



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1300500
<b>Complainant:</b>	Alibaba Group Holding Limited
<b>Respondent:</b>	Zhao XiRen
<b>Disputed Domain Name(s):</b>	<Elibaba.net>, <Elibaba.com>

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**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. The Complainant's authorized representative is Hogan Lovells, of 11<sup>th</sup> Floor, One Pacific Place, 88 Queensway, Hong Kong.

The Respondent is Zhao XiRen, of High-tech Zone Shuangbei 43 Street 116 building 3 unit 4 Building No. 8 Mianyang, Sichuan 621000, China.

The domain names at issue are <Elibaba.net> and <Elibaba.com> (the "Disputed Domain Names"), registered by the Respondent with GoDaddy.com LLC, of 14455 N. Hayden Rd., St. 226, Scottsdale, AZ 85260.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("the Centre") on 30<sup>th</sup> May 2013. On the same day, the Centre notified the Complainant the receipt of its complaint and transmitted a request for registrar verification in connection with the Disputed Domain Names to GoDaddy.com LLC. On 1<sup>st</sup> June 2013, GoDaddy.com LLC responded the Centre stating that the Disputed Domain Names had been placed on registrar-lock. Upon further request by the Centre on 4<sup>th</sup> June 2013, GoDaddy.com LLC responded the Centre verifying that the Respondent was the registrant.

The Centre verified that the Complaint satisfied the formal requirements of the ICANN Uniform Domain Name Dispute Resolution Policy (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"). In accordance with the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 5<sup>th</sup> June 2013. According to Article 5 of the Rules, the Respondent was required to submit a Response on or before 25<sup>th</sup> June 2013. The Respondent has not filed a Response (the Response Form R and its Annexures) in

accordance with the Supplemental Rules within the required period of time, the Centre notified the parties the proceedings would be continued on default of the Respondent.

The Centre appointed Solomon Lam as the sole panelist in this matter on 3<sup>rd</sup> July 2013. The Panelist has confirmed his availability to act as a Panelist and his ability to act independently and impartially between the parties to this dispute.

The Panel finds that it was properly constituted and appointed in accordance with the Rules and the Supplemental Rules. Therefore, this Panel has jurisdiction over this domain name dispute. In accordance with Paragraph 11(a) of the Rules, since the language of the Domain Name Registration Agreement is English, therefore, these proceeding shall be conducted in English.

### **3. Factual background**

The Complainant is officially known as Alibaba, or "阿里巴巴" in Chinese, and operates its business through a number of related companies (collectively referred to as, "Alibaba Group"). Alibaba Group was originally founded in Hangzhou, China in 1999. Since then, Alibaba Group has grown to become a global leader in the field of e-commerce.

Alibaba Group, through its affiliate, Alibaba.com Limited and its affiliates ("Alibaba.com"), operates two online business-to-business (B2B) marketplaces: a global trade marketplace (www.alibaba.com) for importers and exporters and a Chinese marketplace (www.alibaba.com.cn and www.1688.com) for domestic trade in the People's Republic of China (together, the "Alibaba.com Websites").

Headquartered in Hangzhou, the Peoples's Republic of China, Alibaba Group, through its affiliates, has offices in seventy 70 cities across China, as well as in Hong Kong, Taiwan, Korea, India, Japan, Korea, Singapore, USA and Europe. Alibaba Group has been promoting "ALIBABA" branded e-commerce services and products extensively since 1999 via the Internet, trade press, trade shows and other print media.

The Respondent registered the Disputed Domain Names <Elibaba.net> and <Elibaba.com> on 2<sup>nd</sup> August 2001 and 14<sup>th</sup> July 2000 respectively.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- (i) The Disputed Domain Names are identical and/or confusingly similar to trade or service marks in which the Complainant has rights. The Complainant contends that it has established that it has rights in the "ALIBABA", "ALIBABA.COM" and "阿里巴巴" trade marks prior to the registration of the Disputed Domain Names and that the majority of the Disputed Domain Names are purposefully misspelled by substituting the first letter "A" in "Alibaba" with an "E", to read as "Elibaba".
- (ii) The Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. The Complainant contends that there is no evidence to suggest that the Respondent has been commonly known by the Disputed Domain Names. The

Respondent's name, Zhao XiRen, in no way corresponds with the Disputed Domain Names and that the Respondent does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Names in the People's Republic of China where the Respondent is apparently domiciled.

(iii) The Disputed Domain Names have been registered and are being used by the Respondent in bad faith on the grounds that:-

- (1) The fact that the Respondent has registered the Disputed Domain Names without having any legitimate rights or interests in them is of itself evidence of bad faith;
- (2) The Respondent must have been aware of the Complainant's prior rights and interests in the Disputed Domain Names;
- (3) The websites of the Disputed Domain Names contain further evidence that the Respondent was aware of the Complainant's Alibaba Trade Marks when it registered the Disputed Domain Names and registered them to take advantage of the Complainant's goodwill in these trade marks;
- (4) Featured advertisements on <Elibaba.com> were linked to other services provided by the Complainant;
- (5) The Respondent intentionally takes advantage of the confusion of internet users who mistyped the Complainant's domain name and was instead diverted to the Respondent's Websites for the Respondent's commercial gain and profit;
- (6) The Respondent registered the Disputed Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Disputed Domain Names to the Complainant or to a competitor of the Complainant in excess of the Respondent's out-of-pocket expenses for registering and transferring the Disputed Domain Names.

#### B. Respondent

The Respondent has not filed a Response (the Response Form R and its Annexures) in accordance with the Supplemental Rules. However, the Panel has also considered the contentions written in Chinese submitted by the Respondent to the Centre on 17<sup>th</sup> June 2013. The Respondent's contentions may be summarized as follows:

- i. The Respondent contends that there are differences between "Alibaba" and "Elibaba";
- ii. < elibaba.com> registered legally in the People's Republic of China;
- iii. < elibaba.com> was registered in 2000 earlier than the registration of alibaba's English trade marks.

### 5. Findings

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

- i. Respondent's domain name must be 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**

On the evidence before the Panel, the Complainant has established rights in the "Alibaba" and "阿里巴巴" trade marks through registrations and use of many trade marks for "Alibaba" registered in the People's Republic of China and internationally since 1999.

The Panel accepts that the domain extension shall be disregarded. Therefore, the only distinction between the main body of the Disputed Domain Names "Elibaba" and "Alibaba" is the first letter "E".

There were cases that domain names have been held to be confusingly similar to trade marks, when some letters have been interchanged or replaced with a phonetically similar letter in order to create confusion in the minds of users or deliberate misspelling of a mark by adding, deleting, substituting or reversing the order of letters in a mark (*Fuji Photo Film U.S.A., Inc. v. LaPorte Holdings*, WIPO Case No. D2004-0971; *Yurtici Kargo Servisi A.S. v. Yurticikargo Yurticikargo*, WIPO Case No. D2003-0707; *Neuberger Berman Inc. v. Alfred Jacobsen*, WIPO Case No. D2004-0971 D2000-0323).

"Elibaba" and "Alibaba" are phonetically similar. Further, "E" is commonly used in the internet world as the short form of "electronic" or "e-commerce". Provided the Complainant uses the mark "Alibaba" in providing e-commerce services and products on the internet, the Disputed Domain Names have the potential to cause confusion phonetically and visually with the Complainant's trade marks.

As such, the Panel does not accept the contentions of the Respondent and finds that the Disputed Domain Names are confusingly similar to registered trade marks in which the Complainant has rights or interests.

## **B) Rights and Legitimate Interests**

As mentioned above, the Panel accepts that the Complainant has trade mark rights in the "Alibaba" and "阿里巴巴" marks. The Complainant has used the marks "Alibaba" and "阿里巴巴" since 1999 in the People's Republic of China and other places in the world. This pre-dated the registration of the Disputed Domain Names and the Panel accepts that the Respondent has been aware of the Complainant's "Alibaba" and "阿里巴巴" marks and its fame because of its bad faith as discussed below.

The burden is then shifted to the Respondent in establishing that it has legitimate rights and/or interests in the Disputed Domain Names.

The Respondent is not commonly known by the disputed domain name. It fails to produce any evidence to prove its use of the Disputed Domain Names in offering goods or services in good faith. Apart from merely registering the domain name of < elibaba.com > which is the subject matter of this domain name dispute, the Respondent did not produce any evidence showing its rights or interests in relation to the mark "Elibaba".

Therefore, the Panel does not accept the contentions of the Respondent and finds that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names.

### C) Bad Faith

The Complainant produced evidence showing that the website <Elibaba.com> contained the following logo prior to receipt of the cease and desist letter from the Complainant's legal representatives dated 10<sup>th</sup> May 2013:-



This logo looks very similar of the Complainant's Chinese Alibaba B2B marketplace located at <www.alibaba.com.cn> and <1688.com>:



It is very clear that the logo contained in the website <Elibaba.com> as shown above infringes the trade mark "阿里巴巴" of the Complainant.

The Complainant produced evidence showing that the Disputed Domain Names also contained  and  logos which are also confusingly similar to

the Complainant's  logo on the Complainant's Alibaba.com Websites.

The Complainant also pointed out the similarities between the websites of Disputed Domain Names and the Alibaba.com Websites. The Panel also notes that the websites of the Disputed Domain Names use the Chinese words "阿里巴巴" throughout. It is very likely to cause confusion among Chinese internet users particularly in the People's Republic of China i.e. the place of business of the Complainant and the domiciled place of the Respondent. Therefore, the Panel finds that the Disputed Domain Names have been registered and used in bad faith by the Respondent in respect of Article 4(b)(iv) of the Policy.

Further, it is evidenced in the correspondence between the parties that the Respondent has written to the Complainant's legal representatives stating that he would not transfer the Disputed Domain Names for a sum less than RMB3 million. In light of the circumstances as mentioned above, the Panel accepts that the Disputed Domain Names have been registered and used in bad faith by the Respondent in respect of Article 4(b)(i) of the Policy.

For all the reasons outlined above, the Panel finds that the Respondent has registered and used the Disputed Domain Names in bad faith for the purposes of Article 4(a)(iii) of the Policy.

**6. Decision**

The Panel is satisfied that the Complainant has sufficiently proved the existence of all three elements of Paragraph 4(a) of the Policy. The Panel orders the Disputed Domain Names be transferred to the Complainant.



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Solomon Lam  
Sole Panelist

Dated: 8<sup>th</sup> July 2013