(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No. HK-1701026

Complainant: Alibaba Group Holding Limited

Respondent: Alex Louie / Alex Chen

Disputed Domain Name(s): <alipayhk.com>; <alipayhk.solutions>

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holding Limited, of 4th Floor, One Capital Place, P.O. Box 847, Grand Cayman, Cayman Islands, British West Indies.

Complainant's authorized representative is Paddy Tam (CSC Digital Brand Services Group AB), of Saltmätargatan 7, 113 59 Stockholm, Sweden.

The Respondent is Alex Louie / Alex Chen, of Hong Kong.

The domain names at issue are <alipayhk.com> and <alipayhk.solutions>, registered by Respondent with GoDaddy.com, LLC, of 14455 North Hayden Rd., Suite 219, Scottsdale AZ 85260, United States of America.

2. Procedural History

On 12 October 2017, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("ADNDRC"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On 12 October 2017, the ADNDRC confirmed receipt of the Complaint. The Complainant elected that this case to be dealt with by a one-person panel.

On 12 October 2017, the ADNDRC transmitted by email to the Registrar, GODADDY.COM, LLC, a request for registrar verification in connection with the disputed domain name. On 13 October 2017, the Registrar transmitted by email to the ADNDRC its verification response, confirming that the Respondent, Alex Louie, is the holder of the domain name <alipayhk.com> and that the Respondent, Alex Chen is the holder of the domain name <alipayhk.solutions>, and that the language of the registration agreement is the English language.

On 23 October 2017, the ADNDRC transmitted a Written Notice of Complaint, forwarding the Complaint along with annexures to the Respondent, requesting that the Respondent submit a Response within 20 calendar days. The Notice specified the due date for the Response as being on or before 12 November 2017.

On 13 November 2017, the ADNDRC confirmed in an email to the parties that it had not received a Response from the Respondent within the required period of time.

On 27 November 2017, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David L. KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. The Panel received the file from the ADNDRC and should render the Decision on or before 11 December 2017, if there are no exceptional circumstances.

3. Factual background

Complainant, Alibaba Group Holding Limited (hereinafter "Alibaba Group" or "阿里巴 巴集团"), was founded in Hangzhou, China, in 1999. Since then, Alibaba Group has grown to become a global leader in the field of e-commerce and its total revenue has hit USD11 billion and USD15 billion for the year ended 31 March 2015 and 31 March 2016 respectively. Alibaba Group operates various businesses through its related and affiliated companies including online business-to-business wholesale marketplaces namely, www.alibaba.com for global trade, and www.1688.com for domestic trade in China, and other online business-to-consumer and consumer-to-consumer platforms, namely, Taobao marketplace, AliExpress marketplace and Tmall marketplace. It also operates a travel and tourism service, a data and cloud computing and a logistics data platform. On 19 September 2014, Alibaba officially listed on the New York Stock Exchange (NYSE: BABA), and has set a record for the world's biggest initial public offering with its US\$ 25 billion listing.

The Brand: Alipay

Alibaba Group, through its affiliates established the brand "Alipay" and launched the Alipay platform (www.alipay.com) in 2004. Since October 2014, the Alipay platform has been operated by Ant Financial Services Group ("Ant Financial") and its affiliates including Alipay. Alibaba Group has granted a license to Ant Financial and Alipay to use the Alipay Trade Marks, but all the rights, title, interest and goodwill subsisting in the Alipay Trade Marks remains vested with the Complainant.

The Alipay platform is one of the most widely used independent third-party payment solutions in China. Alipay payment services are available in multiple jurisdictions, allowing payment to be collected by Mainland and overseas merchants from buyers over the world. As of December 2016, Alipay has over 450 million registered users, over 200 financial institutions including leading national and regional banks across China as well as Visa and MasterCard to facilitate payments in China and abroad, and excluding mainland China, it has a network of close to 100,000 retailers in 70 countries and regions, offering payment services for around 10 million small and micro merchants, supporting transactions in 18 foreign currencies. On November 11, 2016, USD 17.8 billion of gross merchandise volume was settled through Alipay on Alibaba's China and international retail

marketplaces and 175,000 payment transactions were processed per second at peak by the Alipay platform.

Alibaba Group secured the registration of <alipay.com> back in 2004. Throughout the years, Alibaba Group, Ant Financial and Alipay have developed the Alipay brand, which has gained significant popularity globally. Alibaba Group, Ant Financial and Alipay have marketed "Alipay" extensively through different marketing campaigns over many years, resulting in a significant amount of media attention and a high public profile for the brand.

Alibaba Group holds over 100 domain name registrations containing the mark "ALIPAY". Specifically, the domain names <alipay.com.hk> and <alipay.hk> were both registered back in 2006. Complainant can provide details of all these registrations, if needed. Therefore, the portfolios of trade marks and domain names incorporating "Alipay" or "支付宝" are substantial.

The Respondent is Alex Louie / Alex Chen, of Hong Kong.

Why Alex Louie / Alex Chen Have Been Identified as the Respondent

The Complaint is filed against Alex Louie / Alex Chen, which Complainant considers to be a single Registrant and the same domain name holder, pursuant to paragraph 3(c) of the Rules for Uniform Domain Name Dispute Resolution Policy. The Rule allows a Complaint to be filed in relation to more than one domain name, provided that the domain names are registered by the same domain name holder. The Complainant alleges that the WHOIS information provided by ADNDRC and the Registrar shows a common Hong Kong domicile; a single telephone number 852.95658991; and a single email address of alexsllouie@gmail.com for Registrant Alex Louie / Alex Chen.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

(i) The disputed domain name(s) is/are identical or confusingly similar to a trademark or service mark in which the Complainant has rights:

By virtue of its trade mark registrations, Complainant is the owner of the Alipay Trade Marks and has established its rights in the Alipay Trade Marks since 2004.

The ALIPAY mark is a coined word with no meaning in the English dictionary or other languages. When comparing the Disputed Domain Names to Complainant's mark "ALIPAY", the relevant comparison to be made is only between the second-level portion of the Disputed Domain Names and Complainant's mark "ALIPAY". *See Rollerblade, Inc. v. McCrady,* D2000-0429 (WIPO June 28, 2000).

The Disputed Domain Names incorporate Complainant's mark "ALIPAY" in its entirety, while merely adding the geographically descriptive term "HK" (the acronym for Hong Kong) at the end, thus rendering the Disputed Domain Names confusingly similar to Complainant's mark "ALIPAY". It is well established that the addition of a geographic

term or place name does not alter the underlying trade mark or negate the confusing similarity, and Panels have established that the mere addition of geographical terms to a complainant's trade mark does not sufficiently differentiate the disputed domain name from that trademark. *See Trip Network Inc. v. Alviera*, FA 0914943 (NAF Mar. 27, 2007). See also *Skype Ltd. v. Sacramento*, FA 0747948 (NAF Aug. 30, 2006).

Respondent's use of the Disputed Domain Names contributes to confusion. Respondent's use of the Disputed Domain Names to resolve to websites which provide consultancy services for Complainant's Alipay payment service without authorization, which suggests and could evidence that Respondent intended the Disputed Domain Names to be confusingly similar to Complainant's mark "ALIPAY". See the Gaming Board for Great Britain v. Gaming Board, D2004-0739 (WIPO Oct. 18, 2004).

Based on the foregoing, Complainant considers the Disputed Domain Names to be identical or confusingly similar to Complainant's mark "ALIPAY" and/or the trade name "Alipay", in which the Complainant has had rights prior to the date of registration of the Disputed Domain Names, and continues to have rights. Thereby, Complainant has satisfied the onus in accordance with Paragraph 4(a)(i) of the Policy.

(ii) The Respondent has no rights or legitimate interests in respect of the domain name(s):

Respondent is not commonly known by the Disputed Domain Names and Complainant has not licensed or authorized Respondent in any way to register and use any domain names incorporating Complainant's Alipay Trade Marks, which evinces a lack of rights or legitimate interests. See Policy ¶ 4(c)(ii). See United Way of America v. Alex Zingaus, FA 1036202 (NAF Aug. 30, 2007). At present, the pertinent WHOIS information identifies the Registrant as "Alex Louie / Alex Chen" which does not resemble the Disputed Domain Names in any manner, nor there is any need for the Respondent to use "alipay" in the Disputed Domain Names – thus, where no evidence, including the WHOIS records for the Disputed Domain Names, suggests that Respondent is commonly known by the Disputed Domain Name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the Disputed Domain Names within the meaning of ¶ 4(c)(ii). See Instron Corp. v. Kaner, FA 0768859 (NAF Sept. 21, 2006). See also Coppertown Drive-Thru Sys., LLC v. Snowden, FA 0715089 (NAF July 17, 2006).

Respondent is not using the Disputed Domain Names for a *bona fide* offering, or for a legitimate non-commercial or fair use. Instead, Respondent uses the Disputed Domain Names in connection with commercial websites offering consultancy services for the Complainant's Alipay payment service without authorization. Pursuant to the historical screenshot on Oct 16, 2016 from "Wayback Machine" at http://web.archive.org, Respondent claimed to be the Alipay-appointed service provider in Hong Kong. Past Panels have concluded that a respondent's efforts to provide service or sell products without authorization under the guise of a complainant's brand, trademarks, and/or logos amounts to neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor a Policy ¶ 4(c)(iii) legitimate non-commercial or fair use. *See Nokia Corp. v. Eagle*, FA 1125685 (NAF Feb. 7, 2008).

Each of the Disputed Domain Names redirects Internet users to a separate website that copies and attempts to duplicate Complainant's official website. The official introduction of Alipay HK from https://world.taobao.com/markets/all/alipayhk_intro is directly copied

to http://www.alipayhk.com/alipayhk-user-account.html. As such, the Disputed Domain Names' websites have purposely been designed to serve as an exact replica of Complainant's website, all as a means of deceiving Internet users into believing that the Disputed Domain Names and their websites are associated with Complainant. Respondent's attempt to pass off the Disputed Domain Names as being affiliated with Complainant, and in fact as being Complainant, is in itself evidence of the fact that Respondent does not have rights and legitimate interests in the Disputed Domain Names pursuant to ¶ 4(a)(ii). See Kmart of Mich., Inc. v. Cone, FA 655014 (NAF Apr. 25, 2006). See also Marino v. Video Images Prod., D2000-0598 (WIPO Aug. 2, 2000).

Further, the metadata associated with the Disputed Domain Names specifically refer to Complainant and its trade marks. Website metadata is used by search engines to link the relevancy of a user's search term with online content. As such, Respondent is using this metadata to increase the likelihood that an Internet user searching for Complainant through a search engine would come across the Disputed Domain Names and would be confused as to their source. Using metadata that specifically refers to Complainant confirms the motive of Respondent's registration of the Disputed Domain Names and makes it more likely that unsuspecting Internet users will be deceived and directed to Respondent's domain names and website. The metadata associated with the Disputed Domain Names are as follows:

<alipayhk.com>

<meta name="description" content="支付寶香港介紹 Alipay HK introduction Alipay online payment 支付寶網站收款 支付寶當面付線下收款 Alipay offline payment 香港服務供應商,提供當面付線下收款及網站收款方案給商戶使用。 We are Alipay service provider in HK ">

<alipayhk.solutions>

<meta name="description" content="Introduce Alipay Products for HK
Merchant, QR code spot payment and online checkout payment. We provide a
total solution on both online & offline payments.">

Respondent registered the Disputed Domain Names in 2016, which is significantly after the registration of the first Alipay Trade Marks and the domain name <alipay.com> in 2004.

Consequently, Complainant submits that Respondent has no rights or legitimate interest in the Disputed Domain Names in accordance with Paragraph 4(a)(ii) of the Policy.

(iii) The disputed domain names have been registered and are being used in bad faith:

Complainant and its Alipay Trade Marks are known internationally, including in Hong Kong, with trade mark registrations in numerous countries, including China, Hong Kong, the United States, and other jurisdictions. Complainant has marketed extensively and provided services using this trade mark since 2004, which is well before Respondent's registration of the Disputed Domain Names in 2016. Further, by the extensive use of the Alipay Trade Marks since 2004 (which significantly predates the registration date of the Disputed Domain Names), the Alipay Trade Marks have acquired distinctiveness which allows the consumers to immediately identify and associate the Alipay Trade Marks with Complainant, Ant Financial and Alipay.

By registering domain names that incorporate the Alipay Trade Marks and the geographical term "HK", Respondent has created domain names that are confusingly similar to Complainant's Alipay Trade Marks, as well as its <alipay.com> domain name. Panels have agreed that it is likely to mislead users into believing that the Disputed Domain Names and Websites are affiliated with Complainant. In addition, there is no plausible good-faith reason for Respondent to register the Disputed Domain Names. It is logical to infer that the Respondent, by registering the Disputed Domain Names, intended to take advantage of Complainant's fame and reputation to create confusion that it is associated with the Complainant in order to make unfair commercial gain. See Vevo LLC v. Ming Tuff, FA 1440981 (NAF May 29, 2012). As such, Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business. See Parfums Christian Dior v. Javier Garcia Quintas, D2000-0226 (WIPO May 17, 2000).

Respondent uses the Disputed Domain Names to resolve websites which provide consultancy services of Alipay's services and claims to be the Alipay appointed service provider in Hong Kong, which Respondent is not authorized to provide. Based on the facts stated herein, it is "not possible to conceive of a plausible situation in which the Respondent would have been unaware of' Complainant's brands at the time the Disputed Domain Names were registered. See Telstra Corp. Ltd. v. Nuclear Marshmallows, D2000-0003 (WIPO Feb. 18, 2000). Stated differently, ALIPAY is so closely linked and associated with Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith – where a domain name is "so obviously connected with such a well-known name and products,... its very use by someone with no connection with the products suggests opportunistic bad faith." See Alibaba Group Holding Limited v. Whois Privacy Protection Service, Inc. & Dohir Solihin, HK-1400656 (ADNDRC Dec 11, 2014). See also Parfums Christian Dior v. Javier Garcia Quintas, D2000-0226 (WIPO May 17, 2000). Further, where the Disputed Domain Names include the entire trade mark of Complainant with the addition of some closely related additional terms, "it defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks." See Asian World of Martial Arts Inc. v. Texas International Property Associates, D2007-1415 (WIPO Dec. 10, 2007).

ICANN policy dictates that bad faith can be established by evidence that demonstrates that "by using the domain name, [Respondent has] intentionally attempted to attract, for commercial gain, Internet users to [Respondent's] web site..., by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on [Respondent's] web site or location." ICANN Policy 4(b)(iv). Here, Respondent creates a likelihood of confusion with Complainant and its trade marks by copying Complainant's logo and trade marks, with Respondent then attempting to profit from such confusion by Complainant's products without authorization. As such, Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Names, and Respondent is thus using the fame of the Complainant's trade marks to improperly increase traffic to the websites listed at the Disputed Domain Names for Respondent's own commercial gain. It is well established that such conduct constitutes bad faith. See Alibaba Group Holding Limited v. Henny Rahmayanti, HK-1400672 (ADNDRC Jun 29, 2015). See also Hewlett-Packard Co. v. Ali, FA 0353151 (NAF Dec. 13, 2004).

The presence of a disclaimer on the Disputed Domain Names' websites makes it abundantly clear that Respondent knew of Complainant when registering and using the Disputed Domain Names, and that Respondent selected the domain to intentionally confuse unsuspecting Internet users into visiting its website – in other words, Respondent acknowledges the likelihood of confusion with Complainant by voluntarily placing a disclaimer on the website. As such, it must be held that Respondent has intentionally misappropriated Complainant's Alipay Trade Marks as a way of redirecting Internet users searching for Complainant to the Disputed Domain Names' websites, only to then offer a disclaimer and content unrelated to and not approved by Complainant. This sort of tactic – labeled "bait-and-switch" for its propensity to confuse Internet users into believing that they are visiting a complainant's site only to discover that the disputed domain is completely unconnected to that complainant – has been held to be evidence of bad faith registration and use by past Panels. See Monsanto Company v. Rowena Tollitt, FA 0110795 (NAF June 4, 2002). See also Educational Testing Service v. Prinn Sukriket, D2011-0439 (WIPO May. 1, 2011).

Respondent has registered and/or used the Disputed Domain Names for possible purposes of launching a "phishing" attack, which is clear evidence of bad faith registration and/or use. After creating a strong likelihood of confusion by misappropriating the Complainant's Alipay Trade Marks in the Disputed Domain Names, Respondent has impersonated Complainant's appointed service provider to lure Internet users to register Alipay Accounts through its consultancy services and "phish" for confidential information. Respondent's efforts to masquerade as Complainant to solicit sensitive, financial information from unsuspecting people certainly constitutes fraud, which must be considered bad faith registration and use of the Disputed Domain Names. See Juno Online Servs., Inc. v. Nelson, FA 0241972 (NAF Mar. 29, 2004) See also Wells Fargo & Co. v. Maniac State, FA 608239 (NAF Jan. 19, 2006).

At the time of filing of the Complaint, Respondent had masked its identity, which Panels have held serves as evidence of bad faith registration and use. *See Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc.*, D2003-0230 (WIPO May 16, 2003). *See also T-Mobile USA, Inc. v. Utahhealth*, FA 0697819 (NAF June 7, 2006).

It is clear from the above that Respondent knew of and targeted Complainant's Alipay Trade Marks, and Respondent should be found to have registered and/or used the Disputed Domain Names in bad faith. See Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc., FA D2014-1754 (WIPO Jan 12, 2014).

For the reasons set out above, Respondent should be considered to have registered and is using the Disputed Domain Names in bad faith, as described in paragraph 4(a)(iii) of the Policy.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent failed to file timely a Response and has not participated in these administrative proceedings.

5. Findings

For the reasons recited above, the Panel finds that the Complaint has been brought correctly against "Alex Louie / Alex Chen" in relation to <u>both</u> Disputed Domain Names, which is the same Registrant and domain name holder pursuant to and in accordance with paragraph 3(c) of the Rules for Uniform Domain Name Dispute Resolution Policy.

The Panel further finds that Complainant has enjoyed rights and legal interests in and to the Alipay Trade Mark, through registration and use since 2004, whereas the Disputed Domain Names, <alipayhk.com> and <alipayhk.solutions>, were registered some twelve (12) years later, on 2 August 2016 and 17 November 2016, respectively.

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 Disputed Domain Names incorporate Complainant's "ALIPAY" mark in its entirety and are therefore identical or confusingly similar to the ALIPAY Trade Mark. The addition of "HK", the acronym for "Hong Kong", in the second-level domain, and of ".com" and ".solutions" in the top-level domain, does not require a different result.

The Panel finds that the Complainant has proved that the Disputed Domain Names are identical to its registered Trade Mark in which the Complainant has rights or interests for the purposes of paragraph 4 (a)(i) of the Policy.

B) Rights and Legitimate Interests

As is noted above, Respondent registered the Disputed Domain Names, <alipayhk.com> and <alipayhk.solutions>, on 2 August 2016 and 17 November 2016, respectively, nearly twelve (12) years after Complainant had registered its ALIPAY Trade Marks. The fame of the ALIPAY Marks, coupled with the fact that the Complainant has not licensed, consented to or otherwise authorized the Respondent's use of the Marks, shifts to Respondent the burden of coming forward with evidence to establish that it has rights and/or legitimate interests in the Disputed Domain Names. The Respondent has failed timely to submit a Response and to carry its burden of production.

The Panel finds that the Complainant has proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of paragraph 4 (a)(ii) of the Policy.

C) Bad Faith

The Panel notes that the Disputed Domain Names resolve to slick and visually attractive websites operated by the Respondent, which falsely purport to provide "Alipay" on-line

secure funds transfer services; related support services and information, to Hong Kong and overseas merchants, retailers and others, when in fact, Respondent has no connection whatsoever with Complainant and has never been authorized to use Complainant's registered Mark in any capacity or for any purpose.

Complainant's evidence includes screenshots of a "Wayback Machine" Internet archive search of the <alipayhk.com> domain, which shows that on 16 October 2016, Respondent's website included the express misrepresentation: 1

"We are Alipay appointed (sic) service provider in Hong Kong, assist Hong Kong merchant enable (sic) online & offline payment services."

The Panel finds persuasive the Complainant's allegation that Respondent's same website is being used for the purpose of "phishing" (defined as the fraudulent practice of inducing individuals to reveal personal information, such as passwords, bank account numbers and credit card information, by purporting to be authorized by or affiliated with reputable companies), by requesting that Hong Kong and overseas merchants and users of the website provide their Hong Kong Identity Card and similar personal and sensitive details, and to create or enter their personal passwords on Respondent's website, for the supposed purpose of completing "Alipay" off-line or on-line secure funds transfers.

Screenshots of Respondent's website to which the Disputed Domain Name <alipayhk.solutions> resolves, includes the express misrepresentation: ²

"Assist Hong Kong merchant (sic) enable Alipay spot payment and online payment services, provide method (sic) and devices for HK merchant get pay (sic)".

Respondent's website, containing both English and Chinese text, includes numerous references to Complainant's "支付宝" and "支付寶" Trade Marks (i.e. "ALIPAY" in simplified and traditional Chinese character text, respectively), accompanied in many instances by the "®" symbol, which reflects beyond any reasonable question that Respondent acted with full knowledge of Complainant's prior trade mark rights. Indeed, Respondent's intention was to leverage those rights for the purpose of misleading public Internet users to Respondent's own unfair commercial advantage.

The Panel finds that Respondent is using the Disputed Domain Names and websites to intentionally create confusion with the Complainant's ALIPAY Trade Mark as to the source, sponsorship, affiliation, or endorsement of Respondent's websites, or of the services offered for sale on Respondent's websites.

The Panel finds that Respondent registered and is using the Disputed Domain Name in bad faith to intentionally mislead public Internet users for its own commercial gain. The Complainant has proved that the Respondent registered and is using the Disputed Domain Names in bad faith within the meaning of paragraph 4 (a)(iii) of the Policy.

¹ The misrepresentation also appears on Respondent's website written in Chinese, in the following terms: "我們是支付寶指定香港服務供應商,協助香港商戶開通支付寶當面付及線上支付,提供可行方案及設備協助香港商戶收款。"

² The misrepresentation also appears on Respondent's website written in Chinese, which recites: "提供可行方案及設備協助香港商戶收款,協助香港商戶開通支付寶當面付及線上收款。"

6. Decision

It is ORDERED that the <code><alipayhk.com></code> and <code><alipayhk.solutions></code> domain names be TRANSFERRED to the Complainant.

David L. Kreider Panelist

Dated: 7 December 2017