



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE

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Asian Domain Name Dispute Resolution Centre (Hong Kong Office)

Uniform Domain Name Dispute Resolution Policy

Panelist Decision

Complainant : **Alibaba Group Holding Limited**
Respondent : **Zou Xin**
Case Number : **HK-1100342**
Contested Domain Name : **alibabamap.com**
Panel Member : **Christopher To**

1. 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 **Zou Xin** of Jeifang, Xianfan, Hubei, People's Republic of China 441000.

The contested domain name is "**alibabamap.com**" ("***Disputed Domain***")

2. Procedural History

On 25 March 2011, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre ("***ADNDRC-HK***"). On 1 April 2011, the ADNDRC-HK confirmed receipt of the

Complaint and payment of the required case filing fees.

On 1 April 2011, ADNDRC-HK notified WEB COMMERCE COMMUNICATIONS LIMITED DBA WEBNIC.CC ("**Registrar**") of the Disputed Domain of the proceedings by email.

On 1 April 2011, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain is registered with the Registrar, that Zou Xin is the holder of the Disputed Domain, that the Internet Corporation For Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy ("the Policy") is applicable to the Disputed Domain, the language of the Registration Agreement of the Disputed Domain is English as provided by the WHOIS (<http://www.who.is>) information in relation to the Disputed Domain and confirmed that the Disputed Domain is under Registrar lock status.

On 13 April 2011, the ADNDRC-HK sent a Notification of Commencement of Proceedings ("**Notification**"), together with the Complaint, to the email address of the Respondent's nominated registrant contact for the Disputed Domain (as recorded in the WHOIS database). The Notification gave the Respondent twenty (20) calendar days to file a Response (i.e. on or before 3 May 2011).

On 14 April 2011, the ADNDRC-HK also sent the Notification together with the Complaint, to the fax number of the Respondent's nominated registrant contact for the Disputed Domain (as recorded in the WHOIS database).

On 15 April 2011, Respondent sent ADNDRC-HK an email in the Chinese language requesting that the documentation be provided into the Chinese language.

On 29 April 2011 ADNDRC-HK responded to the Respondent's email of 15 April 2011 in the Chinese language by stating that in accordance with Internet

Corporation for Assigned Names and Numbers Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) Paragraph 11 (a)

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

and urged the Respondent to respond to the Complaint in the English language.

On 16 May 2011 ADNDRC-HK sent an email to the Complainant copying the Respondent informing the Complainant that the Respondent did not file a Response to the Disputed Domain within the required time period (i.e. on or before 3 May 2011) and that a Panelist for the Disputed Domain will be appointed shortly by the ADNDRC-HK.

The Panel comprising of Christopher To as a single panelist was appointed by the ADNDRC-HK on 20 May 2011. The papers pertaining to the case were delivered to the Panel by email on 20 May 2011, followed by a hard copy on 25 May 2011.

3. Factual Background

For the Complainant

The Complainant is a company incorporated in the Cayman Islands and its principal place of Business is in the People’s Republic of China (“*PRC*”).

The brand “Alibaba”, or “阿里巴巴” as it is officially know in Chinese, was founded by the Complainant in Hanzhou, the PRC in 1999 and operates its business through a number of subsidiaries (collectively referred to as “*Alibaba Group*”). Since 1999, Alibaba Group has grown to become a global leader in the field of e-commerce. Its subsidiary, Alibaba.com Limited (“*Alibaba.com*”), has

been listed on the Hong Kong Stock Exchange since November 2007 (HKSE: 1688.HK).

Alibaba.com operates three online business-to-business (“**B2B**”) marketplaces: a global trade marketplace (www.alibaba.com) for importers and exporters; a Chinese marketplace (www.alibaba.com.cn) and (www.1688.com) for domestic trade in the PRC, and a Japanese marketplace (www.alibaba.co.jp) facilitating trade to and from Japan (together, the “*Alibaba B2B Websites*”). The Alibaba B2B Websites form a community now boasting more than 50 million registered users from more than 240 countries and regions worldwide, and the international and Chinese marketplaces are now amongst the largest online B2B trading platforms in the world. Alibaba.com also beta-launched a wholesale platform at www.aliexpress.com on the international marketplace designed to facilitate small bulk transactions in September 2009. Alibaba.com also offers business management software and Internet infrastructure services targeting small businesses across the PRC and, through Ali-Institute, incubates e-commerce talent for Chinese small businesses.

In addition to the Alibaba B2B Websites, the Complainant, as a family of Internet-based businesses, also operates online retail and payment platforms and data-centric cloud computing services. These platforms consist of Taobao (www.taobao.com and www.taobao.com.cn), the PRC’s largest consumer-to-consumer Internet retail platform; Koubei.com (www.koubei.com), the PRC’s leading classified listing website; Alipay (www.alipay.com), the PRC’s leading online payment website, Alimama (www.alimama.com), the PRC’s leading online advertising platform, and Yahoo! China website (www.yahoo.cn).

Alibaba Group, through its subsidiary Alibaba Cloud Computing Ltd., provides an online map service for mainland China branded under the name “Alibaba Map”. Alibaba Group beta launched Alibaba Map on 15 December 2010, and it officially launch the Alibaba Map Website in Greater China on 15 April 2011.

The Complainant is also the registrant of the <alibamaps.com> domain name, which was transferred to the Complainant as a result of successful Uniform Domain Name Dispute Resolution Policy proceedings.

Headquartered in Hangzhou, the PRC, Alibaba Group, through its subsidiaries, has offices in sixty (60) cities across the PRC, as well as in Hong Kong, Taiwan, Korea, Japan, Singapore, India, the UK, the USA and Europe. In 2009, Alibaba.com alone reported total revenue of some RMB 3,870 million and has achieved a year-on-year revenue growth of about 29%.

The Complainant's business and services provided via its subsidiaries in relation to B2B trading are and have always been carried on, supplied and marketed continuously and substantially throughout the world including in the PRC under and/or by reference to "Alibaba". The date of first use of the mark "Alibaba" for which the Complainant has been commonly known worldwide in relation to e-commerce services was in December 1998.

The Complainant and its subsidiaries have been promoting "Alibaba" branded e-commerce services and products extensively since 1999 via the internet and through publicity and advertising in trade press and other print media. Millions of dollars have been spent annually to market the business and services and the "Alibaba" trade mark. For instance, Alibaba.com 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. This campaign represents a long-term investment in the loyalty of user base and global brand recognition for Alibaba.com.

For the Respondent

The Respondent is an individual who resides in the PRC. The Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 3 May 2011) as set out in an email dated 16 May 2011 from ADNDRC-HK to the Complainant copying the Respondent. As such the Respondent has not contested the allegations of the Complaint and is in default.

4. Parties' Contentions

The Complainant

The Complainant submits that, through its legal representatives, the Complainant sent the Respondent a cease and desist letter in English and Chinese on 17 January 2011, demanding that the Respondent shut down the website, take steps to transfer the Disputed Domain to the Complainant and cease and not in the future use the Complainant's Alibaba Trade Marks as part of a company's name or on any website. The Respondent did not reply, nor did the Respondent comply with the demands within the timeframe stipulated.

The Complainant submits that the Disputed Domain is identical to the Trade Mark, which the Complainant has rights in. This right is also reflected in the Complainant's company name ("Alibaba", or "阿里巴巴").

The Complainant submits that the Respondent who is the holder of the Disputed Domain has no rights or legitimate interests in respect of the Disputed Domain. Further, the Complainant submits that, to the best of the Complainant's knowledge and information, the Respondent is not the owner of any trade mark registrations reflecting or corresponding to the Disputed Domain in Hong Kong or the PRC.

The Complainant submits that the word “Alibaba”, being the dominant part of the Disputed Domain, does not in any way reflect the Respondent’s name. (“Zou Xin”). In fact it is further submitted that there is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain and the Respondent’s name (Zou Xin).

The Complainant submits that the Disputed Domain incorporates the Complainant’s “Alibaba” trade mark in its entirety. The only difference between the Disputed Domain and the Complainant’s “Alibaba” trade mark is the inclusion of the word “map” as a suffix.

The Complainant submits that “Alibaba” is clearly the distinctive and prominent component of the Disputed Domain and the addition of the word “map” does nothing to distinguish it from the Alibaba Trade Marks. In fact, given that the Complainant has beta launched Alibaba Maps, the inclusion of the word “map” only increases the likelihood of confusion between the Disputed Domain and the Complainant’s Alibaba Trade Marks.

The Complainant submits that the fame of the Complainant’s Alibaba trade mark (particularly in the PRC where the Respondent is located) is such that the use of the words “map” in connection with the word “alibaba” does nothing to dispel confusion as to an association with the Complainant and, in any case, in the context of the operation of a global B2B trading platform and the Complainant’s Alibaba Maps service, the connection between Alibaba with the word “map” as a suffix to the Complainant’s “Alibaba” trade mark is such that the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant’s business. See, for example *eBay Inc. v. SGR Enterprises and Joyce Ayers* (Case No. D2001-0259) where, the Panel held that the domain names in question, namely <ebaylive.com> and <ebaystore.com>, were confusingly similar to the Complainant’s trade mark.

The Complainant submits that it has not consented to or authorized the Respondent's use of the "Alibaba" brand in connection with the online map website. Further, as the Complainant has only recently become aware of the Respondent's use of the "Alibaba" brand, the Complainant also cannot be said to have acquiesced to such use

The Complainant submits that in a previous complaint [*Alibaba Group Holding Limited v. Lai Qinxing* (Case No. DHK-0900274)] filed by the Complainant for recovery of the <alibamaps.com> domain name, it was held that <alibamaps.com> was confusingly similar to "Alibaba", and the domain name was transferred to the Complainant.

The Complainant submits that there is clear evidence that the Respondent is aware of the Alibaba brand and is using the Disputed Domain to mislead consumers into believing that the Respondent's website is somehow associated with the Complainant's business, thereby attracting Internet traffic and profiting from click through links and advertisements.

The Complainant submits that the Disputed Domain has been registered and is being used by the Respondent in bad faith. Further the Complainant submits that the Respondent does not have any legitimate right or interest in the Disputed Domain. The fact that the Respondent has registered the Disputed Domain without having any legitimate right or interest in them is of itself evidence of bad faith on the part of the Respondent in registering the Disputed Domain.

The Complainant submits that, the Respondent, being an individual domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain by virtue of the Complainant's reputation in the mark "Alibaba" in the PRC and internationally.

The Complainant submits that the Respondent's registration and use of the Disputed Domain must involve mala fides in circumstances where the registration and use of the Disputed Domain was and continues to be made in the full knowledge of the Complainant's prior rights in the Alibaba Trade Marks, and in circumstances where the Respondent did not seek permission from the Complainant, as the owner of the trade marks, to such registration and use.

The Complainant further submits that the Respondent registered the Disputed Domain to blatantly misappropriate the Complainant's goodwill in the Alibaba Trade Marks. There can be no possible grounds on which to find that the Respondent's registration and use of the Disputed Domain have been otherwise done in bad faith and for the sole purpose of misappropriating the Complainant's goodwill and disrupting the Complainant's business in the PRC.

The Complainant accordingly submits that the Respondent's use of the Disputed Domain is identical and/or confusingly similar to the registered trade marks in which the Complainant has rights or interests, that the Respondent has no rights or legitimate interests in respect of the Disputed Domain and that the Respondent has registered and used the Disputed Domain in bad faith. On this basis the Complainant requests that the Disputed Domain be transferred to the Complainant.

The Respondent

The Respondent did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK in its email of 13 April 2011 and as such has not contested the allegations of the Complaint and is in default.

5. Findings

A. The Language of the Proceedings

The Internet Corporation For Assigned Names and Numbers Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) Paragraph 11 (a) provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its email of 1 April 2011 then in accordance with Article 11(a) of the Rules for Uniform Domain Name Dispute Resolution Policy the language of the administrative proceedings shall be in the English language. Although the Respondent did send an email to ADNDRC-HK on 15 April 2011 requesting that ADNDRC-HK provide it with details of the Complaint in the Chinese language. The ADNDRC-HK responded on 29 April 2011, stating that the proceedings shall be conducted in the English language as the language of the Registration Agreement is in the English language, unless the Panel decides otherwise. No further correspondence was received from the Respondent. In these circumstances given that the Complaint is drafted in the English language which is in line with the Registration Agreement and that the Respondent has failed to communicate further on the matter, the Panel considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language.

B. Discussions and Findings

Having considered all the documentary evidence before me, and the Respondent's non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") the Panel is of the view that it should proceed to decide on the Disputed Domain ("alibabamap.com") based upon the Complaint and evidence submitted by the Complainant.

Paragraph 14(a) of the Rules provides that:

"In the event that a Party, in the absence of exceptional circumstances, does not comply with any of the time periods established by these Rules or the Panel, the Panel shall proceed to a decision on the complaint."

According to Paragraph 4a Internet Corporation for Assigned Names and Numbers Uniform Domain Name Dispute Resolution Policy ("the Policy"), which is applicable hereto, the Complainant has the burden of providing that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Disputed Domain; and
- (iii) the Disputed Domain has been registered and is being used in bad faith.

(1) Identical/confusing similar

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

The Disputed Domain incorporates the Complainant's "Alibaba" trade mark in its entirety. The only difference between the Disputed Domain and the Complainant's "Alibaba" trade mark is the inclusion of the word "map" as a suffix. It is well-established that in cases where the distinctive and prominent element of a Disputed Domain is the Complainant's mark and the only addition is a generic term that adds no distinctive element, such an addition does not negate the confusing similarity between the Disputed Domain and the mark. See, for example *LEGO Juris A/S v. Huangderong*, WIPO Case No. D2009-1325; *National Football League v. Alan D. Bachand, Nathalie M. Bachand d/b/a superbowl-rooms.com*, WIPO Case No. D2009-0121; *National Football League v. Peter Blucher d/b/a BluTech Tickets*, WIPO Case No. D2007-1064.

"Alibaba" is clearly the distinctive and prominent component of the Disputed Domain and the addition of the word "map" does nothing to distinguish it from the Alibaba Trade Marks. In fact, given that the Complainant has beta launched Alibaba Maps, the inclusion of the word "map" only increases the likelihood of confusion between the Disputed Domain and the Complainant's Alibaba Trade Marks.

The prominence of the Complainant's Alibaba trade mark (particularly in the PRC where the Respondent is located) is such that the use of the words "map" in connection with the word "alibaba" does nothing to dispel confusion as to an association with the Complainant and, in any case, in the context of the operation of a global B2B trading platform and the Complainant's Alibaba Maps service, the connection between "alibaba" with the word "map" as a suffix to the Complainant's "Alibaba" trade mark is such that the relevant Disputed Domain considered as a whole would be likely to be understood by potential customers of the Complainant as a reference to the Complainant's business.

Further, it is well established that, in making an enquiry as to whether a trade mark is identical or confusingly similar to a domain name, the domain extension, in this case <.com>, should be disregarded. See, for example the WIPO decision

of *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd* (Case No. D2006-0762).

In light of the prominence of the Alibaba Group and the Alibaba Marks, it may be inferred that the Respondent elected to incorporate “Alibaba” in order to misappropriate the Complainant’s goodwill and leverage off the Complainant’s reputation in “Alibaba” by creating confusion among consumers as to some affiliation with, or endorsement by, the Complainant.

Apparently, the trademark “Alibaba” is the same as the distinctive part of the Disputed Domain in question. It is the view of this Panel that the Complainant has discharged its burden of proof to establish the element of identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

(2) Rights or Legitimate Interests of Respondent

The Complainant’s “Alibaba” brand has been in use since at least 1998. According to the WHOIS search result, the Disputed Domain was registered on 19 May 2006, some 8 years after the Complainant had begun using the Alibaba Trade Marks. Furthermore, “Alibaba” and “阿里巴巴” have acquired meanings through their extensive use by the Complainant in commerce, so that both “Alibaba” and “阿里巴巴” are immediately recognisable to consumers as being associated with the Complainant and its business.

The fact that the Complainant’s adoption and first use of the Alibaba name and marks significantly (i.e. 1998) predates the Respondent’s registration and use of the Disputed Domain has the practical effect of shifting to the Respondent the burden to proof in establishing that it has legitimate rights and/or interest in the Disputed Domain. See, for example the WIPO decision of *PepsiCo, Inc. v. PEPSI*,

SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS) (Case No. D 2003-0696) as a reference to this principle.

There is no connection, either in appearance, in meaning or phonetically, between the Disputed Domain and the Respondent's name (Zou Xin).

Given the fame and notoriety of the Complainant and the Alibaba Trade Marks, particularly in the PRC where the Respondent resides, the Respondent must have known of the existence of the Alibaba Trade Marks when registering the Disputed Domain.

The Respondent's website features an "AlibabaMap" logo that is similar to the Complainant's "Alibaba.com" logo, featuring identical font as the Complainant's "Alibaba.com" logo, and the same orange colour scheme used on the "Alibaba.com" logo and many of the Complainant's websites, including www.alibaba.com, www.china.alibaba.com, www.aliexpress.com. From this it is clear evidence that the Respondent is aware of the Alibaba brand and is using the Disputed Domain to mislead consumers into believing that the Respondent's website is somehow associated with the Complainant's business, thereby attracting Internet traffic and profiting from click through links and advertisements.

While the Respondent's website appears to host free maps, the website also contains advertisements and links to other websites, from which the Respondent presumably receives referral fees, or some other kind of remuneration. It is well established that such use of a domain name to point to a website containing sponsored advertising and click-through links to other sites is neither use for the bona fide offering of goods or services nor a legitimate non-commercial use. See, for example *PRL USA Holdings, Inc. v. LucasCobb, WIPO Case. No. D2006-0162*.

Internet users are likely to assume that the Respondent's website is associated with the Alibaba Group. Such use cannot be deemed to be (i) "use in connection with any bona fide offering of goods or services" or (ii) "legitimate non-commercial use" which, in the absence of the trade mark rights or lawfully acquired reputation in "Alibaba", may otherwise have served to confer upon the Respondent a legitimate right or interest in the Disputed Domain.

Given that there is no evidence from the Respondent (notably the absence of a Response) on its right and/or interest in the Disputed Domain, this Panel concludes that the Respondent has no rights and/or legitimate interests in respect of the Disputed Domain.

(3) **Bad faith**

Paragraph 4(b) of the Policy sets down four (4) factors in which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domain in bad faith. The four (4) factors are as follows:

"Evidence of Registration and Use in Bad Faith. For the purposes of [Paragraph 4\(a\)\(iii\)](#), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 web site or location or of a product or service on your web site or location.”

The Respondent, being an individual domiciled in the PRC, must have been aware of the Complainant's prior rights and interest in the Disputed Domain by virtue of the Complainant's reputation in the mark “Alibaba” in China and internationally as of the date that the Respondent registered that Disputed Domain.

The fact that the website features an “Alibabamap” logo that is confusingly similar to the Complainant's “Alibaba.com” logo, evidences the fact that the Respondent knew of the Complainant's trade mark and registered the Disputed Domain in a dishonest attempt to attract Internet traffic to the website on the mistaken belief that it was in some way associated with the Complainant's business, and to make undue profits from advertisements and sponsored links.

The Respondent's registration and use of the Disputed Domain must involve mala fides in circumstances where the registration and use of the Disputed Domain was and continues to be made in the full knowledge of the Complainant's prior rights in the Alibaba Trade Marks, and in circumstances where the Respondent

did not seek permission from the Complainant, as the owner of the trade marks, to such registration and use. See, for example the WIPO decision of *Venve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.* (Case No. D2000-0613) in which the registrant had used and registered the domain name in bad faith, the Panel took into account the fact that the Respondent registered the domain name with knowledge of the Complainant's longstanding prior rights.

The circumstances indicate that the Respondent has used the Complainant's "Alibaba" mark as part of the Disputed Domain in an attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. While the Respondent's website provides free maps, the Respondent is presumably deriving income from the advertisements and sponsored links posted on the website, which may be accessed by Internet users who are likely to assume that the website is somehow associated with the Complainant's business.

For these reasons, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Conclusions

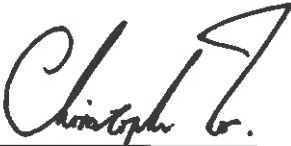
The Complainant has proved its case. It has a registered trademark in the name “Alibaba” to which the contested domain name is confusingly similar.

The Respondent has shown no rights or legitimate interest in the Disputed Domain.

The Complainant has proved that the Respondent registered and used the Disputed Domain in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and do hereby order that the Disputed Domain “**alibabamap.com**” be transferred to the Complainant **Alibaba Group Holding Limited** .

Dated 17 June 2011


Christopher To