



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case Number	:	HK-1901219
Complainant	:	Tencent Holding Limited
Respondent	:	Domain Manager (Yang Xin)
Disputed Domain Name	:	<wechat.me >

1. The Parties and Contested Domain Name

The Complainant is Tencent Holding Limited, of Royal Bank House, 3rd Floor, 24 Shedden Road, P.O. Box 1586, Grand Cayman, KY1-1110, Cayman Islands.

The Complainant's authorised representative is Thomsen Trampedach GmbH, Grundstrasse, 22A, 6343 Rotkreuz, Switzerland.

The Respondent is Domain Manager (Yang Xin), of No. 9, Pusheng Lane, Jiangnan District, 310019 Hangzhou, Zhejiang, China.

The Respondent's authorised representative is Dalong Wang, 12th Floor, Guting Building, No. 495, Jiangdongbei Road, Ningbo, China.

The domain name at issue (the "*Disputed Domain Name*") is <wechat.me>, registered by Respondent with GoDaddy.com, LLC of 14455, North Hayden Road, Suite 219, Scottsdale AZ 85260, United States of America.

2. Procedural History

The Complaint in the English language was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) ("the Centre") on 4 February 2019,

seeking the transfer of the Disputed Domain Name <wechat.me> and that a sole panelist be appointed to determine the matter.

On 8 February 2019, the Centre sent an email to the Registrar (UDRPdisutes@godaddy.com) asking for the details of the registrant. On the same day, the Registrar transmitted by email to the Centre its verification response disclosing registrant and contact information for the Disputed Domain Name (which differed from the named Respondent and contact information in the Complaint), as well as stating that the Uniform Domain Name Dispute Resolution Policy (“the Policy”) applies to the Disputed Domain Name, the language of the registration agreement is in the “*English*” language and that the Disputed Domain Name “*will remain locked during the pending administrative proceeding*”.

The Centre sent an email communication to Complainant on 8 February 2019 providing the registrant and contact information disclosed by the Registrar and inviting the Complainant to submit an amended Complaint. The Complainant sent an email to the Centre on 8 February 2019 submitting its revised Complaint.

Thereafter on the same day, the Centre, confirmed that the Complaint was in administrative compliance with the Policy, the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”), and the Centre’s Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“the Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on 15 February 2019. In accordance with the Rules, paragraph 5(a), the due date for the Response was 7 March 2019.

On 7 March 2019, the Respondent wrote to the Centre copying the Complainant requesting for an additional 4 calendar days to respond to the Complaint. The Centre on the same day responded by granting the 4 calendar days extension to the Respondent pursuant to paragraph 5(b) of the Rules to file its response to the Complaint.

On 11 March 2019, the Respondent filed its response to the Complaint in the English language with the Centre requesting that a sole panelist be appointed to determine the matter.

On 4 April 2019, the Centre appointed Dr. Christopher To as the sole panelist in this matter and notified the parties of the appointment.

On 17 April 2019, the panelist wrote to the Centre informing the Centre, that on 9 January 2018, the Centre appointed the panelist “... in a case (**HK-1701052**) in which the Complainants were Tencent Technology (Shenzhen) and Tencent Holdings Limited and that the Disputed Domain Names in that case were <**tencent.org**> and <**tencent.biz**> ...Although I am not affiliated with the Complainant(s) in any way or form, nor do I have business or personal relationships (now and previously) with the Complainant(s). I still strongly believe that I can act impartially and independently between the parties in rendering this decision...Given the nature of the matter, I would feel more comfortable if you can ask the parties whether this would create any issues with them...”.

On 18 April 2019, the Centre wrote to the parties in accordance with the panelist’s directions, forwarding the panelist’s letter of 17 April 2019 to them and inviting them to submit their respective comments by 1 May 2019.

On 23 April 2019, the Complainant wrote to the Centre stating that “*We believe that the sole panelist can act impartially and independently for this case*”.

On 27 April 2019, the Respondent wrote to the Centre stating that “*Now that Dr. To stressed that he is not affiliated with the Complainant in any way, nor does he have business or personal relationship with the Complainant, and he strongly believes that he can act impartially and independently between the parties, we have no doubt about this appointment*”.

On 28 April 2019, the Respondent wrote to the panelist requesting to submit additional information in support of its response to the Complaint.

Upon reviewing the parties' submissions in relation to the disclosure made by the panelist, on 17 April 2019, the Centre wrote to the parties on 29 April 2019 confirming the panelist appointment.

The Panel finds that it was properly constituted.

On 30 April 2019, the Centre wrote to the parties enclosing the panelist Administrative Panel Order No.1 issued on 29 April 2019 to address the Respondent's application of 28 April 2019 to submit additional information in support of its response to the Complaint.

The Administrative Panel Order No.1 states that:

"...

1. *The Respondent shall submit additional information to support its response to the Complaint on or before Friday 3 May 2019.*
2. *The Complainant shall respond to such information as per paragraph 1 of this Order (if any and only to such information as submitted by the Respondent) on or before Friday 10 May 2019.*
3. *The Respondent shall reply to such information as per paragraph 2 of this Order (if any and only to such information as submitted by the Complainant) on or before Wednesday 15 May 2019.*
4. *No further submissions will be entertained by the Panelist once paragraph 3 of the Order has been complied with.*
5. *The Parties are at liberty to apply to amend and alter this Order as they deem appropriate within 3 days from the date of the issuing of this Order, failing which the Order shall stand as is...".*

On 3 May 2019, the Respondent submitted additional information to support its response to the Complaint.

On 8 May 2019, the Complainant submitted its response to the Respondent's submission of 3 May 2019.

On 16 May 2019, the Respondent submitted its response to the Claimant's submission of 8 May 2019.

On 21 May 2019, as instructed by the panelist, the Centre wrote to the parties informing them that the panelist shall render the decision on or before 27 May 2019.

3. Factual background

The Complainant

The Complainant is a Cayman Islands registered company with subsidiaries in many jurisdictions around the world. Since 1998 the Complainant has operated as a global supplier of software, online networking services and payment services. The Complainant first applied for the registration of the term "WECHAT" as a trademark for use in connection with its business in 2011, and is now a registered trademark of the Complainant in many jurisdictions, including the European Union (trademark 010344621 in Nice Classes 9), United States of America (trademark 4442135 in Nice Classes 9 and 38) and Hong Kong (trademark 301060250 in Nice Classes 9 and 38). WeChat is the most popular mobile application in China, with over 1 billion monthly active users by 2018. The term "WECHAT", which is invented and not a general term, is widely understood by the online and offline audiences as referring to the Complainant and their mobile application. The Complainant is the registrant of the domain wechat.com, which is used, inter alia, for the online version of the eponymous mobile application, and accessed on a daily basis by millions of Internet users. The Complainant owns a large number of other domain name registrations incorporating the term WECHAT.

The Respondent

The Respondent Domain Manager (Yang Xin), is an individual who resides in Hangzhou, Zhejiang, China.

The Respondent through its various submissions' states that the use of the Dispute Domain Name is to help patients with rare diseases and operates on a charitable basis.

The Disputed Domain Name

The Disputed Domain Name was registered by the Respondent on 6 December 2018.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

The Disputed Domain Name is confusingly similar to the Complainant's trademark. It contains the trademark in its entirety without any alterations and that the suffix ".ME" should be disregarded when considering whether a Disputed Domain Name is identical to a registered trademark.

The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant has not authorized or granted the Respondent the right to use the trademark "WECHAT" and as such there can be no *bona fide* or legitimate use of the Disputed Domain Name by the Respondent.

The Respondent is not commonly known nor affiliated with the Disputed Domain Name.

The Respondent is using the Disputed Domain Name to divert internet traffic to its website by passing off itself as "*linked to the Complainant's mobile application WECHAT*".

The Respondent used the Disputed Domain Name to display pay-per-click advertising and listed the Disputed Domain Name for sale on the domain name marketplace "*sedo.com*" which "*...cannot be considered a legitimate noncommercial or fair use...*". Thus misleading the public into thinking that it is commercially linked to the Complainant.

In a reply to the cease and desist letter sent by the Complainant, the Respondent alleged that the Disputed Domain Name was used for a charity to help patients with rare disease. The Complainant further contends that there is no indication on the landing page of the website showing such charitable purpose. By using the Disputed Domain Name the Respondent has prevented the Complainant from using the Disputed Domain Name for its own business thus depriving the Complainant of its exclusive right to use the Disputed Domain Name.

The Disputed Domain Name has been registered and used in bad faith.

The Disputed Domain Name was acquired by the Respondent on 6 December 2018 whereas the Complainant first applied for registration of the term “WECHAT” as a trademark for use in connection with its business in 2011. The Complainant further contends that “*it is highly improbable that the Respondent (who appears to be based in China) was not aware of the Complainant’s app and trademark when they acquired the*” Disputed Domain Name.

The Complainant “*considers all three elements of the test in paragraph 4(a) of the Policy to be fulfilled*” and “*requests that the disputed domain name(s) be transferred to the Complainant*”.

B. Respondent

The Respondent’s contentions may be summarized as follows:

The Respondent purchased the Disputed Domain Name legally through the Registrar GoDaddy.com.

The Respondent denies that it has no legitimate right, nor has it registered the Disputed Domain Name in bad faith as alleged by the Complainant.

The Respondent contends that the Complainant is “*using their brand right in limited sectors to commit a ‘Reverse Domain Name Hijacking’*”.

The Respondent asserted that the Complainant acquired the wechat.com domain name on 28 November 2003 from an “*unknown person/company*”.

The Respondent stated that the Disputed Domain Name was first registered on 14 October 2011 whereas the Complainant’s first trademark registration of WECHAT in Hong Kong was 17 October 2011.

The Respondent avers that the selling of the Disputed Domain Name on “*sedo.com*” was a careless “*misoperation*” on the part of the Respondent and the Respondent once made aware of it, immediately removed the Disputed Domain Name from the “*sedo.com*” site. It is the contention that the Respondent did not want to sell the Disputed Domain Name “*till now*”.

The Respondent asserts that it “*intends to develop wechat.me into a Non-profit site <We Chat> for Rare Diseases patients which is still under preparations*”.

The Respondent further asserts that “*pay-per-click Ads*” were removed after the Respondent received correspondence from the Complainant as it was not the Respondent’s intention to infringe the Complainant’s trademark “*of WeChat or WeChat Pay or to misguide any viewers, or to make illegal profits*”.

The Respondent states that “*wechat.net*” and “*wechat.cn*” are “*not under Tencent’s management. We see no complaint about these domain names*”.

The Respondent does acknowledge that the “*main part of the disputed domain name wechat.me is identical to Tencent’s TM WeChat, no doubt*”. Although the Respondent accepts that the Complainant does own the trademark “*WeChat*” and that the Respondent does not have a “*license or right to use the trademark WECHAT*” but in everyday ordinary use of the words “*we*” and “*chat*”, the Complainant does not have exclusivity and that the Complainant “*should not forbid this public usage of the general term ‘we chat’*”. The Respondent “*never intended to use the domain name [Disputed Domain Name] to cheat Weixin users or harm Weixin’s economic interests or reputations, never. He [The Respondent] just deem it as the most common and often-seen English words and sentence: We chat*”.

The Respondent contends that it did not use the Disputed Domain Name in bad faith “to create confusion with Tencent’s WeChat products and marks”. On the contrary the Respondent asserts that the Complainant is committing a reverse domain name hijacking. “to cover its major strategic mis-judgement, and/or major mis-management on domain names” in particular the Complainant’s abandonment of the Disputed Domain Name in 2013 and the subsequent registration of the Disputed Domain Name by the Respondent is not bad faith.

The Respondent considers that its registration of the Disputed Domain Name does “does not fulfil all the requirements for the applicability of the administrative proceeding under Paragraph 4(a)” of the Policy. The Respondent further “denounces the Complainant’s bully behavior, demands the dismissal of the Complainant’s complaint, and maintains the disputed domain name stay with the Respondent”.

5. Findings

The Language of the Proceedings

Paragraph 11 (a) of the Rules provides that:

“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.”

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the **Registrar** in its email of 8 February 2019 then in accordance with Article 11(a) of the Rules, the language of the administrative proceedings shall be in the English language. In these circumstances given that the Complaint and the Response are drafted in the English language, which is in line with the Registration Agreement, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

Having considered all the documentary evidence before me and the parties' active participation in these proceedings, the Panel is of the view that it should proceed to decide on the Disputed Domain Name based on the parties' submissions and evidence adduced.

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 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 Panel finds that the Complainant has rights in the trademark acquired through use and registration which predate the date of registration of the Disputed Domain Name.

Paragraph 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") (hereinafter called "WIPO Panel Views") states that, *"It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name. This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name"*. As such the incorporation of a trademark in its entirety is sufficient to establish that the Disputed Domain Name is identical or confusingly similar for the purposes of the Policy. (See *Kabushiki Kaisha Hitachi Seisakusho (d/b/a Hitachi Ltd) v. Arthur Wrangle, WIPO Claim No. D2005-1105*).

Having reviewed the Complainant's trademark registration certificates, the Panel finds that the word "WeChat" is recognizable and prominent in the Complainant's trademark and is

satisfied that the Complainant has established rights in a trademark according to paragraph 4(a)(i) of the Policy.

The Panel notes that the Disputed Domain Name is constituted by the core of the Complainant's trademark "WeChat" with the addition of the generic Top-Level suffix ".me", which is commonly disregarded for the purpose of assessing identity or confusing similarity (refer to paragraph 1.11 of the WIPO Panel Views).

Therefore, the Panel finds that the Complainant has proven that the Disputed Domain Name is confusingly similar to a registered trademark in which it has established rights as prescribed in paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must establish that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name.

The language of paragraph 4(a)(ii) of the Policy is in the present tense: the Complainant must show that, as at the time of the filing of the Complaint, the Respondent "*has no rights or legitimate interests*" in respect of the Disputed Domain Name.

Paragraph 4(c) of the Policy sets out three (3) illustrative circumstances as examples which, if established by the Respondent, shall demonstrate his rights to or legitimate interests in respect of the Disputed Domain Name for purposes of paragraph 4(a)(ii) of the Policy. The three (3) illustrative circumstances are as follows:

“

- i. before any notice to you of the dispute, your 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. *you (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. *you are making a legitimate noncommercial 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.”*

It is established that where the Complainant successfully makes out a *prima facie* case that the Respondent lacks rights or legitimate interests in the Disputed Domain Name, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (See *Wal-Mart Stores, Inc v. WalMart Carerrrs, Inc., WIPO Claim No. D2012-0285*).

According to the Complaint, the Complainant was established in 1998, with a mission to be “*a global supplier of software, online networking services and payment services*”, which precedes the Respondent’s registration of the Disputed Domain Name (6 December 2018). Moreover, the Respondent is not an authorized dealer of the Complainant’s products or services. The Complainant has therefore established a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby shifts the burden to the Respondent to produce evidence to rebut this presumption (See *Croatia Airlines d.d. v. Modern Empire Internet Ltd., WIPO Claim No. D2003-0455*).

The Respondent has failed to show that he has acquired any trademark rights in respect of the Disputed Domain Name and the Respondent in its submissions did acknowledge that the Complainant had rights in the Disputed Domain Name through its trademark registration.

The Respondent also failed to show that the Disputed Domain Name has been used in connection with a *Bona Fide* offering of goods or services as the charity to help patients with rare disease is only a concept as stated in the Response “*The Respondent plans to develop wechat.me into a non-profit site serving over 20 million Rare Diseases patients*” [emphasis added].

Based on the Parties submissions, it is clear that there is no relation between the Parties and that the Complainant has not authorized the Respondent to use its trademark “WeChat” or the Disputed Domain Name. There is also no evidence that the Respondent might be commonly known by the Disputed Domain Name and the Respondent makes no such assertion. Since the Disputed Domain Name did briefly display pay-per-click advertising and was listed briefly for sale on the domain name marketplace “*sedo.com*”, which the Respondent acknowledges, as such the Panel finds that the Disputed Domain Name did take advantage of the reputation of the Complainant (whether briefly or not) and its trademark and that such use is neither *bona fide* nor non-commercial. Whatever rights or legitimate interest the Respondent might have had when registering the Disputed Domain Name, those rights or legitimate interests have been lost by such conduct (See *Miele, Inc. v. Absolute Air Cleaners and Purifiers. WIPO Case No. D2000-0756*).

The Panel finds that the Respondent has failed to produce sufficient evidence to establish rights or legitimate interests in the Disputed Domain Name. The Panel finds that the Complainant has established the requirement under paragraph 4 (a) (ii) of the Policy.

C) Bad Faith

Paragraph 4(b) of the **Policy** sets out four (4) factors in which the Panel shall take into account in determining whether the Respondent has registered and used the **Disputed Domain Name** in bad faith. The prescribed four (4) factors are as follows:-

“

- (i) *circumstances indicating that you have registered or you 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 your documented out-of-pocket costs directly related to the domain name; or*

- (ii) *you 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 you have engaged in a pattern of such conduct; or*
- (iii) *you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or*
- (iv) *by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”*

The reputation of the Complainant’s trademark “WeChat” in the field of multipurpose messaging, social media and mobile payment application is clearly established and the Panel finds that the Respondent likely knew of the Complainant and deliberately registered the Disputed Domain Name, because it is confusingly similar to the Complainant’s trademark. Furthermore, through the Parties submissions, the Respondent acknowledges the fact that it knew of the Complainant’s trademark when it registered the Disputed Domain Name.

Although the Respondent did state that the “*pay-per-click advertising*” on its Website displaying adverts claiming an affiliation with the Complainant’s business and the listing of the Disputed Domain Name for sale on the domain name marketplace “*sedo.com*” was a “*misoperation*”, however the incidents did happen and from this it gives the impression that the Respondent at that moment in time did have the intention to attempt to attract Internet users to its website by creating a likelihood of the Complainant’s “*mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location*” and to sell the Disputed Domain Name “*for valuable consideration*”.

The Panel finds that the Respondent has registered and is using the Disputed Domain Name in order to attract Internet users to its Website, which supposedly is registered for charitable purposes which the Respondent intends to embark upon in the future.

The Respondent did provide the Panel with a brief plan of the intended charitable project for helping patients with rare diseases “*intends to build a social interactive site for Rare Diseases patients and others. It aims to increase communications between patients, researchers, companies, NGO, and etc., to let the patients know most updated international studies progress and remedies, help them find cheap and affordable pharmacies, etc.*”, nevertheless the plan was a merely an idea without substantive information to backup its rationale and intended operations.

The Panel concludes that the Respondent has registered and is using the Disputed Domain Name in order to attract Internet users to the Website for commercial gain, thereby creating a likelihood of confusion for the purpose of paragraph 4(b)(iv) of the Policy.

The Panel finds that the Complainant has presented evidence to satisfy its burden of proof with respect to the issue of whether the Respondent has registered and is using the Disputed Domain Name in bad faith and as such the requisite element of bad faith under paragraph 4(b)(iv) of the Policy has been satisfied.

For the foregoing reasons, the Panel concludes that the Disputed Domain Name has been registered and is being used in bad faith. Accordingly the third condition of paragraph 4(a) of the Policy has been fulfilled (i.e. 4(a)(iii)).

D) Reverse Domain Name Hijacking

The Respondent contends that “*the Complainant is committing a ‘Reverse Domain Name Hijacking’ out of bad faith*”.

Paragraph 15(e) of the Rules provides that, if “*after considering the submissions the panel finds 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, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding*”. Reverse Domain Name Hijacking is defined under the Rules as “*using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name*”.

In light of the Complainant's success in establishing the three elements under paragraph 4(a) of the Policy, the Panel does not find this to be a case of Reverse Domain Name Hijacking and as such the Panel has no alternative to dismiss the Respondent's assertions in relation to the aspect of Reverse Domain Name Hijacking.

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 <wechat.me> be transferred to the Complainant.



Dr. Christopher To
Panelist

Dated: 27 May 2019