

## **DISPUTE RESOLUTION SERVICE**

**D00022867**

### **Decision of Independent Expert**

Advanced New Technologies Co., Ltd.

and

Adam Costin

#### **1. The Parties:**

Complainant:

Advanced New Technologies Co., Ltd.  
Cayman Corporate Centre  
27 Hospital Road  
George Town  
Grand Cayman  
KY1-9008  
Cayman Islands

Respondent:

Adam Costin  
Vaslui  
Romania

#### **2. The Domain Name(s):**

alipay.uk

### **3. Procedural History:**

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

27 July 2020 Dispute received  
29 July 2020 Complaint validated  
29 July 2020 Notification of complaint sent to parties  
17 August 2020 Response reminder sent  
20 August 2020 No Response Received  
20 August 2020 Notification of no response sent to parties  
26 August 2020 Expert decision payment received

### **4. Factual Background**

The Nominet records show that the Domain Name was registered on 11 September 2016.

Based on the Complainant's submissions (see section 5 below), which are unchallenged by the Respondent, I set out below the main facts which I have accepted as being true in reaching a decision in this case:

- a. The Complainant owns trade mark registrations for ALIPAY.
- b. The Complainant has made extensive use of the Alipay name since 2004. The Complainant has thereby established substantial goodwill in the name.
- c. The Respondent has not been authorised by the Complainant to use the Domain Name.
- d. The Respondent has offered to sell the Domain Name for amounts up to £30,000.

### **5. Parties' Contentions**

#### Complaint

The Complainant's contentions are as follows:

**The Complainant has rights in respect of a name and mark which is identical or similar to the Domain Name:**

- (1) The Complainant is the owner of trade mark registrations across various jurisdictions. These include the following (the "ALIPAY Mark(s)");

- (a) ALIPAY, UK Registration No. 3349834, filed on 31 October 2018;
  - (b) ALIPAY, EU Registration No. 004469052, filed on 3 June 2005 (with priority date of 23 December 2004);
  - (c) ALIPAY & Device, UK Registration No. 3378229, filed on 25 February 2019;
  - (d) ALIPAY & Device, EU Registration No. 008513475, filed on 27 August 2009;
  - (e) ALIPAY & Device, EU Registration No. 014511778, filed on 25 August 2015; and
  - (f) ALIPAY.COM & Device, EU Registration No. 007045529, filed on 8 July 2008.
- (2) The Complainant is a subsidiary of Ant Group Co. Ltd (formerly known as Ant Small and Micro Financial Services Group Co. Ltd) (“Ant Financial”), the parent company of the Ant Financial Group.
- (3) Ant Financial was established in October 2014 and is a technology company headquartered in Hangzhou, China. Ant Financial is the highest valued fintech company in the world – it provides a range of products and services including an online payment service, online lending and banking, wealth management, fund, credit-rating, insurance, consumer financing and green initiatives.
- (4) The Alipay platform at [www.alipay.com](http://www.alipay.com) (“Alipay platform”) is an online payment service, which was launched in 2004 by Alibaba Group Holding Limited (“Alibaba Group”). The Alipay platform is the world’s leading third-party payment platform and includes partnerships with more than 250 financial institutions including leading banks and credit/debit card providers in Hong Kong, mainland China and internationally. Together with local e-wallet partners, the Alipay platform serves over 1 billion users in 55 countries and regions, providing payment solutions for hundreds of thousands of third-party merchants, covering a wide range of industries such as online purchases, digital communications, commercial services, air ticketing, and utilities.
- (5) Ant Financial and its affiliates have operated the Alipay platform since October 2014. Since 2004, Alibaba Group and then Ant Financial have developed the Alipay platform and brand and have gained significant global fame and popularity. They have marketed extensively the “Alipay” brand for many years through different marketing campaigns and have received a significant amount of media attention which has resulted in a high public profile, including in Europe.
- (6) Until September 2019, Alibaba Group was the owner of the ALIPAY Marks and other trade marks under which Ant Financial’s business was conducted (“AF Marks”), and Ant Financial (including its affiliates and subsidiaries) was

a licensee of such AF Marks. In September 2019, Alibaba Group assigned all right, title and interest in the portfolio of AF Marks around the world together with underlying goodwill to the Complainant, and the Complainant is taking steps to record itself as the applicant or the registered proprietor of these marks throughout the world. The Complainant, therefore, has the benefit of applications and registrations for the AF Marks including the ALIPAY Marks in various classes in many countries and jurisdictions around the world, including in the UK and the EU.

- (7) The Complainant also controls over 100 domain name registrations containing the mark “ALIPAY”. The earliest of such registration is the domain name <alipay.com> registered on 8 October 2004. According to Similarweb.com, the Complainant’s <alipay.com> website received a monthly average of 82.66 million visitors from January 2020 to June 2020.
- (8) The Complainant's ALIPAY Mark is therefore well recognized and respected worldwide. The Complainant has made significant investment to advertise and promote the ALIPAY Mark worldwide in the media and on the internet.
- (9) In the instant case, the Domain Name comprises the string “ALIPAY”, which has been registered by the Complainant as a trade mark in the UK and the EU.
- (10) When comparing the Domain Name to the Complainant’s ALIPAY Mark, the relevant comparison to be made is between only the second-level portion of the Domain Name and the Complainant’s trade mark. See *Enterprise Holdings, Inc. v. Leszek Tomczakowski Ltd.*, D00017902 (“It is well-established that the “.uk” and “.co.uk” suffix may be disregarded for the purpose of assessing identity or similarity between a trade mark and a Domain name, as it is a functional element.”).
- (11) The second-level element of the Domain Name consists solely of the Complainant’s ALIPAY Mark, resulting in a domain name that is identical to the Complainant’s trade mark. See *Midea Group Co. Ltd. v. Dylan*, D00018556 (finding the Domain <midea.co.uk> identical to complainant’s MIDEA trademark).
- (12) Based on the foregoing, it is clear that the Complainant has rights in the ALIPAY Mark, which is identical to the Domain Name, in accordance with paragraph 2.1.1 of the Policy.

**The Domain Name, in the hands of the Respondent, is an abusive registration:**

- (1) The ALIPAY Mark belongs to the Complainant and has the status of a well-known and reputed trade mark with a substantial and widespread reputation throughout the UK and other markets in the EU, as well as China and elsewhere. The awareness of the ALIPAY Mark is significant and substantial. The Expert group in WIPO Case No. D2020-0988 found that “the complainant’s ALIPAY trademark has a high reputation worldwide and is a well-known brand, and that the complainant’s company and its history can be known through a simple Baidu search.” As such, the considerable value and

goodwill of the ALIPAY Mark is, most likely, a major factor why the Respondent registered the Domain Name.

- (2) In the instant case, the Respondent is not commonly known by the name or legitimately connected with a mark, which is identical or similar to the Domain Name. The Respondent does not and could not offer goods and services using the name ALIPAY or any similar name as there is no connection or co-operation between the Complainant and the Respondent. The Complainant has not entered into any agreement of any form with the Respondent permitting the Respondent to register and use the Domain Name. The Complainant has neither licensed, nor otherwise authorised the Respondent to use the ALIPAY Mark in the domain name or in any other procedure.
- (3) In addition, the Complainant has made searches in relevant trade mark databases, i.e. the UKIPO and EUIPO, and the Respondent has not registered any trade marks corresponding to the Domain Name. The Domain Name is not generic or descriptive and the Respondent is not making legitimate non-commercial or fair use of it.
- (4) By registering the Domain Name, the Respondent blocks the Complainant from posting websites on a domain name that is identical to the Complainant's ALIPAY Mark. The Domain Name exactly matches the Complainant's ALIPAY Mark, as well as its <alipay.com> domain name. As such, the Domain Name has been unfairly registered by the Respondent in breach of the Complainant's trade mark rights and the Respondent has no legitimate reason for having registered the Domain Name.
- (5) The Respondent registered the Domain Name on 11 September 2016, after the ALIPAY Mark was registered in the UK and EU. The Domain Name's registration date is also significantly after the Complainant's first use in commerce of its trade mark in 2004, and the Complainant's registration of its <alipay.com> domain name on 8 October 2004. The Respondent would therefore have been fully aware of the Complainant's rights in the ALIPAY Mark as well as the <alipay.com> domain name at the time of the registration of the Domain Name.
- (6) In addition to the numerous trade marks filed in connection with the Complainant's business prior to the Respondent's registration of the Domain Name, the Complainant's Alipay has had a substantial presence in Europe. In April 2016, the Complainant officially announced its expansion into the European market, particularly in the UK, France, and Germany. In fact, the Complainant's Alipay platform is considered as the world's leading payment and lifestyle platform, which demonstrates Alipay's fame. Further, searches in various search engines for "alipay" return multiple links referencing the Complainant and its business.
- (7) It is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brand at the time the Domain Name was registered. The Respondent has specifically registered the Domain

Name to ride on the Complainant's rights, taking undue advantage and causing detriment. There appears to be no obvious rational explanation as to why the Respondent should have registered a Domain Name that is identical to the Complainant's ALIPAY Mark, unless it was to take advantage of the Complainant's valuable trade mark. While the precise motives for the Respondent's actions are unclear, on the balance of probabilities its motivation for registering the Domain Name cannot be other than one which would disadvantage the Complainant. See *Skipton Building Society v. UK Financial Directory*, D00003716 ("There seems little likelihood that anyone would use or combine the words 'SKIPTON' and 'INTERMEDIARIES' unless it was intended that by doing so they would be referencing the Complainant. Respondent's registration of the Domain Name was to take advantage of the Complainant's reputation and goodwill, and to divert the Complainant's customers or parties interested in the Complainant to the Respondent's site, presumably for the financial benefit of the Respondent.").

- (8) Anyone who sees the Domain Name is bound to mistake it for a name related to the Complainant. The likelihood of confusion includes an obvious association with the trade mark of the Complainant. With reference to the reputation of the Complainant's ALIPAY Mark, there is a considerable risk that the public will perceive the Domain Name either as a domain name owned by the Complainant, or that there is some kind of commercial relationship with the Complainant when that is not the case. By using the ALIPAY Mark in the Domain Name, the Respondent exploits the goodwill and the reputation of the Complainant's trade mark, which may result in dilution and other damages. Indeed, persons seeing the Domain Name, even without being aware of the content, are likely to think that the Domain Name is in some way connected to the Complainant, when in fact it is not ("initial interest confusion").
- (9) Moreover, the website at the Domain Name is essentially a scheme adopted by the Respondent to confuse, attract and profit from internet users who are searching for the Complainant and its business in search engines, web browsers and otherwise on the internet. The Respondent thereby creates a likelihood of confusion with Complainant and its trade mark by registering a Domain Name that consists solely of the Complainant's ALIPAY Mark, which demonstrates that the Respondent is using the Domain Name to confuse unsuspecting internet users looking for the Complainant's services, and to mislead internet users as to the source of the domain name and website. By creating this likelihood of confusion between the Complainant's ALIPAY Mark and the Domain Name, leading to misconceptions as to the source, sponsorship, affiliation, or endorsement of the Domain Name, the Respondent has demonstrated a nefarious intent to capitalize on the fame and goodwill of the Complainant's trade mark in order to increase traffic to the Domain Name's website for the Respondent's own pecuniary gain, as evidenced by the presence of multiple pay-per-click links posted to the Respondent's website. A screenshot of the Domain Name's website on 28 September 2016 shows a link which directly references the Complainant's "alipay".

- (10) As paragraph 8.5 of the DRS Policy makes clear, connecting a domain name to a parking page and earning ‘click-through’ revenue from it via links to other websites is not in itself objectionable. However, it goes on to confirm that:

“the Expert will take into account:

8.5.2 the nature of the Domain Name;

8.5.2 the nature of the advertising links on any parking page associated with the Domain Name; and

8.5.3 that the use of the Domain Name is ultimately the Respondent’s responsibility”

This makes it clear that a respondent cannot disclaim responsibility for content appearing on the website associated with its domain name (nor would such links ipso facto vest the respondent with rights or legitimate interests). Neither the fact that such links are generated by a third-party (such as Sedo), nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of abusive use: see *Zambon S.p.A. v. Ms Vanmala Bansode*, D00020003. In this case, having regard to the Complainant’s fame and the identical nature of the Domain Name to the Complainant’s ALIPAY Mark, the Respondent registered the Domain Name with a view of taking advantage of the Complainant’s name and reputation without cause and for financial gain. Thus, such use clearly takes unfair advantage of and is unfairly detrimental to the Complainant’s rights.

- (11) The Domain Name is also currently being offered for sale at Sedo’s marketplace for £1,000. Further, historical screenshots of the Domain Name’s website show that the Respondent has been offering the Domain Name for sale since September 2016, and in January 2018 the Respondent attempted to sell the Domain Name for an exorbitant amount of £30,000. Thus, the Respondent registered the Domain Name primarily for the purpose of selling the Domain Name to the Complainant or one of its competitors. See *Sotheby’s v. Matt Skerrett*, D00008829 (“The Domain Names are Abusive Registrations because Respondent offered to sell the Domain Names to Complainant for valuable consideration in excess of Respondent’s documented out-of-pocket costs directly associated with acquiring or using the Domain Names under Paragraph 3(a)(i)(A) of the Policy.”).

- (12) In summary, the Complainant is the owner of the well-known ALIPAY Mark. There is no doubt that the Respondent was aware of the rights the Complainant has in the ALIPAY Mark and the value of that trade mark at the point of the registration, and that the Domain Name is an abusive registration.

## Response

The Respondent has not filed a Response.

## **6. Discussions and Findings**

## General

Paragraph 2 of the Policy provides that, to be successful, the Complainant must prove on the balance of probabilities that:

- i it has Rights in respect of a name or mark which is identical or similar to the Domain Name; and
- ii the Domain Name, in the hands of the Respondent, is an Abusive Registration (as defined in paragraph 1 of the Policy).

## Complainant's Rights

In light of the factual findings set out in section 4 above, it is clear that the Complainant has Rights in the name and mark ALIPAY. These rights comprise the Complainant's trade mark registrations, together with substantial goodwill arising from its use of the name Alipay, such goodwill also being a legally protectable right.

Disregarding the generic .uk suffix, the Domain Name is identical to the ALIPAY name and mark in which the Complainant has Rights.

I therefore find that paragraph 2.1.1 of the Policy is satisfied.

## Abusive Registration

Paragraph 1 of the Policy defines an "Abusive Registration" as:

*"A Domain Name which either:*

- i was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or*
- ii is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights."*

Paragraph 5 of the Policy sets out a non-exhaustive list of factors which may be evidence that a Domain Name is an Abusive Registration. The relevant factors under paragraph 5 are as follows:

*"5.1.1 Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:*

*5.1.1.1 for the purposes of selling, renting or otherwise transferring the Domain Name to the Complainant or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly associated with acquiring or using the Domain Name;*



*5.1.2 Circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant*

*5.1.6 The Domain Name is an exact match (within the limitations of the character set permissible in domain names) for the name or mark in which the Complainant has Rights, the Complainant's mark has a reputation and the Respondent has no reasonable justification for having registered the Domain Name."*

By way of preliminary comment, although the Respondent has not filed a Response, it is still necessary for the Complainant to prove its case. It is nevertheless relevant that the Respondent has not sought to provide any explanation for why it chose to register the Domain Name.

Dealing first with the factor under paragraph 5.1.6 of the Policy, that factor clearly applies in this case. Disregarding the .co.uk suffix, the Domain Name is an exact match for the ALIPAY name and mark in which the Complainant has Rights. In addition, given the extensive use by the Complainant of its ALIPAY name, the name has become famous and therefore definitely has a reputation for the purposes of paragraph 5.1.6. Finally, there is nothing to support any argument that the Respondent has any reasonable justification for having registered the Domain Name.

When a distinctive brand name is completely reproduced in a domain name, the normal presumption is that there is no bona fide reason for the registration of that domain name. I find that this presumption applies in this case. As already noted, the Respondent has chosen not to file a Response and has thereby failed to offer any explanation or justification for the choice of the Domain Name. The Respondent has therefore failed to rebut the presumption which applies.

It is also inevitable that, when a domain name is identical to the well-known name of another business, at least some people encountering that domain name will mistakenly believe that it is connected with the owner of the well-known name, even if this is only on an initial impression (what is known as "initial interest confusion"). I therefore find that the factor under paragraph 5.1.2 of the Policy also applies in this case.

In fact, the reason for the Respondent having registered the Domain Name can easily be inferred. The Respondent has offered to sell the Domain Name for amounts up to £30,000. It is therefore clear that the Respondent registered the Domain Name primarily for the purpose of selling it to the Complainant or a competitor of the Claimant for a profit. In other words, the factor under paragraph 5.1.1.1 of the Policy applies.

Having found that these factors apply, including that the Respondent intended to sell the Domain Name for a profit, I conclude that the registration of the Domain Name therefore took unfair advantage of and was unfairly detrimental to the Complainant's Rights. There is nothing in this case which could lead to a conclusion that such purpose could be anything other than unfair.

## **7. Decision**

Having found that the Complainant has Rights in respect of a name and mark which is identical to the Domain Name, and that the Domain Name in the hands of the Respondent is an Abusive Registration, the Expert directs that the Domain Name *alipay.uk* be transferred to the Complainant.

**Signed:**

**Dated: 7 September 2020**

**Jason Rawkins**