



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700979
Complainant:	Tencent Holdings Limited
Respondent:	Dinesh Mudiraj
Disputed Domain Name(s):	<tenpayinternational.com>

1. The Parties and Contested Domain Name

The Complainant is Tencent Holdings Limited, of Georgetown, Cayman Islands.

The Respondent is Dinesh Mudiraj, of Hyderabad, India.

The domain name at issue is <tenpayinternational.com>, registered with GoDaddy.com, LLC, of Scottsdale, Arizona 85260, United States.

2. Procedural History

The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (Hong Kong office) (“the Centre”) on 15 May 2017. On 15 May 2017, the Centre transmitted by email to the Registrar a request for registration verification in connection with the disputed domain name. On 15 May 2017, the Registrar disclosed that the true Respondent’s identity had been under a privacy proxy service. The true Respondent was “Dinesh Mudiraj”. The Respondent’s contact details were provided by the Centre to the Complainant which, on 18 May 2017, filed an Amended Complaint to reflect this situation. The Centre verified that the Amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (“the Policy” or “UDRP”, the Rules for Uniform Domain Name Dispute Resolution Policy (“the Rules”) and the Asian Domain Name Dispute Resolution Centre Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“the Supplemental Rules”).

In accordance with the Rules, the Centre formally notified the Respondent of the Amended Complaint and the proceedings commenced on 18 May 2017. The Respondent submitted a Response on 6 June 2017.

The Centre appointed the Honourable Sir Ian Barker QC as the sole panelist in the matter on 15 June 2017. The Panel finds that it was properly constituted and that it is impartial and independent of the parties.

3. Factual background

The Complainant (“Tencent”) is the holding company of the Tencent Group which is a comprehensive technology services provider globally but especially in China. It is one of the largest gaming companies in the world. It provides on-line mobile, telecom services and advertising. Amongst the platforms which it provides are ones for on-line payment, real-time messenger and mobile communication. The latter two platforms have many millions of active users. Tencent is one of the world’s top 10 most valuable companies.

The Complainant’s on-line payment platform is called “Tenpay” and was launched in 2003. It has grown into one of the leading mobile payment services providers in China and Asia with some 200 million active users. Its services are widely adopted in many industries to provide a wide variety of users with professional and secure online payment solutions.

The Complainant owns numerous trademarks for the mark TENPAY in many jurisdictions including the European Union, the United States, Australia, Mainland China, Singapore, Hong Kong and other Asian countries. For example, it holds United States Trademark 4591001 – registration date 26 August 2014 and European Union Trademark 010815033 – registration date 27 November 2012. The various registrations cover a wide range of goods and services – particularly in financial affairs and computer and communications technology.

The first of the Complainant’s registered TENPAY trademarks (i.e. that in Mainland China) has the registration date of 7 September 2010. The disputed domain name was registered on 15 December 2016.

The Complainant also owns “We Chat Pay” trademarks in some Asian jurisdictions and the European Union. These marks include a logo featuring the symbol of a tick of approval.

The Complainant applied on 2 May 2017 for trademark registration for TENPAY in India.

The Respondent applied on 3 March 2017 for trademark registration for TENPAY in India. The Complainant intends to oppose the grant of this application.

The website accessed by the disputed domain name offers identical or substantially similar payment services to the Complainant’s payment services. The word TENPAY is used prominently and in isolation on the website. It also features the Complainant’s “tick” logo alongside the word “Ten Pay International”.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The disputed domain name is confusingly similar to the Complainant’s trademark. The disputed domain name contains the whole of the trademark with the addition of a generic geographical description (i.e. “international”). This addition does not serve as a distinguishing element but only exacerbates the confusion and causes

internet users to believe that the disputed domain name relates to the Complainant's international business.

- ii. None of the situations contemplated by Paragraph 4(c) of the Policy applies to the Respondent. The Complainant gave him no permission to reflect its trademark in the disputed domain name. The Respondent attempted to hide his identity under a privacy shield.
- iii. The disputed website offers online utility recharge and credit and payment services which suggests to internet users that the site is in some way associated with the Complainant – thus causing confusion. The disputed domain name is being used to pass off the Complainant's reputation in its mark. The Respondent has intentionally attempted to attract internet users to his website for financial gain, which constitutes bad faith under Paragraphs 4(b)(iii) and (v) of the Policy.

B. Respondent

All the Respondent said in his Response is as follows:

“I have further denied your allegation that with a dishonest intention had adopted the mark/word and in respect of which it is submitted that, I have written to Tencent Company vide an email explaining of my company for a possible tie up in order to gain experience and also to expand and enhance my company globally which would boost business of my company www.tenpayinternational.com. It is submitted that it is only on my information that Tencent Holdings limited as acted and sent the present notice without replying to the e-mail till date. This proves My honesty and your allegations with respect to the same are baseless and without any substance.

Whereas we are budding start up company in India would have gain our goodwill in the next 1-2 years. I would acknowledge my rights and cooperate in resolving the matter amicably without lengthy opposition and other legal procedures. I thank you in advance for your cooperation if you reach a satisfy settlement (where as we have spent our precious Time and hard earned Money). We are ready for settlement directly with Tencents authorized persons.”

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 disputed domain name is clearly confusingly similar to the Complainant's numerous trademarks for TENPAY. The addition of the generic geographical word "international" does nothing to abate the confusing similarity. Rather it exacerbates it because of the Complainant's extensive international activities.

Paragraph 4(a)(i) of the Policy is satisfied.

B) Rights and Legitimate Interests

The Respondent could have produced evidence to show that the use of the three situations referred to in Paragraph 4(c) of the Policy applied to him. His Response does nothing to further any defense which might be available to him under Paragraph 4(c). Since he does not challenge the Complainant's assertion that the Complainant gave him no authority to reflect its trademarks in a domain name, the onus lies on the Respondent to show, that the comes within one of the three limbs of Paragraph 4(c). He has failed to do so.

Rather his Response seems to indicate that he well knew of the Complainant when he registered the disputed domain name and that he hoped that he could do business with the Complainant and/or reach a settlement of the dispute.

Accordingly, Paragraph 4(a)(ii) of the Policy is satisfied.

C) Bad Faith

Despite the Respondent's protestations, there is a clear inference that the disputed domain name was registered and is being used in bad faith.

The Respondent must have known of the fame of the Complainant and its business. Yet he registered a domain name which was confusingly similar to the Complainant's mark and then used its mark on a website offering similar services. Clearly, the Respondent has intentionally attempted to attract for commercial gain internet users to his website. The opportunity for internet users to be confused is obvious.

The fact that the Respondent hid his identity behind a proxy service, in the circumstances of this case, also points to bad faith.

Paragraph 4(a)(iii) of the Policy is satisfied.

6. Decision

The Panel determines that the disputed domain name <tenpayinternational.com> be transferred from the Respondent to the Complainant.

A handwritten signature in blue ink that reads "Ian Barker". The signature is written in a cursive style with a horizontal line underneath the name.

Hon Sir Ian Barker QC

Dated: 26 June 2017