



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK- 1400594
Complainant:	Alibaba Group Holding Limited
Respondent:	Rebecca Kovan
Disputed Domain Name(s):	<taobao.holdings>

1. The Parties and Contested Domain Name

1.1 The Complainant is Alibaba Group Holdings Limited, a company incorporated in the Cayman Islands with its registered office at One Capital Place, P.O. Box 847, George Town Grand Cayman, Cayman Islands, British West Indies (the “Complainant”) and represented by Mayer Brown JSM.

1.2 The Respondent is, Rebecca Kovan of 1449 El Camino Real 3 Burlingame, California 94010, USA (the “Respondent”) and unrepresented.

1.3 The disputed domain name at issue is <taobao.holdings> (the disputed Domain Name), registered by the Respondent with GoDaddy.com LLC, of 14455 N. Hayden Road, 226 Scottsdale, AZ 85260, USA (the “Registrar”).

2. Procedural History

2.1 The Complaint was filed with the Asian Domain Name Dispute Resolution Centre (ADNDRC) on 10 April 2014. On 10 April 2014 the ADNDRC sought registration verification from the Registrar Go Daddy.com LLC. in connection with the disputed Domain Name. On 11 April 2014, the Registrar confirmed that the Respondent is listed as the registrant and confirmed the registrant’s contact details.

2.2 The ADNDRC formally notified the Respondent of the Complaint by email of 28 April 2014 and advised the Respondent of the prescribed fifteen days deadline within which to file a response; being on or before 18 May 2014. The Respondent did not file a response.

2.3 By email of 26 May 2014, the ADNDRC advised the parties that Ike Ehiribe had been appointed as a sole panelist in this matter.

2.4 By email of 20 June 2014 the ADNDRC at the instance of the Panelist extended the time within which to render the decision up to the 22 June 2014.

3. Factual background.

For the Complainant

3.1 The Complainant is officially known as Alibaba and is said to operate its business through a number of subsidiaries and affiliates known as the Alibaba Group. Since the founding of the Alibaba Group in Hangzhou China, in 1999, the group has grown to be a global leader in the field of e-commerce. The Alibaba Group has offices in about 70 cities including across China, in Hong Kong, Taiwan, Korea, India, Japan, Singapore, Macao, USA and Europe. For the year 2011, the Alibaba Group reported a total revenue of about RMB 6.41 Billion. In May 2003, the Alibaba Group established the “Taobao” brand at www.taobao.com a Chinese language consumer-to-consumer Internet retail platform directed at Chinese consumers. The Alibaba Group is said to have operated this retail platform, which has since grown to become one of China’s largest online retail platforms and the primary online shopping destination in China for the last ten years. As at March 2013, the Taobao Marketplace had 760 million product listings showcased on its websites. The Taobao Marketplace receives more than 50 million visitors daily and is one of the world’s top 20 most visited websites according to the Alexa and Double Click Ad Planner hosted by Google, Inc. The Taobao Marketplace transaction volume is said to have exceeded RMB200 Billion or (US\$29 Billion) in 2009.

3.2 It is further stated that the Alibaba Group’s business and services of the Taobao Marketplace have always been carried on and marketed under and or by reference to the “TAOBAO” trade marks. The Alibaba Group has also expended enormous amounts of time and effort promoting the “TAOBAO” trade marks and the products and services available at the “TAOBAO” Websites extensively, since 2003 through the Internet, the trade or business press and other print media. In addition, it is stated that the Alibaba Group and its brands have recently been receiving substantial media attention in the US as can be gleaned from articles published in newspapers and magazines such as Reuters, The Wall Street Journal and Business Week. In addition the Complainant has listed and referred to well over seventeen trademark registrations, registered between 2003 and 2012, comprising of the “TAOBAO” trade mark to protect its interests around the world in countries such as the United States of America, Mexico, the European Union, China and Hong Kong etc.

For the Respondent

3.1 The Respondent is an individual based in California in the United States of America and registered the disputed Domain Name <taobao.holdings> on 09 February 2014 according to a copy of the WHOIS search record attached to these proceedings. By various exchange of emails between 12 March 2014 and 04 April 2014 the Respondent offered the disputed Domain Name, <taobao.holdings> for sale to diverse parties. The disputed Domain Name is said to currently resolve to a holding page, which only contains an image of the ocean and an inspirational quotation.

4. Parties’ Contentions

The Complainant

4.1 The Complainant asserts that the disputed Domain Name <taobao.holdings> is identical or confusingly similar to the Complainant’s trade or service marks in which the

Complainant has rights in that the disputed Domain Name wholly incorporates the Complainant's "TAOBAO" trade mark. The Complainant submits that it is unnecessary to refer to the domain extension, in this case < . holdings >, when seeking to ascertain the identicalness or confusing similarity of a disputed domain name in line with the decision in *Rohde & Schwarz GmbH & Co. HG v. Pertshire Marketing, Ltd*, WIPO Case No. D2006 – 0762. The Complainant therefore submits that in line with paragraph 4(a)(i) of the Uniform Domain Name Dispute Resolution Policy it has established that the disputed Domain Name is identical or confusingly similar to the registered trade marks of the Complainant in which it has extensive rights.

4.2 The Complainant further states that the Respondent has no rights or legitimate interests in the disputed Domain Name in accordance with paragraph 4(a)(ii) of the Policy in that the Respondent has never been commonly known by the disputed Domain Name. It is further argued that since the Respondent's name (Rebecca Kovan) and her organization (The Edit Guru) do not reflect or correspond with the disputed Domain Name there is therefore no justification for the Respondent to use "TAOBAO" in the disputed Domain Name. The Complainant further contends that the Respondent has never been authorised, permitted or licensed to use the "TAOBAO" trade marks therefore the burden of proving the existence of rights or legitimate interests shifts onto the Respondent in accordance with a previous panel decision in *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a EMS)*, WIPO Case No. D2003-0696. The Complainant further refers to a copy of a proprietor search report conducted at the United States Patent and Trademark Office to assert that the Complainant does not own any trademark registrations reflecting or corresponding to the disputed Domain Name in the United States where the Respondent is based.

4.3 Furthermore, it is asserted that as the Respondent has evinced a clear intention to sell the disputed Domain Name in return for commercial gain, such intent and or conduct cannot amount to a right or legitimate interest within the ambit of the Policy. In addition it is argued that any intended use of the disputed Domain Name by the Respondent cannot amount to a *bona fide* offering of goods or services or a legitimate non-commercial or fair use of the disputed Domain Name. The Complainant therefore submits that since the disputed Domain Name is identical to the Complainant's well known "TAOBAO" trade marks any such use would undoubtedly, mislead Internet visitors into believing that the disputed Domain Name is associated with the Complainant thereby diverting the Complainant's customers and Internet users to the disputed Domain Name for financial gain.

4.4 On the question of bad faith use and registration the Complainant submits *inter alia* as follows: (a) the Respondent's motivation to register the disputed Domain Name was solely to exploit the Complainant's reputation in the "TAOBAO" trade marks and thereby make undue profits as was found in *Sony Kabushiki Kaisha (also trading as Sony Corporation) v. Kil Inja*, WIPO Case No. D2000-1409; (b) the Complainant had been using the "TAOBAO" trade marks extensively in commerce since 2003 therefore it is inconceivable that the Respondent was not aware of the Complainant's established rights in the "TAOBAO" trade marks before deciding to register the disputed Domain Name in February 2014; (c) the Respondent's decision to register and use the disputed Domain Name must involve some degree of *mala fides* since the Respondent, being aware of the Complainant's prior well-established rights failed to seek and obtain prior permission from the Complainant as the owner of the trade marks before registering the disputed Domain Name, contrary to the decision in *Veuve Clicquot Ponsardin, Maison Fondée en*

1772 v. The Polygenix group Co., WIPO Case No D2000-0163; and (d) the Respondent's primary motive for registering the disputed Domain Name was to sell same for profit as evidenced by a number of emails attached to these proceedings which demonstrate that the Respondent was seeking to sell the disputed Domain Name in excess of the Respondent's out-of-pocket expenses.

The Respondent

4.5 The Respondent did not file any response to the Complaint within the stipulated time.

5. Findings

5.1 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 must be 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.

Identical / Confusingly Similar

5.2 The Panel is satisfied that the Complainant has acquired long established rights in the "TAOBAO" trademark in a significant number of jurisdictions including in the United States of America where the Respondent is based. The Complainant has listed seventeen of such trademark registrations in support of this complaint. The Panel is equally satisfied that the disputed Domain Name <taobao.holdings> is identical or confusingly similar to the Complainant's trademarks and indeed the Complainant's other domain names such as www.taobao.com and www.taobao.com.cn. Clearly, the disputed Domain Name wholly incorporates the Complainant's trade marks and as the Complainant submits, the inclusion of a domain name extension in this case <.holdings> does not preclude a finding of confusing similarity following *Rohde & Schwarz GmbH & Co.HG v. Perthshire Marketing Ltd, supra*. In the circumstances, the Panel finds that the Respondent has satisfied the requirements of paragraph 4 (a)(i) of the Policy.

Rights and Legitimate Interests

5.3 The Panel finds that the Respondent has failed to establish that she has any rights or legitimate interests in the disputed Domain Name. As the Complainant submits, the Respondent who bears the burden of proving the existence of such rights and interests following *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS COMPUTER INDUSTRY (a/k/a/ EMS), supra*, has further failed to establish that she was ever authorized, permitted or licensed to use the disputed Domain Name incorporating the Complainant's trade marks in any form or manner. In addition, the Respondent has failed to provide any evidence to establish that she has been commonly known by, or has been making a *bona fide* use of, the disputed Domain Name in connection with the offering of goods or services or has been making a legitimate non-commercial or fair use of the disputed Domain Name. In the circumstances, this Panel is satisfied from the adduced documentary evidence in the form of a website printout demonstrating that the disputed domain Name resolves to a website displaying the image of sea waves and a quotation reading as follows: "**TRUST YOURSELF AND YOU WILL SEE YOUR CHOICES ARE**

INSPIRED! The best and most beautiful things in the world cannot be seen or even touched- they must be felt with the heart. – Helen Keller”; that such unauthorized usage can never be described as a *bona fide* offering of goods and services nor a legitimate non-commercial or fair use of the disputed Domain Name. See generally, the often-cited panel decision in *Oki Data Americas Inc. v. ASD Inc.*, WIPO Case No. D2001-0903.

In the light of the foregoing, the Panel finds that the Complainant has satisfied the requirements of Paragraph 4 (a) (ii) of the Policy.

C) Bad faith

5.4 Turning to the question of bad faith use and registration, the Panel finds that the Respondent registered the disputed Domain Name in bad faith and continued to engage in bad faith use. In arriving at this particular finding, the Panel has taken into consideration a number of irrefutable factors. In the first instance, the Panel finds that it is inconceivable that the Respondent could not have been aware of the Complainant’s extensive rights in the “TAOBAO” trade marks, in numerous countries including the United States of America where the Respondent is based, before deciding to register the disputed Domain Name in February 2014. Secondly, the Complainant accepts that the only possible motivation for registering the disputed Domain Name was the desire to exploit the Complainant’s global reputation in e-commerce and the infringement of the Complainant’s trademarks for commercial gain. The Respondent’s financial and commercial intentions are clearly evidenced by the Respondent’s willingness to offer the disputed Domain Name for sale to the highest bidder in an email dated 10 April 2014. The Panel finds that this is a very powerful and indeed, conclusive evidence of bad faith registration and use as also held by the panel in a previous UDRP decision in *Veuve Clicquot Ponsardin, Maison Fond en 1772 v. The Polygenix Group Co. supra*. Finally, and in any event, the Panel has drawn adverse inferences from the Respondent’s failure and or refusal to respond to the complaint initiated by the Complainant in these proceedings.

In the final analysis the Panel also finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of the Policy.

6. Decision

6.1 For all the foregoing reasons, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules, the Panel directs that the disputed Domain Name <taobao.holdings> be transferred to the Complainant forthwith.

Ike Ehiribe
Panelist

Dated: 22 June 2014