apart from public knowledge of the "TMALL" trade marks, the Disputed Domain Name was registered by the Respondents after the Complainant's "TMALL" trade mark was registered and validated by the Trademark Clearinghouse; and the Panel therefore finds that the Respondents must have received a trademark claims notice of Complainant's rights in the "TMALL" trade marks and had actual knowledge of these trade marks prior to the registration of the Disputed Domain Name.

Secondly, the Panel accepts the 2nd Respondent's submission, the Complainant has adduced no evidence that the 2nd Respondent has offered the Disputed Domain Name for sale. But the Panel finds no evidence that the two emails from rwong.rachel@gmail.com produced by the 2nd Respondent were in any way connected with the Complainant.

Thirdly, having found that the Respondents have no right or legitimate interest in respect of the Disputed Domain Name, coupled with the finding that the Respondents had actual knowledge of the Complainant's rights and interests in the "TMALL" trade marks at the time of registration of the Disputed Domain Name; and having regard to all other relevant evidence in the present case, the Panel considers it irresistible to infer that by registering and using the Disputed Domain Name, the Respondents have intentionally attempted to attract, for commercial gain, Internet users to the Respondents' website or other on-line location, by creating a likelihood of confusion with the Complainant's "TMALL" mark as to the source, sponsorship, affiliation, or endorsement of the Respondents' website or location or of a product or service on the Respondents' website or location, and the Panel so infers. The Panel rejects the 2nd Respondent's submission that it is not bad faith registration nor bad faith use of the Disputed Domain Name. Adopting the words of

the Honourable Neil Anthony Brown, Q.C., the panelist in Michael Page Recruitment Group Limited v. Tassanee Atsawasakundee, KTI Recruitment Consultants Co. Ltd, ADNDRC Case NO. HKS-1400001, "The conclusion from the totality of the evidence ... is that the [Respondents] had actual knowledge of the [Complainant's] trademark and brand and intended to capitalise on it by registering the domain name. That is so as there is no other plausible explanation for taking a prominent name, incorporating it in a domain name registered under one of the new gTLDs and using it or allowing it to be used in the manner described. The only conclusion open on the evidence is that the [Respondents] registered the domain name in bad faith and is using it in bad faith, as it was intending to trade off the [Complainant's] good name and to mislead the internet community. On any test it is bad faith registration and bad faith use." On the totality of the evidence in the present proceedings, the Panel finds that the registration and the use of the Disputed Domain Name by the Respondents are in bad faith.

The Panel accordingly finds that the Complainant has proved that the Respondents have registered and are using the Disputed Domain Name in bad faith for the purposes of paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders that the Disputed Domain Name <tmall.company> be transferred to Complainant.

Raymond HO
Sole Panelist

Dated: 4th August 2014