



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1500715</b>
<b>Complainant:</b>	<b>Alibaba Group Holding Limited</b>
<b>Respondent:</b>	<b>Carlos Manuel Pardo Gonzalez</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;alibaba.website&gt;</b>

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**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 Carlos Manuel Pardo Gonzalez, of caldas de reis 6 ID, 36209, Vigo, Pontevedra, Spain.

The domain name at issue is alibaba.website, which is currently registered by Respondent with Soluciones Corporativas IP, S.L.U., of Rona Institut No. 24 Bajos, Manacor, Illes Balears-07500, Spain.

**2. Procedural History and Ruling on the Language of the Procedure**

**2.1 Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on February 18, 2015, seeking for a transfer of the domain name in dispute.

On February February 19, 2015, the Center sent an email asking for the detailed data of the registrant or the Respondent to the registration organization, and the registration organization, on February 21, 2015, responded with the detailed data checked, including checking over the registrant.

On February 27, 2015, the Center examined whether the Complaint meets formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules").

On March 3, 2015, the Center sent to the Respondent the "Complaint Transmission Cover" along with the Complaint via email as well as via registered mail. The Center informed the Respondent

of a due date, March 23, 2015, for the submission of its Response.

On March 28, 2015, the Respondent submitted the Response.

On April 10, 2015, the Center appointed Mr. Doo-Hyung Do to the Sole Panelist of this case, and with the consent for the appointment, impartiality and independence declared and confirmed by the panelist, the Center, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On April 10, 2015, the Complainant filed the Complainant's Supplemental Submissions for consideration by the Panelist, and on April 17, 2015, the Panelist determined not do admit the Complainant's Supplemental Submissions.

## **2.2 Ruling on the Language of the Procedure**

The Panel notes that the Response submitted by the Respondent is written in Spanish while the Complaint is written in English.

Paragraph 11(a) of the Rules provides that unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise.

Since the language of the Registration Agreement is English which has been confirmed by the Registrar, and also taking into account the fact that the Respondent, fully understanding the Complaint and the Annexures which are written in English, prepared and submitted the Response written in Spanish retorting the Complainant's arguments, the Panel determines that the language of the decision shall be English.

## **3. Factual background**

The Complainant is a corporation established in Cayman Islands and operates its business through a number of subsidiaries and affiliates (collectively, the "Alibaba Group").

Alibaba Group, since it started its business In Hangzhou, China, in 1999, has grown in the field of e-commerce and has its offices in about 70 cities across China, Hong Kong, Taiwan, Korea, India, Japan, Singapore, USA and European countries.

Alibaba Group, through its affiliates, operates various online business marketplaces for business-to-business transactions, for global importers and exporters, and for the domestic trade in the PRC; offers business management software and internet infrastructure services focusing on Chinese small business; and operates online retail and payment platforms and data-centric cloud computing services.

For the year ended March 31, 2012 and the 9 months ended December 31, 2012, Alibaba Group had a total revenue of over RMB 34 billion and RMB 40 billion, respectively and as of December 31, 2012 had around 36.7 million registered users from more than 240 countries and regions and showcased more than 2.8 million supplier storefronts.

Since 1999, Alibaba Group has been conducting business under the trade name as well as the trademarks of "ALIBABA" and "阿里巴巴" and has registered these marks and other

marks comprising of or incorporating the above marks in the countries and regions where it is conducting business.

Due to the rapid growth and success of Alibaba Group, it and its business activities have attracted a public attention globally and a lot of articles and coverage dealing with the Alibaba Group and its Alibaba, Alipay, Taobao and AliExpress businesses appeared in many newspapers, magazines, TV programs, internet portals during the past 16 years.

Alibaba Group, since its start of business in 1999, has been spending millions of dollars to promote its businesses as well as its main brands of “ALIBABA” and “阿里巴巴” and other related brands.

The Complainant’s “ALIBABA” trademark was validated by the Trademark Clearing House on August 12, 2013.

On September 19, 2014, the Complainant officially listed its stock on the New York Stock Exchange, which was reported by the news media worldwide even before the public offering and recognized as the world’s biggest initial public offering in New York in September.

The Respondent registered the disputed domain on September 18, 2014.

The website of the disputed domain name, when accessed by the Panel on May 16, 2015, showed a text in the Spanish language composed of a heading stating “under construction” and a short paragraph explaining a fictional character Ali Baba, which was mostly transcribed from the webpage of the Wikipedia entry on Ali Baba.

#### **4. Parties’ Contentions**

##### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

- i. The Complainant has registered numerous trademarks comprising “ALIBABA” and “阿里巴巴” in many countries since around 1999.
- ii. The disputed domain name incorporates the complainant’s trademark “ALIBABA” in its entirety and is identical or confusingly similar to the above trademark.
- iii. Since 1999, the Alibaba Group’s trademarks have become well-known and easily recognizable to consumers as being associated with the Alibaba Group and its businesses.
- iv. There is no evidence showing that the Respondent has been commonly known by the disputed domain name and the inclusion of copied wiki text is a veiled attempt by the Respondent to circumvent the application of the Policy. The appearance of the webpage of the disputed domain name does not show that the Respondent is making demonstrable preparations to use the disputed domain name and such use can never amount to a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

- v. The disputed domain name has been registered and is being used by the Respondent in bad faith.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The disputed domain name was registered for the non-profit and personal use and the Complainant is not allowed to assert its rights for the products and services not covered by the Complainant's registered trademarks.
- ii. "ALIBABA" trademarks are not well recognized in Spain.
- iii. The Respondent did not have enough time to construct the website since it had to defend itself in the URS proceedings.

## 5. Findings

The 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 name is composed of two parts, namely "alibaba" and ".website".

The only difference between the Complainant's trademark "ALIBABA" and the "alibaba" of the disputed domain name is whether capital letters or small letters are used. This difference is negligible and thus irrelevant when determining whether a domain name is similar to a registered trademark.

Furthermore, the addition of a generic top-level domain extension such as ".website" is irrelevant when determining whether a domain name is similar to a registered trademark.

Therefore, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "ALIBABA" and that the Complainant has satisfied the first element of the Policy.

### B) Rights and Legitimate Interests

The Policy provides, at Paragraph 4(c), for some examples without limitations of how a respondent can demonstrate a right or legitimate interest in a domain name:

- i. Before receiving any notice of the dispute, the respondent used or made demonstrable preparations to use the domain name in connection with a *bona fide* offering of goods or services; or
- ii. The respondent has been commonly known by the domain name; or
- iii. The respondent is 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 at issue.

It is not disputed that the Complainant has not licensed, consented to or otherwise authorized the Respondent to use the Complainant's "ALIBABA" trademark. In this regard, the Respondent claims that the disputed domain name was registered for non-profit and personal use. However, the Respondent did not show that it has made any effort to use the disputed domain for such purposes. On the other hand, in light of the fact that the website of the disputed domain name is composed of only one page of simple description of the story involving Ali Baba and forty thieves, which was mainly borrowed from the Wikipedia entry on Ali Baba, and has remained the same for more than 7 months since the registration of the disputed domain name, it is reasonable to infer that the Respondent has maintained the website of the disputed domain name only for the purpose of defending itself from the attack from the trademark owners or other legitimate interested parties instead of using it in connection with a *bona fide* offering of goods or services.

The Complainant has not licensed nor authorized the use of its trademark to the Respondent.

The present record provides no evidence to demonstrate the Respondent's intent to use or to make demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services.

The Respondent has not produced any evidence showing that it has been commonly known by the disputed domain name.

The Respondent has not yet sought registration of the trademark relating to the disputed domain name even though the Respondent has 3 registered trademarks in Spain ("DIBUCHE EL DIBUJO HECHO PELUCHE", "MADERKING" and "SUALFOMBRA"). Further, the text telling the story of Ali Baba and the forty thieves on the webpage of the disputed domain name is not an original story written by the Respondent, but a mere transcription from the Wikipedia entry on the Ali Baba. In light of these facts, it is reasonable to infer that when registering the disputed domain name, the Respondent was motivated more by the intent for commercial gain to misleadingly divert consumers or to tarnish the trademark at issue than by the non-profit intent.

Based on the foregoing facts and discussion, the Panel finds that the above circumstances provided for at Paragraph 4(c) of the Policy are not present in this particular case.

Consequently, the Panel is satisfied that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Complainant has proven the second element of the Policy.

### **C) Bad Faith**

The Policy states, at Paragraph 4(b), that the following circumstances in particular, but without limitation, shall be evidence of registration and use of a domain name in bad faith:

- i. Circumstances indicating that the respondent has registered or 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 documented out-of-pocket costs directly related to the domain name; or
- ii. The respondent 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 the respondent has engaged in a pattern of such conduct; or
- iii. The respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the domain name, the respondent has intentionally attempted to attract, for commercial gain, internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location.

The Panel has the view that the following facts and considerations must be taken into account in finding the intent of the Respondent when registering the disputed domain name:

The disputed domain name does not reflect or correspond to the Respondent's own name or current business whereas the Complainant and the Alibaba group has been using the "Alibaba" as its name and trademark in connection with its businesses for the past 16 years;

The "ALIBABA" trademark has attained the status of a famous trademark in the area of e-commerce as the Alibaba group's business continuously expanded worldwide during the past 16 years;

As far as using Ali Baba as a trade name or a trademark is concerned, the Alibaba Group may not be the first company using this name in the commerce, but might possibly be the first company combining "Ali"(first name) and "Baba"(second or last name) together without hyphen or space between them, and thus it is reasonably fair to assume that anyone other than the Alibaba Group intending to use this name in good faith as its domain name might possibly tend to combine them by inserting a period, hyphen or underline between two words rather than combining them like the Complainant;

Due to the character of the e-commerce, the well-known status can be recognized easily without regard to the geographic barrier of national borders, and since the Respondent does not deny the well-known status of the "ALIBABA" trademark in the countries other than Spain, it is fair to impose the burden on the Respondent to prove that this trademark is not well recognized in Spain notwithstanding the well-known status of the "ALIBABA" trademark in other countries including neighboring European countries, but the Respondent failed to prove such fact; and

The disputed domain name was registered just one day before the date when the public offering of the Complainant's stock on the New York Stock Exchange was scheduled to take place, and this public offering had been publicized in the newspapers and other media worldwide for several months preceding the event.

In light of the foregoing facts and considerations, it is fairly reasonable to infer that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the Complainant who is the owner of the trademark, for valuable consideration in excess of documented out-of-pocket costs directly related to the disputed domain name.

Accordingly, the Panel finds that the Complainant has proved that the disputed domain name was registered and is being used in bad faith, satisfying the third element of the Policy.

## **6. Decision**

For the foregoing reasons, in accordance with the paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <alibaba.website> be transferred to the Complainant.

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Do, Doo-Hyung  
Sole Panelist

Date: May 16, 2015