

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited and Tencent Technology (Shenzhen) Co, Ltd. v.
吴志威 (Zhi Wei Wu), 广东百创互联科技有限公司 (Guang Dong Bai Chuang
Hu Lian Ke Ji You Xian Gong Si)
Case No. D2023-5270

1. The Parties

Complainants are Tencent Holdings Limited, Cayman Islands, United Kingdom (“UK”) (Complainant 1); and Tencent Technology (Shenzhen) Co, Ltd., China (Complainant 2), (collectively “Complainant”), represented by Kolster Oy Ab, Finland.

Respondent is 吴志威 (Zhi Wei Wu), 广东百创互联科技有限公司 (Guang Dong Bai Chuang Hu Lian Ke Ji You Xian Gong Si), China.

2. The Domain Name and Registrar

The disputed domain name <wechatshops.net> is registered with Xin Net Technology Corp. (北京新网数码信息技术有限公司) (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on December 19, 2023. On December 19, 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 (Registrant information unknown) and contact information in the Complaint. The Center sent an email communication to Complainant on December 22, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant 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, Complainant confirmed its request that English be the language of the proceeding. Respondent did not submit any comment on Complainant's 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 Respondent in English and Chinese of the Complaint, and the proceedings commenced on January 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 31, 2024. Respondent sent three email communications to the Center on January 16, 2024 and February 8, 2024.

The Center appointed Yijun Tian as the sole panelist in this matter on February 16, 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

A. Complainant

Complainant 1 is Tencent Holdings Limited, a company incorporated in the Cayman Islands, UK; and Complainant 2 is Tencent Technology (Shenzhen) Co, Ltd., a company incorporated in China. Complainants are part of Tencent, a global Internet and technology group founded in 1998, headquartered in Shenzhen, China. They offer various Internet, mobile, and telecommunication services worldwide, including popular products like QQ, WeChat, Tencent Games, and Tencent Video.

Complainants have rights in the WECHAT marks. Complainants are the owner of numerous WECHAT trademarks worldwide, including the European Union trademark registration for WECHAT, registered on March 21, 2012 (registration number: 010344621), the United States of America (“US”) trademark registration for WECHAT, registered on December 3, 2013 (registration number: 85455432), and the Chinese trademark registration for WECHAT, registered on March 7, 2015 (registration number: 13863523) (Annexes 4-6 to the Complaint). In 2021, Brand Finance Global 500 named WECHAT the world’s strongest tech brand (Annexes 7 and 8 to the Complaint).

B. Respondent

Respondent is 吴志威 (Zhi Wei Wu), 广东百创互联科技有限公司 (Guang Dong Bai Chuang Hu Lian Ke Ji You Xian Gong Si), China.

C. Disputed Domain Name

The disputed domain name <wechatshops.net> was registered on July 15, 2018.

According to the Complainant, the disputed domain name used to lead to a website prompting users (in Chinese) to log in or verify their identity. Additionally, at the bottom of the homepage, there’s a Chinese text: “WeChat Mini Program Takeaway Ordering”.

5. Parties’ Contentions

A. Complainant

Complainant contends that the disputed domain name is identical to Complainant’s trademarks, clearly featuring the recognisable trademark. The addition of the generic, descriptive word “shops” does not adequately distinguish it from Complainant’s trademarks.

Complainant contends that Respondent lacks rights or legitimate interests in the disputed domain name.

Complainant contends that the disputed domain name was registered and is being used in bad faith.

Complainant requests that the disputed domain name be transferred to it.

B. Respondent

Respondent did not reply to Complainant's contentions. On January 16, 2024, Respondent sent an email communication including the certificate of the disputed domain name purchase and a screenshot of the backlog of the disputed domain name registration with ICP, indicating Respondent's name. On February 8, 2024, Respondent replied in an email stating (in Chinese) "We can agree to negotiate."

6. Discussion and Findings

6.1. Language of the Proceeding

The language of the Registration Agreements for the disputed domain name <wechatshops.net> is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

From the evidence presented on the record, no agreement appears to have been entered into between Complainant and Respondent to the effect that the language of the proceeding should be English. Complainant filed initially its Complaint and amendment to the Complaint in English, and has requested that English be the language of the proceeding for the following reasons:

- (a) The disputed domain name combines Complainant's trademark WECHAT with the generic word "shops", indicating a deliberate and knowledgeable selection of English names and trademarks;
- (b) Conducting the proceeding and rendering the decision in English does not prejudice or unfairly disadvantage Respondent; and
- (c) The Complaint has been submitted in English.

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).

On the record, Respondent appears to be located in China and thus presumably not a native English speaker, but considering the following aspects, the Panel has decided that the language of the proceeding shall be English: (a) the disputed domain name is registered in Latin characters, particularly in English (e.g., English words "we", "chat", and "shops", rather than Chinese script; (b) the generic Top-Level Domain ("gTLD") of the disputed domain name is ".net", so the disputed domain name seems to be prepared for users worldwide, particularly English speaking countries; (c) the Center has notified Respondent of the language of the proceeding in both Chinese and English, and Respondent has indicated no objection to Complainant's request that English be the language of the proceeding; (d) the Center also notified Respondent in both Chinese and English of the Complaint, and informed Respondent that it would accept a response in either English or Chinese, but Respondent chose not to file any response. Respondent's only response was an email stating (in Chinese), "We can agree to negotiate".

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 Issues: Three Elements

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

Based on the available record, the Panel finds 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 Panel finds the entirety of the WECHAT mark was reproduced within the disputed domain name. More specifically, accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of the term, "shops", may bear on the 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.

Based on the available record, 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 Respondent may demonstrate rights or legitimate interests in a disputed domain name.

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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

More specifically,

(i) there has been no evidence adduced to show that Respondent used the disputed domain name in connection with a bona fide offering of goods or services. Respondent has not provided evidence of reasons to justify the choice of the terms "wechat", Complainant's WECHAT trademark, in the disputed domain name. There has been no evidence to show that Complainant has licensed or otherwise permitted Respondent to use the WECHAT trademark or to apply for or use any domain name incorporating the WECHAT marks;

(ii) there has been no evidence adduced to show that Respondent has been commonly known by the disputed domain name. There has been no evidence adduced to show that Respondent has any registered trademark rights with respect to the disputed domain name. Respondent registered the disputed domain name in 2018, after the WECHAT marks became widely known. The disputed domain name is confusingly similar to Complainant's WECHAT marks; and

(iii) there has been no evidence adduced to show that Respondent was making a legitimate noncommercial or fair use of the disputed domain name. By contrast, the disputed domain name resolved to a website prompting users (in Chinese) to log in or verify their identity. Additionally, at the bottom of the homepage, there's a Chinese text: "WeChat Mini Program Takeaway Ordering". It seems likely that Respondent was making profits through the Internet traffic attracted to the website under the disputed domain name. (See *BKS Bank AG v. Jianwei Guo*, WIPO Case No. [D2017-1041](#); and *Pet Plan Ltd. v. 权中俊 and 李金梁* (Li Jin Liang), WIPO Case No. [D2020-3358](#).)

Based on the available record, 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 Respondent has registered and used the disputed domain name in bad faith.

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.

Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the information provided by Complainant, the Panel finds that Complainant has a widespread reputation in the WECHAT marks with regard to its products and services. It is not conceivable that Respondent would not have had Complainant's trademark in mind at the time of the registration of the disputed domain name (in 2018). This has been reinforced by the fact that the disputed domain name incorporates Complainant's WECHAT trademark in its entirety.

Respondent has used the website resolved by the disputed domain name to prompt users (in Chinese) to log in or verify their identity. Additionally, at the bottom of the homepage, there's a Chinese text: "WeChat Mini Program Takeaway Ordering".

Thus, the Panel concludes that Respondent is using confusingly similar disputed domain name with the intention to attract, for commercial gain, Internet users to Respondent's website by creating a likelihood of confusion with Complainant. Such use constitutes bad faith pursuant to paragraph 4(b)(iv) of the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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 <wechatshops.net> be transferred to Complainant 1.

/Yijun Tian/

Yijun Tian

Sole Panelist

Date: March 18, 2024