



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400666
<b>Complainant:</b>	ALIBABA GROUP HOLDING LIMITED
<b>Respondent:</b>	WHOIS PRIVACY PROTECTION SERVICE, INC./ARIO RISWAN
<b>Disputed Domain Name(s):</b>	<malaysia-alipay.com>

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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, represented by Mayer Brown JSM of 16th to 19th Floor, Prince's Building, 10 Chater Road, Central, Hong Kong.

The Respondent is Whois Privacy Protection Service, Inc. of P.O. Box 639, Kirkland, WA 98083, United States of America/Ario Riswan of banjarnegara, yogjakarta, banjarnegara, yogjakarta, Yogyakarta 55283, Indonesia. The Respondent is unrepresented.

The domain name at issue is <malaysia-alipay.com> ("the disputed domain name"), registered by Respondent with Name.com, Inc. ("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 14 November 2014. On the same day, the Centre transmitted by email to the Registrar a request for registrar verification in relation to the disputed domain name. On 15 November 2014, the Registrar transmitted by email to the Centre its verification response, advising that Whois Privacy Protection Service, Inc. is not listed as the registrant and providing the details of the underlying registrant, Ario Riswan. The Complainant was notified and given until 26 November 2014 to file an amended Complaint. An amended Complaint was filed on 26 November 2014.

The Center verified that the Complaint satisfied 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. The proceedings commenced on 27 November 2014. In accordance with the Rules, the due date for the Response was 17 December 2014. No Response was submitted.

The Centre appointed Francine Tan as panelist in this matter on 29 December 2014. The Panel is properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual background**

#### **A. Complainant**

The Complainant was founded and headquartered in Hangzhou, China. Since its formation in 1999, it has grown to become a global leader in the field of e-commerce and B2B services. The Complainant was officially listed on the New York Stock Exchange in September 2011.

The Complainant has subsidiary and affiliate offices in about 70 cities across China, as well as in Hong Kong, Taiwan, Korea, India, Japan, Singapore, the USA and Europe. Through its affiliates, the Complainant operates two online B2B marketplaces - a global trade marketplace ([www.alibaba.com](http://www.alibaba.com)) for importers and exporters and a Chinese marketplace ([www.alibaba.com.cn](http://www.alibaba.com.cn) and [www.1688.com](http://www.1688.com)) for domestic trade in China. As of 31 December 2012, [Alibaba.com](http://www.alibaba.com) had around 36.7 million registered users from more than 240 countries and regions and showcased more than 2.8 million supplier storefronts. In the same period, [Alibaba.com](http://www.alibaba.com)'s online Chinese marketplace had around 77.7 million registered users and showcased more than 8.5 million supplier storefronts.

The Complainant launched the ALIPAY platform ([www.alipay.com](http://www.alipay.com)) in 2004, under the brands "ALIPAY" and "支付宝" (the Chinese version of the ALIPAY trade mark). On 11 November 2014, RMB 57.1 billion of gross merchandise volume was settled through the Alipay platform on Alibaba Group's China and international retail marketplaces. The Alipay platform partners with more than 180 financial institutions including leading national and regional banks across China, as well as Visa and MasterCard, to facilitate payments in China and abroad. The Alipay platform provides payment solutions for more than 460,000 merchants, covering a wide range of industries including online retail, virtual gaming, digital communications, commercial services, air ticketing and utilities.

The growth of the Complainant and the success of the Alipay platform and other services offered by it have garnered a significant amount of media attention and resulted in a high public profile for the Complainant and its brands internationally.

The ALIPAY trade mark has been registered in various jurisdictions around the world including China, Hong Kong, Macau, Malaysia, Singapore, Taiwan, and the European Union, as well as Indonesia and the United States (where the Respondent appears to be domiciled).

Significant time and effort have been expended by the Complainant to extensively promote its ALIPAY trade mark as well as "ALI" branded e-commerce services and products extensively since 1999 via the Internet, trade press, trade shows and other print media.

#### **B. Respondent**

The Respondent registered the disputed domain name on 1 October 2014.

The disputed domain name resolves to a website that claims to provide “Alipay” payment services and to be associated with the Complainant or to be “Malaysia Alipay, Alibaba’s company”.

#### **4. Parties’ Contentions**

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

The Complainant’s contentions may be summarized as follows:

- i. The Complainant has trademark rights in ALIPAY and states that the disputed domain name is confusingly similar thereto.
- ii. The disputed domain name incorporates the ALIPAY trade mark in its entirety. The only difference between the disputed domain name and the Complainant’s ALIPAY mark is the inclusion of the word “malaysia” and a hyphen.
- iii. The Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name was registered about 10 years after the ALIPAY mark was first used, adopted and registered by the Complainant. The Respondent has not been licensed or otherwise authorised by the Complainant to use the ALIPAY trade mark nor is the Respondent an authorised representative of the Complainant.
- iv. There is no evidence that Respondent owns any trademark registrations in Malaysia, Indonesia or the USA (where the Respondent is apparently domiciled) which reflect or correspond to the disputed domain name.
- v. The Respondent registered and used the disputed domain name in bad faith. The Respondent must have been aware of the Complainant and its ALIPAY trade mark, when one takes into account the contents of the Respondent’s website and the well-known nature of the Complainant’s ALIPAY mark.
- v. The Respondent’s intention must have been to mislead and confuse Internet users into believing that the disputed domain name is associated with the Complainant and its ALIPAY trade mark and/or that the Respondent is an authorised partner.

##### **B. Respondent**

The Respondent did not file a Response.

#### **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. the Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

- ii. the Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. the Respondent's domain name has been registered and is being used in bad faith.

### **A) Identical / Confusingly Similar**

The Complainant has established that it has rights in the trade mark ALIPAY. The first requirement of paragraph 4(a) of the Policy has therefore been met.

The next issue to consider is whether the disputed domain name is identical or confusingly similar to the ALIPAY mark. The Panel notes that the ALIPAY mark is readily identifiable within the disputed domain name. Further, it is a well-accepted principle that the generic top-level domain “.com” is to be disregarded in the consideration of this issue. The Panel agrees with the Complainant that the addition of the word and hyphen “malaysia-” does not serve to remove the likelihood of confusion; in fact, in the context of the evidence submitted by the Complainant of the content of the Respondent's website, the inclusion of the geographical reference to Malaysia increases the likelihood of confusion. Internet users are very likely to assume that the Respondent's website is associated with or endorsed by the Complainant.

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant's ALIPAY trade mark.

### **B) Rights or Legitimate Interests**

The Panel is of the view that a *prima facie* case has been established by the Complainant. There is indeed no evidence that the Respondent is commonly known by the name ALIPAY nor is there evidence of a legitimate noncommercial or fair use of the disputed domain name (paragraphs 4(c)(i) and (iii) of the Policy). The Respondent appears to be using the disputed domain name to misleadingly divert consumers for commercial gain (paragraph 4(c)(iii) of the Policy).

As a *prima facie* case has been established by the Complainant, the onus shifts to the Respondent to rebut the Complainant's contentions with evidence of its rights or legitimate interests. The Respondent has, however, not responded and in the absence of any evidence to the contrary, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

### **C) Bad Faith**

Paragraph 4(b) of the Policy enumerates the following circumstances which, if established, would constitute evidence of registration and use of a domain name in bad faith by the respondent:

- “(i) circumstances indicating that [the respondent] registered or [the respondent] 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 [the respondent's] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] 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 [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location.”

The Panel is persuaded on the evidence submitted that the Respondent must have been aware of the Complainant's ALIPAY mark and of the fame associated with the ALIPAY and ALIBABA payment platform and ecommerce services. The disputed domain name was registered long after the Complainant was established and long after after the ALIPAY mark was first used and registered. The Complainant is undoubtedly a well-known entity and the Complainant has shown evidence of how extensively the ALIPAY mark has been used. The Panel concludes that the Respondent's intention must have been to attempt to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant and its ALIPAY mark. Internet users would very easily and likely be misled into thinking that the Complainant is the source of or affiliated to, and/or has sponsored or endorsed the Respondent's website.

The Panel finds that the Complainant has established that the Respondent registered and used the disputed domain name in bad faith.

## **6. Decision**

Having established all three elements required under the Policy, the Panel decides that relief shall be GRANTED.

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Francine Tan  
Panelist

Dated: 2 January 2015