



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1300519
Complainant:	Alibaba Group Holding Limited
Respondent:	heilongjianghuobanyitongwangluokejiyouxiangongsi
Disputed Domain(s):	<alibaba-ru.com>

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holding Limited, (“the Complainant”), represented by Hogan Lovells.

The Respondent is heilongjianghuobanyitongwangluokejiyouxiangongsi, unrepresented.

The disputed domain name is <**alibaba-ru.com**>, registered with Web Commerce Communications Limited DBA Webnic.cc.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Center (the “Center”) on 16 July, 2013. On 17 July, 2013, the Center transmitted by email to Web Commerce a request for registrar verification in connection with the domain name at issue. On 17 July, 2013, Web Commerce 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 19 July, 2013. In accordance with the Rules, the due date for Response was 8 August, 2013. A timely Response was submitted on 3 August, 2013.

The Center appointed Debrett G. Lyons as panelist in this matter on 8 August, 2013. 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 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 8 March, 2006.
7. A Russian language website corresponding with the disputed domain name provides a B2B platform similar to that offered by the Complainant.

4. Parties' Contentions

A. Complainant

The Complainant asserts rights in the trademark ALIBABA and states that the disputed domain name is virtually identical 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 filed a pro-forma Response form which largely ignored the Complainant's allegations. The only matter of any potential relevance to the dispute is extracted and set out in full hereunder:

The domain name alibaba-ru.com is composed of partners in Heilongjiang Huobanyitong Network Technology Co., Ltd. in March 8, 2006 to register and use.

The "Alibaba" as a noun, originated from Arabia's "one thousand one night" "Alibaba and the Forty Thieves" in, is not Alibaba Holdings Limited new vocabulary original. Our company has registered "alibaba-ru.com" domain name in March 8, 2006, and is still in use, is a Russian version of the Russian trade electronic commerce platform. Prior to this, Alibaba Holdings Limited and no Russian version of e-commerce platform, and to promote in the Russian market. We think, we have registered the domain name "alibaba-ru.com" does not have any rights infringement Alibaba Holdings Limited, also do not belong to the "Uniform Domain Name Dispute Resolution Policy" mentioned in the malicious registration. To sum up, the domain name "alibaba-ru.com" in my company, have no objection.

5. Findings

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 ALIBABA 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. The comparison then reduces to ALIBABA-RU with ALIBABA. The Complainant's submission is that "'ru' is simply a geographical reference to Russia, especially taking into account that the language of the Website is Russian." Panel readily accepts that submission and in the result finds the disputed domain name to be 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 “heilongjianghuobanyitongwangluokejiyouxiangongsi” (Hei Long Jiang Huo Ban Yi Tong Wang Luo Ke Ji You Xian Gong Si) 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 resolves to a Russian language website which offers a B2B platform presented in a layout and colour scheme which imitates the Complainant’s relevant website. Moreover, the resolving website carries a click through link entitled “Chinese website” (中文站) redirecting users to <cocochina.cn> which is shown by evidence to also belong to Respondent and which carries a link to Complainant’s website under an area describing “partner websites” (合作网站), a misleading claim. None of this paints a picture of a *bona fide* business legitimately conducting its own affairs in a manner unlikely to divert custom from the Complainant.

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.

The Response does nothing to rebut that case. In so far as it is possible to understand the Response, it appears to rely on some form of argument that “Alibaba” is a known literary character and therefore somehow part of the public stock of terms available for anyone to use. Clearly such an argument is untenable. The name “Alibaba” has no natural, descriptive or obvious connection with the relevant B2B services and, absent proof to the contrary, is wholly capable of distinguishing of the Complainant’s business from that of other traders.

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 somehow 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: 20 August 2013