



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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| <b>Case No.</b>                 | <b>HK-1700964</b>   |
| <b>Complainant:</b>             | <b>1. Tencent Technology (Shenzhen) Company Limited<br/>2. Tencent Holdings Limited Company</b>   |
| <b>Respondent:</b>              | <b>Lim Sang Woon</b>  |
| <b>Disputed Domain Name(s):</b> | <b>&lt;&lt;antitencent.com&gt;, &lt;tencentai.com&gt;, &lt;tencentent.com&gt;, &lt;tencentholdings.link&gt;, &lt;tencentholdings.xyz&gt;, &lt;tencentmedia.link&gt;, &lt;tencentmedia.xyz&gt;, &lt;tencentmotors.com&gt;, &lt;tencenttechnology.com&gt;, &lt;tencentta.xyz&gt;, &lt;tencenttk.xyz&gt;, &lt;tencentt.xyz&gt;, &lt;tencenttv.xyz&gt;, &lt;tencentw.xyz&gt;, &lt;tencentx.xyz&gt;, &lt;tencenty.xyz&gt;, &lt;tencentz.xyz&gt;, and &lt;wechatpay.xyz&gt;</b> |

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**1. The Parties and Contested Domain Name**

The Complainant is Tencent Technology (Shenzhen) Company Limited of Nanshan District, Shenzhen, China (Complainant 1) and Tencent Holdings Limited Company of Wanchai, Hong Kong (Complainant 2) (hereinafter collectively referred to as 'Complainant'). The Authorized Representative of Complainant is Jacob Chen of Beijing Lusheng Law Firm of Beijing, China.

The Respondent is Lim Sang Woon of Seoul, Republic of Korea.

The disputed domain names are <antitencent.com>, <tencentai.com>, <tencentent.com>, <tencentholdings.link>, <tencentholdings.xyz>, <tencentmedia.link>, <tencentmedia.xyz>, <tencentmotors.com>, <tencenttechnology.com>, <tencentta.xyz>, <tencenttk.xyz>, <tencentt.xyz>, <tencenttv.xyz>, <tencentw.xyz>, <tencentx.xyz>, <tencenty.xyz>, <tencentz.xyz>, and <wechatpay.xyz> registered with Gabia, Inc., of 4F, Complex B, USPACE 1 B/D, 670 Bundanggu Sungnam City Kyunggido 463400 Korea (South)., registered by Respondent.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (ADNDRC) ["Centre"] on April 7, 2017, seeking for a transfer of the disputed domain names. On April 7, 2017, the Centre sent an email to the Gabia, Inc. asking for the detailed data of the registrant. On April 10, 2017, the Registrar verified that lim sang woon is the current registrant of the domain names and that Respondent is bound by the Gabia, Inc. registration agreement and has thereby agreed to resolve domain disputes

brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

The Centre verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the Centre's Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

The proceedings commenced on April 11, 2017. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint both in Korean and English, setting a deadline of May 1, 2017 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts.

On April 27, 2017, the Centre appointed Ho Hyun Nahm, Esq., as the Sole Panelist in the administrative proceeding and with the consent for the appointment, impartiality and independence declared and confirmed by the Panelist, the Centre, in accordance with paragraph 7 of the Rules, organized the Panel of this case in a legitimate way.

On April 20, 2017, the Complainant submitted additional evidence.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the Centre has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2. Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the Centre's Supplemental Rules and any rules and principles of law that the Panel deems applicable.

On April 19, 2017, Respondent sent an email in the nature of an objection to the Complainant's request that the Language of the Proceedings be English to the Centre. Given the circumstances, in order to give the Respondent the opportunity to file a Response in Korean at his/her request, on May 3, 2017 the Panel issued the Administrative Panel Order No. 1 allowing the Respondent: to file a Response in Korean setting a deadline of May 16, 2017. On May 14, 2017, the Respondent submitted a Response in Korean in an email format (not in a Centre's standard format) to the Centre which the Panel confirmed as a formal Response. On May 16, 2017, the Complainant sent an email to the Centre in response to the Respondent's Response.

### **3. Factual background**

Complainant is the lawful rights holder of the marks 'TENCENT', 'TENCENT + Chinese characters', and 'WECHAT' in Republic of Korea as well as in China. Established in November 1998 and headquartered in Shenzhen China, Complainant 1 is one of the largest comprehensive Internet service providers in China; and Complainant 2 is an affiliate company of Complainant 1. Complainant provides value-added Internet, mobile and telecommunication services and online advertising. Complainant operates leading Internet platforms in China, including QQ (QQ Instant Messenger), WeChat (a social media application with instant messaging, commerce and payment services), Tencent.com, Tencent Games, Tencent Comic, Tencent Pictures, Tencent News, and Tencent Video.

The Respondent is not using the disputed domain names at all. The disputed domain names were registered on the dates as below:

Disputed domain names <tencentai.com> and <tencentent.com> were registered on September 10, 2015; <antitencent.com> on September 30, 2015; <tencenttechnology.com> on August 19, 2016; <tencentholdings.xyz> on August 22, 2016; <tencentholdings.link> on October 25, 2016; <tencentmotors.com> on September 7, 2016; <tencentmedia.link> and <tencentmedia.xyz> on November 9, 2016; <tencentk.xyz>, <tencentt.xyz>, <tencentv.xyz>, <tencentw.xyz>, <tencentx.xyz>, <tencenty.xyz>, and <tencentz.xyz> on November 27, 2016; and <wechatpay.xyz> on August 22, 2016.

#### **4. Relief Sought**

Complainant requests that the disputed domain names be transferred from Respondent to Complainant 1.

#### **5. Parties' Contentions**

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

The Complainant's contentions in the Complaint are summarized as follows:

- i) Each of the disputed domain names is identical with or similar to the trademarks owned by the Complainant, which may cause confusion;
- ii) The Respondent has no right or lawful interest in the disputed domain names; and
- iii) The Respondent registered and used the disputed domain names in bad faith.

The Complainant's contentions in its Additional Submission are as follows:

- i) The respondent further acknowledged that he intended to sell the disputed domain names to the Complainants or third party at high price (USD 10,000), evidencing his bad faith of registering and using the disputed domain names as his main purpose of registering the disputed domain names are selling for illegitimate income; and
- ii) The respondent is registering and using the disputed domain names by threatening the Complainant that he/she would make this dispute public and disrupting the business of the Complainant.

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

The Respondent's contentions in the Response filed in Korean are categorized and summarized as follows:

##### **i. (Rights or Legitimate Interests)**

Respondent has rights or legitimate interests to register and own the disputed domain names in order to set up and operate a domain name hosting company. Respondent is preparing to set up a domain name hosting company, and for that reason he/she owns a number of domain names.

'Ten Cent' is a general noun or inherent noun. Anyone can register a domain name comprising of inherent noun such as 'One Cent,' 'Two Cent,' etc. Based on the lines of reasoning used by Complainant, no one can register any domain name. Complainant's lines of reasoning do not make sense, and they are not persuasive at all. They are not logical at all. Respondent knows that U.S. domain name company Go Daddy also owns a number of domain names concerned with Ten Cent.

ii. (Neither Registration Nor Use in Bad Faith)

Respondent did not register the disputed domain names in bad faith. Respondent has never used the disputed domain names in bad faith either. The disputed domain names remain unused.

Respondent does not understand the dispute over the domain names at issue, and he/she cannot accept it, either. Respondent is preparing to set up a domain name hosting company, and for that reason he/she owns a number of domain names. It is not such that Respondent has bad faith to own or use the disputed domain names with Ten Cent. It is not that Respondent created a home page or used the domain names for connection to other pages, and he/she merely registered the disputed domain names and has them under Respondent's ownership.

Complainant, on its own initiative, contacted Respondent by an e-mail in bad faith for purchasing the disputed domain names. On April 6, 2017, Ming<1406054180@qq.com> sent Respondent an e-mail and stated his wish to purchase the <tencenttechnology.com> domain name. Respondent was short of money to operate his/her company after Respondent set it up, and he/she sent the response to the e-mail. On April 10, 2017, there was a notice that there would be a disputed resolution proceedings on the domain names concerned with Complainant from the Asia Domain Name Dispute Resolution Centre. Respondent has since then sent an e-mail multiple times to the initial e-mail sender, and the sender has not even read Respondent's e-mails and has not responded to Respondent. It costs Respondent money to register and maintain 18 domain names, and there will have to be compensation amounting to US\$10,000 for abandoning the right to these 18 domain names, and Respondent knows that such requests and demands would be unfavorable for domain name dispute resolution. Had if Respondent known their intention, Respondent would not have responded to their query. Respondent has recently set up his/her own company and simply needed money to run the company. Respondent knows that he/she should not own the domain names for sales.

iii. (Reverse Domain Name Hijacking)

Complainant has acted in bad faith and is engaging in reverse domain name hijacking by initiating this dispute. Complainant is attempting to deprive Respondent, the rightful, registered holder of the disputed domain names, of his/her rights to use the disputed domain names. Complainant seeks "to take by stealth the disputed domain names from a weak individual by using domain name dispute resolution procedures." If necessary, Complainant should have registered the domain name concerned in the first place and that a global corporation like Complainant uses violence against a weak individual in another country. Complainant is trying to steal Respondent's domain names.

iv. (Language Issue)

Respondent does not speak English. Also, he/she used Google's translator and sent an e-mail in English concerning the current domain name issue.

## 6. Findings

Complainant established that it had rights in the marks contained in the disputed domain names. Each of the disputed domain names is confusingly similar to Complainant's protected marks.

Respondent has no rights to or legitimate interests in the disputed domain names.

Respondent registered and used the disputed domain names in bad faith.

Complainant has not engaged in reverse domain name hijacking.

## 7. Discussions

Paragraph 15(a) of the Rules instructs this Panel to “decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.”

### **Preliminary Issue: Language of Proceedings**

The Panel notes that the Registration Agreement is written in Korean, thereby making the language of the proceedings in Korean. The Panel has discretion to determine the appropriate language of the proceedings on appointment. *See* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Ed. Complainant respectfully requests that the proceedings be conducted in English. In accordance with the Rules, paragraphs 11(a), 10(b) and 10(c), Complainant requests that the Panel determine English to be the language of the proceeding for the following reasons:

- (i) Respondent has registered 680 domain names, half of which incorporate English words, including sophisticated vocabulary such as “campus”, “semiconductor”, “institute”, “genetics”, which demonstrate the Respondent's ability to communicate in English;
- (ii) It is also apparent from the written communications exchanged between the parties with respect to a possible voluntary transfer of some of the disputed domain names that Respondent has no difficulties in communicating in the English language. The English used by Respondent in his letters demonstrates his ability to understand and communicate in English without difficulties;
- (iii) Domiciled in China, Complainant is unable to communicate in Korean. If Complainant were to submit all documents in Korean, the proceeding would be unduly delayed and the Complainant would have had to retain specialized translation services at a cost very likely to be higher than the overall costs of these proceedings, while using English as the language of proceeding will ensure fairness to all parties;
- (iv) English is a global language and widely-used in the world including China where Complainant locates and Korea where Respondent resides, and therefore, it will be fair to all parties to use English as the language of proceeding;
- (v) Complainant believes that this case is a sufficiently exceptional case and that the language of the proceedings should be in the English language. *See Chopard Int'l SA, et al v. Shenyang Zhongxu Economic and Trade Co Ltd*, HKIAC Case No. DCN-0400020, in which

the panel finds the case was “sufficiently exceptional” where the disputed domain name was in the English language and the complaint and inter-party communications were in English.

Meanwhile, Respondent expressed that he could not speak English and had to use Google translator.

Given the contentions of each of Complainant and Respondent, to prevent the current proceedings from resulting in additional burden and delay, the Panel decided in its Procedural Order No.1 issued on May 3, 2017 that: Respondent may file a Response in Korean; and the Panel's Decision will be issued in English. *See* FilmNet Inc. v Onetz, FA 96196 (FORUM Feb. 12, 2001) (finding it appropriate to conduct the proceeding in English under Rule 11, despite Korean being designated as the required language in the registration agreement because the respondent submitted a response in English after receiving the complaint in Korean and English); *see* also SWX Swiss Exchange v. SWX Financial LTD, D2008-0400 (WIPO May 12, 2008) (in determining the language of the proceeding, “account should be taken of the risk that a strict and unbending application of paragraph 11 may result in delay, and considerable and unnecessary expenses of translating documents...”).

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

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

Complainant contends that Complainant has registered TENCENT and WECHAT trademarks in Korea and China, which long predate the registration of the disputed domain names.

The Panel notes that Complainant has registered the TENCENT, TENCENT (with a Chinese characters) and WECHAT trademarks in Korea and China. The Panel specifically notes that Complainant registered TENCENT (with a Chinese characters) trademark with the KIPO (Korean Intellectual Property Office) (e.g., Reg. No. 410,304,479 covering classes of services 41, 42, 45 registered Nov.14, 2014; Reg. No. 450,050,347 covering classes of goods and services 9, 16, 35, 38 registered July 21, 2014). The Panel also notes that Complainant registered WECHAT trademark with the KIPO (Korean Intellectual Property Office) (e.g., Reg. No. 450,043,577 covering classes of goods and services 9, 38 registered Feb.13, 2013).

The general consensus is that KIPO, CTO or USPTO registrations are sufficient in conferring rights in a mark under Policy ¶ 4(a)(i). *See* T-Mobile USA, Inc. dba MetroPCS v. Ryan G Foo / PPA Media Services, FA1627542 (FORUM Aug. 9, 2015) (finding that Complainant has rights in the METROPCS mark through its registration with the United States Patent and Trademark Office); *see* also Samsung Electronics Co., Ltd v. lupie jet, KR-1700157 (CENTRE May 3, 2017) (finding that Complainant has rights in the SAMSUNG mark through its registration with the Korean Intellectual Property Office). Therefore, the Panel deems Complainant’s evidence of KIPO and CTO registrations for the TENCENT and WECHAT marks sufficient in establishing rights under Policy ¶ 4(a)(i).

Next, Complainant argues that it is a well-established principle that the generic top-level domain suffixes including '.com', '.xyz' and '.link' would be disregarded in assessing the similarity between a disputed domain name and a mark in which a complainant has rights. It further argues that hence, the dominant components of the disputed domain names are 'antitencent', 'tencentai', 'tencentent', 'tencent holdings', 'tencentmedia', 'tencentmotors', 'tencenttechnology', 'tencent a', 'tencentk', 'tencentt', 'tencentv', 'tencentw', 'tencentx', 'tencenty', 'tencentz', 'wechatpay', incorporating the Complainant's well-known trademarks TENCENT and WECHAT in their entirety, while the additional parts, 'anti', 'ai', 'ent', 'holdings', 'media', 'motors', 'technology', 'a', 'k', 't', 'v', 'w', 'x', 'y', 'z' and 'pay', are merely generic words or English letters. Complainant contends that none of the additional words/letters could avoid a finding of confusing similarity, given the reputation of the TENCENT and WECHAT trademarks. It further avers that TENCENT and WECHAT are coined and highly distinctive marks which could attract Internet users' attention. Reproduction of the Complainant's TENCENT and WECHAT trademarks in entirety in the disputed domain names in itself establishes that the disputed domain names are confusingly similar to the Complainant's trademarks.

The Panel agrees that addition of generic or descriptive terms i.e., 'anti,' 'holdings,' 'media,' 'motors,' 'technology,' or 'pay' to Complainant's marks in order to form the disputed domain names does not distinguish the disputed domain names from Complainant's mark for the purposes of a Policy ¶ 4(a)(i) analysis. *See* Microsoft Corporation v. Thong Tran Thanh, FA 1653187 (FORUM Jan. 21, 2016) (determining that confusing similarity exist where [a disputed domain name] contains Complainant's entire mark and differs only by the addition of a generic or descriptive phrase and top-level domain, the differences between the domain name and its contained trademark are insufficient to differentiate one from the other for the purposes of the Policy.).

The Panel notes that disputed domain names <tencent a.xyz>, <tencentk.xyz>, <tencentt.xyz>, <tencentv.xyz>, <tencentw.xyz>, <tencentx.xyz>, <tencenty.xyz>, <tencentz.xyz> merely add one Latin letter 'a', 'k', 't', 'v', 'w', 'x', 'y', 'z' to Complainant's mark TENCENT. The Panel also notes that the disputed domain names <tencentai.com> and <tencentent.com> merely add suffix "ai" or "ent" to Complainant's mark TENCENT. The Panel, however, finds that such mere adding one Latin letter or two or three Latin-letter suffix to the Complainant's mark does not avoid confusing similarity. *See* PathAdvantage Associated v. VistaPrint Technologies Ltd, FA1625731 (FORUM July 23, 2015) (holding that the <pathadvantages.com> domain name was confusingly similar to the PATHADVANTAGE trademark because the domain name "merely adds the letter 's' to Complainant's mark"); *see* also Capital One Financial Corp. v. Yin Jun / Yin Jun, FA1639063 (Forum Oct. 25, 2015) (finding <capitalonem.com> confusingly similar to CAPITAL ONE); SBE Hotel Licensing, LLC v. SITCO, Michael Shaya & Shaya Int'l Trading Corp. d/b/a "SITCO," D2011-2254 (WIPO Feb. 27, 2012) (finding <slshotelmb.com> confusingly similar to SLS HOTEL).

The Panel also agrees that the addition of the '.com' '.xyz' and '.link' gTLDs is irrelevant for the purposes of the Policy. *See* Jerry Damson, Inc. v. Tex. Int'l Prop. Assocs., FA916991 (FORUM Apr. 10, 2007) ("The mere addition of a generic top-level domain ('gTLD') '.com' does not serve to adequately distinguish the Domain Name from the mark.").

The Panel therefore finds that each of the disputed domain names is confusingly similar to Complainant's mark TENCENT or WECHAT per Policy ¶ 4(a)(i).

The Panel therefore finds Policy ¶4(a)(i) satisfied.

## B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm't Commentaries*, FA741828 (Forum Aug. 18, 2006) (holding that the complainant must first make a *prima facie* case that the respondent lacks rights and legitimate interests in the disputed domain name under UDRP ¶ 4(a)(ii) before the burden shifts to the respondent to show that it does have rights or legitimate interests in a domain name); see also *AOL LLC v. Gerberg*, FA780200 (Forum Sept. 25, 2006) (“Complainant must first make a *prima facie* showing that Respondent does not have rights or legitimate interest in the subject domain names, which burden is light. If Complainant satisfies its burden, then the burden shifts to Respondent to show that it does have rights or legitimate interests in the subject domain names.”).

Complainant asserts that Respondent has no rights or legitimate interests in the disputed domain names. Complainant claims Respondent holds no trademark rights in the disputed domain names. It claims Complainant has never authorized or licensed the Respondent to use the TENCENT or WECHAT trademarks or to use them to register domain names. It further claims Respondent is not affiliated with Complainant in any way.

The Panels finds that a lack of contradicting evidence in the record that a respondent was authorized to use a complainant’s mark in a domain name can be evidence of a lack of rights and legitimate interests. See *Navistar International Corporation v. N Rahmany*, FA1620789 (FORUM June 8, 2015) (finding that the respondent was not commonly known by the disputed domain name where the complainant had never authorized the respondent to incorporate its NAVISTAR mark in any domain name registration).

Complainant next contends that there is no indication that Respondent demonstrated, before notice of the dispute, use of or demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services, or that the Respondent is making legitimate noncommercial or fair use of the disputed domain names because Respondent is passively holding the disputed domain names.

The Panel is of the view that inactive use of a domain name is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii). See *Thermo Electron Corp. v. Xu*, FA713851 (FORUM July 12, 2006) (finding that the respondent’s non-use of the disputed domain names demonstrates that the respondent is not using the disputed domain names for a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)); see also *The Lincoln Electric Company v. David Vargo*, FA1725364 (FORUM May 10, 2017)(finding that inactive use of a domain name is not a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) and it is not a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶ 4(c)(iii)). Complainant has attached screenshots of Respondent’s websites which do not contain any content. The Panel also notes that Respondent has admitted inactive use of the disputed domain names. Therefore, the Panel holds that Respondent lacks rights and legitimate interests under Policy ¶¶ 4(c)(i) and (iii).

Finally, Complainant asserts that there is no evidence indicating that Respondent has been commonly known by the disputed domain names, nor any plausible explanation exists to suggest the possibility of any circumstances of the type specified in paragraph 4(c) of the Policy, or of

any other circumstances giving rise to a right to or legitimate interest of Respondent in the disputed domain names and that on the contrary, reverse Whois search result shows Respondent is a trademark squatter that has registered 680 domain names. The Panel is of the view that WHOIS information can be used to support a finding under Policy ¶ 4(c)(ii) that a respondent is not commonly known by a disputed domain name. *See* Chevron Intellectual Property LLC v. Fred Wallace, FA1626022 (FORUM July 27, 2015) (finding that the respondent was not commonly known by the <chevron-europe.com> domain name under Policy ¶ 4(c)(ii), as the WHOIS information named “Fred Wallace” as registrant of the disputed domain name). The Panel notes that the WHOIS information of the disputed domain names lists “Lim Sang Woon” as the registrant. Therefore, the Panel holds the Respondent is not commonly known by the disputed domain names. As such, the Panel concludes that Respondent has no rights or legitimate interests in respect of the disputed domain names pursuant to paragraph 4(c) of the Policy.

As such, the Panel holds that Complainant established a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), and thus the burden shifts to Respondent to show it does have rights or legitimate interests.

Respondent is responding in this respect that he/she has rights or legitimate interests to register and own the disputed domain names in order to set up and operate a domain name hosting company, and for that reason he/she owns a number of domain names, and thus he/she has legitimate interests in the disputed domain names. However, as Respondent admits that the disputed domain names remain unused, the Panel holds that Respondent has failed to prove that he/she is using the disputed domain names for a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii).

In addition, Respondent contends that 'Ten Cent' is a general noun or inherent noun, and thus anyone can register a domain name comprising of inherent noun such as 'One Cent,' 'Two Cent,' etc. However, the distinctiveness as a trademark is determined relatively in relation to goods or services on which the mark is being used. The Panel does not agree that 'Ten Cent' is a general noun or inherent noun. Even if it falls within the concept of non-distinctive word, the Panel is of the view that it has sufficient distinctiveness as a trademark in relation to Complainant's goods and services, *i.e.*, provision of value-added Internet, mobile and telecommunication services and online advertising. Furthermore, once a word has become another person's rights as in the subject case, then any one is supposed to respect and protect it within the scope of its rights.

The Panel also observes that even a domain name hosting company is not justified to register and use domain names which are confusingly similar to another person's trademark in which another person holds rights. Respondent failed to prove that Respondent demonstrated, before notice of the dispute, use of or demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services, or that the Respondent is making legitimate noncommercial or fair use of the disputed domain names because Respondent is passively holding the disputed domain names. The Panel holds that a mere preparation to set up and operate a domain name hosting company is not considered as demonstrable preparations to use the disputed domain names in connection with a *bona fide* offering of goods or services.

In conclusion, the Panel cannot find that Respondent has satisfied to prove existence of any of other elements under Policy ¶ 4(c). The Panel therefore finds Policy ¶4(a)(ii) satisfied.

### C) Bad Faith

Complainant contends that Respondent registered and used the disputed domain names in bad faith. First of all, Complainant contends that its TENCENT and WECHAT trademarks, through continuous and extensive use in connection with Internet services, are well known in the world including Korea where the Respondent resides. Complainant next claims that its TENCENT and WECHAT marks are coined by Complainant with no specific meaning in Chinese, Korean or English, and are known primarily as identifiers of Complainant and its services. Complainant thus asserts it inconceivable that Respondent happened to register the disputed domain names incorporating the well-known TENCENT and WECHAT trademarks without actual knowledge of said trademarks. It contends that there is no plausible explanation as to why the Respondent selected the marks TENCENT and WECHAT as part of the disputed domain names other than to exploit the goodwill of Complainant and the TENCENT and WECHAT trademarks to make illegitimate interests.

Pursuant to Complainant's allegations along with its supporting evidence, the Panel notes that Complainant's official website, [www.qq.com](http://www.qq.com), ranks No. 2 in China and No. 7 worldwide. According to Financial Times, Complainant ranked 11 in BrandZ rankings for global brands in 2015 and 2016. First released in 2011, WeChat is now one of the largest standalone messaging apps by monthly active users with over 800 million active users, and is growing even faster than Facebook. In 2016, the revenue of Complainant 2 reached approximately 21.9 trillion US dollars. The Complainant founded an office in Korea early in 2006. The Complainant has acquired high reputation through their cooperation with market leaders in Korea in IT, banking and entertainment fields and gained huge media exposure. Complainant is reported as “(one of) the world’s most powerful tech brands” in Korean media. This Panel further notes that the panel holds in *Tencent Technology (Shenzhen) Limited v. Asia-Pacific Technology Group Co. Limited*, ADNDRC Case No. HK-1300520, that “the Complainant has a widespread reputation in Internet, media and telecommunication industry in the world”; and the panel in *Tencent Holdings Limited v. Ning Yang*, WIPO Case No. D2012-2330, finds the trademark of Complainant 2 has a strong reputation and is widely known.

In light of the total circumstances and UDRP precedents as stated above, this Panel notes that Complainant and its trademarks TENCENT and WeChat were widely-known and enjoyed a good fame and reputation, long-predating the registration of the disputed domain names, around the world including Korea where Respondent is domiciled.

The Panel notes arguments of bad faith based on constructive notice are irrelevant because UDRP case precedent declines to find bad faith as a result of constructive knowledge. *See The Way Int'l, Inc. v. Diamond Peters*, D2003-0264 (WIPO May 29, 2003) (“As to constructive knowledge, the Panel takes the view that there is no place for such a concept under the Policy.”). Meanwhile this Panel infers, due to the fame and notoriety of Complainant and its trademarks TENCENT and WeChat and the manner of registration and use of the disputed domain names by Respondent that Respondent had actual knowledge of Complainant's rights in Complainant's trademarks prior to registering the disputed domain names and finds that actual knowledge is adequate evidence of bad faith under Policy ¶ 4(a)(iii). *See Univision Comm'cns Inc. v. Norte*, FA 1000079 (Forum Aug. 16, 2007) (rejecting the respondent's contention that it did not register the disputed domain name in bad faith since the panel found that the respondent had knowledge of the complainant's rights in the UNIVISION mark when registering the disputed domain name); *see also The Toronto-Dominion Bank v. Emanuella Doucet*, FA1714314 (Forum March 9, 2017) (inferring due to the fame and notoriety of Complainant's marks and the manner of use of the disputed domain names, however, that Respondent had actual knowledge of Complainant's

rights in the Marks prior to registering the disputed domain names and finds that actual knowledge is adequate evidence of bad faith under Policy ¶ 4(a)(iii).

Complainant also asserts that two of the disputed domain names, <tencentholdings.link> and <tencentholdings.xyz>, are almost identical to the name of Complainant 2, Tencent Holdings Limited, clearly indicating Respondent's familiarity with Complainant, and thus Respondent's awareness of the TENCENT and WECHAT trademarks suggests opportunistic bad faith registration. The Panel agrees with Complainant that Respondent's awareness of the TENCENT and WECHAT trademarks suggests opportunistic bad faith registration, due to Respondent's familiarity with Complainant coupled with the fact of a worldwide good fame and notoriety of both Complainant in itself and its trademarks TENCENT and WeChat. *See Singapore Airlines Ltd. v. European Travel Network*, D2000-0641 (WIPO Aug. 29, 2000) (where selection of disputed domain name is so obviously connected to complainant's well-known trademark, use by someone with no connection with complainant suggests opportunistic bad faith); *see also Am. Online, Inc. v. Fu*, D2000-1374 (WIPO Dec. 11, 2000) (finding that the ICQ mark is so obviously connected with the complainant and its products that the use of the domain names by the respondent, who has no connection with the complainant, suggests opportunistic bad faith).

Complainant contends that by the time of this Complaint, the disputed domain names have not been put into actual use and that inactivity and lack of use of a domain name amounts to passive holding by Respondent, which can be treated as the domain name being used and falls within the concept of the domain name being used in bad faith. The Panel notes that Complainant has provided screenshots of the disputed domain names' inactive websites. It further claims that this is especially true under the circumstance that the disputed domain names reproduce undisputedly famous trademarks TENCENT and WECHAT.

This Panel notes that panels tend to find that respondents show bad faith by failing to make use of disputed domain names under Policy ¶ 4(a)(iii). *See VideoLink, Inc. v. Xantech Corporation*, FA1608735 (FORUM May 12, 2015) ("failure to actively use a domain name is evidence of bad faith registration and use pursuant to Policy ¶ 4(a)(iii)."). The Panel agrees that the passive holding of a domain name does not necessarily circumvent a finding that the domain name is being used in bad faith within the requirements of paragraph 4(a)(iii) of the Policy. *See Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003 (finding that in considering whether the passive holding of a domain name, following a bad faith registration of it, satisfies the requirements of paragraph 4(a)(iii), the panel must give close attention to all the circumstances of the respondent's behavior, and a remedy can be obtained under the Policy only if those circumstances show that the respondent's passive holding amounts to acting in bad faith.). *See also DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000) (concluding that the respondent's [failure to make an active use] of the domain name satisfies the requirement of ¶ 4(a)(iii) of the Policy).

The particular circumstances of this case that this Panel has considered are:

- i) As observed above, Complainant's TENCENT and WeChat marks have a good reputation and are widely known, as evidenced by the fact that Complainant had a long and well established reputation in connection with the provision of value-added Internet, mobile and telecommunication services and online advertising at the time of Respondent's registration; and
- ii) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain names. As the Panel finds such a failure to make an active use

here, the Panel finds that Respondent uses the disputed domains in bad faith under Policy ¶ 4(a)(iii).

Taking into account all of the above, the Panel concludes that Respondent's passive holding of the disputed domain names constitutes bad faith under Policy, paragraph 4(a)(iii) and that Respondent is using the disputed domain names in bad faith.

Complainant additionally claims that Respondent has registered 680 domain names, among which numerous domain names incorporate well-known trademarks of others such as "Samsung", "Google", "Facebook" and "Mazda" and claims that such conduct constitutes a pattern of conduct of preventing a trademark holder from reflecting the mark in a corresponding domain name as specified in paragraph 4b(ii) of the Policy.

The Panel notes that Respondent registered as many as 18 disputed domain names directed against Complainant and agrees that such conduct constitutes a pattern of conduct of preventing Complainant from reflecting its marks in the corresponding disputed domain names as specified in paragraph 4b(ii) of the Policy. *See Telstra Corporation Limited v. Ozurls*, WIPO Case No. D2001-0046 (a 'pattern of conduct' as required in Paragraph 4.b.(ii) typically involves multiple domain names directed against multiple Complainants, but may involve multiple domain names directed against a single Complainant.").

Finally, Complainant avers that before this Complaint is filed, Complainant contacted Respondent to negotiate the purchase of some of the disputed domain names, and the price offered by Respondent for <tencenttechnology.com> was USD 30,000. Respondent contacted Complainant again on April 11, 2017 after being notified of this UDRP proceeding, offering to sell the disputed domain name concerned again for USD 10,000. Complainant claims that the prices were well in excess of his out-of-pocket costs directly related to the domain name concerned, and therefore this is a clear case of cyber squatting within the meaning of Policy, paragraph 4(b)(i).

Paragraph 4(b) of the Policy sets out four non-exclusive criteria which shall be evidence of the registration and use of a domain name in bad faith including:

"circumstances indicating that [the Respondent has] registered or [has] 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 [its] documented out-of-pocket costs directly related to the domain name."

The Panel observes that Respondent has offered to sell one of the disputed domain names to Complainant for US\$30,000 which was, on his/her own initiative, later reduced to US\$10,000 by Respondent for all 18 disputed domain names. However, the Panel is of the view that even the amount of US\$10,000 for all 18 disputed domain names falls within the concept of valuable consideration in excess of [its] documented out-of-pocket costs directly related to the disputed domain names.

The Respondent has given no satisfactory reason why it has a legitimate interest in a domain name comprising the Complainant's trademarks TENCENT, TECHNOLOGY and '.com' '.xyz' and '.link' gTLDs. Accordingly, the Panel finds on the balance of probabilities based on the evidence that Respondent has registered or acquired the domain names concerned primarily for the purpose of selling, renting, or otherwise transferring it to Complainant who is the owner of

the trademark TENCENT or to a competitor of Complainant, for valuable consideration in excess of Respondent's documented out-of-pocket costs directly related to the disputed domain names.

This can be so even where Complainant initiates contact and makes the first offer as in the present case. *See* Moynahan v. Fantastic Sites, Inc. D2000-1083 (WIPO Oct. 22, 2000) (finding bad faith where the respondent offered to sell the domain name to the Complainant for \$10,000.00 when the respondent was contacted by the complainant.); *see* also Colorganics v. Domain Administrator / Marketing Express, FA1672179 (FORUM June 2, 2016)( The Respondent has also offered to sell the Domain Name to the Complainant for \$16,800.00.).

In response to Complaint's contentions, Respondent contends that he/she did not register the disputed domain names in bad faith. Respondent has never used the disputed domain names in bad faith either, as he/she is passively holding disputed domain names. Respondent is arguing that he/she is preparing to set up a domain name hosting company, and for that reason he/she owns a number of domain names. It is not such that Respondent has bad faith to own or use the disputed domain names with Ten Cent. It is not that Respondent created a home page or used the domain names for connection to other pages, and he/she merely registered the disputed domain names and has them under Respondent's ownership. However, as observed above, the Panel found that the passive holding *per se* of the disputed domain names by Respondent constituted bad faith use of the disputed domain names.

Respondent argues that Complainant, on its own initiative, contacted Respondent in bad faith for purchasing the domain names. It costs Respondent money to register and maintain 18 domain names, and there will have to be compensation amounting to US\$10,000 for abandoning the right to these 18 domain names. As the Panel found that even the amount of US\$10,000 for all 18 disputed domain names falls within the concept of valuable consideration in excess of [its] documented out-of-pocket costs directly related to the disputed domain names, the Panel does not agree with Respondent's arguments.

Finally, Respondent implies that his/her offer of the prices for the disputed domain name(s) does not constitute the registration and use of the disputed domain names in bad faith because Complainant initiated contacting Respondent to negotiate the purchase of some of the disputed domain names. However, as observed above this can constitute the registration and use of the disputed domain names in bad faith even where Complainant initiated contact and made the first offer as in the present case.

The Panel therefore finds Policy ¶4(a)(iii) satisfied.

#### **D) Reverse Domain Name Hijacking**

Respondent alleges that Complainant has acted in bad faith and is engaging in reverse domain name hijacking by initiating this dispute. Respondent contends that Complainant is attempting to deprive Respondent, the rightful, registered holder of the disputed domain names, of his/her rights to use the disputed domain names.

Respondent specifically claims that Complainant seeks "to take by stealth the disputed domain names from a weak individual by using domain name dispute resolution procedures." Respondent further contends that if necessary, Complainant should have registered the domain name concerned in the first place and that a global corporation like Complainant uses violence

against a weak individual in another country. Respondent conclusively argues that Complainant is trying to steal Respondent's domain names.

The Panel notes that Respondent's statements are unsubstantiated by any facts. Respondent failed to provide proof his/her established any rights to any specific asset or mark. Furthermore, the Panel found that Complainant has satisfied all of the elements of Policy ¶ 4(a) above, it therefore finds that Complainant has not engaged in reverse domain name hijacking. *See* World Wrestling Fed'n Entm't, Inc. v. Ringside Collectibles, D2000-1306 (WIPO Jan. 24, 2001) ("Because Complainant has satisfied [all of] the elements of the Policy, Respondent's allegation of reverse domain name hijacking must fail"); *see* also Gallup, Inc. v. PC+s.p.r.l., FA190461 (FORUM Dec. 2, 2003) (finding no reverse domain name hijacking where complainant prevailed on the "identical/confusingly similar" prong of the Policy); *see* also Securian Financial Group, Inc. v. me s / enom, FA1595614 (FORUM Jan. 16, 2015) (denying request for reverse domain name hijacking where Complainant satisfied all elements of Policy ¶ 4(a)); *see* also JAGUAR LAND ROVER LIMITED v. Martin Green / Coventry Auto Components, FA1720158 (FORUM April 25, 2017) (Respondent's statements are unsubstantiated by any facts. Respondent failed to provide proof it established any rights to any specific asset or mark. Respondent has failed to prove its claim).

## 8. Decision

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

Accordingly, it is Ordered that the domain names <antitencent.com>, <tencentai.com>, <tencentent.com>, <tencentholdings.link>, <tencentholdings.xyz>, <tencentmedia.link>, <tencentmedia.xyz>, <tencentmotors.com>, <tencenttechnology.com>, <tencentai.xyz>, <tencentk.xyz>, <tencentt.xyz>, <tencentv.xyz>, <tencentw.xyz>, <tencentx.xyz>, <tencenty.xyz>, <tencentz.xyz>, and <wechatpay.xyz> be **TRANSFERRED** from Respondent to Complainant 1.

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Ho Hyun Nahm, Esq.

Sole Panelist

Dated: May 25, 2017