



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-18010171
Complainant:	MYOB Technology Pty Ltd
Respondent:	Tan Xeng
Disputed Domain Name(s):	<myobcenter.com>

1. The Parties and Contested Domain Name

The Complainant is MYOB Technology Pty Ltd, of Level 3, 235 Springvale Road, Glen Waverly VIC 3150, Australia.

The Complainant's authorized representative in these administrative proceedings is Chang Tsi & Partners, whose address is 6-8th Floor, Tower A, Hundred Island Park, Bei Zhan Jie Street, Xixheng District, Beijing 100044, China.

The Respondent is Tan Xeng, of 41 Main Road, Xiamen, China.

The domain name at issue are <myobcenter.com>, registered by Respondent with Eranet International Limited, of 2 7/F Trans Asia Centre, 18 Kin Hong Street, Kwai Chung N.T., Hong Kong SAR, China.

2. Procedural History

On 18 September 2018, the Complainant submitted a Complaint to the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC"), pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy") adopted by the Internet Corporation for Assigned Names and Numbers ("ICANN") on 24 October 1999. On 18 September 2018, the ADNDRC confirmed receipt of the Complaint. The Complainant elected that this case to be dealt with by a one-person panel.

On 20 September 2018, the ADNDRC transmitted by email to the Registrar, Eranet International Limited, a request for registrar verification in connection with the disputed domain names. On 12 October 2018, the Registrar transmitted by email to the ADNDRC its verification response, confirming the registration particulars for the disputed domain names and that the language of the registration agreement is the English language.

On 23 October 2018, the ADNDRC transmitted a Written Notice of Complaint, forwarding the Complaint concerning the disputed domain name <myobcenter.com> along with annexures to the Respondent, requesting that the Respondent submit a Response within 20

calendar days. The Notice specified the due date for the Response as being on or before 12 November 2018.

On 13 November 2018, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, the ADNDRC notified the parties that the panel in this case had been selected, with Mr. David L. KREIDER acting as the sole panelist. The ADNDRC advised the Panel that no Response was received from the Respondent. The Panel determines that the appointment was made in accordance with Rules 6 and Articles 8 and 9 of the Supplemental Rules. The Panel received the file from the ADNDRC and should render the Decision on or before 27 November 2018, if there are no exceptional circumstances.

3. Preliminary Issue: Consolidation

The Complainant has requested to consolidate the complaint against <myobcenter.com> which is held by the Respondent, "Tan Xeng", with an action against the <myob360.com>; <myobexpress.com>; and <myobonline.com> domains so they may be heard in a single proceeding.

In support of its application, the Complainant avers as follows:

Complainant submits one Complaint against the Domain Names is appropriate. Paragraph 10(e) of the Policy Rules (the Rules) provides the Panel with general powers to consolidate multiple domain names disputes even where there are technically different Registrants: see: *Backstreet Productions, Inc. v. John Zuccarini, CupcakeParty, Cupcake Real Video, Cupcake-Show and Cupcakes-First Patrol*, WIPO Case No. D2001-0654.

Complainant submits:

According to the WHOIS information of the domain name <myobcenter.com>, Complainant submits this Complaint against its registrant Tan Xeng is appropriate.

Although the Registrant of <myobcenter.com>, Tan Xeng, is different from the registrants of other 3 domain names <myob360.com>; <myobexpress.com>; and <myob-online.com>, the Complainant has abundant evidence to prove that all (4) Domain Names are controlled by one entity with fictitious names. The specific reasons are as follows:

3.1 The Domain Names and/or the websites to which they resolve are the subject to **common control**. In particular:

- (i) **Phishing Scam** - All the aforesaid four (4) Domain Names have been registered and/or are being controlled by one person and are being used in connection with a serious phishing scam.

Complainant sells account management software under its MYOB trademark and this software enables users of the Complainant's MYOB software to send invoices to their customers via email.

Respondents have created false invoices, which look like genuine invoices generated by the Complainant's MYOB software, and are sending these invoices via email to members of the Australian public from email addresses associated with the Domain Names (the **Phishing Emails**). When a Phishing Email recipient clicks on the "View Invoice" icon in the false invoice, malware is downloaded onto their computer. The malware is designed to steal personal information such as passwords and banking credentials.

The Phishing Emails, which are substantially the same, appear to come from a genuine Australian business using the Complainant's MYOB software and feature:

- an email address containing the Complainant's MYOB trademark: for e.g., <noreply@myobcenter.com>;
- the Complainant's **myob** trademark.
- the phrase “Powered by MYOB”
- a copyright statement “2017 MYOB Technology Pty Ltd”
- a link named 'Privacy'. This is a link to the genuine MYOB Privacy Policy at <https://www.myob.com/au/privacy-policy>.

Phishing Email recipients are misled and deceived into believing they come from genuine Australian businesses using Complainant's MYOB software.

(ii) Same Registrant Using Fictitious Names - The Registrant names, "Tan Xeng" and “Wang Lao” are fictitious names. Further, the Registrant, Administrative and Technical contact details for all four (4) Domain Names are false. Common control or ownership has been found in circumstances indicating that a single person or entity has registered multiple domain names using fictitious names. See: *Adobe Systems Incorporated v. Domain OZ*, WIPO Case No. D2000-0057; *Yahoo!, Inc v. Somsak Sooksripanich and Others*, WIPO Case No. D2000-1461.

(iii) Common Contact Details - The Domain Names have common false Registrant, Administrative and Technical contact details. Common control of ownership is found where there is common Administrative or Technical contact or other instances of commonality in the registration information, such as the same postal address or email address. See: *Caesars World, Inc. v. Starnet Communications and Atlantic West Gaming Entertainment, Ltd.*, WIPO Case No. D2002-0066;

- a. Registrant, Administrative and Technical **email address** for <myob360.com>, <myobexpress.com>, <myob-online.com> and <myobcenter.com> is the same, namely whois-protect@hotmail.com.
- b. Registrant **street address** for <myob360.com>, <myobexpress.com>, <myob-online.com> and <myobcenter.com> (41 Main Road, Xiamen China) is the same or similar.
- c. **Registrant, Administrative and Technical phone and fax number** for <myob360.com>, <myobexpress.com> and <myob-online.com> are the same, namely “Wang Lao” and +86.5925763128.
- d. None of the 4 Domain Names have ever resolved to active websites and all are used in connection with the Phishing Emails. Panels have found multiple respondents to be commonly controlled where the content of their websites were substantially identical. See: *CSA International v. John O. Shannon and Care Tech Industries, Inc.*, WIPO Case No. D2000-0071.

3.2 The consolidation of the Domain Names is fair and equitable to all parties. In particular:

All 4 Domain Names have been used in connection with calculated, targeted and repeated Phishing Scams and therefore the complaints involve common questions of fact and law and thus:

- (i) are suited for consolidation in the expedited dispute resolution process contemplated by the Policy: See: *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. D2010-0281.
- (ii) would create unnecessary onerous and inadequate cost on Complainant if determined separately.

The Panel notes that the Registrant of the disputed domain <myobcenter.com> is shown in the WHOIS search results as “Tan Xeng”, residing at **42** Main Street, Xiamen, in Fujian Province, China, whereas the Registrant for the other three (3) disputed domains <myob360.com>, <myobexpress.com> and <myob-online.com>, is shown as “Wang Lao”, who purports to reside at **41** Main Street, Xiamen, in Fujian Province, China. The Complainant has helpfully highlighted additional commonalities among the registrations of the four (4) disputed domain names (e.g., same Registrar; same privacy protection service; same contact phone number, and cetera) – the most critical of which is that each of the four (4) domains is associated with the Phishing Scam that incorporates within the Phishing Emails the Complainant’s registered “MYOB” mark and even includes a link that redirects users to the genuine MYOB Privacy Policy at <https://www.myob.com/au/privacy-policy>.

Notwithstanding the above, the Panel understands that the three (3) additional disputed domain names, <myob360.com>; <myobexpress.com>; and <myobonline.com>, which are (nominally) held by the Registrant, “Wang Lao”, are the subject of a separate UDRP and that the issue of possible consolidation in this proceeding is now moot. Accordingly, the Panel need not decide the issue of possible consolidation.

4. Factual background

History of MYOB Trademark

The trademark MYOB was first used on business accounting software in America in the late 1980's. The trademark MYOB is derived from and is an initialism for the words "mind", "your", "own" and "business". In 1997, Data-Tech bought the IP rights to the software and thereafter changed its name to MYOB Limited. In 2011, MYOB Limited restructured as MYOB Group Limited (MYOB Group).

Owner of Intellectual Property

Complainant is the owner of MYOB Group's intellectual properties. Complainant licenses the MYOB trademark to MYOB Group's subsidiary trading companies.

MYOB Group is Australia's and New Zealand’s leading provider of business management solutions, including accounting, payroll, tax, practice management, customer relationship management (CRM), job costing and inventory software.

Complainant owns at least 24 prior domain names which include MYOB.

Complainant's first MYOB trademark was applied in Australia in 1994. Complainant owns at least 141 trademark applications/registrations for MYOB or marks including MYOB.

During 2016, Complainant spent AU\$13,875,000 marketing its goods and services under the MYOB trademark and marketing spend for the first half of 2017 financial year was AU\$17,021,000.

Complainant's mark MYOB appears in broad online/offline media.

The Respondent, "Tan Xeng", has defaulted and failed to file a response in these administrative proceedings.

5. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

5.1 The Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Complainant submits:

The relevant parts of the Domain Names are confusingly similar to MYOB trademark. In particular:

- (i) The domain designator ".com" is without legal significance and must be disregarded in comparing the marks in the domain name: *Wal-Mart Stores, Inc. v. Walsucks and Walmarket Puerto Rico* (case No. D2000-0477).
- (ii) The MYOB trademark is inherently distinctive. Through worldwide registrations and use, the distinctive character of the MYOB mark has been enhanced and protected.
- (iii) The word AUSTRALIA is a geographical term. It is well established that a trademark in its entirety together with a geographical term in a domain name creates a domain name that is confusingly similar to the trademark. See, e.g., *C. & A. Veltins GmbH & Co. KG v. Heller Highwater Inc.*, WIPO CaseNo.D2004-0466.
- (iv) The terms "express", "online" and "center" are generic terms and are not sufficient to ward off the specter of confusing similarity arising in the Domain Names. Complainant provides:
 - (v) online services.
 - (vi) a product called "retail express".
 - (vii) frequently uses the term "center" in connection with its "MYOB Learning Center", "MYOB Help Center", "MYOB Cost Center" and "MYOB Command Center".
 - (viii) The term "360" is a commonly used accounting term and "buzz" word, meaning comprehensive or complete. The term "360" is non-distinctive.
- (ix) The use of generic descriptive and non-distinctive terms together with an inherently distinctive trademark does not prevent a finding of confusing similarity. The use of "express", "online", "center" and "360" adds to the confusingly similarity of these domain names with MYOB trademark.

5.2 The Respondent has no rights or legitimate interests in respect of the Domain Names:

- (i) Respondents is not found in registering any MYOB relevant trademarks or trade names;
- (ii) Respondents are not commonly known by the Domain Names.

- (iii) Respondents have not used or made demonstrable preparations to use the Domain Names or a name corresponding thereto in connection with a *bona fide* offering of goods or services. Respondents' intention to commit fraud through the Phishing Emails is compelling evidence that the Respondents lack any legitimate interest in the Domain Names. See: *Go Daddy Operating Company, LLC. v Wu Yanmei* WIPO Case No. D2015-0177.
- (iv) Respondents are not making a legitimate non-commercial or fair use of the Domain Names without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's trademark in issue.

5.3 The Domain Names have been registered and are being used in bad faith:

- (v) Respondents have registered and are using the Domain Names to intentionally attract, for commercial gain, internet users to online locations, being links on the Phishing Emails, by creating a likelihood of confusion with the Complainant's trademark and the source of the Phishing Emails in contravention of paragraph 4 (b) (iv) of the Policy.
- (vi) The purpose of the Phishing Emails is to trick the recipients into taking steps to view or pay the invoice by clicking the link on the invoice which immediately downloads malware designed to steal the recipient's banking credentials. This is not a fair use but clearly an opportunistic bad faith registration and use of the Domain Names. See: *Go Daddy Operating Company, LLC v. Wu Yanmei* Case No. D2015-0177.
- (vii) Respondents have registered Domain Names primarily for the purpose of disrupting the business of a competitor in contravention of paragraph 4 (b) (iii) of the Policy. Registration and use of the Domain Names for sending Phishing Emails demonstrates the Respondents' intent to disrupt the business of the Complainant: *Go Daddy Operating Company, LLC v. Wu Yanmei* Case No. D2015-0177.
- (viii) The Domain Names do not resolve to active websites. Passive holding of the Domain Names clearly indicates they were registered and used merely to send Phishing Emails in bad faith. See: *Telstra Corporation Limited v Nuclear Marshmellows* WIPO Case No. D2000-0003.
- (ix) Respondents' use of false WHOIS contact data is an obvious attempt to remain elusive and evidence of bad faith registration and use of the Domain Names. See: WIPO Case No. 2000-1121, *Nintendo of America Inc. v. Berric Lipson*.
- (x) Respondents have engaged in a pattern of conduct by registering the Domain Names in order to prevent the Complainant from reflecting its MYOB mark in contravention of paragraph 4(b)(ii) of the Policy. Registration of 4 Domain Names over a nine month period, all used in connection with the same type of Phishing Email is sufficient to demonstrate a "pattern of conduct": See *Society BIC v. LaPorte Holdings, LLC*, WIPO Case No. D2005-0342.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Respondent, "Tan Xeng", has defaulted and failed to file a response in these administrative proceedings.

6. Findings

The Panel finds that Complainant owns at least 141 trademark applications/registrations for MYOB or marks including MYOB dating as far back as 1994, including its registration for the Mark in the People's Republic of China, and that the disputed domain name was registered on 3 January 2018.

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 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

Complainant's widely registered MYOB Mark is distinctive and famous. The disputed domain name incorporates the MYOB Mark in its entirety, and the inclusion of the generic terms "express", "online" and "center" does not reduce the confusing similarity with Complainant's Mark, but are descriptive of services offered by Complainant are therefore increase the likelihood of actual confusion on the part of public internet users.

The Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to the trademarks in which the Complainant has rights and that the first element at Paragraph 4(a)(i) of the Policy is satisfied.

B) Rights and Legitimate Interests

In the present case, Complainant alleged that the Respondent has no rights or legitimate interests in respect of the disputed domain name and the Respondent defaulted and has failed to come forward with rebuttal evidence, or to assert any such rights, or legitimate interests.

Complainant has adduced compelling evidence to prove Respondent's intention to commit fraud on public internet users through the Phishing Emails. This, in turn, establishes beyond serious question that the Respondent lacks any legitimate interest in the disputed domain name. *Go Daddy Operating Company, LLC. v Wu Yanmei* WIPO Case No. D2015-0177.

The Panel finds that the second element at Paragraph 4(a)(ii) of the Policy is satisfied.

C) Bad Faith

Complainant has also provided evidence to demonstrate its trademark's extensive good will. Given the fame of Complainant's MYOB Mark, there is no other conceivable interpretation of the Respondent's registration and use of the disputed domain name incorporating the Mark other than that of bad faith. *Swarovski Aktiengesellschaft v. Zhang Yulin*, WIPO Case No. D2009-0947.

Further, the use made by the Respondent of the disputed domain name as part of a Phishing Scheme intended for use to hijack Complainant's customers' information strongly suggests

opportunistic bad faith. *Tata Sons Limited v. TATA Telecom Inc/Tatatelecom.com, Mr. Singh*, WIPO Case No. D2009-0671.

Finally, paragraph 4(b)(iv) of the Policy provides that it will be evidence of bad faith registration and use by a respondent, if by using the domain name it had intentionally attempted to attract, for commercial gain, internet users to the websites or other on-line locations, here, the Phishing Emails, to which the disputed domain name is associated, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the websites or locations or of a product or service on the websites or locations to which the domain name resolves.

The Panel finds that the third element at Paragraph 4(a)(iii) of the Policy is satisfied.

7. Decision

Complainant having established all three elements under the ICANN Policy, the Panel concludes that relief shall be GRANTED and the <myobcenter.com> domain name TRANSFERRED to the Complainant.



David L. Kreider
Sole Panelist

Dated: 16 November 2018