



Asian Domain Name Dispute Resolution Centre
- a charitable institution limited by guarantee registered in Hong Kong

UNIFORM RAPID SUSPENSION SYSTEM (URS) DETERMINATION

Case ID.:	HKS-1400003
Complainant:	Alibaba Group Holding Limited
Authorised Representative of the Complainant:	Mayer Brown JSM
Respondent:	Andreas Perschk
Authorised Representative of the Respondent:	Rainer Jaeschke

Disputed Domain Name(s)

• < aliexpress.camera >

• < aliexpress.clothing >

• < aliexpress.email >

• < aliexpress.equipment >

• < aliexpress.estate >

Total: **5** Disputed Domain Name(s)

Procedural History

Receipt of Complaint:	2014-05-05 (YYYY-MM-DD)
Notification of Commencement of Proceedings:	2014-05-12 (YYYY-MM-DD)
Date of Receipt of Response:	2014-05-22 (YYYY-MM-DD)
Notification of Appointment of Examiner:	(YYYY-MM-DD)

Having reviewed the communications record, the Examiner finds that the Asian Domain Name Dispute Resolution Centre has discharged its responsibility under URS Procedure, Paragraphs 3 and 4, and Rule 4 of the Rules for the Uniform Rapid Suspension System ("Rules").

Findings

A. The registered domain name is identical or confusingly similar to a word mark

The Complainant is known as Alibaba (阿里巴巴). Alibaba Group was founded in China in 1999. In September 2009, Alibaba Group launched a wholesale international marketplace platform (www.aliexpress.com) under the brand "ALIEXPRESS". Complainant holds worldwide registered rights in the Complainant's trademark, which is entirely incorporated into the Disputed Domain Names. The generic top-level extensions are irrelevant. That the Complainant holds the CTM-Trademark 8508566 ALIEXPRESS is admitted by Respondent.

B. The Registrant has no legitimate right or interest to the domain name

That the Complainant holds the CTM-Trademark 8508566 ALIEXPRESS is admitted by Respondent, however, Respondent asserts that "the Registrant" has applied for a CTM-Trademark ALIEXPRESS with the OHIM (Office for Harmonization in the Internal Market, Alicante), on December 20, 2013, in relation to classes of goods other than the classes for which Complainant's CTM-Trademark was registered. Contrary to Respondent's assertions, Respondent's evidence reflects only that a third-party, Patty's GmbH, which purports to share the same street address with Respondent, has applied for such a CTM-Trademark.

Respondent proffers no evidence to establish the legal relationship, if any there may be, between the third-party CTM-Trademark applicant, Patty's GmbH, and the Respondent, moreover, Complainant has not licensed or authorised the Respondent's use of the Complainant's

trademark and there is no evidence that the Respondent is commonly known by the Disputed Domain Names, or any of them.

C. The domain was registered and is being used in bad faith

The Complainant's trademark is a coined term, which has no common meaning in any language independent of the Complainant's trademark and its business. The Respondent registered the Disputed Domain Names five (5) years after the Complainant first registered and began using the Complainant's trademark.

The Disputed Domain Names were registered after the Complainant's trademark was validated by the Trademark Clearinghouse, and the Respondent must have been on notice of Complainant's rights when it registered the Disputed Domain Names. The Disputed Domain Names resolve to a parking page. Respondent asserts that "the Registrant" intends to start activities in these fields of business with "his company" Patty's GmbH and with the Disputed Domain Names. This Examiner finds and decides that Respondent's assertions are, at best, pure speculation unsupported by evidence.

The passive holding of domain names can constitute bad faith registration and use, especially when combined with other factors, such as the Respondent preventing a trademark holder from reflecting its mark in a corresponding domain name and where good faith use by the Respondent is inconceivable. Bad faith registration and use may also be found in circumstances where, as here, by using the domain name Registrant has intentionally attempted to attract for commercial gain, Internet users to 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 Registrant's web site or location or of a product or service on that web site or location. Here, Respondent admits that a third-party, Patty's GmbH, with which Respondent purports enjoy a connection or relationship, but which Respondent has failed to establish, intends to use the Disputed Domain Names for commercial gain, notwithstanding that the Respondent has demonstrated no legitimate right or interest to the Disputed Domain Names.

Determination

Respondent admits Complainant's prior registered rights, but asserts that a third-party, Patty's GmbH also has registered rights for the same trademark pursuant to a later filing pertaining to different classes of goods. Claimant maintains that the point is irrelevant under URS 1.2.6.1, and that, even assuming, arguendo, that it were relevant, Claimant argues that the subsequent CTM-Trademark application upon which Respondent seeks to rely is not in the Respondent's name and gives the Respondent no rights. This Examiner agrees, and, applying the standard of clear and convincing evidence, finds that Complainant has satisfied all three required elements of the URS.

The Examiner hereby Orders that the following domain names be SUSPENDED for the duration of the registration:

- <aliexpress.camera>
- <aliexpress.clothing>
- <aliexpress.email>
- <aliexpress.equipment>
- <aliexpress.estate>

Name	David L. KREIDER
Date	2014-05-24 (yyyy-mm-dd)
Electronic Signature	(David L. Kreider)