

.hk Domain Name Dispute Resolution
AWARD BY ARBITRATION PANEL

1st Complainant: Alibaba Group Holding Limited
2nd Complainant Alibaba Group Services Limited
Respondent: DOMAIN NETWORK LIMITED / ALEXANDER CHEN
Case Number: DHK-1700151
Contested Domain Name: <alipayhk.com.hk> (Bundled Domain Name 支付寶香港.公司.香港)
Panel Member: David L. Kreider

1. Parties and Contested Domain Name

The 1st Complainant is Alibaba Group Holding Limited, of 4th Floor, One Capital Place, P.O. Box 847, Grand Cayman, Cayman Islands, British West Indies.

The 2nd Complainant is Alibaba Group Services Limited, of 26/F Tower One, Times Square, 1 Matheson Street, Causeway Bay, Hong Kong.

The Respondent is ALEXANDER CHEN, of Domain Trustee Services Department, Domain Network Limited, 12/F, Nathan Commercial Building, 430-436 Nathan Road, Kowloon, Hong Kong, whose email address is trustee-service@domain.net.hk / 9394hohoho@gmail.com.

The domain names at issue are <alipayhk.com.hk> bundled with the same domain name written in Chinese<支付寶香港.公司.香港>, registered by Respondent with Speedy Group Corp. Limited, of 九龍九龍灣宏開道 8 號其士商業中心 6 樓 603 室, Hong Kong.

2. Procedural History

On 12 October 2017, Complainants submitted a Complaint to the Hong Kong International Arbitration Centre (HKIAC), pursuant to the Domain Name Dispute Resolution Policy, adopted by the Hong Kong Domain Name Internet Registration Corporation Limited (HKIRC) on 22 February 2011 (the Dispute Resolution Policy), the HKIRC Domain Name Dispute Resolution Policy Rules of Procedure, approved by HKIRC on 22 February 2011 (the Rules of Procedure) and the HKIAC Supplemental Rules effective from 1 March 2011. Complainants elected that this case to be dealt with by a one-person panel.

On 13 October 2017, HKIAC transmitted by email to the Registrar, Speedy Group Corp. Limited, a request for registrar verification in connection with the disputed domain name. On 23 October 2017, the Registrar transmitted by email to HKIAC its verification response, confirming that the Respondent, ALEXANDER CHEN, is the holder of the domain name <alipayhk.com.hk> and that the language of the registration agreement is English.

On 9 November 2017, HKIAC transmitted a Written Notice of Complaint, forwarding the Complaint along with annexures to the Respondent, requesting that the Respondent submit a Response within 15 business days. The Notice specified the due date for the Response as being on or before 30 November 2017.

On 1 December 2017, HKIAC confirmed in an email to the parties that it had not received a Response from the Respondent within the required period of time.

On 1 December 2017, having received a Declaration of Impartiality and Independence and a Statement of Acceptance, HKIAC notified the parties that the panel in this case had been selected, with Mr. David L. KREIDER acting as the sole panelist. The Panel determines that the appointment was made in accordance with Rules 6 and 7, and Articles 8 and 9 of the Supplemental Rules. The Panel received the file from HKIAC and should render the Decision on or before 22 December 2017, if there are no exceptional circumstances.

3. Factual Background

For the Complainant

1st Complainant, Alibaba Group Holding Limited (hereinafter “**Alibaba Group**” or “**阿里巴巴集团**”), was founded in Hangzhou, China, in 1999. Since then, Alibaba Group has grown to become a global leader in the field of e-commerce and its total revenue has hit USD11 billion and USD15 billion for the year ended 31 March 2015 and 31 March 2016 respectively. Alibaba Group operates various businesses through its related and affiliated companies including online business-to-business wholesale marketplaces namely, www.alibaba.com for global trade, and www.1688.com for domestic trade in China, and other online business-to-consumer and consumer-to-consumer platforms, namely, Taobao marketplace, AliExpress marketplace and Tmall marketplace. It also operates a travel and tourism service, a data and cloud computing and a logistics data platform. On 19 September 2014, Alibaba officially listed on the New York Stock Exchange (NYSE: BABA), and has set a record for the world’s biggest initial public offering with its US\$ 25 billion listing.

2nd Complainant, Alibaba Group Services Limited is a wholly owned subsidiary of the Alibaba Group registered in Hong Kong. (1st Complainant and 2nd Complainant, collectively “**Complainants**”)

The Brand: Alipay

Alibaba Group, through its affiliates established the brand “Alipay” and launched the Alipay platform (www.alipay.com) in 2004. Since October 2014, the Alipay platform has been operated by Ant Financial Services Group (“**Ant Financial**”) and its affiliates including Alipay. Alibaba Group has granted a license to Ant Financial and Alipay to use the Alipay Trade Marks, but all the rights, title, interest and goodwill subsisting in the Alipay Trade Marks remains vested with the Complainant.

The Alipay platform is one of the most widely used independent third-party payment solutions in China. Alipay payment services are available in multiple jurisdictions, allowing payment to be collected by Mainland and overseas merchants from buyers over the world. As of December 2016, Alipay has over 450 million registered users, over 200 financial institutions including leading national and regional banks across China as well as Visa and MasterCard to facilitate payments in China and abroad, and excluding mainland China, it has a network of close to 100,000 retailers in 70 countries and regions, offering payment services for around 10 million small and micro merchants, supporting transactions in 18 foreign currencies. On November 11, 2016, USD 17.8 billion of gross merchandise volume was settled through Alipay on Alibaba’s China and international retail marketplaces and 175,000 payment transactions were processed per second at peak by the Alipay platform.

Alibaba Group secured the registration of <alipay.com> back in 2004.

Throughout the years, Alibaba Group, Ant Financial and Alipay have developed the Alipay brand, which has gained significant popularity globally. Alibaba Group, Ant Financial and Alipay have marketed “Alipay” extensively through different marketing campaigns over many years, resulting in a significant amount of media attention and a high public profile for the brand.

Alibaba Group holds over 100 domain name registrations containing the mark “ALIPAY”. Specifically, the domain names <alipay.com.hk> and <alipay.hk> were both registered back in 2006. Therefore, the portfolios of trade marks and domain names incorporating “Alipay” or “支付宝” are substantial.

Due to the similarity between the Domain Name Dispute Resolution Policy for .hk and .香港 domain names [Effective 22 Feb 2011] (hereinafter “Policy” or “HKDRP”) and the Uniform Domain Name Dispute Resolution Policy (hereinafter “UDRP”), Past Panels have accepted that consensus views and decisions of UDRP are applicable to cases under HKDRP, *see Nike Innovate C.V. and Nike Hong Kong Limited v. UBN Limited*, DHK-1600129 (HKIAC March 28, 2016). Accordingly, UDRP panel decisions will be cited herein as a source of authority, where appropriate.

For the Respondent

The Respondent is ALEXANDER CHEN, of Hong Kong. Pursuant to the WHOIS database, DOMAIN NETWORK LIMITED is the Registrant of the Disputed Domain Names and trustee-service@domain.net.hk is the Registrant email. On October 23, 2017, the Registrar advised that “Alexander Chen” is the applicant of the Domain Trustee Service provided by DOMAIN NETWORK LIMITED.

4. Parties' Contentions

The Complainant

The Complainant's contentions may be summarized as follows:

(i) The Registrant's Domain Name is identical or confusingly similar to a trademark or service mark in Hong Kong in which the Complainant has rights:

By virtue of its trade mark registrations, Complainant is the owner of the Alipay Trade Marks and has established its rights in the Alipay Trade Marks since 2004.

The ALIPAY and “支付寶” marks (collectively, the “Alipay Trade Marks”) are coined terms with no meaning in the English and Chinese dictionary or other languages. When comparing the Disputed Domain Names to Complainant's marks “ALIPAY” and “支付寶”, the relevant comparison to be made is only between the second-level portion of the Disputed Domain Names and Complainant's mark “ALIPAY”. See *Rollerblade, Inc. v. McCrady*, D2000-0429 (WIPO June 28, 2000).

The Disputed Domain Names incorporate 1st Complainant's mark “ALIPAY” and “支付寶” in their entirety, while merely adding the geographically descriptive term “HK” (the acronym for Hong Kong) and “香港” (Hong Kong in Chinese) at the end. It is well established that the addition of a geographic term or place name does not alter the underlying trade mark or negate the confusing similarity, and Panels have established that the mere addition of geographical terms to a complainant's trade mark does not sufficiently differentiate the disputed domain name from that trademark. As such, the Disputed Domain Names are confusingly similar to 1st Complainant's marks “ALIPAY” and “支付寶”. See *Wynn Resorts Holdings, LLC v. Jun Xi*, DHK-0700025 (HKIAC May 12, 2008). See also *Skype Ltd. v. Sacramento*, FA 0747948 (NAF Aug. 30, 2006).

Respondent's use of the Disputed Domain Names contributes to confusion. Respondent previously re-directed Internet users from www.alipayhk.hk to the website at www.alipayhk.solutions which allegedly provides consultancy services for 1st Complainant's Alipay payment services without 1st Complainant's authorization. Although it currently resolves to an inactive site, it clearly suggests and could evidence that Respondent intended the Disputed Domain Names to be confusingly similar to Complainant's marks “ALIPAY” and “支付寶”. See *the Gaming Board for Great Britain v. Gaming Board*, D2004-0739 (WIPO Oct. 18, 2004).

Based on the foregoing, Complainants consider the Disputed Domain Names to be identical or confusingly similar to 1st Complainant's mark “ALIPAY” and/or the trade name “Alipay”, in which the 1st Complainant has had rights prior to the date of registration of the Disputed Domain Names, and continues to have rights. Thereby, Complainants have satisfied the onus in accordance with Paragraph 4(a)(i) of the Policy.

(ii) The Registrant has no rights or legitimate interests in respect of the domain name(s):

Respondent is not commonly known by the Disputed Domain Names and 1st Complainant has not licensed or authorized Respondent in any way to register and use any domain names incorporating 1st Complainant's Alipay Trade Marks. It has clearly evinced a lack of rights or legitimate interests. See Policy ¶ 4(c)(ii). See *United Way of America v. Alex Zingaus*, FA 1036202 (NAF Aug. 30, 2007). At present, the pertinent WHOIS information identifies the registrant "DOMAIN NETWORK LIMITED / Alexander Chen" which does not resemble the Disputed Domain Names in any manner, nor there is any need for the Respondent to use "Alipay" or "支付寶" in the Disputed Domain Names. Thus, there is no evidence which would suggest that Respondent is commonly known by the Disputed Domain Names, and Respondent cannot be regarded as having acquired rights to or legitimate interests in the Disputed Domain Names within the meaning of ¶ 4(c)(ii). See *Instron Corp. v. Kaner*, FA 0768859 (NAF Sept. 21, 2006). See also *Coppertown Drive-Thru Sys., LLC v. Snowden*, FA 0715089 (NAF July 17, 2006).

Respondent is not using the Disputed Domain Names for a *bona fide* offering, or for a legitimate non-commercial or fair use. Respondent previously used the Disputed Domain Name <alipayhk.com.hk> to re-direct Internet users from www.alipayhk.com.hk to the website at www.alipayhk.solutions which allegedly provides consultancy services for 1st Complainant's Alipay payment services without 1st Complainant's authorization for a commercial gain. The redirected website at www.alipayhk.solutions ("**Redirected Website**") includes references to the 1st Complainant's "Alipay" and "支付寶" marks and such use would undoubtedly mislead and deceive Internet users into believing that the Redirected Website and the Disputed Domain Name <alipayhk.com.hk> are associated with 1st Complainant. Respondent's previous attempt to pass off the Disputed Domain Name <alipayhk.hk> as being affiliated with 1st Complainant is in itself evidence of the fact that Respondent does not have rights and legitimate interests in the Disputed Domain Names pursuant to ¶ 4(a)(ii). See *Kmart of Mich., Inc. v. Cone*, FA 655014 (NAF Apr. 25, 2006). See also *Marino v. Video Images Prod.*, D2000-0598 (WIPO Aug. 2, 2000). Even though the auto redirection has been suspended by the Registrar or Registry due to the blackout status of the Disputed Domain Names, it doesn't change the facts established above, see *Bass Hotels & Resorts, Inc. vs. Mike Rodgerall*, D2000-0568 (WIPO August 7, 2000).

Past Panels have concluded that a respondent's efforts to provide services or sell products without authorization under the guise of a complainant's brand, trademarks, and/or logos amounts to neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i), nor a Policy ¶ 4(c)(iii) legitimate non-commercial or fair use. See *Nokia Corp. v. Eagle*, FA 1125685 (NAF Feb. 7, 2008).

Respondent registered the Disputed Domain Names in 2016, which is significantly after the registration of the first Alipay Trade Mark and the domain name <alipay.com> in 2004.

Consequently, Complainants submit that Respondent has no rights or legitimate interest in the Disputed Domain Names in accordance with Paragraph 4(a)(ii) of the Policy.

(iii) The Registrant's Domain Name has been registered and is being used in bad faith:

1st Complainant and its Alipay Trade Marks are known internationally including Hong Kong with trade mark registrations across numerous countries including China, Hong Kong, United States and other jurisdictions. 1st Complainant has marketed extensively and provided services using such trade marks since 2004, i.e. well before Respondent's registration of the Disputed Domain Names in 2016. Further, by the extensive use of the Alipay Trade Marks since 2004 (significantly predating the registration date of the Disputed Domain Names), the Alipay Trade Marks have acquired distinctiveness which allows the consumers to immediately identify and associate the Alipay Trade Marks with Complainants, Ant Financial and Alipay.

By registering domain names that incorporate the Alipay Trade Marks and a geographical term "HK"/"香港", Respondent has created domain names which are confusingly similar to 1st Complainant's Alipay Trade Marks, as well as its <alipay.com> domain name. There is no plausible good-faith reason for Respondent to register the Disputed Domain Names and it is logical to infer that Respondent, by registering the Disputed Domain Names, seeks to take advantage of 1st Complainant's fame or reputation to create confusion that it is associated with 1st Complainant for Respondent's own unfair commercial gain. See *Vevo LLC v. Ming Tuff*, FA 1440981 (NAF May 29, 2012). As such, Respondent has demonstrated a knowledge of and familiarity with 1st Complainant's brand and business. See *Parfums Christian Dior v. Javier Garcia Quintas*, D2000-0226 (WIPO May 17, 2000).

Respondent previously used the Disputed Domain Name <alipayhk.com.hk> to re-direct Internet users from www.alipayhk.com.hk to the website at www.alipayhk.solutions which allegedly provides consultancy services for 1st Complainant's Alipay payment services without authorization. It is reasonable to believe that <alipayhk.solutions> is also under the control of Respondent (the WHOIS information of <alipayhk.solutions> is masked). Based on the facts stated herein, it is "not possible to conceive of a plausible situation in which Respondent would have been unaware of" 1st Complainant's brands at the time the Disputed Domain Names were registered. See *Telstra Corp. Ltd. v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000). Even though the auto redirection is suspended by the Registrar or Registry due to the blackout status of the Disputed Domain Names, it doesn't change the facts established above, see *Bass Hotels & Resorts, Inc. vs. Mike Rodgerall*, D2000-0568 (WIPO August 7, 2000). Stated differently, ALIPAY is so closely linked and associated with 1st Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith – where a domain name is "so obviously connected with such a well-known name and products,...its very use by someone with no connection with the products suggests opportunistic bad faith." See *Alibaba Group Holding Limited v. Whois Privacy Protection Service, Inc. & Dohir Solihin*, HK-1400656 (ADNDRC Dec 11, 2014). See also *Parfums Christian Dior v. Javier Garcia Quintas*, D2000-0226 (WIPO May

17, 2000). Further, where the Disputed Domain Names include the entire trade mark of Complainant with the addition of some closely related additional terms, “it defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks.” See *Asian World of Martial Arts Inc. v. Texas International Property Associates*, D2007-1415 (WIPO Dec. 10, 2007).

HKIRC policy dictates that bad faith can be established by evidence that demonstrates that “by using the Domain Name, the Registrant has intentionally attempted to attract, for commercial gain, Internet users to the Registrant’s 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 the Registrant’s web site or location or of a product or service on the Registrant’s web site or location.” HKIRC Policy 4(b)(iv). Here, Respondent previously has created a likelihood of confusion with 1st Complainant and its trade marks and has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant’s Alipay Trade Marks in order to increase traffic to the Disputed Domain Names and the website at <alipayhk.solutions> for Respondent’s own pecuniary gain without authorization. Although <alipayhk.com.hk> now resolves to an inactive site, it is clear that Respondent previously has attempted to cause consumer confusion in a nefarious manner to profit from such confusion. It is well established that such conduct constitutes bad faith. See *Alibaba Group Holding Limited v. Henny Rahmayanti*, HK-1400672 (ADNDRC Jun 29, 2015). See also *WhatsApp Inc. v. GOIP Holdings Limited*, DHK-1300095 (HKIAC Aug 14, 2013).

The Disputed Domain Names currently resolve to an inactive site and past Panels have noted that the word bad faith “use” in the context of ¶4(a)(iii) does not require a positive act on the part of the Respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy ¶ 4(a)(iii). See *Telstra Corp. v. Nuclear Marshmallows*, D2000-0003 (WIPO Feb. 18, 2000). See also *Salvatore Ferragamo, S.p.A. v. Duan Zuochun*, DHK-1200085 (HKIAC Feb 18, 2013).

In this case, the Disputed Domain Names are confusingly similar to the Alipay Trade Marks, Respondent’s name does not in any way correspond to the Disputed Domain Names and Respondent must be aware of 1st Complainant and its Alipay Trade Marks and has taken advantages of 1st Complainant’s fame and goodwill, as the Disputed Domain names are neither a generic term nor particularly suggestive, there is no reason for Respondent to choose to register the Disputed Domain Names for any reasons other than the fact that Respondent knew of the Alipay Trade Marks of 1st Complainant. These factors should be duly considered in assessing bad faith registration and use. Therefore, it is not possible to conceive any plausible use of the Disputed Domain Names that would be legitimate and the only likely inference is that the registration and use of the Disputed Domain Names by Respondent is to create a false impression that the Disputed Domain Names are associated with Complainants. See *DCI S.A. v. Link Commercial Corp.*, D2000-1232 (WIPO Dec. 7, 2000).

Further, Complainants have reasons to believe that the underlying Registrant of the Disputed Domain Names of the present case is ALEXANDER CHEN or that the true

registrant of the Disputed Domain Names is the same as <alipayhk.hk> and <支付寶香港.香港> masked under different names based on the following reasons:

1. ALEXANDER CHEN is the current Registrant of the Domain Names <alipayhk.hk> and <支付寶香港.香港> and the Date of Registration is the same as the Disputed Domain Names of the present case, <alipayhk.com.hk> and <支付寶香港.公司.香港>.
2. Both www.alipayhk.hk and www.alipayhk.com.hk previously re-directed Internet users to the same website at www.alipayhk.solutions.
3. DOMAIN NETWORK LIMITED is the Registrant of not only the Disputed Domain Names, but also more than 3,000 other .com.hk and .公司.香港 domain names. It is reasonable to believe that DOMAIN NETWORK LIMITED is an agent holding the .com.hk and .公司.香港 domain names on behalf of its customers.
4. The Registrant email, trustee-service@domain.net.hk, shares the same domain name with the Registrar. In addition, the user name of the Registrant email and the Administrative Contact of the Disputed Domain Names, trustee service, suggests that it is only a trustee service provided by the Registrar.
5. Pursuant to Article 3.6 of the Domain Name Registration Policies, Procedures and Guidelines for .hk and .香港 domain names Version 1.0 [Effective 22 Feb 2011], Registrant of a .com.hk or .公司.香港 must be commercial entities registered in Hong Kong.

On this basis, Complainants truly believe that ALEXANDER CHEN is the underlying Registrant of the Disputed Domain Names or alternatively that the Disputed Domain Names are within control of the same entity as <alipayhk.hk> and <支付寶香港.香港> masked in a different name, while DOMAIN NETWORK LIMITED is only the entity holding agency of the .com.hk and .公司.香港 domain name provided by the Registrar.

The Respondent's registration of similar domain names under the mask of different names demonstrate that Respondent is engaging in a pattern of cybersquatting, which is evidence of bad faith registration and use. *See The Stanley Works and Stanley Logistics, Inc. v. Camp Creek Co., Inc.*, D2000-0113 (WIPO Apr. 13, 2000). *See also Unified Brands, Inc. v. John Paul / International Chef Solutions*, FA 1563720 (NAF July 30, 2014).

Respondent has previously registered and/or used the Disputed Domain Names for possible purposes of launching a phishing attack, which is clear evidence of bad faith registration and/or use. After creating a strong likelihood of confusion by misappropriating 1st Complainant's Alipay Trade Marks in the Disputed Domain Names, Respondent has impersonated 1st Complainant's appointed service provider to lure Internet users to register Alipay Accounts through its consultancy services and phish confidential information. Respondent's efforts to masquerade as Complainants to solicit sensitive, financial information from unsuspecting people certainly constitute fraud, which must be considered bad faith registration and use of the Disputed Domain Names. *See Juno Online Servs., Inc. v. Nelson*, FA 0241972 (NAF Mar. 29, 2004) *See also Wells Fargo & Co. v. Maniac State*, FA 608239 (NAF Jan. 19, 2006).

Finally, it is clear from the above that Respondent knew of and targeted 1st Complainant's Alipay Trade Marks, and Respondent should be found to have registered and/or used the Disputed Domain Names in bad faith. *See Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, FA D2014-1754 (WIPO Jan 12, 2014).

For the reasons set out above, Respondent should be considered to have registered and is using the Disputed Domain Names in bad faith, as described in paragraph 4(a)(iii) of the Policy.

(iv) if the Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.:

Paragraph 4(a)(iv) of the Policy is not applicable in this case. *See Google Inc. v. Kam Piu Shih*, DHK-1300092 (HKIAC Apr 13, 2013).

The Respondent

Respondent ALEXANDER CHEN has defaulted in submitting a response and has not participated in these arbitral proceedings.

5. Findings by the Arbitration Panel

As a threshold question, the Panel finds that both the English Disputed Domain Name <alipayhk.com.hk> and the Bundled Chinese Disputed Domain Name <支付寶香港.公司.香港> are entitled to be treated as one Domain Name under the Policy to be examined by this Panel within these arbitral proceedings.

Further, the Panel finds that the weight of the facts and evidence supports the conclusion that DOMAIN NETWORK LIMITED is an agent holding the .com.hk and .公司.香港 domain names on behalf of its customers, and that ALEXANDER CHEN is the underlying Registrant of the Disputed Domain Names or, alternatively, that the Disputed Domain Names are within control of the same entity as <alipayhk.hk> and <支付寶香港.香港> masked under a different name, while DOMAIN NETWORK LIMITED is only the agent and entity holding the .com.hk and .公司.香港 domain names provided by the Registrar.

Finally, the Panel finds that 1st Complainant has enjoyed rights and legal interests in and to the Alipay Trade Marks, through registration and use in Hong Kong and elsewhere around the world since 2004, whereas the Disputed Domain Names were registered some twelve (12) years later, in 2016.

According to Paragraph 4a of the HKDNR Domain Name Dispute Resolution Policy (the "Policy") which is applicable hereto, Complainants have the burden of proving that:

- (i) the Disputed Domain is identical or confusingly similar to a trade mark or service mark in Hong Kong 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; and
- (iv) if the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of Domain Name.

(1). Identical/confusing similarity

The Disputed Domain Names incorporate 1st Complainant's mark "ALIPAY" and "支付寶" in their entirety, and are therefore identical or confusingly similar to 1st Complainant's Alipay Trade Marks. The mere addition of the geographically descriptive term "HK" (the acronym for Hong Kong) and "香港" (Hong Kong in Chinese) at the end, is of no relevance to this inquiry under the Policy and does not require a different result.

The Panel finds that Complainants have proved that the Disputed Domain Names are identical to its registered Trade Mark in which the 1st Complainant has rights or interests for the purposes of paragraph 4 (a)(i) of the Policy.

(2). Rights or Legitimate Interests of Respondent

As is noted above, Respondent registered the Disputed Domain Names, <alipayhk.com.hk> and <支付寶香港。公司。香港>, in 2016, some twelve (12) years after Complainant had registered its ALIPAY Trade Marks. The fame of the ALIPAY Trade Marks, coupled with the fact that the 1st Complainant has not licensed, consented to or otherwise authorized the Respondent's use of the Marks, shifts to Respondent the burden of coming forward with evidence to establish that it has rights and/or legitimate interests in the Disputed Domain Names. The Respondent has defaulted and failed timely to submit a Response and to carry its burden of production.

The Panel finds that Complainants have proved that the Respondent has no right or legitimate interest in respect of the Disputed Domain Names for the purposes of paragraph 4 (a)(ii) of the Policy.

(3). **Bad faith**

Although Respondent's recent past use of the Disputed Domain Names has been passive, as the domains currently resolve to an inactive website, it is abundantly clear to this Panel that Respondent is not using the Disputed Domain Names for a *bona fide* offering of goods or services, or for any legitimate non-commercial or fair use. To the contrary, it is apparent that Respondent is a serial "cybersquatter" who targets famous trade marks, such as 1st Complainant's Trade Marks, for the purpose of misleading and defrauding Internet users by intentionally creating confusion as to the source, sponsorship, affiliation, or endorsement of the trade mark owners, including 1st Complainant, or of the services offered for sale on such trade mark owners' official websites.

As but one example, the Panel finds that Respondent's Re-directed Website was being used by Respondent (before the re-direction function was curtailed as a result of action taken by the Registrar), for the purpose of "phishing" (defined as the fraudulent practice of inducing individuals to reveal personal information, such as passwords, bank account numbers and credit card information, by purporting to be authorized by or affiliated with reputable companies), by requesting that Hong Kong and overseas merchants and users of the website provide their Hong Kong Identity Card and similar personal and sensitive details, and to create or enter their personal passwords on Respondent's website, for the supposed purpose of completing "Alipay" off-line or on-line secure funds transfers.

Screenshots of Respondent's Re-directed Website, to which the Disputed Domain Name had previously resolved (before the re-direction function was curtailed by action of the Registrar), includes the express misrepresentation: ¹

"Assist Hong Kong merchant (sic) enable Alipay spot payment and online payment services, provide method (sic) and devices for HK merchant get pay (sic)".

Respondent's website, containing both English and Chinese text, includes numerous references to 1st Complainant's "支付宝" and "支付寶" Trade Marks (i.e. "ALIPAY" in simplified and traditional Chinese character text, respectively), accompanied in many instances by the "®" symbol, which reflects beyond any reasonable question that Respondent acted with full knowledge of 1st Complainant's prior trade mark rights. Again, Respondent's intention was to leverage those rights for the purpose of misleading public Internet users to Respondent's own unfair commercial advantage.

The Panel finds that Respondent is using the Disputed Domain Names and websites to intentionally create confusion with the 1st Complainant's ALIPAY Trade Marks as to the source, sponsorship, affiliation, or endorsement of Respondent's websites, or of the services offered for sale on Respondent's websites.

¹ The misrepresentation also appears on Respondent's Re-direction Website written in Chinese, which recites: "提供可行方案及設備協助香港商戶收款，協助香港商戶開通支付寶當面付及線上收款。"

The Panel finds that Respondent registered, or is using, or both, the Disputed Domain Name in bad faith to intentionally mislead public Internet users for its own commercial gain.

Complainants have proved that the Respondent registered and is using the Disputed Domain Names in bad faith within the meaning of paragraph 4 (a)(iii) of the Policy.

(4). If the Disputed Domain Name is registered by an individual person, the Registrant does not meet the registration requirements for that individual category of domain name


Not applicable.

6. AWARD

It is ORDERED that the <alipayhk.com.hk> and the bundled <支付寶香港.公司.香港> domain names be TRANSFERRED to the 2nd Complainant, Alibaba Group Services Limited.

Dated: 7 December 2017

Place of arbitration: Hong Kong



David L. Kreider
Sole Panelist of the Arbitral Tribunal