

**KUALA LUMPUR REGIONAL CENTRE
FOR ARBITRATION**



ADMINISTRATIVE PANEL DECISION

TENCENT HOLDINGS LIMITED v. HAPPY CLICK SDN. BHD.
Case No. KLRCA/DNDR-502-2017

1. The Parties

The Complainant is Tencent Holdings Limited of George Town, Cayman Islands, represented by Paddy Tam (Corporation Service Company) of Stockholm.

The Respondent is Happy Click Sdn. Bhd. of Selangor, Malaysia.

2. The Domain Name and Registrar

The disputed domain names, <wechat.my> and <wechat.com.my> (“Disputed Domain Names”) are registered with the Malaysian Network Information Centre (MYNIC).

3. Procedural History

The Complaint was filed in English with the Kuala Lumpur Regional Centre for Arbitration (the “Centre”) on 15 August 2017. On the same day, the Centre verified that the Respondent is listed as the registrant and that the formal requirements of the MYNIC Domain Name Dispute Resolution Policy (the “Policy”), the MYNIC Rules for Domain Name Dispute Resolution Policy (the “Rules”), and the Kuala Lumpur Regional Centre for Arbitration’s Supplemental Rules to the Rules (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 5.2 and 5.3, the Centre formally notified the Respondent in English of the Complaint, and the proceedings commenced on 17 August 2017. In accordance with the Rules, paragraph 6.1, the due date for Response was 7 September 2017. The Respondent did not submit any response.

The Centre appointed Kar Liang Soh as the sole panelist in this matter on 18 September 2017. The Panel finds that it was properly constituted. The Panel has submitted the Declaration of Impartiality and Independence, as required by the Centre to ensure compliance with the Rules, paragraph 9.3.

4. Factual Background

The Complainant was founded in 1998 and is a leading company of Internet value added services in China, including providing social platforms and digital content services. The Complainant was listed on the main board of the Hong Kong Stock Exchange in 2004.

Among the social platforms offered by the Complainant is that marketed under the name Weixin (in Chinese) or WeChat. By the third quarter of 2016, there were about 846 million monthly active user accounts on

Weixin/WeChat. Launched in 2011, Weixin/WeChat integrates instant messaging and social entertainment to individual users as well as extended merchant services such as Weixin/WeChat Pay.

Over 50% of the Complainant's employees are devoted to research and development. The Complainant operates China's first Internet research Institute, known as Tencent Research Institute, established in 2006 with campuses in Beijing, Shanghai and Shenzhen.

The Complainant owns many registrations for the trade mark WECHAT, including the following:

Jurisdiction	Trade mark No	Registration Date
Malaysia	20110564425	28 October 2011
Hong Kong	302060252	17 October 2011
European Union (EUTM)	010344621	21 March 2012
United States	854555432	21 March 2012

The Disputed Domain Names were registered on 9 September 2014. On or before the date of the Complaint, the Disputed Domain Name <wechat.com.my> resolved to a website promoting mobile marketing services associated with the WeChat platform (the "Landing Webpage"). The header of the website a logo comprising the words HAPPY CLICK as well as menu items which included one titled "Mobile Marketing". In conjunction with the prominent display of the trade mark WECHAT, the Landing Webpage also contained the statements "Over 800 million users worldwide" and "Up to 90 per cent of Malaysia's smartphone users use and register with its mobile social communications application WeChat". The "Mobile Marketing" menu item redirected to another website (specifically, the URL <https://happyclick.my/mobile-marketing>) which presented a nearly identical design to that of the Landing Webpage (the "Happy Click Website"). The Happy Click Website has navigation elements to content associated with the WeChat platform, as well as other social platforms like WhatsApp, Line, Instagram and Twitter. The content on the Happy Click Website associated with the WeChat platform is almost identical to that of the Landing Webpage. In addition, the Landing Webpage also linked to the URL <https://wechat.com.my/apply/> which presented the heading "WeChat Official Account Application Form" and an online form for collecting various information including, company name, company address, and bank account (the "Online Form"). The Online Form also displayed an agreement which began as follows:

"WECHAT OFFICIAL ACCOUNT ADMIN PLATFORM – USER AGREEMENT

Last modified: 6 May 2015

Welcome to the WeChat Official Account Admin Platform (the "OA Platform")!

Tencent International Services Pte. Ltd. ("we", "our" or "us") provides you with the OA Platform in order to facilitate and enable your provision of various services and brand promotional activities via your Official Account (such services provided by you being "Your services"). The OA Platform is part of the overall WeChat service that we provide to users.

You must have an Official Account with us in order to use the OA Platform. Unless expressly specified otherwise, any reference to the "OA Platform" under this Agreement also refers to your Official Account.

Please carefully review this Agreement – Your use of the OA Platform and your Official Account is always subject to this Agreement.

If you do not agree to this Agreement, you must not use the OA Platform. ..."

The Disputed Domain Name <wechat.my> also resolved to the Landing Webpage.

There is little information available about the Respondent in this proceeding.

5. Parties' Contentions

A. Complainant

The Complainant contends that:

- a) The Disputed Domain Names are identical or confusingly similar to the trade mark WECHAT. The relevant comparison is between the Complainant's trade mark and the second-level portion of the Disputed Domain Names. The Disputed Domain Names contain the trade mark WECHAT in its entirety. The Complainant had rights to the trade mark WECHAT prior to the date of registration of the Disputed Domain Names;
- b) The Disputed Domain Name was registered and/or is used by the Respondent in bad faith. The Respondent is not commonly known by the Disputed Domain Names and the Complainant has not licensed or authorized the Respondent in any way to register and use any domain names incorporating the Complainant's trade mark. The Respondent has no rights or legitimate interests in the Disputed Domain Names. The Respondent registered the Disputed Domain Names years after the Complainant's trade mark registrations for WECHAT. The Complainant and the trade mark WECHAT are known internationally. By registering the Disputed Domain Names, the Respondent has demonstrated its knowledge of the trade mark WECHAT. It is not possible to conceive of a plausible situation in which the Respondent could have been unaware of the trade marks at the time the Disputed Domain Names were registered. The Respondent's use of the Disputed Domain Names constituted a disruption of the Complainant's business. The Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. The impression given by the Disputed Domain Names and the resolved website would cause consumers to believe the Respondent to be associated with the Complainant when it is not. The Disputed Domain Names are used to redirect Internet users who click on the "Mobile Marketing" link to the Respondent's other website. The Respondent is using the Disputed Domain Names to launch phishing attacks by attempting to solicit sensitive, financial information. The Respondent knew of and targeted the Complainant's trade mark.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must establish both the following requirements of paragraph 5.2 of the Policy:

- (i) the Disputed Domain Names are identical or confusingly similar to a trade mark or service mark to which the Complainant has rights; and
- (ii) the Respondent has registered and/or used the Disputed Domain Names in bad faith.

A. Identical or Confusingly Similar

The trade mark registrations submitted by the Complainant establishes the Complainant's trade mark rights to the trade mark WECHAT. It is a consistent practice of past panels constituted under the Uniform Disputed Resolution Policy ("UDRP") and the dispute resolution policies of other country code Top Level Domains that Top Level Domains should be disregarded when comparing domain names with trade marks (see WIPO

Jurisprudential Overview 3.0, in particular

<http://www.wipo.int/amc/en/domains/search/overview3.0/index.html#item111>). There is no reason to depart from this practice in the present case. Disregarding the “.com.my” and “.my” elements of the Disputed Domain Names, it is immediately apparent to the Panel that the Disputed Domain Names clearly incorporate the trade mark WECHAT in its entirety. The Panel therefore finds that the Disputed Domain Names are identical or confusingly similar to the trade mark WECHAT and holds that the first requirement of paragraph 5.2 of the Policy is met.

B. Registered and/or Used in Bad Faith

The Panel notes that the second requirement of paragraph 5.2 of the Policy does not dictate that the Complainant must show conjunctively that the Disputed Domain Names were both registered and used in bad faith. It is sufficient to show that the Disputed Domain Names were registered in bad faith, or the Disputed Domain Names were used in bad faith.

The evidence submitted by the Complainant indicates that the trade mark WECHAT was registered at least as long ago as 2011. This pre-dates the registration of the Disputed Domain Names by some years. In view of the prominence of the WeChat platform as evidenced in the proceedings, the Panel finds it implausible that the Respondent could not have known of the trade mark WeChat when the Disputed Domain Names were registered. In fact, it would seem from the use of the trade mark WECHAT and strategic references to the WeChat Platform and Complainant on the Landing Webpage, the Happy Click Website and the Online Form, that these are geared towards creating the impression of an association and relationship with the WeChat platform and the Complainant.

The Complainant's tremendous user account base of over 800 million is echoed by the Respondent on the Landing Webpage and Happy Click Website. The Complainant has denied any license or authorization of the Respondent to use the trade mark WECHAT in the Disputed Domain Names. There is no evidence before the Panel to suggest that it should be otherwise. The Panel finds itself drawn to the conclusion that the Respondent intended to capitalize on the fame of the trade mark WeChat and the popularity of the WeChat platform.

Paragraph 6.1(iv) of the Policy identifies the following circumstance as one of bad faith registration and/or use of a domain name:

“you registered and/or are using the Domain Name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to:-

- (a) your web site;
- (b) a web site of the Complainant's competitor; or
- (c) any other web site and/or online location,

by creating a possibility of confusion or deception that the web site and/or online location is operated or authorized by, or otherwise connected with the Complainant and/or its trade mark or service mark.”

The Panel is satisfied that the unequivocal facts in this proceeding are consistent with the circumstances outlined in paragraph 6.1(iv) of the Policy, namely:

- (i) The Disputed Domain Name <wechat.com.my> purported to offer services under the Landing Webpage in association with the trade mark WECHAT and the provision of services requires an account;
- (ii) The Landing Webpage also diverted Internet users via a Mobile Marketing link to the Happy Click Website which purported to offer services in association with the trade mark WECHAT and the provision of services requires an account;

- (iii) The Disputed Domain Name <wechat.my> diverted Internet users via a redirection to the Landing Webpage;
- (iv) The Online Form anticipates that the operation of an account involved financial concerns by requiring the provision of bank account details, that is, there is an anticipation of commercial gain;
- (v) The way in which the trade mark WECHAT is used on the Landing Webpage and the Online Form, in the Panel's view, indicated that the Respondent is authorized by or is connected with the Complainant
- (vi) Additionally, the agreement on the Online Form first welcomed an Internet user to the "WeChat Official Account Admin Platform" and giving a short-form reference to this as the "OA Platform". The agreement follows with a claim that "Tencent International Service Pte Ltd" provides the "OA Platform" and the ensuing statement that "the OA Platform is part of the overall WeChat service that we provide to users" cleverly conveyed an assurance that the Online Form emanates from or is associated with the Complainant and the its WeChat platform;


There is no nothing before the Panel which suggests that the Respondent has any rights or legitimate interests to the trade mark WECHAT or the Disputed Domain Names which could indicate that the registration and/or use of the Disputed Domain Names were not in bad faith under paragraph 7.1 of the Policy. The Complainant's assertions that the Respondent is not commonly known by the Disputed Domain Names and that the Respondent has not been licensed or authorized by the Complainant to register and use any domain name incorporating the Complainant's trade mark have not been rebutted by the Respondent.

Further, the manner in which the Online Form is designed to collect sensitive banking details from Internet users by associating with the trade mark WeChat and the Complainant is a cause for concern. The Online Form appears suspiciously to be a phishing instrument and reinforces the Panel's conclusion of bad faith.

Having considered the circumstances, the Panel determines that the Respondent has registered and used the Disputed Domain Names in bad faith under the second requirement of paragraph 5.2 of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraph 12 of the Policy and paragraph 17 of the Rules, the Panel orders that the Disputed Domain Names, <wechat.my> and <wechat.com.my>, be transferred to the Complainant.


Kar Liang Soh
Sole Panelist

Date: 9 October 2017