



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

— A charitable institution limited by guarantee registered in Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No. HK-0900278

Complainant: Alibaba Group Holding Limited (“ALIBABA”, formerly known as Alibaba. Co Company

Respondent: Lai Qixing

Domain Name:

<ALIBABALIFE.COM> <ALIBABAFUTURE.COM> <ALIBABAIDEA.COM>
<ALIBABAPLAN.COM> ,<ABOUTALIBABA.COM.> <ALIBABASTRATEGY.COM>
<ALIBABAKEY.COM> <ALIBABAING.COM> <HIALIBABA.COM>

Registrar: HiChina Zhicheng Technology Ltd.

1. Procedural History

On 12 November, 2009, the Complainant sent a Statement of Complaint and Annexure to the Hong Kong Office of ADNDRC. On the same day, ADNDRC HK responded to the Complainant and confirmed that the ADNDRC HK had received the Complaint

On 13 November, 2009, the ADNDRC HK sent an e-mail to the Registrar and asked him to furnish the following information.

1. Whether the above domain names and <aliabafuture.com> are registered by the Registrar;
2. Whether the Respondent “Lai Qixing” is the Registrant or holder of the disputed domain names;
3. Whether the ICANN Uniform Domain Name Dispute Resolution Policy is applicable to the current dispute;
4. The language of the Registration Agreement of the disputed domain names In accordance with the UDRP, the language of the proceedings shall be the language of the Registration Agreement, unless otherwise agreed by the parties or decided by the Panelist;
5. Please provide us with the Whois information regarding the disputed domain

names;

6. the Status of the domain names.

On 16 November, 2009, the Registrar responded that the above domain names(no <aliabafuture.com>) are registered and the Registrant(Respondent) is “Lai Qixing”.

On 20 November, 2009, the ADNDRC HK asked the Complainant to provide with a translation of the Complaint to the language of the Registration Agreement(i.e. Chinese).

Based on the response from the Registrar, <aliabafuture.com> was not registered as a domain name. Then, the ADNDRC HK informed the Complainant to revise the Complaint . The Complainant revised his Complaint in time.

On 11 December, 2009, ADNDRC HK sent the Complaint to the Respondent and asked him to respond before 31 December, 2009. However, ADNDRC HK did not receive any respond from the Respondent before the time limit.

After consultation, Prof. Guo Shoukang has been designated as the sole Panelist of the domain names dispute. Then, ADNDRC HK informed both the Complainant and the Respondent that the proceeding is started and, if there be no exceptional circumstances, the decision shall be rendered by 28 January, 2010.

For technical reason, the Panelist received the hard copy on 25 January, 2010. So, it is decided that the time limit for the decision has to be postponed until 5 February, 2010.

Many documents are in English and the Chinese translation of the Complaint is not completely equivalent to the English version(even have some misprints and mistakes), therefore, the Panel decided that the language of the decision shall be in English according to Article 11 of the Rule.

2. Factual Background

For the Complainant

The Complainant of the domain names’ dispute is Alibaba Group Holding Limited (“ALIBABA”, formerly known as Alibaba.com Corporation).

Alibaba, or “阿里巴巴” as it is officially known in Chinese, was founded in Hangzhou, the PRC in 1999. Since then, Alibaba has grown to become a global company of e-commerce. Alibaba’s subsidiary, Alibaba.com, has been listed on the Hong Kong Stock Exchange since November 2007(HKSE: 1688.HK). Together, Alibaba’s marketplaces form a community now boasting more than 45 million registered users from more than 240 countries and regions worldwide.

Headquartered in Hangzhou, the PRC, Alibaba.com has offices in 50 cities across the PRC, as

well as in Hong Kong, Japan, Korea, Taiwan, USA and Europe. Reporting total revenue of some RMB 3 billion in 2008, Alibaba.com has achieved a year-on-year growth of about 39% in revenue.

The Complainant and its subsidiaries have been promoting “ALIBABA” branded e-commerce services and products extensively since 1999 via the internet and through publicity and advertising in trade press and other print media. Millions of dollars have been spent annually to promote and market the business and services and the “ALIBABA” trade mark. For instance, Alibaba.com launched a US\$30 million marketing campaign in 2008 which will continue over the course of 2009 in key buyer markets such as the United States and Europe, as well as in emerging markets with meaningful buyer growth potential. This campaign represents a long-term investment in the loyalty of user base and global brand recognition for “ALIBABA”.

For the Respondent

The Respondent, Lai Qixing, has address in Wuxi City, Jiangsu Province, PRC. His Principal Place of Business is in China.

The Respondent also registered the domain names <alibababank.com.cn> and <alibababank.net.cn>, which were not in use but were offered to sell for a price well exceeding the Respondent’s out of pocket expenses in registering the domain names(Annexures 4 and 8). After discovered this situation, the Complainant filed administrative complaint with the HKIAC. The Panel made an order for the transfer of the disputed domain names to the Complainant(Annexure 6 and 9).

Moreover, the Respondent has also registered about 50 domain names which wholly incorporated the Complainant’s ALIBABA trade mark, such <buyalibaba.com>, <alibabapay.net> and so on(collectively referred to as “Other Alibaba Domain Names) The Whois records for these domain names are attached at Annexure 12.

3. Parties’ Contentions

The Complainant

The Complainant submits that the disputed domain names are confusingly similar to marks in which the Complainant has rights on the basis of the Alibaba Trade Marks(see Annexure 23).

The only difference between each of the Disputed Domain Names and the Complainant’s registered ALIBABA trade mark is the addition of a miscellaneous generic word(in English). All of these words-”life”, “future” and so on-are commonly used in domain name. As such, they are in each case descriptive and do not serve to distinguished the Disputed Domain Names from the Complainant’s registered ALIBABA trade mark.

The fame of the Complainant’s ALIBABA trade mark(particularly in the PRC where the Respondent is related) is such that the use of these words in connection with it does nothing to dispel confusion as to an association with the Complainant and, in any case, in the context of one of the word’s most famous and innovative online trading platforms. The connection between ALIBABA with each of these words as a prefix or suffix to the Complainant’s “ALIBABA” trade mark is such that the relevant Disputed Domain Name considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant’s business.

The Complainant accordingly submits that it has proved that the Disputed Domain Names are confusingly similar to registered trade marks in which the Complainant has rights or interests for the purposes of Article 4 (a) (i) of the Policy.

In addition, the Complainant Holds the view that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names. There is no connection, either in appearance, in meaning or phonetically, between any of the Disputed Domain Names and the Respondent's name("Lai Qixing").

Further, the Respondent is not the owner of any registered trade marks reflecting any of the Disputed Domain Names in China(the Place of the Respondent). Complaint's legal representative conducted proprietor trade mark searches in the name of Lai Qixing which revealed that no company or individual by that name owns any registered trade marks in China relevant to any of the Disputed Domain Names(see Annexure 16).

The Complainant indicates that , as of the date of this Complaint none of the Disputed Domain Names are in use at all and to the best of the Complainant's knowledge and belief none of the Disputed Domain Names have been used for any purpose or in any respect since they were registered

In the circumstances the Complainant submits that there are only two plausible explanations for the registration of the Disputed Domain Names: First, that(as with the Alibababank Domain Name, the Respondent registered them in order to sell them to the Complainant and thereby obtain unjustified commercial gains; Secondly, that the Respondent registered the Disputed Domain Names out of malice after receiving unfavourable decisions in respect of the Alibababank Proceedings, to intentionally interfere with and disrupt the Complainant's business.

The Complainant according submits that it has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of Article 4(a)(ii) of the Policy.

Finally, the Complainant holds that the Disputed Domain Names have been registered and used by the Respondent in Bad Faith.

The Complainant submits that the Respondent selected the Disputed Domain Names either for the purpose of selling them to the Complainant to obtain unjustified commercial gains, or to disrupt the Complainant's business. This is substantiated by the following. First, the Respondent does not have any legitimate right or interest in any of the Disputed Domain Names. The fact itself is evidence of bad faith on the part of the Respondent in Registering the Disputed Domain Names. Secondly. The Respondent, being an individual domiciled in China, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Names by virtue of the Complainant's reputation in the mark "ALIBABA" in China and internationally as of the date that the Respondent registered the Disputed Domain Names. Thirdly, none of the Disputed Domain Names are in use as of the date of the Complaint. Fourthly, the Respondent previously registered <alibababank.com.cn> and <alibababank.net.cn> in circumstances of blatant bad faith, as was affirmed by appointed Panel for the administrative complaint proceedings filed by the Complainant in respect of those two domain names.

The Complainant according submits that it has proved that the Respondent has registered and used the Disputed Domain Names in bad faith for the purposes of Article 4(a)(iii).

The Respondent

No response from the Respondent.

4. Findings

According to Article 4(a) of the ICANN's "Policy", the Complainant must approve that three elements, mentioned below, have to be presented for support of the Complainant:

- (1) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and**
- (2) the respondent has no rights or legitimate interests in respect of the domain name; and**
- (3) the domain name has been registered and is being used in bad faith.**

Identical or Confusing Similarity

The Complainant is the owner of more than 150 trade mark registrations for or incorporating "ALIBABA" in numerous countries worldwide, including 11 registrations in the People's Republic of China, being the Respondent's country of domicile("Alibaba Trade Mark"). A complete list of these Trade mark registrations as well as copies of the registration certificates and extracts from the official trade mark databases for selected trade marks are attached at Annexure 2 of the Complaint. Therefore, it is clear that the Complainant is the right owner of the registered trade marks "Alibaba".

The most prominent part of the Disputed Domain Names is also "Alibaba". All the prefix or suffix -"life", "future", "idea", "plan", "about", "strategy", "key", "ing" and "hi"-are miscellaneous generic words (in English) and do not serve to distinguish the Disputed Domain Names from the Complainant's registered ALIBABA trade mark. For consumers, competitors and the public, it is likely for them to assume that the Disputed Domain Names have close connections with the registered trade mark

Case No. D3001-0259 "eBay Inc. v. SGR Enterprises and Joyce Ayers " is an Administrative Panel Decision under the WIPO Arbitration and Mediation Center. In that case, the Panel decided that the Disputed Domain Names <ebaylive.com> and <ebaystore.com> were confusingly similar to the complainant's trade mark <eBay>(see Annexure 13).

Based on the above analysis, the Panel holds that the Disputed Domain Names are confusingly similar to the trade mark <Alibaba> in which the Complainant has rights. The Complaint satisfied the requirement provided by Article 4(a)(i) of the Policy.

Rights or Legitimate Interests of the Respondent

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The complainant never authorized the Respondent to use and register <Alibaba> as Domain Names. In addition, the Respondent did not respond to the Complaint.

Thus, the Panel holds that the respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Complaint satisfied the requirement provided by Article 4(a)(ii) of the Policy.

Bad Faith

Article 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 Respondent has registered or has 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 respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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 the respondent's web site 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 respondent's web site or location or of a product or service on the respondent's web site or location.

Alibaba was founded in Hangzhou, the People's Republic of China, in 1999. On November, 2007, it has been listed on the Hong Kong Stock Exchange. Together, Alibaba's marketplaces from a community now boasting more than 45 million registered users from more than 240 countries and regions worldwide. Alibaba.com has offices in 50 cities across the PRC, as well as in Hong Kong, Japan, Taiwan USA and Europe. Reporting total revenue of some RMB 3 billion in 2008, Alibaba.com has achieved a year-on-year growth of about 39% n revenue.

The Complainant is the owner of more than 150 trade mark registrations for or incorporating "ALIBABA" in numerous countries worldwide, including 11 registrations in the People's Republic of China.(see Annexure 2 and Annexure 3).

The Complainant and its subsidiaries have been promoting "ALIBABA" branded e-commerce services and products extensively since 1999 via the internet and through publicity and advertising in trade press and other print media. A lot of money have been spent annually to promote and market the business and services and the "ALIBABA" trade mark. Only in 2008, Alibaba.com launched a US\$ 30 million marketing campaign which will continue over the course of 2009 in key buyer markets such as the United States and Europe, as well as in emerging markets with meaningful buyer growth potential. This campaign represents a long-term investment in the loyalty of user base and global brand recognition for "ALIBABA".

Practically speaking, "ALIBABA" has obtain a strong influence and high reputation in China and abroad. The Respondent, being an individual domiciled in China must have been aware of the Complainant's prior rights and interests in the Disputed Domain Names by virtue of the Complainant's reputation in the mark "ALIBABA" in China as of the date that the Respondent registered the Disputed Domain Names, especially after the date of the decision for the Disputed Domain Name case "alibababank.com.cn".

Moreover, none of the Disputed Domain Names are in use as of the date of the Complaint. Case No. D2000-0003 "Telstra Corporation Limited v. Nuclear Marshmallows, decided by a Panel under WIPO, made it clear that the concept of "use in bad faith" in the corresponding paragraph 4(a)(iii) of the UDRP is not limited to positive action. And that inaction is within the concept, i.e. inactivity by the Respondent may therefore amount to "the use of the domain name in bad faith(see Annexure 18). Therefore, it is submitted that the non-use or passive holding of the Disputed Domain Names by the Respondent also amounts to the use of the Disputed Domain Names in bad faith.

In addition, as the case "alibababank.com.cn" indicated, the Respondent selected the Disputed Domain Names only for the purpose of selling them to the Complainant to obtain unjustified commercial gain. Obviously, it is in bad faith according to Article 4(b)(i) of the policy.

Thus, the Panel holds that Disputed Domain Names have been registered and are being used in bad faith. The Complaint satisfied the requirement provided in Article 4(a)(iii) of the policy.

5. Decision

Based on the above mentioned analysis, the panel decides that the Complaint satisfied all the three elements provided in Article 4(a) of the Policy and, therefore, the Disputed Domain Names should be transferred to the Complainant.

Shoukang Guo

(Name in Print)

Dated: 3 February , 2010