

ADMINISTRATIVE PANEL DECISION

Tencent Holdings Limited v. mingtian ye
Case No. D2023-2067

1. The Parties

The Complainant is Tencent Holdings Limited, Cayman Islands, United Kingdom, represented by Kolster Oy Ab, Finland.

The Respondent is mingtian ye, China.

2. The Domain Name and Registrar

The disputed domain name <wechatgpt.com> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 9, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 12, 2023, 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 amended Complaint on May 17, 2023.

The Center verified that the Complaint together with the amended 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 of the Complaint, and the proceedings commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Response was filed with the Center on June 11, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on June 27, 2023. 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.

On July 12, 2023, the Panel issued an Administrative Panel Procedural Order (“Procedural Order”), inviting the Complainant to make a submission regarding the use of the disputed domain name, in particular in relation to the content on website to which the disputed domain name resolves by July 17, 2023, and also inviting the Respondent to submit comments on the Complainant’s submission by July 22, 2023. The Complainant’s submission was received by the Center on July 17, 2023, and the Respondent’s comments on the Complainant’s submission were received by the Center on July 20, 2023.

4. Factual Background

The Complainant is a global Internet and technology company established in 1998. It provides Internet, mobile, and telecommunication services and products in entertainment, artificial intelligence, and technology in China and globally. The Complainant’s products include the QQ instant messenger, the WeChat social media application, Tencent Games, Tencent Video, Tencent News, and Tencent Sports. WeChat is an instant messaging, social media, and mobile payment application developed by the Complainant and first released in 2011. In 2018, it became one of the world’s most popular standalone mobile applications with over 1 billion monthly active users. WeChat has been described as China’s “app for everything” and a super-app because of its wide range of functions, such as text messaging, hold-to-talk voice messaging, broadcast messaging, video conferencing, video games, sharing of photographs and videos, and location sharing. In 2021, Brand Finance Global 500 named WeChat one of the world’s strongest tech brands.

The Complainant is the owner of the European Union trademark WECHAT with registration No. 010344621, registered on March 21, 2012, for goods and services in International Classes 9 and 38 (the “WECHAT trademark”).

The disputed domain name was registered on December 5, 2022. It resolves to a Chinese language website containing various images and text related to artificial intelligence.

5. Parties’ Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its WECHAT trademark, because the trademark is recognizable in it, and the addition of the element “gpt” is not sufficient to eliminate the confusing similarity with the WECHAT trademark. According to the Complainant, the disputed domain name suggests that the Complainant’s products are related, or used in connection with artificial intelligence.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not commonly known by it and has never acquired any related trademark rights, and the Complainant has not allowed the Respondent to register or use the WECHAT trademark or the disputed domain name. According to the Complainant, the Respondent has not used or made any demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. The Complainant also submits that its WECHAT trademark is well known and it is therefore inconceivable that there would be any legitimate use of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It maintains that it has been using the WECHAT trademark since 2011, so the Respondent had knowledge of it when registering the disputed domain name. The Complainant submits that the disputed domain name has not been used for a *bona fide* offering of goods or services, and adds that the associated website contains a disclaimer stating that the “website has nothing to do with any company, organization, or trademark”. According to the Complainant, this disclaimer does not eliminate the Respondent’s bad faith, as it has not authorized the Respondent of use the WECHAT trademark for any offering of goods or services and the Respondent is not connected to the Complainant or its services in any way. The Complainant adds that the Respondent’s bad faith is shown by the concealment of its identity, by its failure to respond to the

Complainant's cease and desist letter, and by the fact that the disputed domain name consists mostly of the Complainant's domain name.

With its response to Procedural Order, the Complainant states that its WECHAT trademark is well known and widely used in several jurisdictions around the world, and its registration predates the registration of the disputed domain name. According to the Complainant, the Respondent registered the disputed domain name with knowledge of the Complainant and its WECHAT trademark with the intent to prevent the Complainant from using it, to create confusion among Internet users, or to disrupt the Complainant's business. The Complainant notes that the Respondent claims on its website that "[w]e never provide goods or commercial services here" (translated from Chinese), and adds that the lack of commercial use of the disputed domain name does not indicate that the Respondent has not registered it in bad faith.

B. Respondent

The Respondent states that it is a Chinese student and is interested in artificial intelligence ("AI"). It explains that the website at the disputed domain name is a blog learning website built in its free time.

The Respondent submits that the disputed domain name consists of two parts: the dictionary word "we" and the name "ChatGPT", which according to it is the focus and core of the disputed domain name. The Respondent notes that ChatGPT is an application launched by the American company OpenAI in late 2022 and that it is popular all over the world and is currently the most successful and popular AI application. The Respondent maintains that the disputed domain name is therefore different from the Complainant's WECHAT trademark and is not misleading the public. According to the Respondent, in the present proceeding the Complainant attempts to use the WECHAT trademark to obtain rights over the name "ChatGPT", which is intellectual property of OpenAI.

The Respondent states that after the registration of the disputed domain name, it did not sell it to obtain improper benefits, but built a website to learn and share useful knowledge of AI and pictures with others with no malicious intent. It maintains that its website contains ChatGPT-related consultation, news, and many AI-generated pictures. The Respondent also states that its website has no content related to the Complainant, that it does not infringe the Complainant's rights, and that it is used in good faith without any commercial purpose. The Respondent notes that the website contains a disclaimer that it has nothing to do with any organization, company, or trademark.

With its comments to the Complainant's submission to the Procedural Order, the Respondent states that it is a fan of OpenAI and ChatGPT, and has registered the disputed domain name and built the corresponding website as a noncommercial blog website with the aim of sharing and learning information, experience and knowledge about ChatGPT and artificial intelligence. The website has many human-computer interaction images, text, and interesting conversations with ChatGPT, without any relationship with the Complainant.

6. Discussion and Findings

6.1. Procedural issue: Transfer of a domain name containing the trademark of a third party

As already discussed, the disputed domain name contains, in addition to the Complainant's WECHAT trademark, the trademark CHATGPT owned by a third party. This fact raises the issue of whether, in the event the Complaint is successful, it would be appropriate to order the transfer of the disputed domain name to the Complainant.

In cases like the present case, where a single complainant has filed a complaint containing a domain name which is composed of a mark owned by the complainant and the mark of a third party, but without having obtained the express consent of the third-party mark holder, UDRP panels have in some cases transferred the domain name without prejudice to the rights of others (see *WhatsApp Inc. v. Private Whois whatsappandroid.com*, *Private Whois whatsappipad.com* and *Private Whois whatsappiphone.com*, WIPO Case No. [D2012-0674](#); *F. Hoffmann-La Roche AG v. Bob*, WIPO Case No. [D2006-0751](#)).

This Panel follows the same approach and accepts that there is no basis to deny a complainant the remedy of transfer merely because the disputed domain name contains, in addition to this complainant's trademark, a trademark owned by a third party. Neither the Policy nor the Rules contain a provision that precludes the grant of the transfer remedy in this situation. Furthermore, neither the Policy nor the Rules contain a provision that precludes the third party from bringing an action under the Policy, or under any other applicable law, against the complainant in whose favor an order of transfer is made, in the event that the third party considers the complainant's holding of the domain name to be in violation of the Policy (see *WhatsApp Inc. v. Private Whois whatsappandroid.com, Private Whois whatsappipad.com and Private Whois whatsappiphone.com, supra*).

For the above reasons, this Panel sees no reason not to make the requested order of transfer of the disputed domain name to the Complainant if its case under the three requirements of the Policy is established.

6.2. Substantive issues

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 the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the WECHAT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds that the WECHAT trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to it for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The addition of other terms (here, "gpt") may bear on assessment of the second and third elements, but the Panel finds the addition of this term here does not prevent a finding of confusing similarity between the disputed domain name and the WECHAT trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Previous UDRP panels have consistently found that the inclusion of a third-party trademark in a domain name does not eliminate the visual impression that the domain name is associated with the respective complainant's trademark. (See *Pfizer, Inc. v. Martin Marketing*, WIPO Case No. [D2002-0793](#); *Hoffmann-La Roche Inc. v. #1 Viagra Propecia Xenical & More Online Pharmacy*, WIPO Case No. [D2003-0793](#); *WhatsApp Inc. v. Private Whois whatsappandroid.com, Private Whois whatsappipad.com and Private Whois whatsappiphone.com, supra*).

The disputed domain name represents a combination of two trademarks of unrelated parties - the WECHAT trademark of the Complainant and the CHATGPT trademark of OpenAI. Applying the established precedent under the Policy, the Panel accepts that the disputed domain name is confusingly similar to the WECHAT trademark.

Based on the available record, the Panel therefore 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 the 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 the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor has it made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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 trademark or service mark at issue. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Neither of the Parties claims that the disputed domain name has been used commercially or that the Respondent has been commonly known by the disputed domain name, and there is no evidence to support such finding.

The central question here is whether the Respondent’s use of the disputed domain name should be considered as “fair” and thus giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

The Complainant’s WeChat application has over 1 billion monthly active users, and in 2021, Brand Finance Global 500 named WeChat one of the world’s strongest tech brand. This is sufficient for the Panel to conclude that WECHAT is a well-known trademark, especially in China where the Respondent is located, and that the Respondent must have been well aware of the Complainant and of its WECHAT trademark when it registered the disputed domain name in December 2022. Moreover, the Respondent does not deny having such knowledge.

As discussed in section 2.5 of the [WIPO Overview 3.0](#), fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term (at the second or top-level), UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner.

As already noted, the disputed domain name combines two unrelated trademarks - the WECHAT trademark of the Complainant and the CHATGPT trademark of OpenAI. The Respondent claims that the disputed domain name represents a combination of the elements “we” and “chatgpt”, and that it is related solely to ChatGPT. The disputed domain name may indeed be regarded as such combination, but this does not exclude the possibility that it may also be regarded as a combination between “wechat” and “gpt”, especially

since “wechat” is located in front. The Panel considers the probability this to happen as no less likely, especially for Internet users located in China, where WECHAT is a well-known trademark and where most of WeChat’s 1 billion users originate from, and since the Complainant is an important player in the field of AI. The recent trend of many global technology leaders to introduce the power of AI into their products and services should also be taken into account. If the disputed domain name is regarded in this way, it may be understood as referring to the Complainant’s WeChat application powered by AI, and this understanding would be reinforced by the numerous AI-generated images on the associated website. In such situation, the disputed domain name would effectively impersonate or suggest sponsorship or endorsement by the Complainant. Therefore, and taking all the above into account, the Panel reaches the conclusion that the Respondent’s registration and use of the disputed domain name cannot be regarded as “fair” and giving rise to rights or legitimate interests of the Respondent in it.

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.

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.

As discussed in relation to the issue of rights and legitimate interests, the Respondent’s registration and use of the disputed domain name cannot be regarded as “fair”, as it may be considered as effectively impersonating or suggesting sponsorship or endorsement by the Complainant. The Respondent does not deny having knowledge of the Complainant and of its WeChat application.

The website at the disputed domain name contains a disclaimer. As discussed in section 3.7 of the [WIPO Overview 3.0](#), in cases where the respondent appears to otherwise have a right or legitimate interest in a disputed domain name, a clear and sufficiently prominent disclaimer would lend support to circumstances suggesting its good faith. On the other hand, where the overall circumstances of a case point to the respondent’s bad faith, the mere existence of a disclaimer cannot cure such bad faith.

The Respondent maintains that the content of the website at the disputed domain name is related to AI and to ChatGPT, and not to the Complainant. However, the disputed domain name is confusingly similar to the Complainant’s WECHAT trademark, and the Complainant is actively involved in the development of AI, so the content of the Respondent’s website may also be regarded as referring to the Complainant. The fact that the Respondent can be regarded as targeting OpenAI and its ChatGPT service does not exclude the simultaneous targeting of the Complainant and its WECHAT trademark with the registration and use of the disputed domain name, and the Panel considers this possibility equally likely. On this basis, the Panel accepts that it is likely that the Respondent has targeted the Complainant with the registration and use of the disputed domain name.

Therefore, 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 <wechatgpt.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: July 29, 2023