



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400608
<b>Complainant:</b>	Alibaba Group Holding Ltd
<b>Respondent:</b>	Bryan Easley
<b>Disputed Domain Name(s):</b>	<alibabaipo.com>

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**1. The Parties and Contested Domain Name**

The Complainant is Alibaba Group Holding Ltd. of British West Indies

The Respondent is Bryan Easley of United States.

The domain name at issue is <alibabaipo.com>, registered by Respondent with GoDaddy.com, LLC of United States.

**2. Procedural History**

The Complaint was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Center ("ADNDRC")["Center"] on May 7, 2014, seeking a transfer of the domain name in dispute.

The Center examined whether the Complaint met formal requirements set out in the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the ADNDRC Supplemental Rules (the "Supplemental Rules").

The Center sent to the Respondent the "Complaint Transmission Cover" together with the Complaint via email as well as via registered mail. The Center informed the Respondent of a due date for the submission of its Response.

The Respondent did not submit the Response by the due date of June 11, 2014.

On June 19, 2014 the Center appointed Professor Moonchul Chang as a single Panelist of this case. With the consent to the appointment, and impartiality and independence declared and confirmed by the panelists, the Center, in accordance with paragraph 7 of the Rules, set up the Panel in this case.

### **3. Factual background**

The Complainant, Alibaba Group Holding Ltd., was founded in Hangzhou in 1999 and has now operated its e-commerce business through its affiliates and subsidiaries. It has offices in about seventy cities across China as well as in Hong Kong, Taiwan, Korea, India, Japan, Singapore, USA and Europe. In addition the Complainant owns the registered trademarks "ALIBABA" and "阿理巴巴" in many countries such as China, USA, Hong Kong, Europe and others (Annexure 3). The mark "ALIBABA" and "阿理巴巴" is used as the company name and the trademark of online business services.

According to the WhoIs information of the registrar concerned, the Respondent registered the disputed domain name on November 8, 2013 (Annexure 1).

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

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- (1) The disputed domain name <alibabaipo.com> incorporates the Complainant's trademark "ALIBABA" in its entirety. The only difference is the inclusion of "ipo" as a suffix. The word "ipo" is simply a reference to the generic acronym IPO (i.e. initial public offering). As a result, the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights.
- (2) The Respondent has no rights or legitimate interests in respect of the disputed domain name. Since 1999 the Complainant has extensively used the Alibaba marks and exclusively owns the trademark "ALIBABA" which is registered in many countries. "ALIBABA" mark is now recognizable to consumers as being associated with the Complainant, its affiliates and their business. The Complainant has never licensed or authorized the Respondent to use the Alibaba trademarks. There is no

evidence to suggest that the Respondent has been commonly known by the disputed domain name.

(3) The Respondent registered and used the disputed domain name in bad faith. Firstly, since the Respondent registered and has used the disputed domain name in the full knowledge of the Complainant's prior rights in the Alibaba trademark, the Respondent's registration and use of the disputed domain name must involve mala fides. Secondly, the Respondent registered disputed domain name to take advantage of the Complainant's reputation in the Alibaba trademark in bad faith for the purposes of selling it for commercial gain or to block any registration by the Complainant or to unfairly disrupt the Complainant's business. Thirdly, the Respondent's primary motive for registering the disputed domain name was to sell it for profit. This is evidenced by the fact that the respondent relied that he had already received several low offers and asked what their offer would be when the Complainant sent an anonymous email to the Respondent to ask if he was interested in selling the disputed domain name. The respondent additionally offered to sell the disputed domain name to the Complainant for \$7,500 (Annexure 12).

#### B. Respondent

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

### 5. Findings

Paragraph 4(a) of the Policy provides that in order for a Complainant to prevail, the following three elements must be shown:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The registrant has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) The disputed domain name has been registered and is being used in bad faith.

#### A. Identical or Confusingly Similar

The disputed domain name <alibabaipo.com> entirely incorporates the Complainant's trademark ALIBABA and include a suffix of "ipo". Therefore they are likely to be associated with the Complainant who has no connection with the Respondent. The Panel finds that the domain name registered by the Respondent is "confusingly similar" within the meaning of the policy.

Accordingly, the Panel finds the first element under paragraph 4(a)(i) of the Policy has been satisfied by the Complainant.

### **B. Rights or Legitimate Interests of the Respondent**

Under paragraph 4(a)(ii) of the Policy, the overall burden of proof is on the Complainant. However, once the Complainant presents a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, the burden of rebuttal is transferred to the Respondent. In this case the Respondent did not reply to the Complaint.

Firstly, in the absence of any license or permission from the Complainant to use the Complainant's trademark, no actual or contemplated *bona fide* or legitimate use of the domain name could reasonably be claimed by the Respondent.

Secondly, there is no evidence presented to the Panel that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services at present. In addition there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

Accordingly, the Panel finds that the Complainant has satisfied the second element under paragraph 4(a)(ii) of the Policy in the present case.

### **C. Registered and Used in Bad Faith**

Under paragraph 4(a)(iii) of the Policy the Complainant must show that the domain name "has been registered and is being used in bad faith." Evidence of the registration and use of a domain name in bad faith includes circumstances indicating that the registrant has registered the 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 for

valuable consideration in excess of the registrant's documented out-of-pocket costs directly related to the domain name.

The disputed domain name includes in its entirety the Complainant's trademark ALIBABA and includes a suffix of "ipo". It is therefore evident that the Respondent knew of the Respondent's business and registered the disputed domain name with notice of the Complainant's trademark and its business plan. The Respondent in all likelihood registered the disputed domain name to take advantage of the similarity for commercial gain.

In addition, the Respondent is neither positively using the disputed domain name nor is there any evidence of any attempted plans of *bona fide* use. In the email communication with the Complainant, the Respondent offered to sell the disputed domain name to the Complainant for US \$7,500 which is far in excess of the Respondent's out-of-pocket costs.

The Panel finds that the Respondent registered the disputed domain name in bad faith for the purpose of selling the same to the Complainant for commercial gain.

Based on the foregoing, the Panel is satisfied that bad faith registration and use have been sufficiently established by the Complainant with respect to the disputed domain name in accordance with paragraphs 4(a) and 4(b)(i) of the Policy.

## 6. Decision

For all the foregoing reasons, in accordance with paragraph 4(i) of the Policy and paragraph 15 of the Rules, the Panel orders that the domain name <alibabaipo.com> be transferred to the Complainant.



Moonchul Chang,  
Sole Panelist

Dated: July 13, 2014