



Asian Domain Name Dispute Resolution Centre  
*- a charitable institution limited by guarantee registered in Hong Kong*

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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|---------------------|--------------------------------------|
| <b>Case No.</b>     | HK-1300509                           |
| <b>Complainant:</b> | <b>Alibaba Group Holding Limited</b> |
| <b>Respondent :</b> | <b>Song Bin</b>                      |

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**1. The Parties and Contested Domain Names**

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 (hereinafter referred to as "Complainant").

The Respondent is Song Bin, of Dongsanhunnanlu54-10-2803, Beijing, China 100025 (hereinafter referred to as "Respondent").

The domain names at issue are <ailpay.com>, registered by Respondent with Dynadot, P.O. Box 345, San Mateo, CA, 94401, United States of America, <jietaobao.com> registered by Respondent with Domaineered.ca Inc., 6140 Tutt Blvd., #150, Colorado Springs, CO 80923, United States of America, <taobaog.com>. <taobao.com>, <talobao.com>, and <toptaobao.com>, all registered by Respondent with Go-Daddy.com LLC, of 14455 N. Hayden Road, Suite 226, Scottsdale, Arizona, United States of America, <taobaou.com>, registered by Respondent with eNom of 5808 Lake Washington Blvd. NE, Ste. 300, Kirkland, WA 98033 United States of America, whose downstream registrar is namecheap.com, <taoabo.com>, registered by Respondent with Moniker Online Services LLC, of 1007 North Federal Highway, Suite 311, Fort Lauderdale, FL 33304, United States of America (hereinafter referred to as the "Registrars").

**2. Procedural History**

On 20 June 2013 Complainant filed the Complaint in this matter concerning the domain names at issue. On that same date The Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the "Centre") notified the Registrars of the filing of the complaint and requested that the Registrars confirm that the domain names at issue were registered with the Registrars, that the identified Respondent is the registrant of the domain names, and that the Registrars had received a copy of the Complaint. Also on that same date the Centre sent the Complainant an Acknowledgement of Receipt of Complaint. Beginning on 21 June 2013 and continuing through 24 June 2013 the Registrars notified the Centre that the domain names at issue had been registered to the identified Respondent, that the language of the registration agreement was English, and that the Registrar had received a copy of the Complaint. On 25 June 2013, the

Centre notified Complainant that the fee required for filing a Complaint with the Centre had been received.

On 28 June 2013 the Centre requested certain of the Registrars to confirm that the domain names at issue had been locked. On 28 and 29 June 2013 the contacted Registrars notified the Centre that the domain name registrations had been locked. On 4 July 2013 the Centre notified the Complainant that the Centre was conducting an examination of the Complaint in order to confirm that the Complaint was compliant with the Policy, the Rules, and the Supplemental Rules. Also on July 4, 2013, Complainant transmitted by email to Respondent a copy of the Complaint together with the annexes thereto.

On July 5, 2013, the Centre thanked the Registrars for insuring that the domain names at issue had been locked. Also on that date the Centre transmitted to Respondent a Notice of the Complaint together an additional copy of the Complaint and the annexes thereto. In that Notice the Centre informed Respondent that the Response to the Complaint was due no later than 25 July 2013. On 26 July 2013, not having received a Response to the Complaint, the Centre notified the parties of the Respondent's default.

On 30 July 2013 the Centre appointed M. Scott Donahey as the sole panelist in conformity with the Policy and the Rules. On that same date the Centre transferred the file to the panel. As the registration agreement was in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

### **3. Factual background**

Complainant was founded in Hangzhou, China in 1999 and has become a leader in global ecommerce. Complainant's affiliate Alibaba.com Limited ("Alibaba") operates two online business-to-business marketplaces. Alibaba has a community of web sites with more than 65 million users in 240 countries and regions.

In May 2003 Complainant created the brand TAOBAO, a business-to-consumer and consumer-to-consumer Internet retail platform focused on Chinese consumers. In the ten years since its creation the consumer-to-consumer platform has grown to be one of the largest such platforms in China, and as of June 2012, the TAOBAO branded platform had more than 500 million registered users. The platform currently has over 800 million product listings, which are viewed by more than 50 million users daily. Alexa and DoubleClick Ad Planner rate the platform as one of the 20 most visited web sites. In 2009, the TAOBAO brand's transaction volume exceeded RMB 200 billion (US\$29 billion).

In 2004, following the success of its retail Internet platforms, Complainant introduced ALIPAY, an electronic payment system through which consumers can make and businesses can receive payments for goods and/or services. Alipay launched its <alipay.com> web site in March 2004. ALIPAY is now the largest third party payment solution in the People's Republic of China.

Complainant has expended hundreds of millions of U.S. dollars promoting the TAOBAO family of marks. The success of Complainant and its TAOBAO family of marks and its ALIPAY family of marks has been well documented in the press and other media. Complaint, Annex 7.

Complainant's applications for registration of the TAOBAO related marks date back to May 2003, and of the ALIPAY related marks date back to December 2004. Issued registrations of the

TAOBAO family of marks date from October 2004 and of the ALIPAY family of marks date back to December 15, 2004. Complaint, Annexes 3 and 4.

Respondent registered the domain name <ailpay.com> on March 8, 2005. The <jietaobao.com> domain name was first registered on July 14, 2010. Respondent registered the domain name <taebao.com> on January 22, 2009. Respondent registered the domain name <talobao.com> on November 14, 2008. Respondent registered the domain name <taoabo.com> on July 27, 2004. Respondent registered the domain name <taobaog.com> on May 1, 2011. Respondent registered the domain name <taobaou.com> on March 28, 2006. Respondent registered the domain name <toptaobao.com> on February 10, 2010. Complaint, Annex 1, except Whois search on <taobaog.com>.<sup>1</sup>

The domain names <taoabo.com>, <jietaobao.com>, <taobaou.com>, and <taebao.com> do not resolve to a web site. The domain names <ailpay.com> and <toptaobao.com> resolve to parking pages that contain links to web sites that contain links to various of Complainant's services and also services of competitors of Complainant. Complaint, Annex 15. The domain name <taobaog.com> resolves to a web site at which allegedly pornographic materials were offered and which contained links to web sites at which pornographic materials were offered. Such offerings and links have since been removed. Complaint, Annex 17.

Complainant says nothing about the use or non-use of the domain name <talobao.com>.

Respondent has registered other domain names which include the famous trademarks of third parties, which Complainant argues shows a pattern of bad faith conduct. Complaint, Annex 21.

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

##### **A. Complainant**

The Complainant's contentions may be summarized as follows:

Complainant contends that the domain names at issue are confusingly similar to either its famous TAOBAO mark or its famous ALIPAY mark, that Respondent has no rights or legitimate interests in respect of the domain names, and that Respondent has registered and is using the domain names in bad faith.

##### **B. Respondent**

The Respondent has failed to respond to the allegations of the Complainant.

#### **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 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**

Complainant is the registrant of the famous TAOBAO and ALIPAY trademarks, known throughout the world, and whose application for registrations of the marks in China date at least to May 2003 in the case of the TAOBAO family of marks and to April 2005 in the case of the ALIPAY family of marks, and whose operations in China date back to 1999. Respondent, a resident of China, registered the domain names at issue at various times. The domain name similar to the ALIPAY family of marks, <ailpay.com>, was registered on March 8, 2005. The earliest registration of the domain names similar to the TAOBAO family of marks, <taobo.com>, was registered on July 27, 2004. The domain names, with two exceptions, are common typographical errors for users attempting to enter either the SLD <alipay> or the SLD <taobao> prior to the .com gTLD. The two exceptions are SLD <toptaobao> which simply adds the English word "top" to Complainant's TAOBAO mark, and <jietaobao>, which adds a prefix "jie" to the TAOBAO mark.

Misspellings or typos have long been recognized as confusingly similar to the mark which they have misspelled. *E.I. DuPont de Nemours and Company. v. Avant Garde Composition*, WIPO Case No. D2000-0130 (insertion of "h" in mark CROMALIN to create a domain name <chromalin.com> confusingly similar). *Neuberger Berman, Inc. v. Alfred Jacobsen*, WIPO Case No. D2000-0323 (replacement of "u" in the mark NEUBERGER with a "w" in the domain name is confusingly similar to the mark).

Accordingly, the panel finds that the domain names at issue involving misspellings and typos of the TAOBAO family of marks and of the ALIPAY family of marks are confusingly similar to the marks.

The addition of the English word "top" and of "jie," which is the pinyin for numerous Chinese words to Complainant's TAOBAO mark has long been recognized not to defeat the concept of confusing similarity, as was recently found in the case of *Oakley, Inc. v. Joel Wong/Blue Host.com-INC.*, WIPO Case No. D2010-0100 (addition of the word "spree" to the mark OAKLEY found not to defeat finding of confusing similarity).

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

The consensus view of WIPO panelists concerning the burden of a complainant to rebut rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview, 2.0”), Section 2.1.

As there are WIPO panelists among the panelist in the ADNDRC, and as there are ADNDRC panelists among the panelists in WIPO, as this panelist is a member of both panels, and as all panelists are interpreting the same Rules and Policy, this panelist believes that the consensus view of WIPO panelists is equally applicable at the ADNDRC.

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the panel finds that Respondent has no rights or legitimate interests in respect of the domain names at issue.

## **C) Bad Faith**

The panel adheres to the minority view that bad faith registration and use is a unitary concept. According to this view, bad faith registration is not to be evaluated separately from bad faith use. Rather, the test that a panel should apply is whether under all the facts and circumstances it can fairly be said that a respondent is attempting to profit from the goodwill in Complainant’s mark or marks.

In the present case, Respondent is using two of the domain names at issue to resolve to parking sites that contain links to Complainant’s services, but also to similar services offered by competitors of Complainant. It is fair to conclude that Respondent is receiving remuneration from the competitors when Internet users arrive at the parking site by mistyping Complainant’s marks and click on the links to Complainant’s competitors.

Respondent was using one of the domain names at issue to resolve to a web site on which pornographic materials were made available, as well as links to other pornographic web sites. Again, it is fair to conclude that Respondent was receiving remuneration from the purveyors of the materials when Internet users were arrived at the site by mistyping Complainant’s mark and also when after arriving at the site users clicked on links to the purveyors of other such materials.

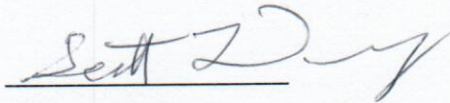
Respondent is not using four of the domain names to resolve to web sites. However, as set out by the now deservedly famous *Telstra* decision, the true test is not whether the domain name is being actively used, but rather “whether, in all the facts and circumstances of this case, it can be said that the Respondent is acting in bad faith.” *Telstra v. Nuclear Marshmallows*, WIPO Case

No. D2000-0003. Under the facts and circumstances of the present case where Respondent has registered as domain names numerous typographical misspellings of Complainant's famous mark, where Respondent has actively used those domain names in bad faith, and where Respondent has failed to respond to the allegations in the Complaint, the panel concludes that by holding other similar domain names Respondent is acting in bad faith.

But what of the domain name <talobao.com>? Complainant has offered neither evidence nor any assertions as to its use or non-use. Under the unitary approach, it would be entirely unfair to require Complainant to file a separate additional complaint in order to obtain a domain name that obviously slipped through the cracks in Complainant's presentation. Under all of the facts and circumstances of this case, the panel concludes that Respondent is acting in bad faith with respect to all of the domain names at issue, including <talobao.com>.

## 6. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain names <ailpay.com>, <jietaobao.com>, <taobao.com>, <talobao.com>, <taobo.com>, <taobaog.com>, <taobaou.com>, and <toptaobao.com> be transferred to the Complainant.



M. Scott Donahey  
Panelist

Dated: 7 August 2013

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<sup>1</sup> As Annex 9, Complainant attaches a search of the history of the domain name registrations as at a certain date in the Domain Tools data base. Complainant asserts that Annex 9 and the chart prepared therefrom demonstrate different dates of registration from those shown in the Whois data contained in Annex 1. See Complaint, p.10, Chart. They do not.