

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited, and Tencent Technology (Shenzhen) Co Ltd. (腾讯科技(深圳)有限公司) v. Outwit Inc
Case No. D2024-3273

1. The Parties

The Complainant is Tencent Holdings Limited, Cayman Islands, United Kingdom; and Tencent Technology (Shenzhen) Co Ltd. (腾讯科技(深圳)有限公司), China, represented by Kolster Oy Ab, Finland.

The Respondent is Outwit Inc, Philippines.

2. The Domain Name and Registrar

The disputed domain name <tencent-member.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 9, 2024. On August 12, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 12, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Registration Private, Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 13, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on August 19, 2024.

The Center verified that the Complaint together with the amendment to the 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 WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 20, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 9, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 18, 2024.

The Center appointed Kateryna Oliinyk as the sole panelist in this matter on September 23, 2024. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a part of a global Internet and technology corporation which is headquartered in China and was established in 1998. The Complainant provides Internet, mobile and telecommunication services and products, including entertainment, and artificial intelligence. Such products include QQ instant messenger, social media application WeChat, Tencent Games, Tencent Video, Tencent News, and Tencent Sports.

The Complainant directly or through its related company owns a series of the TENCENT trademark registrations worldwide, including China, European Union, and United States of America, including the following trademark registrations:

- Chinese Trademark Registration No. 32371178 for TENCENT, registered on April 7, 2019, for goods in International Class 9;
- European Union Trademark Registration No. 006033773 for TENCENT, registered on November 18, 2008, for goods and services in International Classes 9, 38, 41, and 42.

The TENCENT trademark has been highly ranked by a number of prominent international and local ratings.

The disputed domain name was created on May 8, 2019 and used to resolve to the fraudulent website mimicking the website somewhat associated with the Complainant. As the result of the Complainant's recent action with an external Internet anti-fraud service provider to ban access to the website due to its fraudulent nature, the website has been deactivated and the disputed domain name now resolves to an error page.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Identical or confusingly similar

The Complainant states that the disputed domain name is confusingly similar with the Complainant's trademark as the disputed domain name includes the Complainant's trademark in its entirety as its first element and it is clearly recognizable in the disputed domain name. The addition of the term "-member", is not sufficient to remove confusing similarity with the Complainant's trademarks.

The Complainant further states that the addition of the Top-Level Domain ".com" shall be viewed as the standard registration requirement.

Rights or legitimate interests

The Complainant contends that the Respondent lacks any rights or legitimate interests in the disputed domain name.

According to the Complainant's contentions, the Respondent has not used the disputed domain name in connection with a bona fide offering of goods or services, and has not been authorized, licensed, or otherwise permitted by the Complainant to register the disputed domain name.

Registration and use in bad faith

The Complainant contends that the Respondent knew of the Complainant's trademarks when registering the disputed domain name.

The Complainant further asserts that the disputed domain name in itself suggests at least an affiliation with the Complainant and its TENCENT trademark, as the disputed domain name wholly reproduces the Complainant's TENCENT trademark together with the descriptive word "member".

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy directs that the Complainant must prove each of the following:

- i. that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- ii. that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- iii. that the disputed domain name has been registered and is being used in bad faith.

Considering that the Respondent did not reply to the Complainant's contentions, in order to determine whether the Complainant has met its burden as stated in paragraph 4(a) of the Policy, the Panel bases its decision on the statements and documents submitted in accordance with the Policy and the Rules.

Under paragraph 5(f) and paragraph 14(b) of the Rules, if a respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint, and where a party does not comply with any provision of the Rules, the Panel "shall draw such inferences therefrom as it considers appropriate".

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The disputed domain name includes the Complainant's TENCENT trademark in its entirety as its first element and it is clearly recognizable in the disputed domain name. The addition of a hyphen and the term "member", is not sufficient to remove confusing similarity with the Complainant's trademarks.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term here, “member”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

According to the evidence produced by the Complainant, the disputed domain name used to resolve to the fraudulent website mimicking the website somewhat associated with the Complainant. As the result of the Complainant’s action with an external Internet anti-fraud service provider to ban access to the website due to its fraudulent nature, the website has been deactivated and the disputed domain name now resolves to an error page.

Panels have held that the use of a domain name for illegitimate activity here, claimed as applicable to this case: phishing, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

After a complainant has made a prima facie case, the burden of production shifts to a respondent to present evidence demonstrating rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

Here, the Respondent has provided no evidence of any rights or legitimate interests in the disputed domain name. In the absence of any evidence rebutting the Complainant’s prima facie case indicating the Respondent’s lack of rights or legitimate interests in respect of the disputed domain name, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

The Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

The Panel accepts that the Complainant's use and registration of the TENCENT trademark long predated the Respondent's registration of the disputed domain name. The Respondent clearly knew of the Complainant's business and trademark as the disputed domain name used to resolve to a website purportedly offering products bearing the Complainant's trademark.

Furthermore, the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks or to register the disputed domain name incorporating the Complainant's TENCENT trademark.

The nature of the disputed domain carries a risk of implied affiliation. Furthermore, the disputed domain name previously was used to a fraudulent website which has designed so that to create the false impression of affiliation with the Complainant.

Due to this conduct, it is obvious that the Respondent intentionally created likelihood of confusion with the Complainant's TENCENT trademark in order to attract Internet users for his own commercial gain, in line with paragraph 4(b)(iv) of the Policy.

Furthermore, under section 3.3 of the [WIPO Overview 3.0](#), the current non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, and the composition of the disputed domain name, and finds that in the circumstances of this case the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Thus, the current passive holding of the disputed domain name does not prevent a finding of bad faith.

The Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <tencent-member.com> be transferred to the Complainant.

/Kateryna Oliinyk/

Kateryna Oliinyk

Sole Panelist

Date: October 14, 2024