



Asian Domain Name Dispute Resolution Centre

Hong Kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1400672
Complainant:	Alibaba Group Holding Limited
Respondents:	1. Domain Data Guard 2. Henny Rahmayanti
Disputed Domain Name(s):	<alipayeu.com>

1. The Parties and Contested Domain Name

The Complainant is Alibaba Group Holdings Limited (the “Complainant”), of Grand Cayman, Cayman Islands.

The Respondents are Domain Data Guard, of Yogyakarta, Indonesia and Henny Rahmayanti of Riau, Indonesia.

The domain name at issue is <alipayeu.com>, registered by Respondents with CV. Rumahweb Indonesia (the “Registrar”).

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (Hong Kong Office) (the “Centre”) on 26 November 2014. On 27 November 2014, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On 1 December 2014, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Centre verified that the Complainant 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 Respondents of the Complaint, and the proceedings commenced on 9 December 2014. In accordance with the Rules, the due date for Response was on 29 December 2014. The Respondent did not submit any response

The Centre appointed Syed Naqiz Shahabuddin as the sole panelist in this matter on 16 January 2015. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

The Panel also considered the issue concerning the language of the proceedings. The Complainant requested that the language of the proceedings be English and presented the reasons thereof.

The language of the registration agreement for the disputed domain name is in the Indonesian language. According to paragraph 11(a) of the Rules, unless otherwise agreed by the parties, or specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Among other circumstances, the respondent's ability to clearly understand the language of the complaint and the complainant being disadvantaged by being forced to translate, may both support a panel's determination that the language of the proceeding remains the language of the complaint, even if it is different from the language of the registration agreement (*Coutts & Co. v. Agus Santoro - Ptmanis DRI-110160*, WIPO Case No. D2014-1526; *Deutsche Messe AG v. Kim Hyungho*, WIPO Case No. D2003-0679; *LEGO Juris A/S v. Linecom*, WIPO Case No. D2012-2068).

According to the Rules, paragraph 10(b), the Panel shall ensure that the parties are treated with equality and that each party is given a fair opportunity to present its case. Therefore a panel shall objectively assess the parties' language ability in the proceeding.

In the present case, the Panel notes that the website resolving from the disputed domain name is in English and is intended for users in Europe. In addition, the Respondents did not respond to the Complaint nor object to the Complainant's request that the language of the proceedings be English. The Complainant submitted the Complaint in English and would have had to bear considerable costs and effort to translate all the submissions in English. It would have been relatively simple for the Respondents to have made the request for the Complainant to translate the Complaint or to otherwise object to the Complainant's reasons to proceed in English, all of which the Respondents failed or requested to do.

Having regard to all the circumstances, this Panel determines under the Rules, paragraph 11(a) that English shall be the language of the proceeding.

3. Factual background

A. For Complainant

- 3.1 The Complainant was founded in 1999 in Hangzhou, China and has since expanded through its subsidiaries and affiliated companies to about seventy (70) cities across China as well as in Hong Kong, Taiwan, Korea, India, Japan, Singapore, USA, and Europe.
- 3.2 The Complainant through its subsidiaries and affiliated companies is a global leader in the field of e-commerce and operates two online business-to-business (B2B) marketplaces: a global trade marketplace (www.alibaba.com) for importers and exporters; and a Chinese marketplace (www.alibaba.com.cn and www.1668.com) for domestic trade in the PRC, as well as business management software and Internet infrastructure services targeting small businesses across China.
- 3.3 In 2003, the Complainant founded the brand TAobao (www.taobao.com), a Chinese language consumer-to-consumer (C2C) Internet retail platform and online shopping destination.
- 3.4 From the success of the Complainant's various B2B and C2C websites, in 2014, the Complainant launched a third-party payment solution platform under the brand name ALIPAY. The ALIPAY platform provides an escrow payment service for amongst others, various online platforms operated by the Complainant such as <Alibaba.com>, <www.taobao.com>, <www.aliexpress.com>, <www.alimama.com>, <www.aliyun.com>, <www.tmall.com>, and <www.juhuasuan.com> that reduces transaction risk for online consumers as shoppers have the ability to verify their goods before payment is released to the seller.
- 3.5 The Complainant has registered ALIPAY as a trademark in various countries.
- (a) The earliest registration for the ALIPAY trademarks was on 12 October 2004 in Hong Kong.

- (b) In Indonesia, the ALIPAY trademark has been registered as follows:

Trademark	Registration Date	Class(es)
ALIPAY	10 November 2006	9, 35, 36, 38, 39, 42,
ALIPAY	4 May 2010	38, 42

- (c) The ALIPAY trademark is also registered in China, Malaysia, and the USA.

B. For Respondents

3.6 The Respondents registered the disputed domain name on 7 November 2014.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

- i. The Complainant asserts that ALIPAY is a well-known trademark. The Complainant contends further that the disputed domain name is confusingly similar to the Complainant's ALIPAY trademark for the following reasons:
 - (a) the disputed domain name comprises of the Complainant's ALIPAY trademark as its dominant feature.
 - (b) the addition of the top-level domain (gTLD) "com" is inconsequential when determining similarities between domain names and trademarks.
 - (c) the addition of the suffix "eu" does not detract from the overall impression formed by the public that the disputed domain name is owned by or related to the Complainant. In fact, the suffix "eu" can be clearly interpreted as a geographical reference to the European Union as the disputed domain name resolves to a website to which its contents claims to be "Europe Alipay" and that "Alipay (Europe) Limited is Alibaba affiliated partner for European market".
- ii. The Complainant further contends that the Respondents do not have any right or legitimate interest to the disputed domain name because:
 - (a) the Respondents have not adduced any evidence to indicate the Respondents' rights to the disputed domain name.
 - (b) the Respondents cannot be using ALIPAY as a descriptive word as ALIPAY is a uniquely made up word associated with the Complainant and has no meaning in the English or Indonesian language.
 - (c) the Complainant had registered and used the ALIPAY trademark since 12 October 2004, which is more than ten years before the disputed domain name was registered on 7 November 2014.
 - (d) the Respondents are not in any way related to the Complainant's business, is not one of its agents and does not carry out any activity or has any business with the Complainant. The Complainant has not licensed or

authorised the Respondents in any way including to register or to use the disputed domain name.

- (e) the Respondents must have been aware of the Complainant's rights to the ALIPAY trademark and the Complainant's business at the point of registration of the disputed domain name given that the Respondents had on the landing page of the disputed domain name website identified itself as "Alipay (Europe) Limited" which is in fact an affiliated company of the Complainant incorporated in Luxembourg and featured references to the Complainant's business as well as various brands and trademarks associated to the Complainant at the disputed domain name website when they are not an authorised representative, partner or otherwise associated with the Complainant.
- iii. The Complainant further contends that the Respondents registered and/or used the disputed domain name in bad faith and relies on the following:
- (a) the Complainant has not found any evidence to suggest that the Respondents have any legitimate right or interest to the ALIPAY trademark including any license or authorization from the Complainant.
 - (b) the Respondents were using the disputed domain name to intentionally attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the Complainant's trademark as the source, sponsorship, affiliation or endorsement of its website.
 - (c) the Respondents had registered and designed the disputed domain name in bad faith to profit from consumer confusion as:
 - (i) the design and features found in the disputed domain name website are similar to the Complainant's official website.
 - (ii) the Respondents made various references to the Complainant and its affiliated brands and trademarks at the disputed domain website to create the illusion that the disputed domain name website is the website for the Complainant's operations in Europe.
 - (iii) the Respondents are engaged in a pattern of registering domain names incorporating well-known trademarks in order to trade off their goodwill in return for commercial gain and are likely to be the same or are associated with the Registrant of the domain names <alipayindo.com>, <singapore-alipay.com>, <Malaysia-alipay.com> all of which resolves to websites which are virtually identical in appearance, layout and content as the disputed domain name website.

B. Respondent

The Respondents did not reply to the Complainant's contentions.

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. 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

The Panel is satisfied with the evidence adduced by the Complainant to evidence its rights to the ALIPAY trademark. The ALIPAY trademark has been registered by the Complainant in various jurisdictions and is extensively used to the extent that the ALIPAY platform has grown to become one of China's largest online retail platform with 2.85 million transactions being processed per minute at its peak.

The Panel accepts the Complainant's submission that the suffix "eu" to the ALIPAY trademark in the disputed domain name is simply a geographical reference to the European Union, taking into account that the content of the disputed domain name website attempts to pass itself off as the Complainant's company in Luxembourg and/or its affiliate in the European Union region and finds that the disputed domain name to be confusingly similar to the Complainant's trademark.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

The Complainant's assertions have not been rebutted by the Respondents to indicate whether they have any right or legitimate interest to the disputed domain name. There was also no evidence put forward by the Respondents to indicate that the Respondents are licensed or authorised by the Complainant to use the ALIPAY trademark.

The Complainant has adduced sufficient evidence that the disputed domain name is being used by the Respondents solely for commercial gain. The disputed domain

name resolves to a website located at <alipayeu.com> which tries to pass itself off as the Complainant's company in Luxembourg and/or its affiliate in the European Union region. The Complainant asserts that the Respondents are not authorised service providers of the Complainant's products and services and have never had a business relationship with the Complainant. Therefore, by operating such a website under the disputed domain name, the Respondents are in effect creating a false impression or is likely to create such a false impression that the Respondents are authorised providers of the Complainant's services without express authority of the Complainant.

In the circumstances, the Panel cannot find any justification, right or legitimate interest on the part of the Respondents to the words comprising the disputed domain name or to the disputed domain name itself. Based on the above circumstances, the Panel is, therefore, satisfied that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C) Bad Faith

The Panel agrees with the contention by the Complainant that the Respondents had knowledge of the Complainant's rights to the ALIPAY trademark when it registered and started using the disputed domain name.

The factors that were taken into account to arrive at this conclusion include:

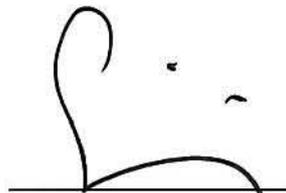
- (a) the date of registration of the disputed domain name which was on 7 November 2014. This is eight years after the Complainant had registered and used the ALIPAY trademark in Indonesia in 2006.
- (b) the notoriety of the trademark through the widespread use of the ALIPAY trademark by the Complainant at a global level well before the disputed domain name was registered by the Respondents.
- (c) the fact that the disputed domain name resolved to a website that:
 - (i) was virtually identical in appearance, layout, and content with the Complainant's official website.
 - (ii) featured the ALIPAY trademark as well as various other trademarks and brands owned by the Complainant and its subsidiaries and affiliated companies.
 - (iii) made references to the Complainant and its affiliated Company in Luxembourg, Alipay (Europe) Limited.
 - (iv) included a link to the Complainant's escrow services agreement.

The Panel cannot find any justification for the registration and use of the disputed domain name in such circumstances except to find that the Respondents are using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of its websites.

The Panel finds that the Respondents registered and used the disputed domain name in bad faith and so finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

6. Decision

For the foregoing reasons, the Panel orders that the disputed domain name <alipayeu.com> be transferred to the Complainant.



Syed Naqiz Shahabuddin
Panelists

Dated: 29 January 2015