



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

| | |
|---------------------------------|--|
| Case No. | HK-1400619 |
| Complainant: | Tencent Technology (Shenzhen) Co. Ltd. |
| Respondent: | Weizhen Wan |
| Disputed Domain Name(s): | <qqclass.com> |

1. The Parties and Contested Domain Name

The Complainant is Tencent Technology (Shenzhen) Co. Ltd. of Tencent Building, Kejizhongyi Avenue, Hi-tech Park, Nanshan District, Shenzhen, PRC.

The Respondent is Weizhen Wan, of Yikang Building, OCT nanshan district, ShenZhen, GuangDong 518053, China, as shown in the registration information. The Respondent used the address of Room 102 No.33, Lane 298, ShuiQing Road, Shanghai, China, in its Response.

The domain name at issue is qqclass.com, registered by the Respondent with GoDaddy.com, Inc of 14455 North Hayden Rd, Suite 219, Scottsdale AZ 85260, United States.

2. Procedural History

On June 10, 2014, the Complainant made complaint in Chinese to the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the "ADNDRC Hong Kong Office") pursuant to the Uniform Policy for Domain Name Dispute Resolution (the "Policy") approved by the Internet Corporation for Assigned Names and Numbers ("ICANN"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform

Domain Name Dispute Resolution Policy (the “ADNDRC Supplemental Rules”). Meantime, the Complainant filed a request for using Chinese as the procedural language.

The ADNDRC Hong Kong Office confirmed receipt of the complaint and asked the Registrar GoDaddy.com Inc for the confirmation of the registration information with regard to the disputed domain name on the same day.

On June 11, 2014, the ADNDRC Hong Kong Office received from the Registrar the registration confirmation in connection to the disputed domain name, which pointed out that the language used in the registration agreement was English.

On June 11, 2014, the ADNDRC Hong Kong Office notified the Complainant that the Complaint has been confirmed and transmitted to the Respondent and the case officially commenced; and transmitted the notice of the Complaint to the Respondent informing that the Complainant had filed a Complaint against the registration of the disputed domain name and the ADNDRC Hong Kong Office had sent the Complaint and its attachments through email according to the Rules and the ADNDRC Supplemental Rules. On the same day, the ADNDRC Hong Kong Office notified ICANN and Registrar of the commencement of the proceeding.

On June 13, 2014, the Complainant submitted an English copy of the Complaint, and the ADNDRC Hong Kong Office transmitted the English version to the Respondent who emailed on June 14, 2014 to the ADNDRC Hong Kong Office pointing out that “It is injustice for the respondent to prepare the response in another language requested by the complainant.”

The ADNDRC Hong Kong Office received a Response in both English and Chinese by the Respondent within the required period of time, and transmitted the copy to the Complainant.

Having received a Declaration of Independency and Impartiality and a Statement of Acceptance from Mr. Chi Shaojie, the ADNDRC Hong Kong Office informed the disputing parties of the Confirmation of the Appointment of the Sole Panelist on July 18, 2014. The sole panelist finds that the Panel is properly constituted in accordance with the Rules and the ADNDRC Supplemental Rules.

Since the language used in the registration agreement is English and the Respondent insists to use English as the procedural language, as well as the ADNDRC Hong Kong Office sends to the disputing parties each and all procedural documents in both English and Chinese; what is more, whatever language used in the proceeding shall have no substantive impact upon any merits in the dispute, the Panel decides to use English to make the Decision.

3. Factual background

The Complainant submits that the disputed domain name qqclass.com was improperly registered by the Respondent, and filed to the ADNDRC Hong Kong Office the Complaint against the registration, requiring the Panel to make a decision on the transfer of the disputed domain name.

4. Parties' Contentions

A. Complainant

The Complainant filed a Complaint in Chinese explaining in detail the reasons for the ruling of the transfer of the disputed domain name, but the reasoning was not fully embodied in the follow-up English version of the Complaint. Since the Panel decides to use English as the procedural language, it cannot but quote what were laid down in the English version of the Complaint, which says,

1. The Respondent registered the disputed domain name in bad faith while being aware that "QQ" is a trademark.
2. The Respondent's registration prevented the Complainant from reflecting its QQ trademark in the disputed domain name.
3. The use of the disputed domain name impedes the Complainant's business.
4. The Respondent is intentionally using the disputed domain name in an attempt to attract, for commercial gain, Internet users to its website 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 the Respondent's website or location or of a product or service on its website or location.
5. The Respondent's actions fall under the trademark infringement provided in the *Trademark Law of China* and constitutes bad faith.

6. The Respondent provides services, for commercial gain, through the disputed domain name while being aware of the infringement, which constitutes bad faith.

B. Respondent

The complaint says qqclass.com and its class.qq.com are the same business, easily confused. We think these two are entirely different websites and business. I and my friend Lu Ning created QingQing cultural communication Co., Ltd. Hngzhou in September 30 2003 (See Annex 1), and started the teaching and training business. qqclass.com is the abbreviation of “QingQing Class online”, until now I hold QingQing.com domain name for more than 11 years. When my company moved to Shanghai, because there was another company’s name called “QingQing”, I could not register the same name, then I changed to register the present company Wan-Wang network technology Co., Ltd. Shanghai to offer our service.

According to China’s trademark laws, two English letters are not allowed to be registered as word trademark, nobody can hold QQ word trademark. Domain name generally consists of letters, numbers and characters, there is no comparability between the complainant’s QQ figurative mark and qq letters as part of the domain name. In the history of these cases, the panel always supports the proposition there is no identical or confusingly similar comparability between domain name and figurative trademark.(see the <qq.com.cn> case CIETAC No. CND0300003)

The complainant developed an IM tools called OICQ in their early years, they used QICQ.com and OICQ.net, then they received the complaint from AOL for coping ICQ, and was forced to use tencent.com. In March 2003, they bought qq.com, and in 2009 they registered QQ trademark in the category 41. My company “QingQing cultural communication Co., Ltd. Hangzhou” was created in September 2003, QingQing.com was registered in December 2002. These both are several years earlier than trademark QQ registration date. class.qq.com site was published before March 2011 (see Annex 2), qqclass.com was registered in November 2012, the registration date was later than March 2011. The complainant says “被投诉人的行为在客观上已阻止投诉人注册争议域名的可能” (“The respondent has prevented them to register qqclass.com” -- The respondent’s understanding), this is a lie.

In June 2 2013, I bought qqclass.com from Mr. Wang SongXu, the status of qqclass.com was totally normal on Godaddy.com. It can not be a malicious registering action for me in both objective and subjective aspects. I give the comparison of qqclass.com and class.qq.com above, these two are totally different business and websites. And my website has several clear announcements that it belongs to our company, visitors can easily

distinguish who are the owners. If necessary, I can offer all our students' contacts for spot checking, to confirm whether or not they know who are offering their English teaching service. The same business of the complainant like qqclass.com is ke.qq.com, not class.qq.com.

The complainant asked me to transfer qqclass.com to them, and offer them the quote. I did not give the commitment at once. Then, they turned to retaliate us by the domain name complaint. This is an obvious Reverse Domain Name Hijacking complaint. We have checked all second-level domains on the complainant main site qq.com/map (see Annex 4), the format of all their second-level domains is `***.qq.com`. Such as `news.qq.com`; `auto.qq.com`; `sports.qq.com`; `finance.qq.com`; `game.qq.com`; `show.qq.com`; `edu.qq.com`; `buy.qq.com`; `fashion.qq.com`; `house.qq.com`; `tech.qq.com`; `map.qq.com` etc. Those are around one hundred second-level domains, but the complainant does not hold the kind of domain which format is `qq***.com`. (only holds `qqmail.com`, but it can not be visited until now). This shows, QQ is a very common abbreviation of many two Chinese words, it has many general meanings. Such as the popular auto brand and candy brand are called QQ in China. So that, the complainant can not hijack this kind of domain `qq***.com` legally. The complainant use the unrelated `class.qq.com` as its excuse to complain `qqclass.com`, their purpose is to harass us specially. This is against the UDRP Rules. The complainant tried to hijack `qq.com.cn` in 2003, CIETAC sentenced the complainant lost this case. (Case No. CND0300003).

In January 2004, the complainant reported to the registrar that the holder of `qq.com.cn` - BeiJing DingYang Technology Co., Ltd. had been expired, then the complainant stole `qq.com.cn`. From these records, the complainant has a spotty history of Reverse Domain Name Hijacking. The complainant says we use QQ IM tool and QQ Email to do our business, and post QQ characters and icon on our website, our purpose is to confuse the visitors. This is the monopoly's selective complaint, it is against its own open policy of IM tool.

The complaint self publishes many reference styles for the third-party websites (see Annex 5), visitors could not mistake these characters and penguin icon. "QQKeFu", "QQZaiXian", "QQKeTang", "QQQun", "QQShiPing", "QQJiaoTan", "QQZiXun", "QQLiuYan" etc. These kind of characters and penguin icon are the very common introduction and symbol, If the third-party websites use QQ as their communication tool. "When visitors find the QQ characters and penguin icon on a third-party website, then they will believe the website is produced by the complainant." - the conclusion is untenable.

We used self-developed teaching system, QQ and Skype as the teaching tools, when we used QQ as our teaching tool, we paid Tencent Company for all our teachers and workmates' QQ accounts to get premium services from the complainant (See Annex 6). Specially, I talked with Mr. Huang and Mr. Johnnis Wang, to emphasize "if it is necessary to note 'QQ is a trademark of Tencent company' on my website?" Their replies were "not necessary". Mr. Johnnis Wang mentioned in his email "QQ 群视频教育模式不等同于QQ 课堂。" ("QQ Qun educational mode is not the exactly same meaning as QQKeTang." -- The respondent's understanding).

The complainant disregarded the registrar's note, and did not respect the fact that the Registration Agreement is in English, and protested the respondent's request of language of proceeding, demanded the panel to make a quick arbitration decision based on their complaint in Chinese. The complainant disregarded the Rules, its action constitutes an abuse of the administrative proceeding. We hire nearly about 100 native English teachers from America, UK and other countries, offer the online English tutor service for more than ten thousand students in China. Now the complainant want to use its QQ trademark and unrelated class.qq.com site to hijack our domain name, this complaint is: no comparability between QQ figurative mark and qq letters as part of the domain name.

My request is to reject this malicious complaint.

5. Findings

It is significant for the parties to understand the legal nature of the current proceeding that is totally different from that of commercial arbitration or litigation. Though the proceeding is known as administrative proceeding, it is really NOT the proceeding by a government agency. The jurisdiction by the Panel over the current dispute on the domain name registered by the Respondent comes from the authorization by the organization for the administration of domain name registration and maintenance. Anyone intends to register a domain name needs to sign a registration agreement with the administrative authority which makes no substantive examination on the registration application, but stipulates in the registration agreement that whenever a claim against the registration is submitted, the registrant is obliged to be a procedural party which has rights to make arguments against the claim, but subject to a decision made by a Panel constituted in conformity with the stipulated procedural rules. As it is, the current proceeding should be regarded as part of the whole proceeding for the registration and maintenance of domain names. As such, the fundamental feature of the Panel's making a judgment on the entitlement to the disputed domain name is to decide on a core issue of which party should be the proper holder of the

disputed domain name, so as to be in conformity with the basic requirements set forth under the Policy and to help keep the good operative order for the running of the internet, and to be beneficial for the protection of common interests of the web-users.

The Respondent cites certain prior cases re domain name disputes containing the Latin letters “qq” in the identifying part of the disputed domain names, to support its view that “qq” is no more than ordinary Latin letters which are not distinctive and should not be monopolized by anyone. A well-known Chinese auto brand contains such letters, which is a noticeable example to support the Respondent’s fundamental argument. What the Panel wants to point out at this moment is that any particular decision was made based upon the panel’s finding and thinking in that particular proceeding. Whatever could be found in the current proceeding is based absolutely upon the allegations and evidences by the disputing parties in this proceeding. That is to say, when the Panel makes a final decision on who should be the proper owner of the disputed domain name “qqclass.com”, it bases itself strictly upon the thinking of the factual and legal factors existing between the Complainant and the Respondent, i.e. in terms of the disputed domain name, which one of the two should be more appropriate to hold the domain name. Whether someone else is legally entitled to be a trademark owner or appropriate to hold a domain name containing the Latin letters “qq” should not be a decisive factor being thought over by the Panel in this case.

One of the prerequisites for the Respondent to register the disputed domain name through the Registrar is to accept the Policy as the binding regulations for the registration. As mentioned, the Policy applies to this dispute as the substantive criteria for making the judgment of whether the Complainant’s request is to be sustained or rejected. As stipulated in the Paragraph 4(a) of the Policy, when claiming back a domain name registered by the Respondent, the Complainant must prove each and all of the following:

- i. Respondent’s domain name must be 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.

Based itself upon the stipulations under the Policy, what the Panel needs to do is to find out whether each AND all of the three basic facts can be attested by the Complainant. If the answer is yes, the Panel makes a decision in the Complainant's favor in accordance with the relevant stipulations under the Policy, the Rules and the ADNDRC Supplemental Rules. If not, the claim by the Complainant shall be rejected. Obviously what the Panel needs to expound for its final decision is no more than whether the three basic facts can be established by the Complainant in the frame of the held facts between itself and the Respondent.

A) Identical / Confusingly Similar

Pursuant to Paragraph 4(a) (i) of the Policy, the Complainant must prove that the domain name at issue is identical OR confusingly similar to a trademark or service mark to which it is entitled. As stipulated in the Policy, the Complainant needs to prove either the IDENTITY or the CONFUSING SIMILARITY. To meet the requirement, the Complainant needs to prove at least two facts, i.e. firstly, it does have a trademark; and secondly, the disputed domain name is in confusing similarity to the trademark. No further burden of prove shall be undertaken by the Complainant to certify the issue of confusing similarity.

The Complainant claims and hands over exhibits to prove that well before the registration of the disputed domain name, it registered in China as well as in some other countries the trademark "qq". The Respondent submits that no simple letters are allowed to be registered as trademark under the Chinese Trademark Law. The Panel indicates that whether Latin letters are allowed to be registered as trademark to exclude other to use the same on goods or in service in the class re the registered trademark shall be decided by the trademark authorities in relevant jurisdictions. Once the Latin letters are allowed to be registered, the registrant shall be entitled to exclusively use the letters in relevant class of goods or service, e.g. IBM, GE, LG. etc. are all registered trademarks and nobody shall use the letters as trademark without the owner's permit. Based upon the relevant exhibits by the Complainant, the Panel holds the alleged fact re prior registered trademark "qq" by the Complainant.

The disputed domain name is "qqclass.com" which identifying part is "qqclass" that is different from the Complainant's registered mark "qq". Thus, the Panel needs to hold the fact that whether "qqclass" is similar to the Complainant's registered mark "qq" and if yes, whether the similarity could cause confusion to web-users.

In the eye of those who knows English to certain extent, “qqclass” may be divided into two parts of “qq” and “class”. In China today, not mentioning in other countries, esp. English-speaking regions, junior middle school students know what the word “class” means. As it is, when ordinary web-users see the identifying part of the disputed domain name, they are eye-caught not by the word “class”, but by the unique component “qq”. What is “qq” in the eye of web-users in China, or even in some part of the world, is not a question needing to be answered, since when the letters are used in the web, the web-users may think of nobody else but the Complainant who have created a special well-known space in the world of internet; unless the Respondent could have proved the fact that when an ordinary web-user sees the word “qq”, he or she thinks of no one else but the Respondent who claims to be the right holder of a domain name of “Qing Qing.com”.

The other fact alleged by the Respondent draws the Panel’s attention, i.e. the business lines engaged by the Complainant and the Respondent are different. It is true that the business scope covered by the Complainant’s operation is much wider than that covered by the Respondent’s. Nevertheless, there is one thing being clear that both the Complainant and the Respondent are engaged in inter-net education, or the sort. The fact constitutes certain foundation for the possible confusion by the web-users when doing web-surfing. As mentioned by the Respondent, after having compared the Complainant’s domain name “class.qq.com” with the disputed domain name, it comes to the conclusion that the two can not be confused in the perspective of different business content and method conducted by the two. The Panel would like to say that in terms of domain name dispute resolution, the decision-maker attaches first importance to the comparing of the two names in their formalities. For an instance, few people may come to a conclusion that “class.qq.com” is not similar to “qqclass.com”, since there is no distinctive difference existing in terms of the formalities of the two. The question is when web-users see either of the two, whom they may think of. Of course the answer is the Complainant due to the fundamental fact that the Complainant enjoys much bigger business reputation than the Respondent does in the world of web-site. It needs to point out that when making a judgment on the issue of confusing similarity, the Panel does not think it necessary to see evidence to prove the fact that confusion does happen in real life, but may configure its subjective conclusion on the probability deducted.

Based upon the above deduction of reasoning, the Panel holds that the disputed domain name “qqclass.com”(esp. its identifying part) is confusingly similar to the Complainant’s registered trademark “qq”; thus further holding that the Complainant meets the first requirement for the transfer of the disputed domain name.

B) Rights and Legitimate Interests

Pursuant to Paragraph 4(a)(ii) of the Policy, the second requirement for the Complainant to meet in terms of the request for the transfer of the disputed domain name is to prove that the Respondent does not have rights to or legitimate interests in the domain name at issue. Reading the expression of the stipulation, it seems to be the Complainant who shall take the burden of proof to establish the fact that the Respondent does NOT have rights or legitimate interests in connection to the disputed domain name. Since the Complainant claims that it is entitled to the disputed domain name and the Respondent has nothing to do with it except having registered it in bad faith, it can hardly submit any evidence to prove something it does not think existing. Probably for this reason, the Policy lists specially several excuses for the Respondent in making defense against the Complainant's allegation; thus, the Panel pays more attention to whatever the Respondent argues with regard to the rights or legitimate interests in respect to the disputed domain name. Unfortunately, the Respondent makes no argument within the frame of the Policy, but telling story of its own in relation to the creation, registration and assign of the disputed domain name.

The Respondent mentions the history of the creation of the concept Qing Qing which is deemed as the base for the registration of the disputed domain name, since "qq" is the abbreviation of Qing Qing. What the Panel intends to say on the allegation is that whatever entitlement by the Respondent to the term Qing Qing, it should have not been a problem to use the word in the identifying part of a domain name, but could have been a problem if only two initial letters are used, due to the fact that prior to this sort of use, the Complainant has registered the two letters as trademark which may be taken as a lethal weapon against someone else's using the letters in the identifying part of a domain name after the trademark registration approved by the authority. Thus, when talking about prior rights and legitimate interests in relation to the disputed domain name, the object is not Qing Qing but the "qq", namely the Respondent enjoys prior rights and legitimate interests in the term Qing Qing, whereas the Complainant enjoys prior rights and legitimate interests in the letters "qq". What is more, if the Respondent wants web-users to find it on inter-net, uses Qing Qing in the identifying part of a domain name. As stated by the Respondent, it does have the domain name "Qing Qing.com" or the sort. If that is true, why does the Respondent prefer to have "qq" as an identifying part of a domain name, since people know it as "Qing Qing" instead of "qq" which has been linked to the business fame and image of the Complainant. Aiming at improper commercial advantage may be the right answer.

The Respondent also argues that there exist lots of domain names with identifying part using the letters "qq", why the Respondent could not use the same to register a domain name. As pointed out, what the Panel needs to make a judgment in the current proceeding is which party between the Complainant and the Respondent should be entitled to the disputed

domain name, in terms of the principle of equity and fairness, common interests of web-users and contribution to the good order in the web, esp. in the environment of Chinese inter-net operation. With regard to why others may hold a domain name containing the letters “qq”, the factual and legal groundings are not available to the Panel to make any comments; and even available, making any comment on other cases may be beyond the authority of the Panel in this case.

The Complainant submitted exhibits to certify that the two key letters in the identifying part of the disputed domain name was innovated and created by the Complainant, which have become well-known inside China and in certain other part in the world. The Complainant has never and ever authorized the Respondent to use the registered letters “qq” in whatever way, thus it is the Complainant not the Respondent who should be rightful holder of the disputed domain name. Based upon comprehensive analyses of all the relevant evidences by the Complainant, the Panel has sound reason to ascertain that it is the Complainant who has rights and legitimate interests in connection to the disputed domain name; and further holds that the Complainant meets the second requirement set forth under Paragraph 4(a)(ii).

C) Bad Faith

The Complainant has yet to establish the fact of bad faith on the part of the Respondent as set forth in the Paragraph 4(a)(iii) of the Policy. Under the Paragraph 4(b) of the Policy, the following circumstances, in particular, shall be considered evidence of the registration and use of a domain name in bad faith: “..... (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 Complainant claims and proves that the disputed domain name is being used in a way identical to what is described in item (iv) of the Paragraph 4(b) of the Policy. The Panel holds the factual allegations by the Complainant for reasons which follow,

The Respondent says that it created the term Qing Qing. The question is if it was fond of the two initial letters of the term at the time the term was created, or even sometime after the creation, why it failed to use the two initials to register a domain name, but thought of using the two initials in a domain name leading to the Respondent some 10 years later. It is not hard to find out why, i.e. when the Respondent commences to use the two initials in a domain name which the Respondent utilizes in its business operation, the letters “qq” have gained much higher value due to the Complainant’s business operation. If the Respondent

prefers to have simple letters in a domain name, it could have used “gg”, the last two letters of its created term Qing Qing, which though look similar to “qq” at first sight, the Complainant may not complain against the use. The acceptable answer is “qq” may lead people to think of the Complaint, while “gg” may lead people to think of the registrant of the domain name alone. Obviously, the intention of the registrant of the disputed domain name is to take advantage of the fame of the Complainant who has made the letters “qq” well-known to the public. As indicated, when the web-users see the disputed domain name, they connect it to the Complainant, and when they visit the web using the disputed domain name, they got confused of the relations between the Complainant and the Respondent.

Furthermore, the logical thinking of the Panel is when a party registers a domain name which is NOT created by the party with its distinctive feature known in the real world, but identical or confusingly similar to a mark or logo or sign to which the other party has rights and legitimate interests with high market value, the intention of the registration is clear, namely taking illegal gains by causing confusion to the consumers. On the other hand, if the registrant is NOT intentionally to take others’ advantage, it should create a distinctive domain name to make web-users easily tell the name from others. What is more, if someone registers a domain name in bad faith, it is hard for him to make use of the registered subject matter in good-faith, otherwise the ill-intention of the registrant would not be realized. This fundamental logic further supports the holding of bad-faith fact in the foregoing paragraph. In view of this, the Panel holds that the Complainant meets the requirement set forth under Paragraph 4(a)(iii) of the Policy.

Based upon all the above findings, the Panel comes to final conclusion that the Complaint fulfills each AND all of the conditions provided in Paragraph 4(a)(i)(ii) (iii) of the Policy.

6. Decision

In light of all the foregoing findings and in accordance with Paragraphs 4(a), 8(a) of the Policy and 5(e) of the Rules, the Panel holds:

- a) That the disputed domain name “qqclass.com” is confusingly similar to the trademark “qq” to which the Complainant has rights and legitimate interests; and
- b) That the Respondent has no rights to or legitimate interests in relation to the disputed domain name; and
- c) That the domain name was registered and used in bad faith.

As such, the Panel rules that the disputed domain name <qqclass.com> shall be transferred to the Complainant Tencent Technology (Shenzhen) Co. Ltd.

The Sole Panelist:

A handwritten signature in black ink, appearing to be 'R. B. ...', written in a cursive style.

Dated: July 23, 2014