



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700986
Complainant:	Alibaba Group Holding Limited
Respondent:	Whois Foundation
Disputed Domain Name:	<hkalipay.com>

1. The Parties and the Disputed 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 Whois Foundation, of Ramon Arias Avenue, Ropardi Building, Office 3-C PO Box 0823-03015, Panama City, Panama, 0823.

The domain name at issue is <hkalipay.com>, registered by Respondent with NameKing.com, Inc., of c/o Rook Media AG, 1 Meadow Rd, Suite 210, Florida, NY 10921.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the “Centre”) on June 5, 2017. On June 6, 2017, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 2017, the Registrar transmitted by email to the Centre its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Centre sent an email communication to the Complainant on June 14, 2017 providing the registrant and contact information disclosed by the Registrar, notifying the Complainant that section 8 of the Complaint exceeded the word limit of 3,000 words, and inviting the Complainant to submit an amended Complaint. The Complainant filed an amended Complaint on June 19, 2017.

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 the proceeding commenced, on June 19, 2017.

On June 23, 2017, the Complainant filed supplemental submissions with the Centre.

In accordance with the Rules, the due date for the Response was July 9, 2017. The Response was filed on July 6, 2017.

The Centre appointed Sebastian Hughes as the Panelist in this matter on July 17, 2017. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual Background

A. Complainant

The Complainant is a company incorporated in the Cayman Islands and is the owner of numerous registrations in jurisdictions around the world for the trade mark ALIPAY (the “Trade Mark”), including Hong Kong registration number 302032307, registered on 15 September 2011; and United States registration number 3761346, registered on 16 March 2010.

The Complainant has used the Trade Mark continuously since 2004 in relation to its online and in-store third party payment platform.

B. Respondent

The Respondent is a company apparently incorporated in Panama.

C. The Disputed Domain Name

The disputed domain name was registered on July 14, 2015.

D. The Website at the Disputed Domain Name

The disputed domain name is resolved to a parking page with sponsored links relating to third party payment platforms (the “Website”).

4. Parties’ Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar or identical to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent denies all parts of the Complaint.

Without admitting fault or liability and without responding substantively to the allegations raised by the Complainant, the Respondent stipulates that it is willing to voluntarily

transfer the disputed domain name to the Complainant. The Respondent requests the Panel to make an order for transfer, by consent, without making any findings of fact or conclusions as to the elements of paragraph 4(a) of the Policy.

C. Complainant's Supplemental Submissions

The Complainant's supplemental submissions were filed before the Response, and in anticipation of the Respondent's request in the Response for an order for transfer without any findings on the merits.

The Complainant contends that the Respondent is a seasoned domain squatter who had the intention of targeting the Complainant's trade marks, and has been the subject of several UDRP proceedings (referred to in the Complaint) filed by third parties. Therefore, the Complainant asks that the Panel issue a formal decision based on the merits of the case, with findings on each of the three elements under paragraph 4(a) of the Policy.

5. Findings

5.1 Supplemental Submissions

Panels have sole discretion, under paragraphs 10 and 12 of the Rules, whether to accept an unsolicited supplemental filing from either party, bearing in mind the need for procedural efficiency, and the obligation to treat each party with equality and ensure that each party has a fair opportunity to present its case. The party submitting its filing would normally need to show its relevance to the case and why it was unable to provide that information in the complaint or response.

The Complainant's reply submissions address specifically the Respondent's request for an order for transfer, without any findings on the merits under paragraph 4(a) of the Policy.

In all the circumstances, the Panel determines that it will admit the Complainant's supplemental filing. The Panel further considers it is not necessary to give the Respondent the opportunity to respond to the Complainant's supplemental submissions, as they have already been addressed in the Response.

5.2 Consent to Transfer

A genuine unilateral consent to transfer by a respondent will usually provide the basis for an immediate order for transfer without consideration of the paragraph 4(a) elements.

In the circumstances of this proceeding, however, the Panel determines that a substantive determination on the merits is warranted, for the following reasons:

1. The Respondent has not provided its unqualified consent to transfer, but has expressly denied all parts of the Complaint (including bad faith);
2. The Respondent, whilst denying all parts of the Complaint, has chosen not to put forward a positive case in respect of each of the elements of paragraph 4(a);

3. The manner in which the disputed domain name has been used suggests that the Respondent has targeted the Complainant and its trade marks in registering and using the disputed domain name;
4. The Complainant has not agreed to accept such consent and has requested a recorded decision on the merits;
5. The uncontested submissions of the Complainant suggest that the Respondent has been found to have registered and used domain names in bad faith in previous UDRP proceedings. Accordingly, there are public policy reasons in support of a finding on the merits in this proceeding, in order to assist the assessment in future proceedings as to whether the Respondent has engaged in a pattern of bad faith conduct under paragraph 4(b)(ii); and
6. The stated rationale in the Response behind the Respondent's consent to transfer, namely "to expedite this matter for the Panel so that its time and resources are not otherwise wasted on this undisputed matter", does not sit well with the Respondent's denial of all parts of the Complaint; the Respondent's failure to put forward a positive case in support of its denial; and the manner of the Respondent's use of the Website.

5.3 Substantive Elements of the Policy

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

A) Identical / Confusingly Similar

The Panel finds that the Complainant has rights in the Trade Mark acquired through use and registration.

The disputed domain name comprises the Trade Mark in its entirety, together with the non-distinctive and well-known acronym "hk" for Hong Kong, which, in the Panel's opinion, heightens the risk of confusion given the Complainant's long-established use of the Trade Mark in Hong Kong and in China.

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or

(iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Mark. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services. To the contrary, the disputed domain name has been used in respect of the Website, which, without the Complainant's authorisation, provides sponsored links to third party commercial websites, including references to the Complainant's "支付宝" and "支付寶" trade marks (i.e. "ALIPAY" in Chinese).

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

The Panel finds that the Respondent has failed to produce any evidence to rebut the Complainant's *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

C) Bad Faith

In light of the evidence of the Respondent's use of the Website in the manner described above, the Panel finds the requisite element of bad faith has been satisfied, under paragraph 4(b)(iv) of the Policy.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used 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 <hkalipay.com> be transferred to the Complainant.

Sebastian Hughes
Panelist

Dated: July 31, 2017