



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-2101464
Complainant:	Tencent Holdings Limited
Respondent:	Super Privacy Service Limited
Disputed Domain Name:	< tencent-game.com >

1. The Parties and Contested Domain Name

The Complainant is Tencent Holdings Limited, of P.O. Box 2681 GT, Century Yard, Cricket Square, Hutchins Drive, George Town, Grand Cayman, Cayman Islands. The authorized representative of the complainant is Paddy Tam, CSC Digital Brand Services Group AB, Drottningatan 92-94, 111 36 Stockholm, Sweden.

The Respondent is Super Privacy Service Limited c/o Dynadot, LLC, of PO Box 701, San Mateo, CA 94401, USA.

The domain name at issue is < tencent-game.com >, registered by Respondent with Dynadot, LLC, of 210 S Ellsworth Ave #345 San Mateo, CA 94401 US.

2. Procedural History

On May 13, 2021, the Complainant filed the Complaint with the Hong Kong office of the Asia Domain Name Dispute Resolution Centre (the "Centre") in accordance with the Uniform Domain Name Dispute Resolution Policy (the "Policy") adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, the Rules for Uniform Domain Name Dispute Resolution Policy Disputes (the "Rules") approved by ICANN on September 28, 2013, and the Asian Domain Name Dispute Resolution Centre Supplemental Rules in effect as of July 31, 2015. On May 13, 2021, the Centre transmitted by email to the Registrar a request for confirmation that the Disputed Domain Name was registered by the Respondent and that the Disputed Domain Name will be prohibited from being transferred to a third party.

Despite repeated attempts by the Center on 18 May 2021, 20 May 2021, and 24 May 2021, the Registrar did not provide the requested information in accordance with Article 4(a) of the UDRP Rules. On May 20, 2021, the Center filed a complaint to ICANN to seek assistance from ICANN in liaising with the Registrar, "Dynadot LLC" in order to obtain

the necessary information identified in the Verification Request thereby permitting the matter to advance.

On May 27, 2020, the Registrar provided its response to the Centre through which it confirmed that: (1) the name was registered with Dynadot LLC, (2) the Respondent is the registrant or holder of the name, and (3) the Policy applies to the name. The Registrar also stated that (4) the registration agreement is in the English language, (5) provided name and contact information pertinent to the name as reflected in its WhoIs database, and stated that (6) the domain name is currently locked and is not allowed to transfer pending the initiated proceedings.

In accordance with paragraphs 2(a) and 4(a) of the Rules, the Centre formally notified the Respondent of the Complaint, and the proceedings commenced on May 27, 2021. In accordance with paragraph 5(a) of the Rules, the due date for the Response was June 16, 2021. The Respondent did not submit any response. Accordingly, the Centre notified the parties of the Respondent's default on June 17, 2021.

On June 17, 2021, the Centre appointed Professor Julien Chaisse as Panelist in the administrative proceeding. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rule 7. The Panel finds that the Asian Domain Name Dispute Resolution Centre has performed its obligations under Rule 2(a) of the Rules "to employ reasonably available means calculated to achieve actual notice to Respondent". Accordingly, the Panel is able to issue its decision based on the Complaint, the Response, the e-mails exchanged, the evidence presented, the Policy, the Rules, the Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from the Respondent. Based on the deadline set forth in paragraph 15 of the Rules, a decision was to be issued by the Panel to the Centre on or before July 1, 2021.

3. Factual background

The Complainant: Tencent Holdings Limited

A. The Complainant and its activities

Founded in November 1998, Tencent Holdings Limited ("Tencent") is a leading provider of Internet value added services in China. Since its establishment, Tencent has maintained steady growth under its user-oriented operating strategies. On June 16, 2004, Tencent Holdings Limited (SEHK 700) went public on the main board of the Hong Kong Stock Exchange.

Tencent provides social platforms and digital content services. Tencent's leading Internet platforms in China – QQ (QQ Instant Messenger), Weixin/WeChat, QQ.com, QQ Games, Qzone, and Tenpay – have brought together China's largest Internet community, to meet the various needs of Internet users including communication, information, entertainment, financial services, and others.

B. The Complainant's Marks

Tencent Holdings Limited (“Complainant”), is the owner of trademark registrations across various jurisdictions, which demonstrate that the Complainant has spent a considerable amount of time and money protecting its intellectual property rights. These registrations are referred to hereafter as the “Complainant’s Trademark.”

The trademark registrations relevant to this instant matter are:

TRADEMARK	JURISDICTION/ TM OFFICE	REGISTRATION NUMBER	IC CLASSES	FILING REGISTRATION DATE
TENCENT	US / USPTO	5409861	43	2018-02-27
TENCENT	EM / EUIPO	006033773	43	2008-11-18
TENCENT	HK / HKIPD	300169506AA	9, 38, 42	2004-03-02
TENCENT	US / USPTO	4815553	9	2018-08-07
GAMES				
				
TENCENT	HK / HKIPD	302560437	9, 41	2013-03-26
GAMES				
腾讯游戏				
				
				

The Respondent

The Respondent did not file a Response. As such, the Respondent did not provide any information as for the legal status and place of incorporation of the Respondent. There is no indication as for the nature and size of the business operated by the Respondent.

4. Parties' Contentions

A. Complainant

The Complainant's contentions may be summarized as follows:

i. Identical or Confusingly Similar

The Complainant has registered numerous trademarks comprising the TENCENT and TENCENT GAMES trademarks to protect its interests around the world.

The Complainant accordingly submits that it has proved that the Disputed Domain Name is identical and/or confusingly similar to its registered trademarks in which the Complainant has rights or interests for the purposes of paragraph 4(a)(i) of the Policy.

ii. Rights or Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the Disputed Domain Name pursuant to paragraphs 4(a) (ii) and particular 4(c) of the Policy.

The Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, Complainant has not given Respondent permission, authorization, or license to use Complainant's Trademark in any manner, including in domain names. There is no evidence indicating that the Respondent enjoys any prior legal rights or legitimate interests in respect of the domain name in dispute.

iii. Registered and Used in Bad Faith

The Complainant contends that the Respondent registered and is now using the Disputed Domain Name in bad faith under paragraph 4(a)(iii) of the Policy.

The Disputed Domain Name does not reflect or correspond to the Respondent's own name. Therefore, it is inconceivable that the Respondent registered the Disputed Domain Name for any reason other than in bad faith.

B. Respondent

The Respondent 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 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 finds that the disputed domain name is confusingly similar to the Complainant's Trademark.

The Disputed Domain Name is a purposeful misspelling of Complainant's TENCENT GAMES trademark and must be considered confusingly similar to the Complainant's Trademark. More specifically, the Disputed Domain Name varies from Complainant's TENCENT GAMES trademark by only one letter and one punctuation – Respondent has added a hyphen between TENCENT and GAMES and removed the letter "s" from GAMES.

This contributes to similarity between the trademark and the domain names. Domain names which differ from a trademark by only minor variations have a greater tendency to be confusingly similar to the trademark where the trademark is highly distinctive, see *Reuters Limited v. Global Net 2000 Inc.*, WIPO Case No. D2000-0441.

The Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B) Rights and Legitimate Interests

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name pursuant to paragraphs 4(a) (ii) and particular 4(c) of the Policy.

Under Paragraph 4 (c) of the Policy, Respondent may demonstrate that it has a right or a legitimate interest to a domain name for the purpose of Article 4(a) (ii), inter alia, by providing evidence of any of the following circumstances: “(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or (iii) you are 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 granting of registrations by the USPTO, EUIPO and HKIPD to Complainant for the TENCENT and TENCENT GAMES trademarks is *prima facie* evidence of the validity of the terms “tencent” and “tencent games” as trademarks, of Complainant’s ownership of the trademarks, and of Complainant’s exclusive right to use the TENCENT GAMES trademark in commerce on or in connection with the goods and/or services as demonstrated by Complainant.

By not submitting a Response, Respondent has failed to invoke any circumstances, which could demonstrate any right or legitimate interest in the domain names. Complainant has stated uncontested that it did not grant to Respondent any right (license) to use its trademark or to apply for the domain name < tencent-game.com >.

The Complainant has made out a *prima facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and thereby the burden of production shifts to the Respondents to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name. The second element of paragraph 4(a) of the Policy is therefore satisfied.

C) Bad Faith

After a careful examination of the four non-exclusive examples enumerated in paragraph 4 (b) of the UDRP, the panel ultimately found, that, based on the available facts and circumstances, the registration and use of the domain name could be said to have been made in bad faith.

Respondent necessarily knew, at least constructively based on the activities and trademarks registrations, that Complainant had established legal rights in the marks TENCENT and TENCENT GAMES. See *Waterman, S.A.S. v. Brian Art, WIPO Case No. D2005-0340* (finding bad faith registration and noting that complainant’s mark was well-known); *Marconi Data Systems, Inc. v. IRG Coins and Ink Source, Inc., WIPO Case No. D2000-0090* (registration of a mark puts a respondent on constructive notice); *Microsoft Corporation v. Party Night, Inc. d/b/a Peter Carrington, WIPO Case No. D2003-0501* (“it is not reasonable to expect the Respondent to register the disputed Domain Names if the Respondent had no knowledge of the Complainant’s trademark and services in connection thereto.”). Respondent knowingly and intentionally registered both Domain Names at issue here incorporating the

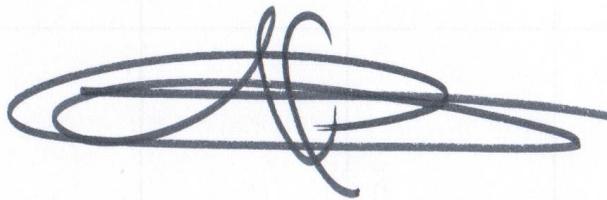
Complainant's mark identically and in its entirety into the domain name < tencent-game.com >.

The Complainant and its TENCENT GAMES trademark are known internationally, with trademark registrations across numerous countries. The Complainant has marketed and sold its goods and services using this trademark before Respondent's registration of the Disputed Domain Name. The purpose to be reasonably inferred from the facts is that Respondent intended to trade upon the goodwill the Complainant has in its marks, utilizing the confusion attendant upon the use of the Complainant's marks to attract Internet traffic to Respondent's site(s) for commercial gain. See *America Online, Inc. v. Anson Chan, WIPO Case No. D2001-0004*. This is sufficient to establish bad faith registration.

The Panel finds that the Respondent's actions, with respect to the Disputed Domain Name, constitute bad faith registration and use. Consequently, the Panel concludes that the Respondent violated paragraph 4(a)(iii) of the Policy and specifically paragraph 4(b)(i) thereof.

6. Decision

Having established all three elements required under the Policy, the Panel concludes that relief should be granted. Accordingly, it is ordered that the disputed domain name < tencent-game.com >, be TRANSFERRED to the Complainant.

A handwritten signature in dark ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Professor Julien Chaisse
Panelist

Dated: June 25, 2021