



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1400574</b>
<b>Complainant:</b>	<b>Alibaba Group Holding Limited</b>
<b>Respondent:</b>	<b>Shangwei Ding</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;cn-alipay.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is Alibaba Group Holding Limited, of Fourth Floor, One Capital Place, P.O. Box 847, George Town, Grand Cayman, Cayman Islands, British West Indies, having its principal place of business in the People's Republic of China (hereinafter referred to as "Complainant").

The Respondent is Shangwei Ding, of 234 W. Newby Ave., San Gabriel, California 91776, United States of America (hereinafter referred to as "Respondent").

The domain name at issue is <cn-alipay.com>, registered by Respondent with Register.com, Inc. (the "Registrar"). Although neither Complainant nor Respondent gives the address of the Registrar, Yahoo Finance shows that Registrar's business address is 575 8<sup>th</sup> Ave., 11<sup>th</sup> Floor, New York, New York 10018-3011, United States of America.

**2. Procedural History**

On 12 February 2014 Complainant filed the Complaint in this matter concerning the domain name at issue. On that same date The Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the "Centre") notified the Registrar of the filing of the complaint and requested that the Registrar confirm that the domain name at issue was registered with the Registrar, that the identified Respondent is the registrant of the domain name, and that the Registrar had received a copy of the Complaint. Also on that same date the Centre sent the Complainant an Acknowledgement of Receipt of Complaint. Also on that same date the Registrar notified the Centre that the domain name at issue had been registered to the identified Respondent, that the language of the registration agreement was English, and that the Registrar had received a copy of the Complaint. On 17 February 2014, the Centre notified Complainant that the fee required for filing a Complaint with the Centre had been received.

On 18 February 2014 the Centre notified the Complainant that the Centre was conducting an examination of the Complaint in order to confirm that the Complaint was compliant with the

Policy, the Rules, and the Supplemental Rules and requested confirmation that the Complaint had been served on Respondent. On that same date, Complainant transmitted by email to Respondent a copy of the Complaint together with the annexes thereto, with a copy to the Centre. Also on that date the Centre transmitted to Respondent a Notice of the Complaint together with an additional copy of the Complaint and the annexes thereto. In that Notice the Centre informed Respondent that the Response to the Complaint was due no later than 10 March 2014.

On 8 March 2014, the Centre received a Response from Respondent. On 10 March 2014 the Centre acknowledged receipt of the Response.

On 17 March 2013 the Centre appointed M. Scott Donahey as the sole panelist in conformity with the Policy and the Rules. On that same date the Centre transferred the file to the panel. As the registration agreement was in the English language, the Panel finds that the language of the proceedings is English. Uniform Rules, Rule 7(a).

### **3. Factual background**

#### **a. Complainant's Factual Allegations**

Complainant was founded in Hangzhou, China in 1999, and is now recognized as one of the global leaders in electronic commerce. Through its affiliates, Complainant operates a global electronic marketplace at [www.alibaba.com](http://www.alibaba.com) (domain name registered on 18 November 2009) and a second marketplace aimed at China and primarily Chinese language users at [www.alibaba.com.cn](http://www.alibaba.com.cn) (domain name registered on 19 October 1999) and [www.1688.com](http://www.1688.com) (domain name registered on 19 November 2009). Through the end of 2012, [www.alibaba.com](http://www.alibaba.com) had approximately 36.7 million registered users from around the globe and Complainant's Chinese marketplaces had approximately 77.7 million registered users.

In 2004, Complainant, through its affiliates, launched an electronic payment platform, [www.alipay.com](http://www.alipay.com) (domain name registered on 18 November 2009), The Alipay electronic payment platform is now one of the largest such platforms in China. On November 11, 2013, the Alipay payment platform processed 171.3 million payment transactions in one 24 hour period. The platform provides electronic payment solutions for more than 460,000 merchants.

Complainant and its subsidiaries and affiliates have offices in seventy cities in China, as well as offices in Hong Kong, Taiwan, Korea, India, Japan, Korea, Singapore, the United States, and the European Union. Complainant's success has been the subject of many articles in the world's newspapers and publications. Complaint, Annex 5.

Complainant has promoted the ALIPAY brand extensively, beginning in 2004, spending tens of millions of US dollars in such promotional activities.

Beginning in 2004, Complainant has registered the mark ALIPAY and its Chinese character equivalent in countries around the world, including China, Hong Kong, Taiwan, and the United States. Its trademark registrations in the United States, in which Respondent resides, were issued as early as 16 March 2010. Complaint, Annex 3.

The domain name at issue was originally registered on 10 June 2011 and was transferred to Respondent on or about 30 October 2011. Complaint, Annex 1. The domain name at issue resolves to a web site that purports to offer "top up" services for the Alipay platform. Complaint, Annex 12. On 27 January 2014, Complainant sent Respondent a cease and desist

letter, demanding that Respondent cease using to domain name at issue and cancel its registration. Complaint, Annex 18. Complainant received no response to this newsletter.

In the Response, Respondent expressly “does not dispute the facts asserted in the complaint.”

#### **4. Parties’ Contentions**

##### **A. Complainant**

The domain name at issue incorporates Complainant’s ALIPAY mark, and adds to it as a prefix “cn” followed by a dash. Complainant asserts that “cn” is a reference to China.<sup>1</sup> Therefore, Complainant argues that the domain name at issue is confusingly similar to Complainant’s ALIPAY mark.

Complainant asserts that the domain name at issue was registered more than seven years after the ALIPAY mark was used in the electronic payment business and well after it had become a well-known mark in China and around the world. Complainant has given Respondent no right to use the mark. Respondent is not now nor ever has been known by the name which has been trademarked by Complainant, nor does Respondent have any trademarks for ALIPAY. In sum, Respondent has no rights or legitimate interests in the use of ALIPAY.

Respondent is using the domain name to resolve to a web site at which “top up” services are offered to the ALIPAY platform. The web site to which the domain name at issue resolves features references to Complainant, to its ALIPAY marks, to its TAOBAO.COM trademarks, and links to its ALIPAY platform and to web sites of its affiliates, and allegations that Complainant and its affiliates are partners of Respondent, which is definitely not the case. Further Respondent’s logo mimics Complainant’s logo. All of the above indicates that Respondent has registered and is using the domain name at issue in bad faith.

##### **B. Respondent**

Respondent argues that because its use of the mark ALIPAY is prefaced by “cn” followed by a dash, the average consumer would not find Respondent’s use confusingly similar.

Respondent spends considerable time pointing out the differences in the meaning of the Chinese characters contained in the parties’ respective logos, which differences are argued to be sufficient to override any incidental visual similarities.

Respondent denied any knowledge that there was any similarity between the domain name at issue and Respondent’s trademarks. When Respondent purchased the domain name at issue from a third party, the third party assured him that the domain name was not similar to any trademarks, thus the filing of the complaint in this matter came as a complete surprise to Respondent.

Further Respondent never received the cease and desist email.

Accordingly, Respondent asserts that Complainant has failed to prove its case.

## 5. Findings

The Panel is bound to apply the ICANN Uniform Domain Name Dispute Resolution Policy the “UDRP”} in order to determine whether Complainant has established the elements necessary to prevail in this matter. The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

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

### A) Identical / Confusingly Similar

Complainant is the owner of the ALIPAY mark which had been in use for more than seven years prior to the registration of the mark by Respondent. The domain name at issue was acquired by Respondent, a resident of the United States, a year and a half after Complainant had registered the ALIBAY trademark with the United States Patent and Trademark office. Complainant is perhaps the foremost Chinese internet company, and the addition of the letters “cn” as a prefix to Complainant’s mark in the English language serves only to draw a closer connection to Complainant, as “.cn” is the Internet country code for the Chinese top level domain. It is clear to the Panel that the domain name at issue is confusingly similar to the mark in which Complainant has rights.

### B) Rights and Legitimate Interests

The consensus view of WIPO panelists concerning the burden of a complainant to rebut rights or legitimate interests in respect of the domain name is as follows:

While the overall burden of proof rests with the complainant, panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent. Therefore a complainant is required to make out an initial *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition (“WIPO Overview, 2.0”), Section 2.1.

As there are WIPO panelists among the panelist in the ADNDRC, and as there are ADNDRC panelists among the panelists in WIPO, as this panelist is a member of both panels, and as all panelists are interpreting the same Rules and Policy, this panelist believes that the consensus view of WIPO panelists is equally applicable at the ADNDRC.

In the present case the Complainant alleges that Respondent has no rights or legitimate interests in respect of the domain name and Respondent has failed to assert any such rights. Accordingly, the panel finds that Respondent has no rights or legitimate interests in respect of the domain names at issue.

### **C) Bad Faith**

Respondent used the domain name at issue to resolve to a web site at which references to Complainant and links to Complainant's web sites were present, at which users were offered the opportunity to "top up" their electronic payment accounts maintained by Complainant, at which logos which were visually confusingly similar to that of Complainant were featured, and which web sites contained false representations that Respondent was a partner of Complainant and its affiliates, all of which lead the Panel to conclude that without doubt the domain name at issue has been registered and is being used in bad faith.

### **6. Decision**

Accordingly, the Panel finds that the domain name at issue, cn-alipay.com, should be transferred to Complainant.

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M. Scott Donahey  
Panelist

Dated: 18 March 2014

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<sup>1</sup> Although Complainant does not assert this fact, it is common knowledge that "cn" preceded by a "." is the country code top level domain (ccTLD) for China.