



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400663
Complainant:	Alibaba Group Holding Limited
Respondent:	Whois Privacy Protection Service, Inc./ Rachmat Rahardjo
Disputed Domain Name:	<singapore-alipay.com>

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holding Limited, a Cayman Islands company with a registered business office at Fourth Floor, One Capital Place, P.O. Box 847, George Town, Grand Cayman, Cayman Islands, British West Indies, represented by Mayer Brown JSM of 16th to 19th Floor, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is Whois Privacy Protection Service, Inc. of P.O. Box 639, Kirkland, WA 98083, USA and Rachmat Rahardjo of Jl. Cigadung Wetan No. 8, Bandung, Jawa Barat, 40191, Indonesia, unrepresented.

The disputed domain name is <singapore-alipay.com>, registered with Name.com.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the "Center") on 4 November 2014. On that same day the Center transmitted by email to Name.com a request for registrar verification in connection with the domain name at issue. On 7 November 2014, Name.com transmitted by email to the Center its verification response advising that the Respondent is not listed as the registrant and providing the details of the underlying registrant, Rachmat Rahardjo. The Complainant was notified of this and given until 16 November 2014 to file an Amended Complainant, which they did.

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 13 November 2014. In accordance with the Rules, the due date for Response was 3 December 2014. No Response was submitted.

The Center appointed Debrett G. Lyons as panelist in this matter on 4 December 2014. The Panel is 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 has used that trademark ALIBABA (and its Chinese equivalent, 阿里巴巴) in relation to those services since 1999.
3. In 2003 the Complainant created a Chinese language C2C Internet retail platform under the name “Taobao” (in Chinese “淘宝”).
4. In 2004 the Complainant launched an independent third-party payment platform for online transactions under the trademark ALIPAY (in Chinese “支付宝”).
5. The trademark ALIPAY is the subject of national trademark registrations in Singapore, Hong Kong, mainland China, the United States of America, the European Union, Indonesia, Macau and Taiwan.
6. The Complainant has not licensed or otherwise permitted the Respondent to use the trademark ALIPAY or to register or use any domain name incorporating that trademark.
7. The Complainant petitions the Panel to order transfer the disputed domain name from the Respondent to the Complainant.

B. For Respondent

8. The Respondent registered the disputed domain name on 1 October 2014.
9. A website corresponding with the disputed domain name claims to provide “Alipay” payment services in Singapore and to be associated with the Complainant.

4. Parties’ Contentions

A. Complainant

The Complainant asserts rights in the trademark ALIPAY and states that the disputed domain name is confusingly 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

The Respondent failed to file a Response.

5. Findings

Notwithstanding the absence of a Response, 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 must 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 ALIPAY acquired through registration.

The remaining question is whether the disputed domain name is confusingly similar to the Complainant's trade mark. For the purposes of testing confusing similarity, the generic top-level domain “.com” can be ignored as can the trivial hyphenation. The comparison then reduces to SINGAPORE ALIPAY with ALIPAY. The added word “Singapore” is geographical and only increases the likelihood of confusion since Internet users are bound to assume they have found the Complainant's transaction payment site for Singapore.

Panel readily accepts the Complainant's submission that the disputed domain name is confusingly similar to the Complainant's trade mark. Accordingly, the Panel 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 “Whois Privacy Protection Service, Inc.” and the registrar identified the underlying owner as Rachmat Rahardjo. Neither supports 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 resolves to a website that alleges to be the Complainant's Alipay platform for Singapore. It states, for example, that “We developing Singapore supplier and buyer in Alibaba to be world class business and join every buyer and sellers in the world...Many people can use us for them business in Singapore.”). The Complainant asserts that the Respondent is not an authorised representative, partner or otherwise associated with the Complainant and there is nothing before me to contradict that claim.

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. In the absence of a Response that case is not met, nor the onus discharged. 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.

The Panel finds on a balance of the evidence that the Respondent deliberately chose the disputed domain name so as to benefit commercially from the notoriety of the Complainant's trademark and business. It follows that registration of the domain name was in bad faith but what is noteworthy about Policy ¶ 4(b)(i)-(iv) is that they are all cases of both registration *and use* in bad faith. In terms of paragraphs 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 confusingly similar to 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: 11 December, 2014