



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400571
Complainant:	Alibaba Group Holding Limited
Respondent:	David Huber
Disputed Domain Name(s):	<thetianmao.com>

1. The Parties and Contested Domain Name

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.

The Respondent is David Huber, of 2604 E 23rd Street, Farmington, District of Columbia 87401, USA.

The domain name at issue is <thetianmao.com>, registered by Respondent with Wild West Domains, LLC, of 14455 North Hayden Rd. #226, Scottsdale, AZ 85260, USA (the "Registrar").

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on 30 January 2014. On the same day, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On 31 January 2014, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant of the Disputed Domain Name and providing the Respondent's contact details.

The Centre has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules of Procedure under the Policy (the "Rules") and the Centre's Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and proceedings commenced on 10 February 2014.

Under the Rules, the Respondent has to submit a response within 20 days of commencement of the Complaint (i.e. 2 March 2014). No response has been received.

The Centre appointed Mr Peter Bullock as the Sole Panelist in this matter on 24 March 2014. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

3.1 Complainant

The Complainant was founded in 1999. The Complainant operates its business through a group of companies and has grown to become a global leader in the field of e-commerce.

In May 2003, the Complainant founded the brand "Taobao" (in Chinese "淘宝") at www.taobao.com, a Chinese language business-to-consumer and consumer-to-consumer Internet retail platform. In the last ten years, the consumer-to-consumer platform operated under the Taobao brand ("Taobao Marketplace") has grown to become one of China's largest online retail platforms and the primary online shopping destinations in China.

In 2008, the Complainant introduced "Taobao Mall", a business-to-consumer portal accessible from its Taobao Marketplace designed to include listings from brand owners or authorised distributors ("Taobao Mall"). In 2010, the Complainant rebranded Taobao Mall as "Tmall" (which is an abbreviation of the Complainant's "Taobao Mall" trade mark) giving it an independent website located at www.tmall.com. (the "Tmall.com Marketplace"). Tmall.com Marketplace is known as "天貓" in Chinese, which transliterates as "tian mao", and was adopted as its official Chinese brand in January 2012.

The Complainant has registered "TIANMAO", "天貓", "TAOBAO MALL" and "TMALL" as trademarks worldwide, including jurisdictions in Hong Kong, mainland China, the European Union, Macau, Singapore and Taiwan (collectively the "Tianmao Trade Marks").

3.2 Respondent

The Respondent registered the Disputed Domain Name on 15 January 2014.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarised as follows:

- i. The Disputed Domain Name "thetianmao.com" contains a mark which is identical and/or confusingly similar to the Complainant's "TIANMAO", "天貓", "TAOBAO MALL" and "TMALL".
- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name on the grounds that the Respondent: (i) has not been commonly known by the Disputed Domain Name; (ii) does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Name in China or the USA; (iii) has not made a legitimate non-commercial or fair use of the Disputed Domain Name; and (iv) has no connection or affiliation with the Complainant and has received no license or consent, express or implied from the

Complainant to use the Tianmao Trade Marks or any of the other trademarks registered by the Complainant.

- iii. The Respondent has used the Disputed Domain Name in bad faith in order to: (i) lead the public into the mistaken belief that the website is an official website of the Complainant; and (ii) intentionally attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's brand.

B. Respondent

The Respondent did not file a response within the stipulated time.

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

There is no doubt that the trademark "TIANMAO" is identical to the Disputed Domain Name. The Complaint materials submitted by the Complainant indicate that the trademark "TIANMAO" has been registered in the PRC China and Hong Kong.

The Panel finds that the Complainant has rights in the "TIANMAO" trademark and it is identical to the Disputed Domain Name save for the additional 'the', and is hence confusingly similar. Consequently, the Panel finds it unnecessary to deal with any of the other trademarks referenced by the Complainant as paragraph 4(a) of the Policy is already satisfied.

B) Rights and Legitimate Interests

Question 2.1 of the WIPO Overview 2.0 states the consensus view that once a complainant makes a prima facie case in respect of the lack of rights or legitimate interests of the respondent, the respondent carries the burden of production to demonstrate it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy.

The Respondent did not submit a Response within the prescribed time frame and in failing to do so fails to demonstrate that it has rights or legitimate interests in the Disputed Domain Name.

It can be seen from the evidence that "TIANMAO" trademark is immediately recognisable as being associated with the Complainant due to its worldwide fame. Further, the Respondent is not known by the Disputed Domain Name nor was any evidence provided to show that it has rights in the relevant trademarks.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Bad Faith

Finally, the Claimant needs to establish that the Respondent registered the Disputed Domain Name and that it is being used in bad faith.


The evidence shows that "TIANMAO" is a made up word that has no common meaning in English. In addition, the Complainant has provided screenshots of the Respondent's website (the "Website") captured on 28 January 2014, which contains limited content. The Website consists only of a large prominent link in the middle of the page that when clicked leads to another website <<http://www.boguanjia.com>> that is concerned with credit valuation of gambling companies.

The Panel is satisfied that the Respondent, by using the Disputed Domain Name has intentionally attempted to attract, for commercial gain, Internet users to the Website or other on-line location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Website. The Panel accepts that *Paris Hilton v Deepak Kumar*, WIPO Case No. D2010-1364 applies.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy and that the Respondent has acted in bad faith.

6. Decision

In light of the foregoing paragraphs, all the elements of paragraph 4(a) of the Policy have been satisfied in this case. The Panel orders the Domain Name to be transferred to the Complainant.



Peter Bullock
Panelist

Dated: 1 April 2014