



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK 1300550
Complainant:	Alibaba Group Holding Limited
Respondent:	hiyeah hu
Disputed Domain Name(s):	<tmalls.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 (“Complainant”).

The Respondent is hiyeah hu, of Jinshuiquqingonguan, Zhengzhou, Henan 450000 CN, PRC (“Respondent”).

The domain name at issue is <tmalls.com>, registered by Respondent with MidWestDomains, LLC, of 1800 SW 1st Avenue, Suite 440, Portland, Oregon, 97201, United States of America (the “Registrar”).

2. Procedural History

On 8 October 2013 Complainant filed the Complaint in this matter concerning the domain name at issue. On that same date and again on 10 and 16 October 2013, the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “Centre”) notified the registrar Go-Daddy of the filing of the complaint and requested that the registrar Go-Daddy confirm that the domain name at issue was registered with the registrar Go-Daddy, that the identified Respondent is the registrant of the domain name, and that the Registrar had received a copy of the Complaint. Also on that same date the Centre sent the Complainant an Acknowledgement of Receipt of Complaint.

On 12 October 2013, the identified registrar Go-Daddy advised the Centre that it was not the registrar of the domain name at issue. On 16 October 2013 the Centre requested that the registrar Go-Daddy clarify its relationship with the Registrar. On 17 October 2013 the registrar Go-Daddy advised the Centre that there was no relationship between the Registrar and Go-Daddy, that the domain name had at one time been registered by the registrar Go-Daddy, but that the domain name had since been re-registered with the Registrar.

On 17 October 2013 the moniker.com notified the Centre that the registrar of the domain name at issue was the Registrar (MidWestDomains, LLC) . that the domain name 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 17 October 2013, Complainant confirmed to the Centre that a copy of the Complaint had been sent to Respondent. On the same date the Centre notified the Complainant that that the domain name had been locked and provided Complainant with the Whois information provided by the Registrar. On that same date, Complainant sent by email a copy of the Complaint and annexes thereto to Respondent.

On 17 October 2013 the Centre sent to Respondent a formal written Notice of Complaint announcing commencement of the Proceedings as of that date and advising Respondent that a formal response was due on or before 6 November 2013, and transmitting to Respondent a Notice of the Complaint together an additional copy of the Complaint and the annexes thereto . Not having received a response within the required time, on 7 November the Centre notified the parties of Respondent's

On 17 Noember 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 is in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

3. Factual background

Complainant is known as Alibaba and is a well known Internet retail operation founded in Hangzhou, China in 1999. Complainant is one of the largest Chinese Internet ecommerce providers and has over 800 million products available on its various web sites. The web site at <tmall.com> is a business to consumer operation. Prior to 2010, the web site was known as Taobao Mall, but in 2010 was rebranded as "Tmall." Tmall.com Marketplace currently has more than 400 million registered users, and currently offers over 70,000 different commercial brands from more than 50,000 retailers. Tmall.com Marketplace links to numerous other Alibaba sites

Complainant is headquartered in Hangzhou, China, and has offices in 70 cities across China, as well as in Hong Kong, Taiwan, Korea, Japan, India, Singapore, the United States of America, and the European Union. Complainant's marketplaces are some of the most successful Internet operations in the world. Complaint, Annexes 4, 5, 6, and 7.

Complaint has numerous trademark applications pending for its TMALL mark and TMALL.COM and related marks. In addition, registrations have issued for the TMALL mark in Cambodia, Ecuador, Egypt, Hong Kong, Japan, Macau, Mexico, New Zealand, Norway, the Philippines, Singapore, Switzerland, and the United States of America. The earliest of these registrations issued on 5 November 2010 in Hong Kong. Registrations of Complainant's TMALL.COM and related marks have issued in China, Hong Kong, and Singapore, the earliest of these registrations issued on 25 October 2011 in Hong Kong and in Singapore. Complaint, Annexes 2 and 3. Virtually all of such registrations issued prior to 1 September 2013.

Respondent provided an address in Zhengshou, Henan, People's Republic of China. Respondent registered the domain name at issue on 16 September 2013.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

Complainant contends that the domain name at issue is confusingly similar to Complainant's TMALL mark and Complainant's TMALL.COM family of marks. Complainant contends that as Respondent registered the domain name at issue more than three years after Complainant began extensive use of the TMALL mark and of the TMALL.COM family of marks, and as complainant has not licensed the marks to Respondent nor consented in Respondent's use of the domain name at issue or otherwise authorized Respondent to use its TMALL mark, its TMALL.COM family of marks, or the domain name at issue, as there is no evidence that Respondent has been commonly known as "tmalls," and as there is no evidence that Respondent has registered as a trademark or used as a trademark the "tmalls" character string (Complaint, Annex 12), Respondent has no rights or legitimate interests in respect of the domain name at issue. Finally, Respondent is using the domain name at issue to resolve to a parking site that contains advertisements and links to other sites. Complaint, Annex 13. Therefore it is fair to assume that Respondent is receiving remuneration as a result of such advertisements and links. This constitutes evidence under paragraph 4(b)(iv) of the Policy that Respondent has registered and is using the domain name at issue in bad faith.

B. Respondent has failed to respond to the Complaint

Respondent failed to deny Complainant's contentions, or to produce evidence contrary to Complainant's assertions.

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 Similarity

The domain name at issue consists of the addition of the letters "l" and "s" to Complainant's well-known TMALL mark and to insert the "l" and "s" in the SLD prior to the .com gTLD suffix. Thus, there are only small differences between Complainant's TMALL mark and Complainant's TMALL.COM family of marks. The Panel finds that the domain name at issue is confusingly similar to Complainant's trademarks.

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 panelists 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.

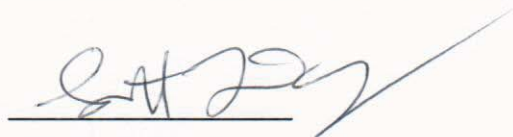
In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the Panel finds that Respondent has no rights or legitimate interests in respect of the domain name at issue.

C) Bad Faith

In the present case Respondent uses the domain name at issue resolves to a parking page at which advertisements and links to other web sites are present. It is fair to assume that Respondent is using the domain name at issue to confuse Internet users who are searching for Complainant and who arrive at Respondent’s web site and to obtain commercial gain as a result of such confusion. Therefore, the Panel finds that Respondent has registered and is using the domain name at issue in bad faith.

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 name <tmalls.com> be transferred to the Complainant.



M. Scott Donahey
Panelist

Dated: 19 November 2013