



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400677
<b>Complainant:</b>	Alibaba Group Holding Limited
<b>Respondent:</b>	刘晓波 (Liu Xiao Bo); Lingping
<b>Disputed Domain Name(s):</b>	<alibaba.公司>; <alibabamobile.com>; <alibaba66.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.

The Respondent is 刘晓波 (Liu Xiao Bo), of 蓬莱市经济开发区, 烟台市, 山东, 265600 and lingping of shanqu, rizhaoshi, Shandong, China.

The domain names at issue are <alibaba.公司> registered by Respondent with Ourdomains Limited, of Unit 2209, 22/F, Wu Chung House, 213 Queens Road East, Wanchai, Hong Kong; <alibabamobile.com> registered by Respondent with Century Oriental International Co., Ltd of Suite 2611 Office Tower Langham Place, 8 Argyle Street, Mongkok, Kowloon, Hong Kong; and <alibaba66.com> registered by Respondent with Foshan Yidong Network Co. Ltd of Guang Dong, Foshan Chancheng Junning Building No. 1801, China (the “**Registrars**”).

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”) on 10 December 2014 seeking transfers of the domain names in dispute. On the same day, the Centre transmitted by email to the Registrars a request for registrar verification in connection with the Disputed Domain Names. In the same month, the Registrars transmitted by email to the Centre its verification responses confirming that the Respondents are listed as the registrants of the Disputed Domain Names, confirming the languages of the Domain Names as English and Chinese and providing the Respondent’s contact details.

The Center has verified that the Complainant satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”), the Rules of Procedure under the Policy (the “**Rules**”) and the Centre’s Supplemental Rules. In accordance with

the Rules, the Centre formally notified the Respondent of the Complaint and Proceedings on 23 December 2014.

Under the Rules, the Respondent must submit a response within 20 days of the commencement of the Complaint (i.e. 12 February 2015). No response has been received.

The Panel comprising of Dr. Shahla F. Ali as a sole panelist was appointed by the ADRDRC-HK on 16 January 2015. The papers pertaining to the case were delivered to the Panel by email on the same day.

### **3. Factual background**

The Complainant, Alibaba Group Holding Ltd., was founded in Hangzhou in 1999 and operates its e-commerce business through its affiliates and subsidiaries. It has offices in about seventy (70) cities across China as well as in Hong Kong, Taiwan, Korea, India, Japan, Singapore, USA and Europe. The Complainant owns the registered trademarks “ALIBABA” and “阿里巴巴” in many countries including Mainland China, Hong Kong, Taiwan and Singapore.

The Respondents registered the disputed domain names: <alibaba.公司> on 11 October 2014; <alibabamobile.com> on 3 September 2014; and <alibaba66.com> on 14 September 2014.

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

- I. The domain names in dispute is confusingly similar to the Complainant’s trademarks “ALIBABA” and “阿里巴巴”.
- II. Respondents have no rights or legitimate interests in the registration of the domain names in dispute.
- III. Respondents have registered and used the domain names in bad faith.

#### **B. Respondents**

The Respondents did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK and as such have not contested the allegations of the Complaint.

### **5. Findings**

Having considered all the documentary evidence, and the Respondents’ non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy (“the

Rules”) the Panel is of the view that it should proceed to decide on the Disputed Domain Names (“<alibaba.公司>; <alibabamobile.com>; and <alibaba66.com>”) based upon the Complaint and evidence submitted by the Complainant.

The Panel having reviewed the evidence, finds that the disputed domain names are subject to common control and finds that consolidation would be procedurally efficient, fair and equitable to all parties.

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**

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

In addition to registrations in Mainland China, Hong Kong, Singapore and Taiwan, the Complainant’s “ALIBABA” trademark was also validated by the Trademark Clearinghouse on 12 August 2013.

The Disputed Domain Name <alibaba.公司> incorporates and is identical to the Complainant’s “ALIBABA” trademark. It is well established that in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <公司> and <.com> should be disregarded (see *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd*, WIPO Case No. D2006-0762)

The Disputed Domain Names <alibabamobile.com> and <alibaba66.com> incorporate the Complainant’s “ALIBABA” trademark in its entirety with the only difference between the Disputed Domain Names and the Complainant’s “ALIBABA” trade mark being the inclusion of the numbers “66” and “mobile” as a suffix. It is well-established that in cases where the distinctive and prominent element of a Disputed Domain Name is the Complainant’s mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain Name and the mark. See, for example *LEGO Juris A/S v. Huangderong*, WIPO Case No. D2009-1325; *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com*, WIPO Case No. D2009-0121; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064.

“ALIBABA” is the distinctive and prominent component of the Disputed Domain Name and the addition of the numbers “66” or word “mobile” do not substantively distinguish it from the ALIBABA trademarks.

The prominence of the Complainant’s ALIBABA trade mark (particularly in the PRC where the Respondent is located) is such that the use of the numbers “66” and “mobile” in connection with the word “ALIBABA” does nothing to dispel confusion as to an association with the Complainant and its services in the PRC. The connection between “ALIBABA” with the numbers “66” and “mobile” as a suffix to the Complainant’s “ALIBABA” trade mark is such that the relevant Disputed Domain Name considered as a whole would be likely regarded by potential customers of the Complainant as a reference to the Complainant’s business. See, for example *eBay Inc. v. SGR Enterprises and Joyce Ayers* (Case No. D2001-0259) where, the Panel held that the domain names in question, namely <ebaylive.com> and <ebaystore.com>, were confusingly similar to the Complainant’s trademark.

It is the view of this Panel that the Complainant has discharged its burden of proof in establishing that the Disputed Domain Names are identical and/or confusingly similar to its registered trade marks in which the Complainant has rights or interests for the purposes of Paragraph 4(a)(i) of the Policy.

## **B) Rights and Legitimate Interests**

The Examiner finds that the Complainant has not licensed, consented to or otherwise authorized the Respondents to use its "ALIBABA" ("阿里巴巴") trade marks in respect of the Disputed Domain Names. The Respondents could have no rights or legitimate interests in the domain names as it has chosen to take a well known trademark without permission, and in the case of <alibaba.公司> use it in a domain name with the .公司 extension and in the case of <alibabamobile.com> and <alibaba66.com> with the numbers “66” and “mobile” as a suffix raising the inference that it is an official domain name of the Complainant, which it is not and mislead users into believing that the Disputed Domain Name is associated with the Complainant.

The Respondents registered the Disputed Domain Names over 15 years after the Complainant first began using the Complainant’s trademark. The Respondent is based in China where the Complainant’s trademark is particularly well known. In addition, no evidence could be found indicating that the Respondent’s own any trademark registrations reflecting or corresponding to the Disputed Domain Names in China.

In addition, the Examiner finds that the Respondents as individuals are not known by the Disputed Domain Names and thus there is no need for them to use “ALIBABA” in the Disputed Domain Names.

The Respondents have not proffered any evidence establishing any rights or legitimate interests in the Disputed Domain Names. The only conclusion open to evidence is that the Respondents have no rights or legitimate interests in the Disputed Domain Names. This element has been established by clear and convincing evidence.

### C) Bad Faith

Paragraph 4(b) of the Policy sets down four (4) factors in which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domain Name in bad faith. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

The Domain Names were registered many years after the "ALIBABA" ("阿里巴巴") trademarks were registered and many years after the Alibaba Platform became a well known online marketing technology platform. It appears therefore, that the Respondents registered and used the domain names with the intention of attempting to attract for commercial gain internet users to the site to which the domain name resolves by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation and endorsement of the registrant's site.

In addition, the trademarks are registered with the Trademark Clearinghouse and accordingly the Respondents as registrants would have been specifically notified of the Complainant's ownership of its rights in the "ALIBABA" ("阿里巴巴") trademark prior to registering the Disputed Domain Names. Furthermore, the Respondents have chosen to take a prominent name and trademark without prior permission, and in the case of <alibaba.公司> use it in a domain name with the .公司 extension and in the case of <alibabamobile.com> and <alibaba66.com> with the numbers “66” and “mobile” as a suffix raising the necessary inference that it is an official domain name of the Complainant

that will lead to an official website of the Complainant, which they do not.

The fact that the Disputed Domain Names are inactive does not preclude a finding of bad faith. The passive holding of a domain name can constitute bad faith registration and use, particularly when combined with other factors, such as the Respondent preventing a trademark holder from reflecting its mark in a corresponding domain name and where good faith use by the Respondent is inconceivable.

In this case, it is clear that the Respondents motives for registering the Disputed Domain Names was to sell them for a profit evidenced by the email exchange between a representative of the Complainant and the Respondent. In the case of <alibaba.公司>, in response to an offer to purchase the site for USD 500, the Respondent noted “这个价格太低了。。。希望你能出一个合理的价格”(“this price is too low...I wish to sell it if you can come up with an appropriate price”). The Respondent later asked for “30000 万美金行吗?” (“how about USD 300,000,000?”). Even if the 万 was a typo, USD30,000 is nevertheless a substantial amount. The Respondent also listed the Disputed Domain Names <alibabamobile.com> and <alibaba66.com> as domain names which he owns and is willing to sell. The email exchange clearly indicates that the Respondent knew about the Alibaba Trade Marks and intentionally registered them for the purpose of selling them at a profit in excess of the Respondent’s out-of-pocket expenses. This exchange falls within paragraph 4(b) of the Policy as evidence of bad faith.

No evidence has been provided showing that the Respondents sought the permission of the Claimant to use its mark, nor any evidence showing that the Claimant gave such permission to the Respondents.

The only conclusion open to evidence is that the Respondents’ registered the domain names in bad faith.

## **6. Decision**

The Complainant has proved its case. It has registered trademarks in the name “ALIBABA” (“阿里巴巴”) to which the contested domain names are confusingly similar. The Respondent has provided no evidence showing rights or legitimate interest in the Disputed Domain Names. The Complainant has shown that the Respondents registered and used the Disputed Domain Names in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and orders that the Disputed Domain Names “alibaba.公司”; “alibabamobile.com”; and “alibaba66.com” be transferred to the Complainant Alibaba Group Holding Limited.

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Dr. Shahla F. Ali  
Panelist

Dated: 30 January 2015