



Asian Domain Name Dispute Resolution Centre

hong kong

(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	HK-1400595
<b>Complainant:</b>	Alibaba Group Holding Limited
<b>Respondent:</b>	Zhenkang Chen
<b>Disputed Domain Name(s):</b>	<taobao.guru>

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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.

The Respondent is Zhenkang Chen, of Singapore (Post Code 5401440).

The domain name at issue is <taobao.guru>, registered by the Respondent with GoDaddy.com LLC, of 14455 N. Hayden Rd., Ste. 226, Scottsdale, AZ 85260, USA (the "Registrar").

**2. Procedural History**

The Complaint was filed with the Hong Kong office of the Asian Domain Name Dispute Resolution Centre (the "Centre") on 11 April 2014. On the same day, the Centre transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On 12 April 2014, the Registrar transmitted by email to the Centre its verification response confirming that the Respondent is listed as the registrant of the Disputed Domain Name and confirmed the Respondent's name.

The Centre has verified that the Complaint satisfies the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy"), the Rules of Procedure under the Policy (the "Rules") and the Centre's Supplemental Rules. In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and proceedings commenced on 28 April 2014.

Under the Rules, the Respondent has to submit a response within 20 days of commencement of the Complaint (i.e. 18 May 2014). A response was received from the Respondent on 1 May 2014.

The Centre appointed Mr Peter Bullock as the Sole Panelist in this matter on 26 May 2014. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

### **3. Factual Background**

#### *3.1 Complainant*

The Complainant was founded in 1999. The Complainant operates its business through a group of companies and has grown to become a global leader in the field of e-commerce.

In May 2003, the Complainant founded the brand "Taobao" (in Chinese "淘宝") at www.taobao.com, a Chinese language business-to-consumer and consumer-to-consumer Internet retail platform. In the last ten years, the consumer-to-consumer platform operated under the Taobao brand ("Taobao Marketplace") has grown to become one of China's largest online retail platforms and the primary online shopping destinations in China. As at March 2013, Taobao Marketplace had over 760 million product listings showcased on its websites. Taobao Marketplace receives more than 50 million unique visitors daily and is one of the world's top 20 most visited websites.

The Complainant has registered "TAOBAO" and "TAOBAO.COM" as trade marks worldwide, including jurisdictions in Singapore, China, Hong Kong and Malaysia (collectively the "Taobao Trade Marks").

#### *3.2 Respondent*

The Respondent registered the Disputed Domain Name on 5 February 2014.

### **4. Parties' Contentions**

#### *A. Complainant*

The Complainant's contentions may be summarised as follows:

- i. The Disputed Domain Name "taobao.guru" contains a mark which is identical and/or confusingly similar to the Complainant's "TAOBAO" and "TAOBAO.COM".
- ii. The Respondent has no rights or legitimate interests in respect of the Disputed Domain Name on the grounds that the Respondent: (i) has not been commonly known by the Disputed Domain Name; (ii) does not own any trade mark registrations reflecting or corresponding to the Disputed Domain Name in China or Singapore; (iii) has not made a legitimate non-commercial or fair use of the Disputed Domain Name; and (iv) has no connection or affiliation with the Complainant and has received no license or consent, express or implied from the Complainant to use the Taobao Trade Marks or any of the other trade marks registered by the Complainant.
- iii. The Respondent has used the Disputed Domain Name in bad faith in order to sell the Disputed Domain Name for profit.

*B. Respondent*

The Respondent submitted a response on 1 May 2014. The Respondent's main contention may be summarised as follows:

- i. The Respondent never had any intention of selling the Disputed Domain Name for profit until an email from [rwong.rachel@gmail.com](mailto:rwong.rachel@gmail.com) was sent stating that she was very interested in buying it.
- ii. The Disputed Domain Name passed the trade mark claim check of the Registrar.

**5. Findings**

The ICANN Uniform Domain Name Dispute Resolution Policy 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 trade mark 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**

There is no doubt that the trade mark "TAOBAO" is identical to the Disputed Domain Name. The Complaint materials submitted by the Complainant indicate that the trade mark "TAOBAO" has been registered in Singapore.

The Panel finds that the Complainant has rights in the "TAOBAO" trade mark and it is identical to the Disputed Domain Name save for the additional '.guru', and is hence confusingly similar. The Panel accepts that *Rohde & Schwarz GmbH & Co. HG v Pertshire Marketing, Ltd*, WIPO Case No. DZ006-0762 applies and therefore paragraph 4(a) of the Policy is satisfied.

**B) Rights and Legitimate Interests**

Question 2.1 of the WIPO Overview 2.0 states the consensus view that once a complainant makes a prima facie case in respect of the lack of rights or legitimate interests of the respondent, the respondent carries the burden of production to demonstrate it has rights or legitimate interests in the domain name.

The Respondent, upon receipt of the Complaint from the Centre agreed to transfer the Disputed Domain Name to the Complainant in order to attempt settlement of the matter. This is clear evidence that the Respondent himself does not think that he has rights and legitimate interests in the Taobao Trade Marks.

It can also be seen from the evidence that the "TAOBAO" trade mark is immediately recognisable as being associated with the Complainant due to its worldwide fame. Further, the Respondent is not known by the Disputed Domain Name nor was any evidence provided to show that he has rights in the relevant trade marks.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

### **C) Bad Faith**

Finally, the Complainant needs to establish that the Respondent registered the Disputed Domain Name and that it is being used in bad faith.

The evidence shows that "TAOBAO" is a made up word that has no common meaning in English. In addition, in a chain of emails with [rwong.rachel@gmail.com](mailto:rwong.rachel@gmail.com) it is clear that the Respondent was aware of the Complainant's reputation and the Taobao Trade Marks. Particular emphasis is placed on the fact that the Respondent wanted to give priority to a buyer from the Complainant and asked for a starting price of USD10, 000.

The Panel is satisfied that the Respondent, by registering the Disputed Domain Name had the intention to sell the Disputed Domain Name for profit.

Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy and that the Respondent has acted in bad faith.

## **6. Decision**

In light of the foregoing paragraphs, all the elements of paragraph 4(a) of the Policy have been satisfied in this case. The Panel orders the Domain Name to be transferred to the Complainant.



Peter Bullock  
Panelist

Dated: 29 May 2014