



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-2201589
<b>Complainant:</b>	Tencent Holdings Limited
<b>Respondent:</b>	Gba Gaun
<b>Disputed Domain Name(s):</b>	<tencentasia.com>

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**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 Respondent is Gba Gaun, of 1388 6th Ave, New York, NY S, 10105, USA.

The domain name at issue is <tencentasia.com>, registered by the Respondent with NameCheap, Inc., of 4600 East Washington Street, Suite 33, Phoenix AZ 85034, USA.

**2. Procedural History**

The Complaint was received by the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (the “Centre” or “ADNDRC”) on January 6, 2022, and its receipt was acknowledged the following day. On January 7, 2022, the Centre sent an email to the Registrar, NameCheap, Inc., requesting verification of the registrant of the disputed domain name. On January 7, 2022, the Registrar replied to the Centre disclosing the name and contact details provided by the registrant, which were different from the information available from the WHOIS relating to the disputed domain name. The updated information was provided to the Complainant on January 11, 2022, with a request to amend the Complaint accordingly. The Amended Complaint was sent to the Centre on January 17, 2022.

On January 17, 2022 the Complaint was reviewed by the Centre and found to be in administrative compliance with the Uniform Domain Name Dispute Resolution Policy (the “Policy” or the “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

On January 17, 2022, the Written Notice of Complaint, and a copy of the Complaint, were sent to the Respondent by email, advising that the date for submission of a Response to the Complaint was not later than February 6, 2022.

A Response was not received by the due date and on February 7, 2022 a Notice of Respondent in Default was sent to the Respondent.

On February 10, 2022 the Parties were notified by email of the appointment of Dr. Clive Trotman as sole Panelist in this case.

### **3. Factual background**

The Complainant is a public company, listed on the Hong Kong Stock Exchange, that provides a variety of Internet services in China. The Complainant is well-known for Internet platforms such as QQ (QQ Instant Messenger), Weixin/WeChat, QQ.com, QQ Games, Qzone, and Tenpay. The Complainant was ranked 132nd in the Fortune Global 500 World's Biggest Companies 2021 and 45th in Fortune's Top 50 Companies.

The Complainant's main website is located at the domain name <tencent.com> and received some 25 million visitors in the 6 months between February and July 2021.

The Complainant's registered trademarks include the following:

TENCENT, United States Patent and Trademark Office (USPTO), registration number 5409861, filed on May 18, 2015, in class 16;

TENCENT, USPTO, registration number 5500137, filed on May 18, 2015, in class 41;

TENCENT, European Union Intellectual Property Office (EUIPO), registration number 006033773, filed on June 15, 2007, in classes 9, 38, 41, and 42;

TENCENT, Hong Kong Intellectual Property Department (HKIPD), registration number 006033773, filed on March 2, 2004, in classes 9, 38, and 42.

No background information is available for the Respondent except for such contact details as were provided to the Registrar in order to register the disputed domain name on November 9, 2021. The disputed domain name has resolved to a parking page offering link headings with topics broadly related to Internet matters.

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

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

- i. The Complainant contends that the disputed domain name is identical or confusingly similar to the trademark TENCENT in which the Complainant has rights.

The Complainant says the generic Top-Level Domain (“gTLD”), in this instance “.com”, conventionally need not be taken into account. The disputed domain name then comprises the Complainant's trademark TENCENT with the added geographical term “asia”, making it confusingly similar to the Complainant's trademark. The geographical term “asia” may add to the confusing similarity because it refers to the area where Complainant is based and is widely known.

ii. The Complainant further contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant says the Respondent is not affiliated with Complainant in any way and has not been granted any permission to use the Complainant's trademark. Furthermore, the registration of the Complainant's TENCENT trademark as granted by the USPTO, EUIPO, and HKIPD is *prima facie* evidence of the Complainant's exclusive right to use the trademark in commerce or in connection with the supply of goods or services. The Complainant's trademark registrations, and the registration of the Complainant's own domain name <tencent.com>, predate the registration of the disputed domain name.

The Complainant says the Respondent is not commonly known by the disputed domain name, but as “Gba Gaun”. The Respondent is not using the disputed domain name in connection with a *bona fide* supply of goods or services because the corresponding website has offered redirection links to third parties including direct competitors of the Complainant, presumably in return for the receipt of pay-per-click fees.

iii. The Complainant contends that the disputed domain name was registered and is being used in bad faith.

The Complainant says because its trademark is known and registered internationally, and features in the Fortune Global 500 World's Biggest Companies 2021 and in Fortune's Top 50 Companies, the Respondent knew or should have known of it. An Internet search for the term “tencentasia”, as incorporated in the disputed domain name, returns multiple results referencing the Complainant. The Respondent has therefore intentionally created a likelihood of confusion between the Complainant's trademark and the disputed domain name as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, and has done so in order to generate pay-per-click revenue. There can be no plausible good-faith reason for the Respondent to have registered the disputed domain name.

The Complainant says the Respondent's activity with the disputed domain name amounts to cybersquatting. Moreover the Respondent has engaged in a pattern of such registrations, having been proceeded against in *Teleflex Incorporated v. Gba Gaun* (FA2111001973590), dated December 16, 2021.

The Complainant submits that the Respondent's use of a privacy service to hide its identity should support a presumption of registration in bad faith. The Complainant sent a cease and desist letter to the Respondent on November 18, 2021, and again on December 1, 2021. The Respondent replied on December 16, 2021, asking for a price of \$500,000 for the disputed domain name. The Complainant says this is further evidence of the Respondent's bad faith.

The Complainant has cited previous decisions under the UDRP that it considers may be of relevance to the present Complaint.

The Complainant requests the transfer to itself of the disputed domain name.

## **B. Respondent**

The Respondent made no formal reply to the Complaint.

## **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 has perused the copies of registration records produced by the Complainant in evidence and is satisfied that the Complainant has the requisite rights under the Policy in the trademark TENCENT.

The disputed domain name is <tencentasia.com>, in which the word "tencent", being the Complainant's trademark TENCENT, is clear, followed by the geographical word "asia". The gTLD may be disregarded in the determination of confusing similarity. Insofar as it clearly features the entirety of the Complainant's trademark, the disputed domain name is found to be confusingly similar, and the geographical identifier "asia" is found not to detract from the confusing similarity in the circumstances.

The Panel finds for the Complainant in the terms of paragraph 4(a)(i) of the Policy.

### **B) Rights and Legitimate Interests**

The Complainant has asserted that it has no connection with the Respondent, who has not been authorized in any way to use the Complainant's trademark or to register the disputed domain name incorporating the trademark. The Complainant's trademark registrations predate the registration of the disputed domain name by between six and 17 years.

The Complainant's *prima facie* case is thus made out and it is for the Respondent to seek to establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy that:

- “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 above circumstances are without limitation and rights or legitimate interests may be established by the Respondent alternatively to the satisfaction of the Panel.

The Respondent has not made any reply under paragraph 4(c) of the Policy. The Respondent has not offered any evidence to the effect that the disputed domain name has been used for any *bona fide* promotion of goods or services. Trading or the generation of pay-per-click revenue by use of the Complainant's trademark cannot qualify as *bona fide* use. There is no evidence the Respondent has been commonly known by the disputed domain name, or that there has been any fair or noncommercial use.

On the evidence and on the balance of probabilities, the Panel finds for the Complainant under paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

The Complainant must prove under paragraph 4(a)(iii) of the Policy that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four alternative circumstances, without limitation, that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“i. circumstances indicating that you have registered or you have acquired the domain 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 or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

ii. you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

iii. you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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 website or location or of a product or service on your website or location”.

The Complainant has produced in evidence a screen capture of the website to which the disputed domain name resolved on January 6, 2022. The screen capture, displaying the disputed domain name, was evidently a parking page service provided by the hosting company. The page displayed a list of 10 “Related Links” with headings such as “How to Make a Company Email”, “Google Cloud Account Price”, and notably, “Tencent”. It may reasonably be concluded on the evidence and on the balance of probabilities that the parking page was operated on the common industry model of the monetization of a dormant domain name, whereby contextually relevant links are placed by a specialist service on behalf of advertisers who pay a fee in return for referrals. Part of the revenue accrues to the benefit of the domain name owner, in this case the

Respondent. The Complainant's trademark has been used by the Respondent in the disputed domain name in order to attract visitors through the likelihood of confusion with the Complainant's trademark, in order to generate revenue for the Respondent as the expense of the goodwill in the Complainant's trademark. The Panel finds on the balance of probabilities that the disputed domain name was registered for the purpose for which it has been used, and therefore finds registration and use in bad faith by the Respondent under paragraph 4(b)(iv) of the Policy.

In reply to the Complainant's cease and desist letter dated December 1, 2021, the Respondent's reply on December 16, 2021, said in its entirety, "Violation? We paid for the domain and if you pay \$500,000 for it. We will transfer it to you". Since no reasonably plausible use for the disputed domain name can be envisaged that would not conflict with the Complainant's trademark rights, it may reasonably be concluded as more probable than not that the Respondent had primarily intended to sell the disputed domain name to the Complainant, or a competitor of the Complainant, for profit. The lack of any pre-emptive approach from the Respondent does not indicate otherwise, as it is not uncommon to await a first offer from the trademark owner in the hope of countering paragraph 4(b)(i) of the Policy. A high asking price is not uncommon in similar circumstances, being merely an opening ploy. On the totality of the evidence, the Panel finds for the Complainant under paragraph 4(b)(i) of the Policy.

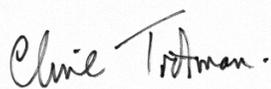
The Complainant has cited the decision in the recent case of *Teleflex Incorporated v. Gba Gaun* (FA2111001973590), in which a domain name was transferred from the present Respondent to a previous complainant, and submits that the Respondent has demonstrated a pattern of the registration of domain names in order to prevent the owner of a trademark or service mark from reflecting the trademark in a corresponding domain name. As reviewed in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, at section 3.1.2, "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration". The Panel finds the disputed domain name to form part of a pattern of abusive registrations within the terms of paragraph 4(b)(ii) of the Policy, constituting registration in bad faith.

Whilst the use of a privacy service to hide a registrant's contact details may be entirely legitimate, it ceases to be so if the motivation has been to attempt to delay or to avoid the service of proceedings. In the present instance the Panel finds it more probable than not that the Respondent intended to avoid or to delay the service of the Complaint, whilst continuing to derive benefit from the disputed domain name, further supporting a finding of registration and use in bad faith.

For the multiple reasons given above, the Panel finds the disputed domain name to have been registered and used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

## 6. Decision

In accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <tencentasia.com> be transferred to the Complainant.



Dr. Clive Trotman  
Panelist

Dated: February 17, 2022