



Asian Domain Name Dispute Resolution Centre

hongkong

(Hong Kong Office)

## ADMINISTRATIVE PANEL DECISION

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<b>Case No.:</b>	HK-1901231
<b>Complainant:</b>	Tencent Holding Limited
<b>Respondent:</b>	Qiu Xiaoming
<b>Disputed Domain Name:</b>	<wechatpay.la>

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### 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, Overseas Territory of the United Kingdom of Great Britain and Northern Ireland.

The Respondent is Qiu Xiaoming, of Wu Hou Qu Tong Zi Lin Zhong Lu 1 Hao Fang Cao Di 3 - 3 - 5 1 0, Cheng Du Shi Sichuan 610061 CN.

The domain name at issue is wechatpay.la ("Disputed Domain Name"), registered by the Respondent with IAPI GmbH, of Talstraße 27. 66424 Homburg.

### 2. Procedural History

On March 7, 2019, the Complainant's representative submitted a Complaint in English language to the Hong Kong Office of Asian Domain Name Dispute Resolution Centre ("ADNDRC").

On March 8, 2019, ADNDRC transmitted by email to the Registrar, IAPI GmbH, a request for registrar verification in connection with the Disputed Domain Name. On 11 March 2019, the Registrar transmitted by email to ADNDRC confirming that the Respondent is the registrant of the Disputed Domain Name.

On March 18, 2019, ADNDRC transmitted the Notification of Deficiency to the Complainant.

On March 19, 2019, ADNDRC transmitted the Complaint to the Respondent by email and informed the Respondent of the 20-day period to file a Response. However, no Response has been filed.

On May 30, 2019, ADNDRC informed the parties of the appointment of Mr. William Law as the sole panelist and the decision would be rendered on or before June 13, 2019.

### 3. Factual background

Based in the Cayman Islands with subsidiaries in different regions, the Complainant has since 1998 operated as a global supplier of software, online networking services and payment services. Of particular relevance for this Complaint is the Complainant's multipurpose messaging, social media and mobile payment application WeChat. First released in 2011, WeChat is the most popular mobile application in China, with over 1 billion monthly active users by 2018. The Complainant first applied for the registration of the term WECHAT as a trademark in Laos for use in connection with its business in 2012, and the term is now a registered trademark of the Complainant (registration no. 31865, registered on 6.9.2013). The Complainant and its subsidiaries own a large variety of trademarks in jurisdictions around the world.

The Complainant has furthermore registered a large number of trademarks where the term "WECHAT" is used in conjunction with another term, including WECHAT PAY (Chinese trademark registration no. 18016332, registered on 14.11.2016; US trademark registration no. 5450706, registered on 24.4.2018). The Complainant uses the WECHAT PAY mark to denote the mobile payment function of their multipurpose mobile application described above, and in particular to attract a variety of businesses to set up business accounts via that application. WeChat Pay is extremely well known as a payment service on the Chinese market due to its widespread use; by 2017 WeChat had around 600 million payment service users.

The term WECHAT, which is an invented term and therefore imbued with a natural distinctiveness, is widely understood by the public active both online and offline to refer only to the Complainant and to their mobile application described above. Similarly, WECHAT PAY is widely understood to refer only to the integrated payment function of the WeChat 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 for that reason accessed on a daily basis by millions of internet users. The Complainant has also established an online presence for WeChat Pay for the primary purpose of encouraging commercial clients to set up business accounts on WeChat (<https://pay.weixin.qq.com/index.php/public/wechatpay>). The Complainant further owns a large number of other domain name registrations incorporating the term WECHAT, including:

Wechat.com	wechat.hk.	wechat.online.
Wechat.net	wechat.holdings.	wechat.org.
wechat.co.za	wechat.id.	wechat.移动.
wechat.design.	Wechat.io.	wechat.to.
wechat.dev.	wechat.jobs.	wechat.travel.
wechat.enterprises.	wechat.llc.	wechat.vip.
Wechat.game.	wechat.my.	
wechat.green.	wechat.news.	

The Disputed Domain Name was registered by the Respondent on 2017-06-09.

### 4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

**i. The Disputed Domain Name is confusingly similar to a trademark or service mark in which the Complainant has rights**

The Complainant submits that the Disputed Domain Name WECHATPAY.LA incorporates the Complainant's trademark and service mark WECHAT PAY in its entirety, with no alterations whatsoever.

The Complainant also submits that the Disputed Domain Name fully incorporates the Complainant's trademark and service mark WECHAT, which constitutes the distinctive part of the domain name.

**ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name**

The Complainant submits that it and its subsidiaries (namely Tencent Technology (Shenzhen) Ltd, 腾讯科技(深圳)有限公司), are the exclusive owners of all relevant trademark registrations for the term WECHAT.

The Complainant submits that it has not granted the Respondent any license or right to use the trademark WECHAT and thus no bona fide or legitimate use of the Disputed Domain Name can be claimed by the Respondent

The Complainant submits that there is no evidence that the Respondent is commonly known by the Disputed Domain Name. The name of the Respondent (Qiu Xiaoming, Chengdu Coolfrog Network Technology Co. Ltd.), has no connection with the term WECHAT, nor is there any other evidence of the Respondent being known by that name.

The Complainant submits that while the disputed domain does not currently resolve to a website, the Respondent was previously using the domain for a website claiming to represent the WeChat mobile application's payment service in Laos. The website made clear and intense use of the WeChat logo and colour scheme while displaying Chinese text encouraging visitors to apply for a WeChat partner login by providing the respondent with information (e.g. name, telephone number, email address and other company information). The Complainant contends that the Respondent was using the domain to mislead consumers to divert them away from legitimate channels authorised by the Complainant.

The Complainant submits that given that the domain was being used for the purposes of gaining access to the personal and company information of consumers deceived into believing that they are dealing with the authorised representative of the Complainant, it is patently obvious that the domain was not being used solely for legitimate non-commercial or fair use purposes, or for the bona fide offering of goods or services under Policy paragraphs 4 (c)(i) or 4 (c)(iii).

**iii. The Respondent's domain name has been registered and is being used in bad faith**

The Complainant submits that on the date the Respondent registered the Disputed Domain Name (assumed to be the domain's date of creation on 2017-06-09), the Complainant's trademark rights to the terms WECHAT and WECHAT PAY were already well established through numerous trademark registrations and published applications.

The Complainant also submits that the Complainant's mobile application (including its payment function) was by that date the most well-known app in China and the WECHAT and WECHAT PAY marks had already acquired international fame. Considering the over 1 billion monthly users of the Complainant's app and its worldwide renown, the Complainant 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 trademarks when they acquired the domain.

The Complainant contends that the Respondent's bad faith is furthermore evident in their use of the disputed domain to mislead consumers as to the existence of an affiliation between the Respondent and the Complainant. The disputed domain was previously used for a website making prominent use of the WeChat logo and colour scheme. The website contained text directly claiming an affiliation with the Complainant and WeChat in order to convince visitors to hand over their contact information and other details. By attempting to gain access to personal information through impersonating the Complainant, the disputed domain was used for phishing, which has been held by previous Panels to constitute evidence of bad faith use.

The Complainant submits that following the expedition of take-down notifications by the Complainant's representatives, the Disputed Domain Name no longer directs to any content. In this regard, the Complainant submits that the passive use currently made of the disputed domain by the Respondent also constitutes use in bad faith under Article 4 (c)(ii) of the Policy. The Complainant considers that the current lack of bona fide use of the disputed domain is likely to disrupt the business of the Complainant since it could give Laotian internet users searching for information regarding the WeChat application's payment function the impression that the Complainant is not active on the internet in their jurisdiction.

The Complainant submits that its representatives have sent a cease and desist letter to the Respondent themselves, asking them to refrain from making further use of the domain. No reply to this letter has been received by the Complainant.

The Complainant submits that under the UDRP, the registration of a domain name confusingly similar to a well-known trademark by an entity not having a relationship with that mark is itself considered sufficient evidence of bad faith registration and use.

The Complainant contends that given that the Respondent must reasonably have been aware of the Complainant's trademark at the time they acquired the disputed domain, they must have registered and continued subsequently to use that domain in bad faith.

**B. Respondent**

The Respondent has not filed any submission within the prescribed time.

**5. Findings**

The ICANN Uniform Domain Name Dispute Resolution 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 distinctive part of the Disputed Domain Name is "wechatpay", which is identical to the Complainant's trademark and service mark WECHAT PAY in its entirety and incorporates the Complainant's trademark and service mark WECHAT.

Accordingly, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's proven trademarks.

**B) Rights and Legitimate Interests**

The Complainant, as the registrant of various trademark registrations, submitted that they have never licensed or granted any rights to the Respondent. The Respondent has the burden of proof to establish that he has rights or legitimate interests in the Disputed Domain Name. However, since the Respondent defaulted in contesting the Complainant's allegations, with no evidence to the contrary, I accept the Complainant's submissions that:

- (1) the Respondent has not been commonly known by the Disputed Domain Name.
- (2) the Respondent's use of the Disputed Domain name is not in connection with a bona fide offering of goods or services.

I am therefore satisfied that the Respondent has no rights or legitimate interests to register and use the Disputed Domain Name.

**C) Bad Faith**

Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the Disputed Domain Name, the Respondent was

or should have been aware of the Trade Marks, since (1) the Complainant's trademark rights to the terms WECHAT and WECHAT PAY were already well established; (2) the Complainant's mobile application (including its payment function) was by that date the most well-known app in China and the WECHAT and WECHAT PAY marks had already acquired international fame; (3) the Complainant's app has over 1 billion monthly users. As the Respondent has not provided reasons to show the otherwise, the Panel is deemed to draw the conclusion that the Respondent was aware of the Complainant and its WECHAT mark and WECHAT PAY mark at the time that he registered the Disputed Domain Name and deliberately chose to register it as part of the Disputed Domain Name in bad faith.

The Disputed Domain Name is likely to misled consumers as to the existence of an affiliation between the Respondent and the Complainant. According to the Complainant, the Disputed Domain Name was previously used for a website making prominent use of the WeChat logo and colour scheme and containing text directly claiming an affiliation with the Complainant and WeChat in order to convince visitors to hand over their contact information and other details. By attempting to gain access to personal information through impersonating the Complainant, the Disputed Domain Name was used for phishing, which constitutes evidence of bad faith use.

Although the Disputed Domain Name no longer directs to any content, following the expedition of take-own notification by the Complainant's representative, the passive use currently made of the Disputed Domain Name by the Respondent also constitutes use in bad faith. The current lack of bona fide use of the Disputed Domain Name is likely to disrupt the business of the Complainant since it could give Laotian internet users searching for information regarding the WeChat application's payment function the impression that the Complainant is not active on the internet in their jurisdiction.

Moreover, the Complainant received no reply from the Respondent regarding the cease and desist letter sent by the Complainant's representatives asking the Respondent to refrain from making further use of the domain.

Thus, I am satisfied that the Disputed Domain Name has been registered and is being used in bad faith.

## 6. Decision

In conclusion, the Complainant has satisfied all the 3 grounds laid down in Article 4(a) of the ICANN Policy. I therefore order that the Disputed Domain Name <wechatpay.la> be **transferred** to the Complainant.



William Law  
Panelist

Dated: June 10, 2019