

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited v. fengwenjia, wenjia Feng
Case No. DAI2023-0023

1. The Parties

The Complainant is Tencent Holdings Limited, Cayman Islands, United Kingdom, represented by Kolster Oy Ab, Finland.

The Respondent is fengwenjia, wenjia Feng, China.

2. The Domain Name and Registrar

The disputed domain name <weixin.ai> is registered with Zenaida.cate.ai (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 5, 2023. On September 6, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On September 6, 2023, the Registry transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On September 11, 2023, the Center received an email from the Respondent asking for the “complete complaint materials and supporting documents”.

The Center verified that 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 September 13, 2023. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2023. The Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on October 4, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on October 6, 2023. 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 provides Internet, artificial intelligence and electronic communication services and products, *inter alia* the WeChat service, which is provided as WeiXin in China; the Complainant and its related entities are the owners of trademark registrations containing the word “WeiXin”, *inter alia*

- Chinese trademark (word) Registration No. 18165351, registered on October 14, 2017, in international class 42; and
- European Union trademark (word) Registration No 14094791, registered on October 26, 2015, in international classes 16, 35, 36, 41, 42 and 45 (Annex 6 and 7 to the Complaint).

The disputed domain name was registered on December 16, 2017 (Annex 1 to the Complaint); the disputed domain name was and is not actively used.

5. Parties' Contentions

A. Complainant

The Complainant is a global Internet and technology company established in 1998. It provides Internet, mobile and telecommunication services and products, including entertainment, artificial intelligence, and technology in China and globally. Some of the most popular products of the Complainants include QQ instant messenger, social media application WeChat, WeGame, Tencent Games, Tencent Video, Tencent News, and Tencent Sports. These products and services have been advertised through the Complainant's website under the domain name <tencent.com> since 1998.

The Complainant provides its WeChat service in China under the mark WEIXIN; the service comprises instant messaging, social media and mobile payment application developed by the Complainant. First released in 2011, it became the world's largest standalone mobile application in 2018 with over 1 billion monthly active users.

WeChat has been described as China's “app for everything” and a super-app because of its wide range of functions. WeChat provides text messaging, hold-to-talk voice messaging, broadcast messaging, video conferencing, video games, sharing of photographs and videos and location sharing.

In 2021, Brand Finance Global 500 named WeChat the world's strongest tech brand.

The Complainant has registered the trademark WEIXIN in various countries all over the world, such as in China, registered on October 14, 2017 and April 7, 2018; in the United States of America., registered on August 29, 2017; and in the European Union, registered on October 26, 2015. The disputed domain name is identical to the Complainant's trademark WEIXIN, since the Top-Level Domain (“TLD”) “.ai” is viewed as a standard registration requirement and as such is disregarded under the first element of the UDRP confusing similarity test.

The Respondent has no rights or legitimate interests in respect of the disputed domain name: The Complainant has not allowed the Respondent to register or use, whether by license or otherwise, the Complainant's trademarks or the disputed domain name. The Respondent has not used or made any demonstrable preparations to use the disputed domain name in connection with *bona fide* offering of goods or services. Further, the Respondent has never been commonly known by the disputed domain name and has never acquired any trademark rights to the same.

Finally, the disputed domain name was registered and is being used in bad faith: Considering that the Complainant has been using and registering the trademark WEIXIN since 2011, it is inconceivable that the Respondent would not have been aware of the Complainant's trademarks when registering the disputed

domain name. Therefore, it is clear that the Respondent had or should have had knowledge of the Complainant's trademark when registering the disputed domain name. The Respondent's awareness of the Complainant's trademark rights at the time of registration suggests bad faith.

The disputed domain name does not resolve to an active website and is therefore not used for any *bona fide* offering of goods or services. Furthermore, although the disputed domain name is not in active use, this, however, does not prevent the finding of bad faith under the doctrine of passive holding under the Policy. Passive holding may amount to bad faith especially when it is difficult to imagine any plausible future active use of the disputed domain name by the Respondent that would be legitimate and not infringing the Complainant's well-known mark, which is the case at present.

B. Respondent

Although the Respondent asked for the "complete complaint materials and supporting documents", he did not formally reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove that

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

A. Identical or Confusingly Similar

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the trademark WEIXIN.

The disputed domain name is identical to the Complainant's registered trademark WEIXIN since it entirely contains this mark without suffix or prefix or any other addition whatsoever.

It has long been established under UDRP decisions that TLDs are generally disregarded when evaluating the confusing similarity or identity of a disputed domain name.

The Panel therefore finds that the Complainant has satisfied paragraph 4(a)(i) of the Policy in the present case.

B. Rights or Legitimate Interests

While 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 often impossible 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. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element (see section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Furthermore, the nature of the disputed domain name, comprising the Complainant's well-known and distinctive mark in its entirety, cannot be considered fair as these falsely suggest an affiliation with the Complainant that does not exist (see section 2.5 of the [WIPO Overview 3.0](#)).

In addition, the Panel especially finds that the TLD ".ai" together with the mark WEIXIN rather strengthen the risk of implied affiliation with the Complainant, since the Complainant also provides artificial intelligence services.

Noting the above, and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g. *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

The Complainant has rights and is the owner of the well-known and distinctive registered trademark WEIXIN, which is registered and used in many jurisdictions around the world for years.

(i) It is inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant's rights which were established before the registration of the disputed domain name; these facts lead to the necessary inference of bad faith. This finding is supported by the fact that the mark WEIXIN is widely used and widespread in China (where the Respondent resides) as well as the disputed domain name incorporates the Complainant's distinctive trademark WEIXIN entirely, together with the TLD ".ai" which clearly refers to the Complainant's artificial intelligence business.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The disputed domain name is also being used in bad faith: Although there is no evidence that the disputed domain name is being actively used or resolved to a website with substantive content, previous UDRP panels have found that bad faith under paragraph 4(a)(iii) does not necessarily require a positive act on the part of the respondent – the non-use of a domain name (including a blank or "coming soon" page) would not prevent a finding of bad faith, since also inaction is within the concept of paragraph 4(a)(iii) under the doctrine of passive holding (see especially *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); *Ladbroke Group Plc v. Sonoma International LDC*, WIPO Case No. [D2002-0131](#)).

This Panel concludes that the non-use of the disputed domain name does not prevent a finding of bad faith, putting emphasis on the following:

- the Complainant's trademark WEIXIN is well-known and widely used especially in China with a high distinctiveness;
- the Respondent has failed to present any evidence of any good faith use with regard to the disputed domain name;
- the Respondent provided false or incomplete contact details when registering the disputed domain name (the courier service was not able to deliver the Written Notice to the Respondent);
- the disputed domain name is inherently misleading, and is thus suited to divert or mislead potential web users from the website they are actually trying to visit (the Complainant's site); and

- there is no conceivable plausible good faith use with regard to the disputed domain name.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) 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 <weixin.ai> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: October 20, 2023