

ADMINISTRATIVE PANEL DECISION

Alibaba Group Holding Limited v. Julia Stavnist
Case No. DGE2021-0005

1. The Parties

The Complainant is Alibaba Group Holding Limited, Cayman Islands, United Kingdom, represented by ELLALAN, China.

The Respondent is Julia Stavnist, Georgia.

2. The Domain Name and Registry

The disputed domain name <aliexpress.ge> is registered with Caucasus Online LLC (the “.GE Registry”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 7, 2021. On December 7, 2021, the Center transmitted by email to the .GE Registry a request for registry verification in connection with the disputed domain name. On December 8, 9 and 15, 2021, the .GE Registry transmitted by email to the Center its verification responses providing additional registrant and contact information for the disputed domain name, which differed from the named Respondent and contact information in the Complaint. The Center sent email communications to the Complainant on December 10 and 15, 2021, providing the registrant and contact information disclosed by the .GE Registry and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed amended Complaints on December 14 and 16, 2021.

The Center verified that the Complaint together with the amended Complaints satisfied the formal requirements of the .GE Domain Name Dispute Resolution Policy (the “.GE Policy”), the Rules for .GE Domain Name Dispute Resolution Policy (the “.GE Rules”), and the WIPO Supplemental Rules for .GE Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the .GE Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 16, 2021. In accordance with the .GE Rules, paragraph 5, the due date for response was initially January 5, 2022.

On January 4, 2022, the Respondent sent an informal communication to the Center requesting an extension of time for the response. The Center granted an extension of time until January 15, 2022. The Respondent

did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 17, 2022.

The Center appointed Tobias Zuberbühler as the sole panelist in this matter on January 20, 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 .GE Rules, paragraph 7.

On January 28, 2022, the Center received a communication by a purported legal representative of a third party who had allegedly initiated court proceedings against the Respondent before the Tbilisi City Court on January 12, 2022. Attached was *inter alia* (i) the (unauthenticated) English translation of a court decision of January 17, 2022 prohibiting the Respondent from transferring the domain name in dispute and (ii) an English document titled “Opposite”, dated January 31, 2022, and signed by the Respondent, wherein the Complainant was asked to “file a legal dispute in the City Court of Georgia in order to protect [its] interests”. The Complainant submitted a response to this communication on February 6, 2022.

4. Factual Background

The Complainant is a group of Internet-based businesses whose mission is to make it easy for anyone to buy and sell online anywhere in the world. The Complainant operates the AliExpress platform, a retail marketplace at “www.aliexpress.com”, which is a global marketplace targeting consumers from around the world. The AliExpress website is available in 17 languages.

The Complainant owns trademark registrations in various jurisdictions, including the Australian trademark ALIEXPRESS (Reg. No. 1339078, registered on December 31, 2009), and the Canadian trademark ALIEXPRESS (Reg. No. TMA844058, registered on February 21, 2013).

The Panel also notes that other companies apparently of the same group as the Complainant’s (such as Alibaba Singapore Holding Private Limited) have registrations for the ALIEXPRESS trademark, including the European Union trademark ALIEXPRESS (Reg. No. 008508566, registered on March 8, 2010), and the European Union trademark ALIEXPRESS (Reg. No. 017971591, registered on February 23, 2019).

In addition, the Panel notes that according to the Complainant’s claim, the Complainant has applied for the Georgian trademark ALIEXPRESS (serial number of application 100764). The Panel notes that the application date of this trademark is December 7, 2018.

The Complainant further holds the domain name <aliexpress.com> (with a creation date in 2006) and more than 100 other domain names incorporating the Complainant’s trademarks.

The disputed domain name was registered on April 24, 2019, and resolves to an inactive page.

5. Parties’ Contentions

A. Complainant

The Complainant alleges that it has satisfied all elements of the .GE Policy, paragraph 4.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions.

However, the Panel notes that a third party submitted some communications apparently connected to the disputed domain name. For the sake of completeness, the Panel will briefly refer to these.

The Center received an email communication on January 28, 2022, from purported legal representative of a third party who had allegedly initiated Court proceedings against the Respondent before the Tbilisi City Court on January 12, 2022:

“We have become aware of the case in your proceedings where the plaintiff is Alibaba Group Holding Limited and the defendant is Julia Stavnist. In Georgia, a lawsuit is pending in the Tbilisi City Court, on the basis of which the defendant Julia Stavnist was prohibited from alienating the domains owned by him.”

On January 31, 2022, the Respondent also sent by email the documents referring to the Court proceedings.

On February 2, 2022, the Center received another email communication from the purported legal representative of the third party.

“Please be informed that I am Giorgi Kristinashvili’s lawyer Natia Dznelashvili. I represent the interests of my client in the Tbilisi City Court. I have sent you a court decision, I present a power of attorney in Georgian, on the basis of which my client gives me the right to defend his interests in the courts of all three instances of Georgia.”

6. Discussion and Findings

Based on the facts and evidence introduced by the Complainant, and with regard to paragraphs 4(a), (b) and (c) of the .GE Policy, the Panel concludes as follows:

A. Additional Submission on Parallel Court Proceedings

As mentioned above, the Respondent appears to request a suspension or termination of these proceedings because of a purported judgement by a local court in the Respondent’s jurisdiction that seems to be based in a motion to secure a third party’s claim.

Paragraph 18(a) of the Rules stipulates the following: “In the event of any legal proceedings initiated prior to or during an administrative proceeding in respect of a domain-name dispute that is the subject of the complaint, the Panel shall have the discretion to decide whether to suspend or terminate the administrative proceeding, or to proceed to a decision.”

In addition, paragraph 4(k) of the Policy, states that:

“The mandatory administrative proceeding requirements set forth in Paragraph 4 shall not prevent either you or the complainant from submitting the dispute to a court of competent jurisdiction for independent resolution before such mandatory administrative proceeding is commenced or after such proceeding is concluded.”

While the Panel is prepared to take the additional submissions into account, it decides to proceed to a decision, for the following reasons:

The local court proceedings have purportedly been initiated by a third party against the Respondent (and not – as one would expect – by the Respondent against the Complainant) after the Complaint was filed with the Center on December 7, 2021.

The purported judgement by the local court was submitted in an unauthenticated English version, *i.e.* not in the local language accompanied by a certified English translation. It is therefore not possible to ascertain the authenticity of the mentioned judgement. Even if this administrative proceeding overlaps with a court proceeding, the Panel does not consider suspension or termination to be appropriate in the circumstances of this case.

The Panel also notes that little is known about the third party's claim in the court proceeding. The Panel considers that the limited information regarding the Court proceeding initiated by a third party does not provide any reason why this dispute should not be evaluated under the Policy, separately and independently from a Court proceeding.

The Panel notes that among the supplemental submissions, there is a communication stating that:

"We would also like to inform you that the disputed domain name is the subject of the loan agreement. Defendant Yulia Stavnist signed a loan agreement with Giorgi Kristinashvili on May 17, 2019 on <aliexpres.ge>."

It may be that there is such a loan agreement or another type of agreement between the Respondent and this third party, but that does not prevent a finding regarding the registration or use by the Respondent in bad faith under the Policy. For this purpose, the Panel notes that the Rules defines "Respondent" as the holder of a domain-name registration against which a complaint is initiated. The Panel notes that the Complaint was filed against Julia Stavnist, who was confirmed by the .GE Registry as the registrant of the disputed domain name. Therefore, the Panel finds that the Respondent in this proceeding is Julia Stavnist. Furthermore, the Panel notes that the Respondent may have agreements with third parties concerning the disputed domain name or other domain names, but this decision is limited to the dispute between the Complainant who has filed a Complaint in accordance with paragraph 4(a) of the Policy, and the Respondent (as the registrant of the disputed domain name).

The Panel notes that this dispute between the Complainant and the Respondent is properly within the scope of the Policy, and that the Panel has jurisdiction to decide the dispute under the Policy.

Finally, the Panel anticipates here its analysis that the disputed domain name is identical to the longstanding Complainant's ALIEXPRESS trademark (which has been registered for several years in different jurisdictions), and that the disputed domain name did not resolve to an active website at the time of the submission of the Complaint. In this case, it does not appear to be any evidence supporting a conceivable legitimate use of the disputed domain name by the Respondent or any third party.

The Panel notes that this decision is rendered without prejudice to any action that an applicable Court may deem appropriate or necessary in furtherance of a proceeding in that forum.

B. Identical or Confusingly Similar

The Complainant has submitted sufficient evidence to demonstrate its registered rights in the ALIEXPRESS trademark.

The ALIEXPRESS trademark is wholly reproduced in the disputed domain name. It has become a consensus view among panels that the applicable country-code Top-Level Domain ("ccTLD") in a domain name is a standard registration requirement and as such may be disregarded when assessing confusing similarity under the first element of the Policy. This practice also applies with regard to ccTLDs such as ".ge" (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), sections 1.11.1 and 1.11.2, and *Alain Afflelou Franchiseur v. Nikoloz Javakhia*, WIPO Case No. DGE2021-0003).¹

Therefore, the Panel concludes that the disputed domain name is identical to the Complainant's ALIEXPRESS trademark.

The Complainant has thus fulfilled the requirements of paragraph 4(a)(i) of the .GE Policy.

¹ Noting the substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel has referred to prior UDRP cases, where appropriate.

C. Rights or Legitimate Interests

There are no indications before the Panel of any rights or legitimate interests of the Respondent in respect of the disputed domain name. The Panel notes that the term “aliexpress” does not appear to have any dictionary meaning to justify the Respondent’s selection of the disputed domain name but is a coined term. In any event, the disputed domain name is being passively held, as discussed further below under section C. See also section 2.10 of the WIPO Overview 3.0.

Based on the Complainant’s credible submissions, the Panel finds that the Complainant, having made out a *prima facie* case which remains unrebutted by the Respondent, has fulfilled the requirements of paragraph 4(a)(ii) of the .GE Policy.

D. Registered or Used in Bad Faith

Panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. The totality of the circumstances in each case will be examined, and factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealing of its identity or use of false contact details, and (iv) the implausibility of any good faith use to which the domain name may be put (see WIPO Overview 3.0, section 3.3).

Under the circumstances of this case, including the composition of the disputed domain name and reputation of the Complainant’s trademark, the Panel finds that the Respondent was most likely aware of the Complainant’s trademark when registering the disputed domain name. The Panel sees no plausible good faith use to which the disputed domain name may be put. Hence, the Panel finds it more likely than not that the Respondent was targeting the Complainant and the goodwill it has obtained with its ALIEXPRESS trademark, and the passive holding of the disputed domain name does not prevent a finding of bad faith.

In the totality of circumstances of this case, the Panel finds that the Respondent has therefore registered or used the disputed domain name in bad faith.

Accordingly, the Complainant has also fulfilled paragraph 4(a)(iii) of the .GE Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the .GE Policy and 15 of the .GE Rules, the Panel orders that the disputed domain name <aliexpress.ge> be transferred to the Complainant.

/Tobias Zuberbühler/

Tobias Zuberbühler

Sole Panelist

Date: February 9, 2022