

## **ADMINISTRATIVE PANEL DECISION**

One97 Communications Limited v. 孙文峰 (Sun Wen Feng)  
Case No. D2022-2030

### **1. The Parties**

The Complainant is One97 Communications Limited, India, represented by Saikrishna & Associates, India.

The Respondent is 孙文峰 (Sun Wen Feng), China.

### **2. The Domain Name and Registrar**

The disputed domain name <paytminsurance.com> is registered with Alibaba Cloud Computing (Beijing) Co., Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 4, 2022. On June 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 8, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on June 8, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint in English on June 19, 2022.

On June 8, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On June 11, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 proceeding commenced on June 20, 2022. In accordance with the

Rules, paragraph 5, the due date for Response was July 10, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on July 11, 2022.

The Center appointed Sebastian M.W. Hughes as the sole panelist in this matter on July 14, 2022. 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**

The Complainant is a listed company founded in India in 2000, and a leading provider of online payment and related financial services, under the trade marks PAYTM and PAYTM INSURANCE (the "Trade Mark(s)"), to customers in particular in India, Canada, Singapore, United Arab Emirates, Malaysia, Tanzania, Kenya, Bangladesh, and Nigeria. As of March 31, 2021, there were over 333 million consumers and over 21 million merchants registered with the Complainant as users of its online payment services.

The Complainant is the owner of numerous registrations in jurisdictions worldwide for the Trade Marks, including Indian registration No. 3328537 for the Trade Mark PAYTM, registered on August 5, 2016; Indian registration No. 4457396 for the Trade Mark PAYTM INSURANCE, registered on February 28, 2020; and European Union registration No. 013075957 for the Trade Mark PAYTM, registered on October 4, 2017.

The Complainant is the owner of numerous domain names comprising the Trade Marks, under generic and country code Top-Level Domains, including <paytm.com>, <paytminsurance.co.in>, <paytmbank.com>, and <paytmoney.com>.

##### **B. Respondent**

The Respondent is apparently an individual resident in China.

##### **C. The Disputed Domain Name**

The disputed domain name was registered on March 15, 2017.

##### **D. The Website at the Disputed Domain Name**

The disputed domain name has not been resolved to an active website. It was previously offered for sale via a parking page for the price of USD 10,000.

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

##### **A. Complainant**

The Complainant contends that the disputed domain name is confusingly similar to the Trade Mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and the disputed domain name was registered and is being used in bad faith.

##### **B. Respondent**

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

## **6. Discussion and Findings**

### **6.1. Preliminary Issue: Language of the Proceeding**

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11, 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.

Paragraph 11(a) of the Rules allows the Panel to determine the language of the proceeding having regard to all the circumstances. In particular, it is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burden being placed on the parties and undue delay to the proceeding.

The Complainant has requested that the language of the proceeding be English, contending that the Respondent can probably understand English, as the disputed domain name consists of the Complainant's Trade Marks, and that it would cause the Complainant extreme hardship and excessive expenditure to submit all documents in Chinese.

The Respondent did not make any submissions regarding the language of the proceeding, and did not file any response. The Panel would have accepted a response in Chinese.

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.

Although there is insufficient evidence before the Panel to support a conclusion that the Respondent is conversant in English, the Panel notes that the Respondent has taken no part in this proceeding; and that all of the Center's communications with the Parties have been sent in English and Chinese.

The Panel is also mindful of the need to ensure the proceeding is conducted in a timely and cost effective manner.

In all the circumstances, the Panel therefore finds it is not foreseeable that the Respondent would be prejudiced, should English be adopted as the language of the proceeding.

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 of the Policy**

The Complainant must prove each of the three elements in paragraph 4(a) of the Policy in order to prevail.

#### **A. Identical or Confusingly Similar**

The Panel finds that the Complainant has rights in the Trade Marks acquired through use and registration.

Disregarding the generic Top-Level Domain ".com", the disputed domain name incorporates the entirety of the PAYTM Trade Mark; and is identical to the PAYTM INSURANCE Trade Mark.

The Panel therefore finds that the disputed domain names is confusingly similar to the PAYTM Trade Mark and identical to the PAYTM INSURANCE Trade Mark.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy provides a list of non-exhaustive circumstances any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to the respondent of the dispute, the respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name even if the respondent has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark or service mark at issue.

The Complainant has not authorised, licensed, or permitted the Respondent to register or use the disputed domain name or to use the Trade Marks. The Panel finds on the record that there is therefore a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, and the burden is thus on the Respondent to produce evidence to rebut this presumption.

The Respondent has failed to show that he has acquired any trade mark rights in respect of the disputed domain name or that the disputed domain name has been used in connection with a *bona fide* offering of goods or services.

To the contrary, the disputed domain name has not been used in respect of an active website; and it has previously been offered for sale, via a parking page, for USD 10,000.

There has been no evidence adduced to show that the Respondent has been commonly known by the disputed domain name.

There has been no evidence adduced to show that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name.

In all the circumstances, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

## **C. Registered and Used in Bad Faith**

In light of the offer for sale by the Respondent of the disputed domain name for USD 10,000, the Panel finds that bad faith has been made out.

The Panel also finds that, in light of the repute of the Trade Marks, and on the evidence herein, there cannot be any actual or contemplated good faith use of the inherently misleading disputed domain name by the Respondent.

For all the foregoing reasons, the Panel concludes that the disputed domain name has been registered and is being used in bad faith.

## 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 <paytminsurace.com> be transferred to the Complainant.

*/Sebastian M.W. Hughes/*

**Sebastian M.W. Hughes**

Sole Panelist

Dated: July 28, 2022