



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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Case No.	<b>HK-1400612</b>
<b>Complainant:</b>	Alibaba Group Holding Limited
<b>Respondent:</b>	Junna Liu
<b>Disputed Domain Name(s):</b>	<alipay.company>

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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 Junna Liu of Chenxi, Nanping, Fujian 865222, China.

The domain name at issue is <alipay.company>, registered by Respondent with GoDaddy.com LLC, 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA

**2. Procedural History**

The Complainant filed a Complaint on the 16<sup>th</sup> May 2014 and thereafter filed an Amended Complaint on the 27<sup>th</sup> May 2014 pursuant to the Uniform Domain Name Dispute Resolution Policy (“the Policy”) approved by the Internet Corporation for Assigned Names and Numbers (“ICANN”) on 24<sup>th</sup> October 1999 to the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC”) concerning the disputed domain name to be determined in accordance with the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”).

The formal date of commencement of the Administrative Proceeding in accordance with the Rules is the 29<sup>th</sup> May 2014.

The Hong Kong office of the ADNDRC notified Respondent on the 29<sup>th</sup> May 2014, that a Complaint had been submitted and that Respondent was required to submit a Response within twenty (20) days in accordance with Article 5 of the Rules.

A Response was forwarded to the ADNDRC on 17<sup>th</sup> June 2014 and thereafter ADNDRC appointed Jeffrey Elkinson to act as sole Panelist on 19<sup>th</sup> June 2014 and notified Complainant and Respondent of the appointment and the forwarded the case file to Panelist for consideration and a Decision.

The Panel confirms that it received the appointment and the case file on 19<sup>th</sup> June 2014.

### **3. Factual background**

The Complainant, officially known as Alibaba, or "阿里巴巴" in Chinese, sets out a Complaint in respect of the disputed domain name where "Alipay" and "支付宝", in their various forms, are registered trademarks of Complainant. Complainant has provided registration certificates/extracts to numerous trademarks in China, Hong Kong and Taiwan and it is the position of Complainant that Respondent's website is identical and is readily seen as confusingly similar to the Complainant's trademark, which trademark is used in its own Alipay platform <[www.alipay.com](http://www.alipay.com)> which was first launched in 2004 and in circumstances where Respondent only registered the disputed domain name in March 2014. It is to be noted that this in turn resolves to another website, <1688.clothing>, that has various sponsored links, including those from the country where the website is being viewed and in circumstances where the domain name <1688.com> is owned by the Complainant's group of companies.

### **4. Parties' Contentions**

#### **A. Complainant**

Complainant sets out a great length the origins and extent of the business of its group of companies and explains how it operates its businesses through a number of related companies and has been established since 1999. Originating in Hangzhou, China, it is a global entity for trade and has established an enormous presence using its various online platforms which, as of December 31, 2012, had approximately 36.7 million registered users in 240 countries and in China alone has 77.7 million registered users. As regards Chinese consumers, Complainant through its group of company, Taobao ("淘宝"), operates a consumer-to-consumer internet retail platform and as at March 2013 it had 760

million product listings showcased on its websites and receives approximately 50 million visitors daily. Headquartered in Hangzhou, Alibaba Group, through its subsidiaries and affiliates, has offices in seventy (70) cities across China, as well as in Hong Kong, Taiwan, Korea, India, Japan, Korea, Singapore, USA and Europe. For the year ended 31 December 2011 and the first quarter of 2012 ended 31 March 2012, Alibaba Group's flagship company, Alibaba.com Limited, reported a total revenue of about RMB6.41 billion and RMB1.59 billion respectively, which achieved a respective year-on-year revenue growth of about 15.5% and 3.7%. The Alipay platform and the Alipay and "支付宝" brands came into being in 2004 and is a third party payment solution used by many millions of individuals and businesses to make and receive payments on the internet. Print-outs provided to the Panel of the search results from major Internet search engines, Google, Baidu and Yahoo! indicate that the vast majority of search results returned for searches of "alipay" relate to the Complainant and its affiliates. It provides payment solutions for more than 460,000 merchants and creates an ability to allow secure online payment solutions for merchants and consumers. It interlinks with the Alibaba Group's other online platforms, including AliExpress <[www.AliExpress.com](http://www.AliExpress.com)>, Alimama <[www.Alimama.com](http://www.Alimama.com)> and Alibaba Cloud <[www.Aliyun.com](http://www.Aliyun.com)>. Millions of dollars have been spent annually to promote its business and services and the "ALIBABA" trade marks and the Alipay trade marks; Alibaba.com's affiliates launched a US\$30 million marketing campaign throughout 2008 and 2009 in key buyer markets such as the United States and Europe, as well as in emerging markets with meaningful buyer growth potential. The Group and Complainant have achieved a high profile in the world's media and it is possibly when it is publicly listed going to be one of the highest value IPOs recorded. Complainant's position is that not only does Respondent not own any trademarks reflecting or corresponding to the disputed domain name, but that Respondent is seeking to take advantage of the confusing similarity between Complainant's trademark and the disputed domain name in circumstances where it has no right or legitimate interests in respect of the disputed domain name and registered it and uses it in bad faith.

## **B. Respondent**

Respondent in its Response raises an issue as to the authenticity of the exhibits attached to the Complaint and refers to Chinese rules of evidence that these should be notarized as they otherwise could be falsified. Its primary position is that it is using the disputed domain name legally and whilst it does not deny that it attempted to sell the domain name as alleged by Complainant, it says that it never sold it. Respondent states that it did not mislead consumers or tarnish the trademark or service mark of Complainant and alleges that the trademark Alipay is limited in China and the trademark and the domain name of the Respondent are not in the same category as they do not have the same meaning. Further, Respondent says the Alipay trademark is not a famous trademark and that effectively Complainant failed to acquire all the related domain names which it should

have known were available and that they could have done this if they wished. Respondent makes complaint about Complainant's behavior, presumably by Complainant lodging this Complaint against Respondent's use of the disputed domain name; Respondent says this is "... a manifestation of commercial hegemony ..." and that Complainant violates the legitimate interests of others for its own benefit. As regards its use of the name Alipay, Respondent says this is a nickname associated with Respondent and combines with the Chinese characters for the baby romper; that the name was obtained in order to open up a shop in the future for the baby romper company and the disputed domain name is not intended to use it in the Chinese mainland. As evidence of this, it says that this is why it redirects to the site <1688.clothing> which is not accessible to persons with Chinese IP addresses. 1688 is a set of lucky numbers in Chinese ("*always success*") and the actual website for it is still under construction and, if using a Chinese IP address, the website does not redirect from the disputed domain name to <1688.clothing>. Respondent says there is no possibility of confusion or any fraudulent misuse of the disputed domain name and it has four letters less which give rise to it having a completely different meaning - <.com> rather than <.company>. Respondent is adamant it has no malicious intent and that simply having trademarks does not exclude others from registering the same or similar domain names and is only relevant where there are similar products. Respondent says that "*Anti-Unfair Competition*" considerations should be taken into account and that the Panel should consider whether the use will cause confusion or mislead the public and in so doing should dismiss the case.

## 5. Findings

The Panel proceeds to decide the dispute based on the submissions made by Complainant and Respondent in the Complaint and Response respectively and the assertions made therein and the available evidence.

As regards the quality of the evidence, under Rule 10 of the Rules there are general powers given to the Panel to determine the admissibility, relevance, materiality and weight of information and documents put before the Panel. In that regard, I have reviewed the materials attached to the Complaint and can find no reason to doubt the legitimacy of them and a mere assertion by a Respondent, unsupported by evidence, is not sufficient to shift the normal method of presentation of evidence to the Panel. In exercise of its general powers, the Panel determines that the documents as submitted by Complainant are admissible in that form and can be given full weight and the Panel will proceed to decide the dispute with that determination having been made and with regard to the matters set out in the Complaint and the Response.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of the following three findings must be made in order for a Complainant to succeed in its Complaint:-

- i. Respondent's domain name must be identical or confusingly similar to a trademark or service mark in which the 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

Complainant has submitted and the Panel accepts that in reviewing whether a trademark is identical or confusingly similar to a domain name, the generic top-level domain name extensions may be disregarded although Complainant submits that the use of the extension <.company> could in fact increase the confusion and mislead users to believe that it resolves to the official website of the Complainant's Alipay platform. Whether there is an additional element of confusion because of the particular domain extension is irrelevant to the real issue which the Panel has to determine which is whether the trademark is identical or confusingly similar to the word used in the disputed domain name, namely Alipay. The Panel has no difficulty in making this determination on both the factual and legal basis, and even in cases where there is a slight differential in the trademark name, it has been held that this is confusingly similar – see **Bang & Olufsen a/s v. Unasi Inc., WIPO Case No. D2005-0728**. The Panel holds that the domain name is identical.

B) Rights and Legitimate Interests

The Panel has considered Respondent's Submissions as regards its basis for using the disputed domain name and its origins. However, the Panel does not accept, on the balance of probabilities, that this is an acceptable explanation as to the origins of the disputed domain name. In reviewing the domain to which the disputed domain name resolves, it is difficult to discern any legitimate use for the domain. This is in context of the long usage that Complainant has had of the Alipay trademarks which first saw use in 2004, in contrast to Respondent's registration of the disputed domain name in March 2014. During that time, Complainant's trademark has built up a significant reputation and Respondent has the burden of proof in demonstrating legitimate and fair use of the disputed domain name which Panel holds it has not discharged. In this instance, the objective of Respondent appears to have been to sell

the domain name and it does not matter that it has not yet done so. The Panel rejects Respondent's submission as regards this. The Panel can discern no legitimate use of the disputed domain name and in the circumstances, the Panel finds that the Respondent can have no right or legitimate interests in respect of the disputed domain name.

### C) Bad Faith

Respondent says that it has not been malicious in its use of the disputed domain name and that on the contrary it is unfair competition to exclude its use. Complainant points to the Alipay trademarks and that the word "Alipay" has no common meaning in English, Chinese or any other language whether in its Roman or Chinese character form, and that Respondent seeks to take advantage of the recognizability of its marks to consumers. Complainant also points to the resolution of the disputed domain name to the <1688.clothing> domain name which coincidentally is similar to a domain name held by the Alibaba Group, namely <1688.com>. Complainant sets out that the only motivation for Respondent is to take advantage of the Alipay trademark in bad faith for the purpose of selling the disputed domain name for commercial gain and to deny registration by the Complainant of that domain. This is compounded by the listing of IT related job vacancies on the redirected website which could entice and mislead job applicants to believe they would be working for Complainant. The Panel has helpfully been referred to the Decision in **Paris Hilton v. Deepak Kumar, Case No. D2010-1364 WIPO** where the issue concerned the name 'ParisHiltonHeiress'. There the Panel determined that the generation of revenue from domain name parking or other advertising activities is not necessarily activity in bad faith but where the registrant is using the disputed domain name in this manner because of the similarity to a mark or name of another person, in the hope and expectation that that similarity would lead to confusion on the part of internet users and result in an increased number of internet users being drawn to that domain name parking page, then that is bad faith.

Further, the issue concerning the sale of the disputed domain name is relevant as Complainant entered into an email exchange, exhibited at Annexure 15, where the correspondence shows an email of 10<sup>th</sup> May 2014 indicating a price for the purchase of it of US\$50,000. Complainant submits that the author of the emails seeking the payments was either Respondent or a representative of Respondent as the exchange of email on 21<sup>st</sup> May 2014 asks, *"Are you the one who filed the*

*domain name dispute? If so, cancel it, there are actually no other buyers for the domain name, we will sell it to you for USD2,000."*

The Panel is satisfied, on the balance of probabilities, that the party on the other side of the email exchange was acting on behalf of Respondent, and that there was demonstrated a dominant purpose for the registration and use of the disputed domain name, namely its sale.

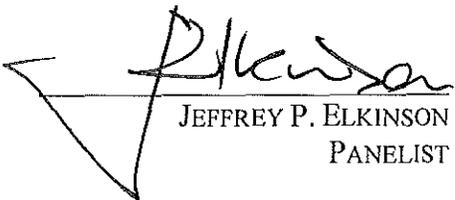
In all the circumstances, the Panel is satisfied that bad faith has been established within the meaning of the Policy.

## 6. Decision

For the reasons set out above, the Panel finds that the disputed domain name registered by Respondent is confusingly similar to Complainant's registered trademark, Alipay, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that the disputed domain name was registered and used in bad faith by the Respondent.

As a consequence of these findings, the Panel directs that the disputed domain name <alipay.company> be transferred to the Complainant, Alibaba Group Holdings Limited.

Dated this 2<sup>nd</sup> day of July, 2014

  
JEFFREY P. ELKINSON  
PANELIST