



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400675
Complainant:	Alibaba Group Holding Limited
Respondent:	张东恒
Disputed Domain Name(s):	<aliyun.公司>

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 张东恒, of 厦门前埔中路华林东盛二期, 厦门市, 福建, 361000, China.

The domain name at issue is <aliyun.公司>, registered by the Respondent with Ourdomains Limited, of Unit 2209, 22/F, Wu Chung House, 213 Queen's Road East, Wanchai, Hong Kong.

2. Procedural History

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“the Centre”) on 8 December 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 9 December 2014, the Registrar transmitted by email to the Centre its verification response, advising that 22cn140827b7f6nj is not listed as the registrant and providing the details of the underlying registrant, 张东恒. The Complainant was notified and given until 22 December 2014 to file an amended Complaint. An amended Complaint was filed on 18 December 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 18 December 2014. In accordance with the Rules, the due date for the Response was 7 January 2015. A Response was submitted on 6 January 2015. The Respondent initially requested a three-member

panel be appointed but communicated on 7 January 2015 a request to the Centre for a single-member panel to be appointed.

The Centre appointed Francine Tan as panelist in this matter on 16 January 2015. The Panel is properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

A. Complainant

The Complainant is officially known as Alibaba or “阿里巴巴”. It 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 on 19 September 2014.

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) for importers and exporters and a Chinese marketplace (www.alibaba.com.cn and www.1688.com) for domestic trade in China. The Complainant offers business management software and Internet infrastructure services targeting small businesses across China and incubates e-commerce talent for Chinese small businesses. As of 31 December 2012, 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's online Chinese marketplace had around 77.7 million registered users and showcased more than 8.5 million supplier storefronts.

The Complainant, through its affiliate, Alibaba Cloud Computing Ltd. launched the provision of advanced data-centric cloud computing services in September 2009, under the brands ALIYUN and 阿里云. The Aliyun business develops highly scalable platforms for cloud computing and data management, and provides a comprehensive suite of cloud computing services to support the users of Complainant's various online and mobile commerce ecosystem, including sellers, and other third-party customers and businesses.

The Complainant's website at www.aliyun.com is linked the Group's other online platforms including the Alibaba.com websites; Taobao Marketplace (www.taobao.com and www.taobao.com.cn), a popular C2C online shopping destination in China; the AliExpress Marketplace (www.aliexpress.com), a leading global e-marketplace made up of small business sellers that offer a wide variety of consumer products at great prices; Alipay platform (www.alipay.com), China's most widely used third-party payment solution; Alimama (www.alimama.com), China's leading online advertising platform; Tmall.com (www.tmall.com), one of the China's leading business-to-consumer (B2C) shopping destination for quality and brand-name goods; and Juhuasuan (www.juhuasuan.com), a comprehensive group shopping platform in China.

The ALIYUN and 阿里云 trade marks were first used in 2009 and have been registered in various jurisdictions around the world including China, Hong Kong,

Singapore and Taiwan. The marks were also validated by the Trademark Clearinghouse on 12 August 2013.

Significant time and effort have been expended by the Complainant to extensively promote its ALIYUN and 阿里云 trade marks. The Complainant has also promoted its ALIBABA and ALI-branded e-commerce services and products extensively since 1999 via the Internet, trade press, trade shows and other print media. The ALIYUN and 阿里云 trade marks have become distinctive of the Complainant and immediately recognisable to consumers as being associated with the Complainant, its affiliates and their business.

B. Respondent

The disputed domain name was registered on 11 October 2014 and does not resolve to an active website.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The disputed domain name is identical and/or confusingly similar to the trade mark ALIYUN in which the Complainant has rights.
- ii. The disputed domain name incorporates the ALIYUN trade mark in its entirety. The domain extension “.公司” should be disregarded when assessing whether a domain name is identical or confusingly similar to a trade mark.
- iii. The Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name was registered about 5 years after the ALIYUN mark was first used by the Complainant. The Respondent has not been licensed or otherwise authorised by the Complainant to use the ALIYUN trade mark.
- iv. There is no evidence that Respondent owns any trademark registrations in China (where the Respondent is apparently domiciled) which reflect or correspond to the disputed domain name.
- v. There is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.
- vi. The disputed domain name does not resolve to an active website.
- vii. There cannot be any bona fide offering of goods or services or legitimate non-commercial or fair use by the Respondent of the disputed domain name. The disputed domain name is identical to the Complainant's well-known ALIYUN mark and any use will inevitably lead Internet users into believing that the disputed domain name is associated with the Complainant.

- viii. The disputed domain name has been registered and is being used in bad faith since the Respondent has no rights or legitimate interests in it.
- ix. The Complainant and its ALIYUN trade mark are particularly well known amongst the Chinese-speaking population. It is inconceivable that the Respondent was not aware of the Complainant and its ALIYUN trade mark at the time he registered the disputed domain name. The Respondent must have received a trademark claims notice from the Trademark Clearinghouse prior to the registration of the disputed domain name. The Respondent's registration of the disputed domain name cannot possibly be for any reason other than to take advantage of the Complainant's reputation in the ALIYUN trade mark in bad faith for the purpose of commercial gain. The passive holding of a domain name can constitute bad faith registration and use.

B. Respondent

The Respondent's contentions may be summarized as follows:

- i. The registration of the disputed domain name is legitimate and obtained from certified auction houses designated by the China Internet Network Information Centre.
- ii. The Complainant lacks legal basis for alleging cybersquatting and dishonesty by the Respondent as it cannot prove that the bidding and procedure for the obtaining of the disputed domain name was illegitimate.
- iii. The domain extension “.公司” is not a proprietary suffix owned by the Complainant although it owns trademark rights to ALIYUN and 阿里云. The Complainant has no right to “inhibit the behaviour of a person's imagination”. This is a “personal dream and freedom”.
- iv. The Complainant is familiar with this industry and had enough time to register the disputed domain name during the Sunrise and pre-registration periods. The Complainant should have paid attention to its claimed famous brand, ALIYUN, and protected it.
- v. There was no intention to infringe when the domain name was registered and the Respondent simply thought that the disputed domain name was unwanted.

5. Findings

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. 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 ALIYUN. The Panel notes that the Respondent has acknowledged the Complainant's rights to the mark. As for the domain extension “.公司”, it is indeed a well-established principle that one should disregard the domain extension when considering the issue of whether a domain name in dispute is confusingly similar or identical to a complainant's trade mark. As ALIYUN has been incorporated in its entirety in the disputed domain name, the Panel finds that the disputed domain name is identical to the Complainant's trade mark.

The first requirement of paragraph 4(a) of the Policy has therefore been met by the Complainant.

B) Rights and Legitimate Interests

Paragraph 4(c) of the Policy provides that “any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate [the respondent's] rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

- (i) before any notice to [the respondent] of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Complainant has established a *prima facie* case in relation to the above. Having done so, the burden shifts to the Respondent to demonstrate rights and legitimate interests in respect of the disputed domain name. The Panel has considered the Respondent's arguments and statements in his Response but does not find a basis upon which to find for the Respondent, having regard to the provisions of paragraph 4(c) of the Rules. The Respondent admits knowing of the Complainant and of the Complainant's rights to the trade marks ALIYUN and 阿里云. He has not shown he has independent rights to the disputed domain name or the name ALIYUN. The Respondent's argument that the Complainant should have taken steps to register the disputed domain name when it could is flawed, as there is no such legal obligation imposed upon trademark owners. The fact remains that the disputed domain name

incorporates a trade mark which the Complainant has rights to and unless the Respondent can establish with evidence that he has rights or legitimate interests in respect of the disputed domain name which are recognised under the Policy, his proclamations of possessing an unfettered right and freedom to register domain names as he wishes are without merit and irrelevant to the issue at hand.

The Panel therefore finds that the Respondent has failed to demonstrate he has rights or legitimate interests in respect of the disputed domain name in accordance with the Policy.

The second requirement of paragraph 4(a) of the Policy has therefore been met by the Complainant.

C) Bad Faith

The Panel finds that the Complainant and its ALIYUN trade mark are well known. The Respondent was clearly aware of the Complainant and its reputation, and would have been aware of the Complainant's ALIYUN trade mark at the time he registered the disputed domain name as he must have received a trademark claims notice from the Trademark Clearinghouse. In any case, the Respondent does not dispute that the Complainant has rights to the trade mark ALIYUN.

The Panel refers to the consensus view expressed by UDRP panelists which is that:

“the apparent lack of so-called active use (*e.g.*, to resolve to a website) of the domain name without any active attempt to sell or to contact the trademark holder (passive holding), does not as such prevent a finding of bad faith. The panel must examine all the circumstances of the case to determine whether the respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity. Panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and *vice versa*.”

(See paragraph 3.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition.)

In the case of *Telstra Corporation Limited v. Nuclear Marshmallows* (WIPO Case No. D2000-0003), the Panel considered the following factors in arriving at its conclusion that there was bad faith registration and use:

“(i) the Complainant's trademark has a strong reputation and is widely known, as evidenced by its substantial use in Australia and in other countries,

(ii) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) the Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,

(iv) the Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.”

The Panel is of the view that the well-known status of the Complainant and of its established ALIYUN mark are such that it would be difficult to conceive of any plausible actual or contemplated use of the disputed domain name that would not be illegitimate. In this case, the Respondent was clearly aware of the Complainant and of its trade mark ALIYUN when he registered the disputed domain name, and had done so under a privacy protection service. The Respondent has not shown evidence of an independent, legitimate claim to the use of the disputed domain name or the name ALIYUN nor provided evidence of contemplated good faith use of the disputed domain name.

The cumulative circumstances are therefore such that the Panel has no difficulty concluding that the disputed domain name has been registered and is being used in bad faith.

The third requirement of paragraph 4(a) of the Policy has therefore been established by the Complainant.

6. Decision

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

Francine Tan
Panelist

Dated: 19 January 2015