

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited and Tencent Technology (Shenzhen) Co, Ltd. v. 刘凯 (kailiu), 北京好思维科技发展有限公司 (Beijing good thinking technology development co., LTD)
Case No. D2023-5289

1. The Parties

The Complainants are Tencent Holdings Limited, Cayman Islands, United Kingdom; and Tencent Technology (Shenzhen) Co, Ltd., China, represented by Kolster Oy Ab, Finland.

The Respondent is 刘凯 (kai liu), 北京好思维科技发展有限公司 (Beijing good thinking technology development co., LTD), China.

2. The Domain Name and Registrar

The disputed domain name <wechat360.net> is registered with Xin Net Technology Corp (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on December 20, 2023. On December 20, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 21, 2023, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainants on December 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amendment to the Complaint in English on December 22, 2023.

On December 22, 2023, the Center informed the Parties in Chinese and English, that the language of the Registration Agreement for the disputed domain name is Chinese. On December 22, 2023, the Complainants confirmed its request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainants' submission.

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 in English and Chinese of the Complaint, and the proceedings commenced on January 12, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 1, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 2, 2024.

The Center appointed James Wang as the sole panelist in this matter on February 7, 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 Complainants are members of Tencent, a global Internet and technology company established in 1998 and headquartered in Shenzhen, China.

The Complainants provide Internet, mobile, and telecommunication services and products, including in entertainment, artificial intelligence, and technology in China and globally. Some of the most popular products of the Complainants include social media application WeChat, QQ instant messenger, Tencent Games, Tencent Video, Tencent News, and Tencent Sports.

TENCENT trademarked products and services have been advertised through the website “www.tencent.com” since 1998.

The Complainants have registered, among others, the following WECHAT trademarks:

- European Union trademark No. 010344621, registered on March 21, 2012;
- United States of America trademark registration No. 4442135, registered on December 3, 2013; and
- China trademark registration No. 13863523, registered on March 7, 2015.

The disputed domain name was registered on July 7, 2013.

The disputed domain name does not resolve to an active web page.

5. Parties’ Contentions

A. Complainants

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainants requested that the disputed domain name be transferred to the Complainant Tencent Holdings Limited.

B. Respondent

The Respondent did not reply to the Complainants’ contentions.

6. Discussion and Findings

6.1 Language of the Proceeding

The Complaint was filed in English. The Complainants requested that the language of the proceeding be English for several reasons, including the fact that the disputed domain name consists of a combination of English alphabets and that the disputed domain name resolved to a website stating in English that the website is currently unavailable.

The Respondent did not make any submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters above, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English.

6.2 Substantive Elements

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

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of 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

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 Complainants' trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainants have 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 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, "360") 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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainants’ 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.

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.

In the present case, the Panel notes that the Respondent’s contact email address is a QQ email address, and QQ email service is one of the major services of the Complainants. As such, it would be inconceivable that the Respondent was not aware about the Complainants at the time of registering the disputed domain name. Moreover, considering that the Complainants’ released its WeChat (微信) app in 2011 in China, and started to use WeChat as the English name of this app in 2012¹; and that the entirety of the Complainants’ WECHAT trademark has been incorporated in the disputed domain name, the Panel finds that the Respondent knew or should have known of the Complainants’ WECHAT trademark when registering the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

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.

Panels have found that the 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 finds the non-use of the disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the distinctiveness or reputation of the Complainants’ 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.

The Panel finds that the Complainants have established the third element of the Policy.

¹ Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

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 <wechat360.net> be transferred to the Complainant Tencent Holdings Limited.

/James Wang/

James Wang

Sole Panelist

Date: February 21, 2024