



ASIAN DOMAIN NAME DISPUTE RESOLUTION CENTRE
(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.: **HK-2201605**
Complainant: **Alibaba Group Holding Limited**
Respondent: **Dawn L**
Disputed Domain Name: **<alifree.net >**

1. The Parties and Contested Domain Name

The Complainant is **Alibaba Group Holding Limited** (hereinafter referred to as the “**Complainant**”), of 4th Floor, One Capital Place, P.O. Box 847, Grand Cayman, Cayman Islands.

The Authorized Representative of the Complainant is **Mr. Paddy Tam**, of CSC Digital Brand Services Group AB.

The Respondent is **Dawn L**, (hereinafter referred to as the “**Respondent**”) of 408 Eskaton Cir, Grass Valley, District of Columbia, 95945, United States of America.

The domain name at issue is **<alifree.net>** (hereinafter referred to as the “**Disputed Domain Name**”), registered with GoDaddy.com LLC, 14455 North Hayden Rd, Suite 219, Scottsdale, Arizona, AZ 85260, United States of America (hereinafter referred to as the “**Registrar**”).

2. Procedural History

On 9 March 2022, the Complaint (in the Chinese language) was filed with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (hereinafter referred to as the “**Centre**”), in accordance with the Uniform Domain Name Dispute Resolution Policy (the “**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (the “**Rules**”) approved by ICANN Board of Directors on 28 September 2013, and the Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”) Supplemental Rules to the ICANN Uniform Domain Name Dispute Resolution Policy and the Rules for the Uniform Domain Name Dispute Resolution Policy (the “**Supplemental Rules**”) effective from 31 July 2015.

On the same day, the Centre confirmed receipt of the Complaint and requested the Complainant to submit the necessary case filing fees on or before 19 March 2022 in accordance with Article 15 of the Supplemental Rules.

On 9 March 2022, the Centre notified the Registrar of the Complaint and requested the Registrar to verify information associated with the Disputed Domain Name.

On 10 March 2021, the Registrar transmitted to the Centre its verification response disclosing registrant information for the Disputed Domain Name, in which the Registrar stated that Dawn L of 408 Eskaton Cir, Grass Valley, District of Columbia, 95945, United States of America is the registrant of the Disputed Domain Name; that the ICANN Policy is applicable to the Disputed Domain Name; that the language of the Registration Agreement of the Disputed Domain Name is English as provided by the Whois database; and confirmed that the Disputed Domain Name will remain locked during the pending administrative proceeding.

On the very same day, the Centre informed the Complainant that the contact information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

“In accordance with Article 4 of the Rules for the ICANN Uniform Domain Name Dispute Resolution Policy (‘Rules’), we are now reviewing the Complaint for administrative compliance with the Policy and its Rules and have found the following deficiency.

The information of the Respondent in the Complaint is different from the Whois information provided by the Registrar:

Dawn L

Rom4113@gmail.com

408 Eskaton Cir, Grass Valley, District of Columbia, US

95945

+1.2676270790

For the deficiency stated above, we ask the Complainant to update the information of the Respondent in the Complaint Form with reference to the Whois information provided by the Registrar. The signed scanned version and word version of the Complaint Form should be sent to the Centre.

According to Article 4(d) of the Rules, the Complainant is hereby required to rectify the above deficiency within 5 calendar days (i.e., by 15 March 2022), failing which the Complaint will be deemed withdrawn without prejudice to submission of a different complaint by the Complainant.”

In another correspondence of 10 March 2022, the Centre wrote to the Complainant stating the following:

“According to Article 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceedings shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the Registration Agreement of the disputed domain name

<alifree.net> is English, therefore the language of the proceedings of the complaint should be English.

*However, the complaint that the Complainant submitted is in Chinese. May we ask the Complainant to respond to this e-mail regarding the language of the proceedings **on or before 15 March 2022**. The Panelist shall make the final determination on the language issue.”*

On 15 March 2022, the Complainant submitted a revised Complaint Form (in the Chinese language) with Annexes for the Centre’s attention.

Also on the 15 March 2022, the Complainant requested that the language of the proceedings be in the Chinese language and gave six reasons in support of its request.

On 15 March 2022, the Centre verified that the Complaint satisfied the formal requirements in accordance with the Policy, the Rules, and the Supplemental Rules. In accordance with the Rules, the Centre shall forward the Complaint to the Respondent and the proceedings shall formally commence.

On 15 March 2022, the Centre wrote to the Respondent informing the Respondent that a Complaint relating to the Disputed Domain Name was filed by the Complainant and that under Paragraph 5 of the Rules, the due date for the Respondent to file a Response was on or before 4 April 2022.

On 15 March 2022, the Centre once again wrote to the Respondent stating the following:

“According to Article 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The language of the Registration Agreement of the disputed domain name <alifree.net> is English, therefore the language of the proceedings of the complaint should be English.

*However, the complaint that the Complainant submitted is in Chinese and the Complainant requested to change the language of the proceedings from English to Chinese (please see below). May we ask the Respondent to respond to this e-mail regarding the language of the proceedings **on or before 20 March 2022**. The Panelist shall make the final determination on the language issue.”*

On 18 March 2022, the Complainant submitted the necessary case filing fees to the Centre in accordance with Article 15 of the Supplemental Rules.

On 21 March 2022, the Centre confirmed receipt of the case filing fees.

On 4 April 2022, the Respondent did not file a response and is in default.

On 6 April 2022, the Centre wrote to the parties informing them that the Respondent did not file a response within the stipulated time frame and that the Centre would shortly proceed to appoint a Panelist to determine the matter.

On 6 April 2022, the Centre wrote to Dr. Christopher To enquiring as to his availability to act as a Sole Panelist (the “**Panelist**”) in relation to the Disputed Domain Name and whether he is in a position to act between the Parties.

On 8 April 2022, the Centre appointed Dr. Christopher To as the Panelist in this matter.

The Panelist finds that it was properly constituted and in accordance with Paragraph 15(a) of the Rules, the Panelist is of the view that it shall decide the Complaint on the basis of statements and documents submitted to it.

According to Paragraph 15(d) of the Rules, this Panel shall issue a reasoned decision.

3. Factual background

Complainant

The Complainant is a company established in Hangzhou, China in 1999. Since its establishment the Complainant has grown to become a global leader in the field of e-commerce and operates various businesses through its related and affiliated companies, including online business-to-business wholesale marketplaces, namely through www.alibaba.com; and other online business-to-consumer and consumer-to-consumer platforms, namely, Taobao.com marketplace, AliExpress.com marketplace, 1688.com marketplace and Tmall.com marketplace. It also operates a travel and tourism service, a data and cloud computing service and a logistics data platform. On 19 September 2014, the Complainant officially listed on the New York Stock Exchange.

Alibaba Cloud (alibabacloud.com) is the digital technology and intelligence backbone of the Complainant. It offers a complete suite of cloud services to customers worldwide, including elastic computing, database, storage, network virtualization, large-scale computing, security, management and application, big data analytics and machine learning platform services. The Complainant is China's leading provider of public cloud services and operates its data and cloud computing services including domain registration services through its subsidiary, Alibaba Cloud Computing (Beijing) Co. Ltd, which is also the registrant of its primary domain names including Aliyun.com. The Aliyun brand (also known as 阿里云 (aliyun.com) was created in 2009. According to Similarweb.com, <aliyun.com> is ranked 42nd most popular website in China and 648th globally. (*reference Annexes 4, 5, 6 and 7 of the Complaint*).

Respondent

The Respondent, Dawn L, is an individual.

On 6 April 2022, the Centre informed this Panelist that the Centre did not receive a Response from the Respondent in relation to the Complaint on or before 4 April 2022, as such, the Respondent has not contested the allegations of the Complaint and is in default.

Disputed Domain Name

The Disputed Domain Name was registered on 25 September 2021.

4. Parties' Contentions

Complainant

The Complainant made the following submissions in the Complaint:

i. Identical/Confusingly Similar

The Complainant contends that by virtue of its trademark and service mark registrations across many countries and regions (*reference Annex 1 of the Complaint*), the Complainant is the owner of the “ALP” trademarks. In support of such contention the Complainant makes reference to *WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”)* at paragraph 1.2.1 (“*Where the complainant holds a nationally or regionally registered trademark or service mark, this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.*”).

The Complainant states that when comparing a Disputed Domain Name to Complainant’s trademarks, it is standard practice not to take the extension into account. In aid of such stance the Complainant makes reference to *WIPO Jurisprudential Overview 3.0* at paragraph 1.11.1 (“*The applicable Top Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.*”).

The Complainant further states that the Disputed Domain Name can be considered as capturing, in its entirety, the Complainant’s “ALP” trademark and simply adding the generic term “free” to the end of the trademark. According to the Complainant, the mere addition of this generic term to the Complainant’s trademark does not negate the confusing similarity between the Disputed Domain Name and the Complainant’s trademark under

paragraph 4(a)(i) of the Policy, and that the Disputed Domain Name must be considered confusingly similar to the Complainant's trademark.

The Complainant asserts that the addition of generic or descriptive terms is not sufficient to overcome a finding of confusing similarity pursuant to paragraph 4(a)(i) of Policy and to support such a stance, the Complainant makes reference to *WIPO Jurisprudential Overview 3.0 at paragraph 1.8* (“Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.”).

It is the Complainant's stance that the Disputed Domain Name is confusingly similar to Complainant's “ALP” trademarks.

ii. Rights and Legitimate Interests

The Complainant contends that the Respondent is not commonly known by the Disputed Domain Name, which evinces a lack of rights or legitimate interests pursuant to paragraph 4(c)(ii) of the Policy (*reference Annex 2 of the Complaint*). In support of such a stance the Complainant makes reference to the case of *World Natural Bodybuilding Federation, Inc. v. Daniel Jones TheDotCafe*, D2008-0642 (WIPO, 6 June 2008) (*finding that a respondent, or his/her organization or business, must have been commonly known at the time of registration in order to have a legitimate interest in the domain name*).

The Complainant further contends that the Respondent is not in any way connected, associated, or affiliated with the Complainant and the Complainant has not authorized, endorsed, or otherwise permitted the Respondent to register the Disputed Domain Name or to use the Complainant's trademark or any variation thereof. In support of such a stance the Complainant makes reference to the case of *Sportswear Company S.P.A. v. Tang Hong*, D2014-1875 (WIPO, 10 December 2014) (*finding that in the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the Disputed Domain Name could reasonably be claimed*).

The Complainant asserts that there is no evidence that the Respondent has been commonly referred to nor has the Respondent been reasonably said to have any rights or legitimate interests in registering or using the Disputed Domain Name within the meaning of paragraph 4(c)(ii) of the Policy. In support of such a stance the Complainant makes reference to the case of *Moncler S.p.A. v. Bestinfo* D2004-1049 (WIPO, 8 February 2005) (*finding that the Respondent's name is "Bestinfo" and it can therefore not be commonly known by the Domain Name ["moncler.com"]*).

The Complainant states that past Panels have determined that use of a Disputed Domain Name to redirect internet users to content unrelated to a complainant, even if the respondent does not derive commercial benefit from such use, does not automatically render the use of the Disputed Domain Name legitimate. In support of such a stance the Complainant makes reference to the case of *Victoria Beckham v. David James* D2017-0035 (WIPO, 27 February 2017) (*finding that it is immaterial that Internet users, having viewed the parking page, may realize that it is unconnected with the Complainant or her business. It is sufficient that such users will have visited the website to which the disputed domain name points in the mistaken belief that it is likely to be connected with her. In other words, it is the characteristics of the disputed domain name itself, particularly when identical to the Complainant's trademark which raises a heightened risk of impermissible impersonation, which creates the likelihood of confusion*). The Complainant further makes reference to the case of *Tata Sons Limited v. TATA Telecom Inc./Tata-telecom.com, Mr. Singh*, D2009-0671 (WIPO, 1 September 2009) (*finding that when a domain name is so obviously connected with a Complainant, it's very use by a registrant with no connection to the Complainant suggests 'opportunistic bad faith'*).

The Complainant claims that the website of the Disputed Domain Name redirects internet users to a third party website drivebbs.com in which the Respondent uses to publish various advertisements for commercial gain. On this basis the Complainant contends that the Respondent is not using the Disputed Domain Name to provide bona fide offering of goods or services nor a legitimate noncommercial or fair use in accordance with paragraph 4(c)(i) and 4(c)(iii) of the Policy. The Complainant further asserts that past Panels have confirmed that such use does not bestow legitimate rights or interests upon a respondent. In support of such stance the Complainant makes reference to *WIPO Jurisdictional Overview*

3.0 at paragraph 2.5.3 (“A respondent’s use of a complainant’s mark to redirect users (e.g., to a competing site) would not support a claim to rights or legitimate interests.”).

The Complainant further states that the Respondent uses the website on <https://drivebbs.com/> to distribute pirated copies of videos, novels, games, etc. via Complainant’s Alibaba Cloud platform without any authorization from both the Complainant and the relevant right owners to these products or services (*reference Annex 3 of the Complaint*).

The Complainant further claims that the Respondent registered the Disputed Domain Name on 25 September 2021. Whereas the Complainant filed for registration of its “ALI” trademark with the CMTO (on 15 August 2017), IPOS (on 23 April 2010) and WIPO (on 25 August 2020) earlier than the Respondent’s registration of the Disputed Domain Name, and significantly after Complainant’s first use in commerce of its trademark in 1999. The Disputed Domain Name’s registration date is also significantly after the Complainant’s registration of its <aliyun.com> domain name in 2007 (*reference Annexes 1, 2 and 4 of the Complaint*).

The Complainant submits that Respondent has no rights or legitimate interest in the Disputed Domain Name in accordance with Paragraph 4(a)(ii) of the Policy.

iii. Bad Faith

The Complainant advocates that the Disputed Domain Name has been registered and used in bad faith.

The Complainant contends that its “ALI” trademark is known internationally, with trademark registrations across numerous countries including the United States of America where the Respondent is based. The Complainant has marketed and sold its goods and services using the trademark since 2017, which is before Respondent’s first registration of the Disputed Domain Name on 25 September 2021.

The Complainant states that by registering a domain name that comprises of the Complainant’s “ALI” trademark in its entirety, and by adding the generic term “free” to the

end of the trademark, the Respondent has created a domain name that is confusingly similar to the Complainant's trademark, as well as its <aliyun.com> domain.

The Complainant further states that where the Disputed Domain Name comprises of the Complainant's "ALF" trademark in its entirety, and by adding the generic term "free" to the end of the trademark, "*it defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks.*" as stated in the case of *Asian World of Martial Arts Inc. v. Texas International Property Associates*, D2007-1415 (WIPO, 10 December 2007).

The Complainant further contends that the Respondent is aware of the Complainant's brand and business. In support of such a stance the Complainant makes reference to the case of *Telstra Corp. Ltd. v. Nuclear Marshmallows*, D2000-0003 (WIPO, 18 February 2000) (*finding that "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the Disputed Domain Name was registered*).

The Complainant states that "ALF" is so closely linked and associated with Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith. In support of such a stance the Complainant makes reference to the case of *Parfums Christian Dior v. Javier Garcia Quintas*, D2000-0226 (WIPO, 17 May 2000) (*finding that— where a domain name is "so obviously connected with such a well-known name and products,...its very use by someone with no connection with the products suggests opportunistic bad faith."*).

The Complainant advances the stance that the Respondent selected the Disputed Domain Name to intentionally confuse unsuspecting internet users into visiting its website with the intention to misappropriate the Complainant's trademark as a way of redirecting internet users searching for the Complainant to the Disputed Domain Name's website. The Disputed Domain Name redirects internet users to a third party website drivebbs.com/ that the Respondent publishes various advertisements for commercial gain unrelated to the Complainant and its services. This sort of tactic – labeled "bait-and-switch" for its propensity to confuse internet users into believing that they are visiting a Complainant's site only to discover that the Disputed Domain Name website is completely unconnected to

that Complainant. In support of such a stance the Complainant makes reference to the case of *Intel Corporation v. The Pentium Group*, D2009-0273 (WIPO, 6 May 2009) (*finding that, “[t]he incorporation of a well-known trademark into a domain name by a registrant having no plausible explanation for doing so may be, in and of itself, an indication of bad faith”*). The Complainant further supports the stance by citing the case of *Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, D2000-0163 (WIPO, 9 May 2000) (*finding that “VEUVECLICQUOT.ORG” is so obviously connected with such a well-known product that its very use by someone with no connection with the product suggests opportunistic bad faith.*”) (reference **Annex 3 of the Complaint**).

The Complainant asserts that the Respondent’s use of the Disputed Domain Name constitutes a disruption of the Complainant’s business and qualifies as bad faith registration and use under paragraph 4(b)(iii) of the Policy because the Respondent’s domain name is confusingly similar to Complainant’s trademarks and the <https://drivebbs.com/> website redirected from the Disputed Domain Name publishes pirated copies of videos, novels, games, etc. via Complainant’s Alibaba Cloud platform without any authorization from both the Complainant and the relevant right owners. In support of such a stance the Complainant makes reference to the case of *DivX, LLC v. Direct Privacy, Savvy Investments, LLC Privacy ID# 14313590*, D2019-1745 (WIPO, 10 September 2019) (*finding that “obvious bad faith purpose of the Respondent’s salient use of the Complainant’s Mark is to entice unsuspecting Internet users to purchase movies otherwise subject to copyright protection.”*) (reference **Annex 3 of the Complaint**).

The Complainant further asserts that the Respondent, at the time of initial filing of the Complaint by the Complainant, had employed a privacy service to hide its identity signifying bad faith on the part of the Respondent. In support of such a stance the Complainant makes reference to the case of *Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc.*, D2003-0230 (WIPO, 16 May 2003) and *WIPO Jurisprudential Overview 3.0 at 3.6* (stating that “Panels have also viewed a respondent’s use of a privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith.”) (reference **Annex 2 of the Complaint**).

The Complainant states that the WHOIS information of the Respondent provided by the Registrar during these proceedings is incomplete and upon checking the address of the Respondent, the address is incorrect, perhaps as a way of avoiding detection and preventing concerned parties from contacting the Respondent. In support of such a stance the Complainant makes reference to the case of *Visit Am., Inc. v. Visit Am., FA 0095093* (NAF, 14 August 2000) (*finding that “Evidence that a domain name owner provided incorrect information to a domain name registrar supports a finding of bad faith registration”*).

The Complainant further states that the Respondent must have known of and targeted the Complainant’s trademark, and that the Respondent should be found to have registered and used the Disputed Domain Name in bad faith. In support of such a stance the Complainant makes reference to the case of *Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc., D2014-1754* (WIPO, 12 January 2014) (*“the Panel makes its finding regarding bad faith registration by asking whether it is more likely than not from the record of the evidence in the proceeding that Respondent had the ELECTRIC FOOTBALL trademark in mind when registering the Domain Name.”*).

Respondent

The Respondent did not reply to the Complainant’s contentions as stated in the Complaint.

5. Findings

Having considered all the documentary evidence before this Panel and the Respondent’s non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 5(f) of the Rules, the Panelist is of the view that it should proceed to decide on the Disputed Domain Name, based upon the Complaint and evidence adduced by the Complainant as contained within the Complaint and attachments.

Paragraph 5(f) of the Rules stipulates that:

“If a Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute based upon the complaint.”

Whereas Paragraph 10(d) of the Rules states that:

“The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.”

Similarly, Paragraph 11(a) of the Rules provides that:

“Unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.”

In the present case the Parties had not agreed to use a particular language for these proceedings. As the Registration Agreement is in the English language as confirmed by the Registrar in its correspondence to the Centre of 10 March 2022, then in accordance with Paragraph 11(a) of the Rules, the language of the administrative proceedings shall be English, unless this Panel decides otherwise.

In these circumstances given that the Complaint before the Panelist is drafted in the Chinese language, the Panelist issued Procedural Order No. 1 dated 10 April 2022, directing the Complainant to provide the Respondent and this Panel with a copy of the Complaint in the English language on or before 15 April 2022. This is in line with the Registration Agreement and given that the Respondent has failed to communicate on the matter, the Panelist considers that it would be appropriate (and without prejudice to any of the parties) for the present proceedings to be conducted in the English language in line with Paragraph 11(a) of the Rules.

On the 14 April 2022, the Complainant provided this Panel with the Complaint (and nine annexes) in the English language.

The Policy provides, at Paragraph 4(a), that each of three findings must be made for a Complainant to prevail:

- A. Disputed Domain Name is **identical or confusingly similar** to a trademark or service mark in which Complainant has rights; and
- B. The Respondent has no **rights or legitimate interests** in respect of the Disputed Domain Name; and
- C. Disputed Domain Name has been registered and is being used in **bad faith** by the Respondent.

The Panelist would like to state that the Respondent's non-participation in these proceedings (i.e., default) would not by itself mean that the Complainant claims are deemed to have prevailed. In fact, the Respondent's default is not necessarily an admission that the Complainant's claims are true. The burden of proof still rests with the Complainant to establish the three elements contained within Paragraph 4(a) of the Policy as stated above by a preponderance of the evidence for the Panelist to determine in accordance with Paragraph 10(d) of the Rules.

A. Identical / Confusingly Similar

The Complainant contends that the Disputed Domain Name is confusingly similar to the Complainant's trademark "ALF" which the Complainant has prior rights.

The threshold test for confusing similarity under the Policy involves a comparison between the relevant trademarks/marks/logos/wordings belonging to the Complainant and the Disputed Domain Name to ascertain the presence of the trademarks/marks/logos/wordings in the Disputed Domain Name. To satisfy this test, the relevant trademarks/marks/logos/wordings would generally need to be recognizable as such within the Disputed Domain Name, with the addition of merely descriptive, common, or geographical wording typically being regarded as insufficient to prevent a finding of confusing similarity.

In essence, this Panel has to consider whether the Disputed Domain Name, namely, <**alifree.net**>, is a central and distinguishable part of the Complainants' trademark/mark.

The Disputed Domain Name contains two elements: (i) "alifree" and (ii) top-level generic domain ".net". It is well established that the top-level generic domain ".net" does not have trademark significance, conferring no distinctiveness to the domain name sufficient to avoid user confusion, and should be ignored for identifying the "confusing similarity" element.

On a side-by-side comparison of the Disputed Domain Name and the textual components of the Complainant's trademark/mark, the trademark/mark is recognizable within the Disputed Domain Name. In fact, the Disputed Domain Name incorporates the entirety of the trademark/mark/wordings of the Complainant with the word "ALF", which is insufficient to prevent a finding of confusing similarity.

The distinctive part of the Disputed Domain Name < **alifree.net**> is "ALF", which is confusingly similar to the Complainant's trademark/mark "ALF" thus creating a likelihood of confusion amongst Internet users. The addition of the generic term "free" does not negate the confusing similarity between the Disputed Domain Name and the Complainant's trademark. This is in line with what is stated within paragraph 1.8 of the *WIPO Jurisprudential Overview 3.0*.

The Panelist finds that the Complainant has rights in the trademark/mark/wordings acquired through use.

The Panelist agrees with the Complainant's contentions that the Disputed Domain Name is the same and is a central and distinguishable part of the Complainant's "ALF" trademark/mark. The Panelist further concurs with the Complainant's stance that the Disputed Domain Name can easily mislead members of the public into believing that the Disputed Domain Name is owned or operated by the Complainant, or that the Respondent has a relationship or association with the Complainant in some way or form.

As stated previously, the Respondent has not contested the allegations of the Complaint and is in default.

For the foregoing reasons, the Panelist concludes that the Complainant has discharged the burden of proof to establish the elements of identical and confusingly similar trademark or service mark in accordance with Paragraph 4(a) (i) of the Policy.

B. Rights and Legitimate interests

The burden of proof shifts to the Respondent once the Complainant provides prima facie evidence showing that the Respondent lacks legitimate rights or interests.

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances, any of which is sufficient to demonstrate that a Respondent has rights or legitimate interests in the Disputed Domain Name:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with a bona fide offering of goods or services; or
- (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the Disputed Domain Name, even if the Respondent has acquired no trademark or service mark rights; or
- (iii) the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

There is no evidence that the Complainant has authorized, licensed, or permitted the Respondent to register or use the Disputed Domain Name or to use the trademark/mark.

The Panelist finds on record that there is therefore a prima facie case that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the burden shifts to the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that it has acquired any trademark rights in respect of the Disputed Domain Name or that the Disputed Domain Name has been used in connection with a bona fide offering of goods or services. The Complainant has neither authorized nor consented to the Respondent to use the Complainant's trademark/mark.

There has been no evidence adduced to show that the Respondent has been commonly known by the Disputed Domain Name.

There has been no evidence adduced to show that the Respondent is making a legitimate non-commercial or fair use of the Disputed Domain Name.

The Complainant has in a credible way alleged that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name whereas the Respondent has failed to show that the Respondent has any rights or legitimate interests in respect of the Disputed Domain Name. This effectively entitles the Panelist to infer that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name at issue.

To sum up, the Panelist is satisfied on the totality of the evidence before it that the Respondent's use of the Disputed Domain Name is not in connection with a bona fide offering of goods or services. The Respondent has not been authorized or licensed by the Complainant to use its marks. Nor is there any evidence that the Respondent has been commonly known by the Disputed Domain Name or similar name. Neither is there evidence that the Respondent has been making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent for commercial gain to misleadingly divert consumers or to tarnish the mark of the Complainant.

In the circumstances, the Panelist concludes that, on a balance of probabilities, the Complainant has discharged its burden of proof to show that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name pursuant to paragraph 4(a) (ii) of the Policy.

C. Bad Faith

Paragraph 4(b) of the Policy sets out four (4) factors in which the Panelist shall take into consideration in determining whether the Respondent has registered and used the Disputed Domain Name in bad faith. Either one (1) of these four (4) factors being evident would amount to registration and use in bad faith on the part of the Respondent.

Bad faith cannot be presumed, but once the Complainant has presented some evidence to establish a prima facie case, the onus then shifts onto the Respondent to either justify or explain its business conduct.

From the evidence submitted by the Complainant, the Panel finds that the Respondent is attempting to use the Disputed Domain Name to create confusion with the Complainant's trademark/mark with the view of gaining commercially. As such the Panelist contends that the Respondent's bad faith is evident by Paragraph 4(b) (iv) of the Policy:

“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location.”

The Panelist also finds that, given the fact that the Complainant's trademark/mark is known within the community, it is likely that the Respondent was aware that it was infringing the Complainant's trademark/mark.

For the foregoing reasons, the Panel concludes that the Complainant has discharged the burden of proof to establish that the Respondent registered and used the Disputed Domain Name in bad faith in accordance with Paragraph 4(a) (iii) of the Policy.

6. Reverse Domain Name Hijacking

Paragraph 15(e) of the Rules provides that, if “...after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name

holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”.

Reverse Domain Name Hijacking is defined under the Rules as “...*using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name*”.

In light of the conflicting decisions as to whether it is necessary for a Complainant to establish both bad faith registration and bad faith use, the Panel does not find this to be a case of Reverse Domain Name Hijacking.

7. Decision

For the foregoing reasons and in accordance with Paragraph 4(a) of the Policy and Paragraph 15 of the Rules, the Panelist is satisfied that the Complainant has sufficiently proved the existence of all three elements pursuant to Paragraph 4(a) of the Policy. The Panel orders that the Disputed Domain Name <**alifree.net**> be transferred to the Complainant.

A handwritten signature in black ink, appearing to read 'Christopher To', written over a horizontal line.

Dr. Christopher To
Panelist

Dated: 19 April 2022