

8 January 2014

To the attention of:

The Board of ICANN
reconsider@icann.org

Our ref 1336688

RESPONSE TO "LETTER FROM DEBORAH LODGE SUBMITTED ON BEHALF OF TENCENT HOLDINGS LIMITED ON 26 DECEMBER 2013"

Dear Members of the Board

I am writing to you on behalf of my client, Sina Corporation, and its subsidiaries (together "Sina").

On 26 December 2013, Tencent Holdings Limited, through their legal counsel Mrs Deborah Lodge at Patton Boggs LLP, addressed a letter to ICANN (available at the following URL: <http://www.icann.org/en/groups/board/governance/reconsideration/lodge-to-ngpc-26dec13-en.pdf>). This letter was submitted further to the unequivocal recommendation issued by the ICANN Board Governance Committee ("BGC") on 29 October 2013 to reject Tencent Holdings Limited's Reconsideration Request 13-12 in relation to the Determinations of the Experts appointed by the World Intellectual Property Organization (WIPO) for Legal Rights Objections LRO2013-0040 and LRO2013-0041 (the "Determinations").

Having carefully considered the letter from Mrs Deborah Lodge dated 26 December 2013 we respectfully submit the following brief comments, for consideration by the Board of ICANN:

1. UNEQUIVOCAL RECOMMENDATION FROM THE BGC TO REJECT RECONSIDERATION REQUEST 13-12

Sina is in complete agreement with the recommendation from the BGC to reject Reconsideration Request 13-12 as submitted by Tencent Holdings Limited and not to give it further consideration as it is abundantly clear that Reconsideration Request 13-12 is nothing more than a mere attempt to seek to re-argue Legal Rights Objections LRO2013-0040 and LRO2013-0041. Specifically, pages 8 to 16 of Reconsideration Request 13-12 are clearly re-arguing the case and are solely discussing the merits of Legal Rights Objections LRO2013-0040 and LRO2013-0041. The

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Reconsideration Request mechanism is not one for direct, *de novo* appeal of staff or panel decisions with which the requester disagrees, and seeking such relief is, in fact, in contravention of the established processes within ICANN, which is why the BGC recommended that Reconsideration Request 13-12 be rejected. In this respect we refer to our earlier correspondence submitted to the BGC on 27 September 2013 (available at the following URL: <http://www.icann.org/en/groups/board/governance/reconsideration/taylor-to-bgc-27sep13-en.pdf>).

2. ARGUMENTS RELATING TO SINA'S STANDING TO OBJECT

In an effort to seek to re-argue Legal Rights Objections LRO2013-0040 and LRO2013-0041, Tencent Holdings Limited have, on two occasions (in a Letter from Zhou Liguo to the Board Governance Committee dated 9 October 2013 and available at the following URL: <http://www.icann.org/en/groups/board/governance/reconsideration/zhou-to-bgc-09oct13-en.pdf>, and again in the letter from Mrs Deborah Lodge dated 26 December 2013), alleged that Sina had no standing to object for Legal Rights Objections LRO2013-0040 and LRO2013-0041.

Sina was very surprised to see that, although this argument was completely and unequivocally dismissed by the BGC in its recommendation dated 29 October 2013, Tencent Holdings Limited decided to reiterate this exact same argument, through its legal counsel.

Whilst this last attempt from Tencent Holdings Limited to re-argue Legal Rights Objections LRO2013-0040 and LRO2013-0041 is in clear contravention of the established processes within ICANN and should thus not be given any consideration, we also respectfully submit that:

- This is a completely new argument which Tencent Holdings Limited are putting forward in an attempt to get an appeal of the Determinations. Tencent have had many opportunities to put this argument forward in their Responses and additional submissions but they did not.
- The WIPO Expert Panel considered (all three Experts) that Sina Corporation had standing to object.
- In terms of drawing an analogy with the UDRP, Tencent Holdings Limited and then Mrs Deborah Lodge deliberately sought to mislead the BGC and now the Board by quoting one UDRP case which, as a matter of fact, does not reflect the WIPO panel consensus view at all as on the contrary the WIPO panel consensus view is that "In most circumstances, a licensee of a trademark or a related company such as a subsidiary or parent to the registered holder of a trademark is considered to have rights in a trademark under the UDRP" (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), point 1.8 "Can a trademark licensee or a related company to a trademark holder have rights in a trademark for the purpose of filing a UDRP case?" at the following URL: <http://www.wipo.int/amc/en/domains/search/overview2.0/#18>).
- Sina did include as Annex 9 to Legal Rights Objections LRO2013-0040 and LRO2013-0041, a description of its organizational structure so that there could be no ambiguity as to the fact that the owners of the trade marks relied on by Sina Corporation were wholly-owned subsidiaries.
- Finally, Tencent Holdings Limited relied on several trade marks including the term WEIBO in their Responses to the LROs and all such trade marks are registered in the name of Tencent Technology (Shenzhen) Co. Ltd and not in the name of Tencent Holdings Limited. It is thus even more surprising to see that Tencent Holdings Limited are now trying to rely on the sort of argument put forward in the Letter from Zhou Liguo to the BGC dated 9 October 2013 and in the letter from Mrs Deborah Lodge dated 26 December

2013. We respectfully submit that this is a further indication of Tencent Holdings Limited's intent to misuse the Reconsideration Request process.

3. TENCENT TECHNOLOGY (SHENZHEN) CO, LTD FILED A LAWSUIT AGAINST SINA IN CHINA

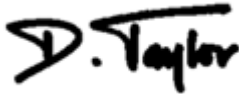
Sina respectfully submits that this circumstance, which is part of Tencent's litigious strategy, is wholly immaterial in the context of Reconsideration Request 13-12 and more generally in the context of the ICANN new gTLD Programme.

4. CONCLUSION

Sina respectfully consider that Tencent Holdings Limited's Reconsideration Request and additional submissions including the letter from Mrs Deborah Lodge of 26 December 2013 constitute a clear misuse and abuse of the Reconsideration Request mechanism by using it for the purpose of seeking an appeal of the Determinations. In addition, the substantive re-arguments and new arguments of Tencent Holdings Limited are misleading and wholly immaterial.

For the above reasons, Sina respectfully request that Reconsideration Request 13-12 be dismissed entirely in line with the BGC recommendation of 29 October 2013.

Respectfully submitted

A handwritten signature in black ink that reads "D. Taylor". The signature is written in a cursive, slightly stylized font.

David Taylor, Partner