

## **ADMINISTRATIVE PANEL DECISION**

Alibaba Group Holding Limited v. David J. Perkins, Worldwide Domains  
Case No. DPH2024-0002

### **1. The Parties**

The Complainant is Alibaba Group Holding Limited, Cayman Islands, United Kingdom, represented by Convey Srl, Italy.

The Respondent is David J. Perkins, Worldwide Domains, United States of America.

### **2. The Domain Name and Registrar**

The disputed domain name <alibaba.ph> is registered with DotPH (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 25, 2024. On March 25, 2024, the Center transmitted by email to DotPH a request for registrar verification in connection with the disputed domain name. On March 26, 2024, DotPH transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name (Privacy Protected by Registry), which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 26, 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 and an amended Complaint, respectively on March 26, and 28, 2024.

The Center verified that the Complaint, together with the amendment to the Complaint and the amended Complaint, satisfied the formal requirements of the .PH Uniform Domain Name Dispute Resolution Policy (“phDRP” or the “Policy”), the Rules for .PH Uniform Dispute Resolution Implementation Rules (the “Rules”), and the WIPO Supplemental Rules (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on April 9, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was April 29, 2024. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent’s default on April 30, 2024.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on May 14, 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.

On May 15, 2024, the Panel issued a Procedural Order No.1 requesting the Complainant to amend the Mutual Jurisdiction section in the amended Complaint by May 21, 2024. On the same day, the Complainant submitted an amended Complaint with the specification of the Mutual Jurisdiction in compliance with the Procedural Order No.1.

#### **4. Factual Background**

The following facts are undisputed.

The Complainant is a platform for global wholesale trade, launched in 1999. The Complainant is active in over 190 countries. For its business the Complainant registered the domain name <alibaba.com>. This domain name resolves to the website and platform of the Complainant.

The complainant owns various registrations in various countries worldwide for the trademark ALIBABA, e.g., the Philippine trademark registration No. 4996 for the combined word device mark ALIBABA with registration date November 21, 2013, registered for products and services in classes 9, 16, 35, 36, 38, 39, 41, and 42.

The trademark of the Complainant was registered before the disputed domain name, which was registered on April 10, 2020.

The disputed domain name resolved to a parked page on which the disputed domain name was offered for sale and has redirected to the Complainant's official website. The disputed domain name currently redirects to third party webpages.

#### **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.

Notably, the Complainant contends the following.

The disputed domain name fully incorporates the word elements of the Complainant's trademark, therefore the disputed domain name is confusingly similar to the Complainant's earlier trademark.

Furthermore, the Respondent is not in any way authorized to use the Complainant's trademark in the disputed domain name. Also, there is no evidence that the Respondent is commonly known by the disputed domain name, nor has he provided any demonstrable preparation to use the disputed domain name in connection with the bona fide offering of goods or services. The Respondent is intentionally trying to attract Internet users without any disclaimer to the Respondent's lack of relationship with the Complainant.

The Respondent could not have possibly ignored the existence of the Complainant's trademark, in particular because the disputed domain name has resolved in one case to the official website of the Complainant and the Complainant's trademark enjoys a distinctive reputation. Therefore, the Respondent is trying to capitalize the reputation of the Complainant's trademark. The Respondent has also concealed its identity. Finally, the Respondent has conducted itself in a pattern of bad faith regarding different other UDRP cases the Respondent was involved in.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **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<sup>1</sup>.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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

### **B. Rights or Legitimate Interests**

Paragraph 4(b) 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.

Furthermore, noting the disputed domain name incorporates the entirety of the Complainant's trademark with the addition of the ccTLD ".ph", it carries a high risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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

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<sup>1</sup> In view of the fact that the phDRP is to an extent based on the Uniform Domain Name Dispute Resolution Policy ("UDRP"), it is well established that both cases decided under the phDRP and cases decided under the UDRP, and therefore [WIPO Overview 3.0](#), is relevant to this proceeding.

### **C. Registered and Used in Bad Faith**

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4 (a)(iv) 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.

In the present case, the Complainant has provided evidence that the Respondent has used the disputed domain name to redirect to the Complainant's website and also in connection with a parked page in which the disputed domain name was offered for sale. The Panel notes that the Respondent intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant's mark. The current redirection to third party websites does not materially alter the Panel's finding.

Hence, the Panel finds that the Respondent by using the disputed domain name, has intentionally attempted to attract, for commercial gain, Internet users to 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 Respondent's website or location or of a product or service on the Respondent's website or location (see under paragraph 4(a)(iv) of the Policy). In particular, because the disputed domain name has redirected to the official website of the Complainant.

Also, the Panel finds that the Respondent has registered the disputed domain name in order to prevent the Complainant from reflecting the mark in a corresponding domain name, and that the Respondent, as substantiated by the Complainant, has engaged in a pattern of such conduct (see under paragraph 4(a)(ii) of the Policy).

Furthermore, the Panel finds that, when reviewing the case file before it and on a balance of probabilities, the Respondent must have been aware of the Complainant and its mark, at the time of registering the disputed domain name, The Panel takes into account that the Complainant's trademark is reflected in its entirety in the disputed domain name and the Complainant has also provided sufficient substantiation of the notoriety of this trademark. The Respondent has also not rebutted the Complainant's contentions in this respect and additionally uses a privacy shield. The Panel concludes that the Respondent registered and is using the disputed domain name in bad faith.

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

### **7. Decision**

For all 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, <alibaba.ph>, be transferred to the Complainant.

*/Willem J. H. Leppink/*

**Willem J. H. Leppink**

Sole Panelist

Date: May 28, 2024.