



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400676
Complainant:	Alibaba Group Holding Limited
Respondent:	Prasanna Ch
Disputed Domain Name:	< alibaba.careers >

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holding Limited, (“the Complainant”) of Fourth Floor, One Capital Place, George Town, Grand Cayman, Cayman Islands, British West Indies, represented by Mayer Brown JSM, lawyers of Hong Kong.

The Respondent is Prasanna Ch of Somajiguda, Hyderabad, Andhra Pradesh, 500060, India, unrepresented.

The disputed domain name is <alibaba.careers>, registered with GoDaddy.com LLC of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 9 December, 2014. On 10 December, 2014, the Center transmitted by email to GoDaddy a request for registrar verification in connection with the domain name at issue. On the next day GoDaddy transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on 18 December, 2014. In accordance with the Rules, the due date for Response was 7 January, 2015. No Response was submitted and on 13 January, 2015, the Center notified the Respondent that it was in default.

The Center appointed Debrett G. Lyons as panelist in this matter on 27 January, 2015. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. For Complainant

1. The Complainant is part of a Chinese company group engaged primarily in the provision of ecommerce and B2B services.
2. The Complainant (either itself or with the license of the company group) has used the trademark ALIBABA (and its Chinese equivalent, 阿里巴巴) in relation to those services since at least 1999.
3. The Complainant is the owner, *inter alia*, of PRC trademark registration number 3068457, registered on 28 April 2003 for the word mark ALIBABA.
4. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark or to register or use any domain name incorporating the trademark.
5. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

B. For Respondent

6. The Respondent registered the disputed domain name on 13 April 2014.
7. The disputed domain name automatically resolves to the website www.brandturn.com, which sells brand names and domain names.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trademark ALIBABA and states that the disputed domain name is identical and/or confusingly similar to the trademark.

The Complainant alleges that the Respondent has no rights or legitimate interests in the disputed domain name.

The Complainant alleges that the Respondent registered and used the disputed domain name in bad faith.

B. Respondent

No Response was filed with the Center.¹

5. Findings

¹ Panel notes that the Respondent wrote directly to the Complainant with an explanation of sorts as to why the domain name had been registered however that correspondence does not constitute a formal Response and has been disregarded by the Panel.

The relatively new gTLD, “.careers”, is subject to the Policy. Paragraph 4(a) of the Policy states that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name be identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- 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

Paragraph 4(a)(i) of the Policy requires a two-fold enquiry – a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to the trademark.

Paragraph 4(a)(i) of the Policy does not distinguish between registered and unregistered trade mark rights. It is accepted that a trade mark registered with a national authority is evidence of trade mark rights for the purposes of the Policy. The Panel finds that the Complainant has trade mark rights in ALIBABA acquired through registration.

For the purposes of comparing the trademark with the disputed domain name, it has long been held that the generic top-level domain “.careers” can be ignored. The terms are then identical.

Panel finds the disputed domain name to be legally identical to the trademark and so finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant has the burden to establish that the Respondent has no rights or legitimate interests in the disputed domain name. Nevertheless, it is well-settled that the Complainant need only make out a *prima facie* case, after which the onus shifts to the Respondent to rebut such *prima facie* case by demonstrating rights or legitimate interests.

Paragraph 4(c) of the Policy states 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 rights or legitimate interests to a domain name for purposes of paragraph 4(a)(ii) of the Policy:

- “(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.”

The publicly available WhoIs database identifies the registrant as “Prasanna Ch” and so does not support any conclusion that the Respondent might be commonly known by the disputed domain name. There is no evidence that the Respondent has trademark rights in the disputed domain name, registered or not.

There is no evidence that the disputed domain name has ever been used in connection with a bona fide offering of goods or services. The Complainant provides evidence that the disputed domain name redirects internet users to a website which promotes the sale of brands and domain names. Such diversionary use is not use of the domain name in respect of a bona fide offering of services, nor is it legitimate non-commercial or fair use.

The Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name and so the onus shifts to the Respondent to show a right or legitimate interest in the name.

In the absence of a Response that *prima facie* case has not been met.

The Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name and so the Complainant has satisfied the second element of the Policy.

C) Bad Faith

Policy ¶ 4(b) sets out the circumstances which shall be evidence of the registration and use of a domain name in bad faith. They are:

- (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 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 your website or location or of a product or service on your website or location.

Panel finds that the Respondent’s actions fall squarely under paragraph 4(b)(iv) of the Policy. It can be concluded on the balance of probabilities that the Respondent registered a domain name already found to be legally identical to the Complainant’s trademark with the intention of attracting Internet users to Respondent’s website for commercial gain.

The Panel finds that the Respondent registered and used the disputed domain name in bad faith and so finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

6. Decision

Having established all three of the elements required under the Policy, the Panel decides that relief shall be **GRANTED**.

Debrett G. Lyons

Panelist

Dated: 10 February, 2015