

## **ADMINISTRATIVE PANEL DECISION**

Sfanti Grup Solutions SRL c/o Walters Law Group v. Domain Administrator  
d/b/a privacy.cloudns.net, Cloud DNS Ltd  
Case No. DIO2023-0026

### **1. The Parties**

The Complainant is Sfanti Grup Solutions SRL c/o Walters Law Group, United States of America ("United States").

The Respondent is Domain Administrator d/b/a privacy.cloudns.net, Cloud DNS Ltd, Bulgaria.

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

The disputed domain name <megapersonals.io> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 22, 2023. On July 24, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 25, 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 July 27, 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 amendment to the Complaint on July 28, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .IO Domain Name Dispute Resolution Policy (the "Policy"), the Rules for .IO Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .IO 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 August 7, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 27, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 29, 2023.

The Center appointed Antony Gold as the sole panelist in this matter on September 6, 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.

#### **4. Factual Background**

The Complainant provides Internet-based social introduction and dating services through two websites located at the domain names <megapersonals.com> and <megapersonals.eu>. The brand the Complainant uses is MEGAPERSONALS and it is the owner of United States service mark for MEGAPERSONALS, registration number 6,432,591, in class 45, dated July 27, 2021. The application for this mark was filed on October 26, 2020 and claims a first use in commerce date of March 30, 2004.

The disputed domain name was registered on June 11, 2021. As at the date of filing the Complaint, it resolved to a website containing a bespoke search engine for Internet users seeking escorts and the claim; "Meet Girls for Sex on Mega Personals". Beneath that was a further claim "Choose your Area and Browse Free Listings of Women Seeking Men". The disputed domain name currently redirects to a website at <megaclassifieds.app> which has essentially the same appearance and functionality as the Respondent's earlier website except the text set out above has been replaced with the following; "Welcome to Mega Classifieds - We are a free alternative to mega personals where you can meet girls for sex - completely for free! This is a website for casual encounters and no strings attached only".

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

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

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name. Notably, the Complainant contends that;

- the disputed domain name is identical or confusingly similar to its MEGAPERSONALS trade mark. The disputed domain name fully and solely incorporates the Complainant's mark, save for the addition of the country code Top Level Domain ("ccTLD") "io". In addition to its registered rights in MEGAPERSONALS, the Complainant asserts that it has accrued common law rights in MEGAPERSONALS in that it has been using or licensing its <megapersonals.eu> domain name since at least January 2020 and it has been using or licensing the domain name <megapersonals.com> since at least March 2004;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent has no affiliation or connection with the Complainant and it has not been authorized to use the Complainant's mark, nor is the Respondent commonly known by the disputed domain name. The use of the disputed domain name to direct Internet users to a commercial website through which services are offered in direct competition to those of the Complainant does not give the Respondent rights or legitimate interests in the disputed domain name;
- the disputed domain name was registered and is being used in bad faith. The disputed domain name was registered in June 2021, after the Complainant had acquired rights in its mark. In the light of the use made by the Respondent of the disputed domain name it was clearly aware of the Complainant's rights in its MEGAPERSONALS mark when it registered the disputed domain name and registration of the disputed domain name in these circumstances is in bad faith. The Respondent is similarly using the disputed domain name in bad faith in that it is directing the disputed domain name to a website which provides services in direct competition to those of the Complainant.

## B. Respondent

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

## 6. Discussion and Findings

### 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 trade mark and the disputed domain name; see the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.<sup>1</sup>

Based on the available record, the Panel finds the Complainant has shown rights in respect of its MEGAPERSONALS service mark for the purposes of the Policy; see the [WIPO Overview 3.0](#), section 1.2.1. As a technical requirement of registration, the ccTLD that is ".io" in the case of the disputed domain name, is usually disregarded when assessing identity or confusing similarity. The Complainant's mark is reproduced in its entirety within the disputed domain name and it contains no additional characters. The disputed domain name is accordingly identical to the Complainant's mark.

For the above reasons, based on the available record, the Panel finds that 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 proceedings under the Policy 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; see the [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. In particular, 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; see paragraph 4(c)(i) of the Policy and the [WIPO Overview 3.0](#), section 2.2;
- there is no evidence in the record that the Respondent has been commonly known by the disputed domain name; see paragraph 4(c)(ii) of the Policy and the [WIPO Overview 3.0](#), section 2.3. The disputed domain name resolved to a website which provides the services in direct competition with the Complainant. The change in wording on the home page of the website to which the disputed domain

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<sup>1</sup> Given the similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy (the "UDRP"), the Panel will refer to cases decided under UDRP and notably the [WIPO Overview 3.0](#), if relevant to this proceeding.

name presently redirects, to the effect that its services compete with those of the Complainant does not serve to make its offering *bona fide* as the Respondent is still using the repute of the Complainant's mark in order to attract Internet users to its website;

- 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 trade mark or service mark at issue; see paragraph 4(c)(iii) of the Policy and the [WIPO Overview 3.0](#), section 2.4; and
- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.
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Moreover, the disputed domain name is identical to the Complainant's trade mark. Therefore, it carries a high risk of implied affiliation with the Complainant. See [WIPO Overview 3.0](#), section 2.5.1.

For the above reasons, based on the available record, the Panel finds the second element of the Policy has been established.

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

The disputed domain name was registered by the Respondent in June 2021, shortly before the registration of the Complainant's mark. Whilst the Complainant asserts that it has acquired common law rights in MEGAPERSONALS, its evidence is scant and is largely confined to the fact that its service mark cited above claims a first use in commerce date of March 30, 2004 and that one of the domain names it uses for its business was acquired in 2004. This falls a long way short of the burden which a complainant seeking to rely on common law rights for the purpose of establishing bad faith registration is expected to satisfy, as outlined at section 1.3 of the [WIPO Overview 3.0](#).

However, the use which has been made of the disputed domain name suggests, on at least a balance of probabilities, that the Respondent was aware of the Complainant and its MEGAPERSONALS mark as at the date of registration. This, in itself, comprises evidence (albeit indirect) as to the extent of the Complainant's repute in its mark and points to it having acquired unregistered trade mark rights in MEGAPERSONALS as at June 2021. See also section 1.3 of the [WIPO Overview 3.0](#): "The fact that a respondent is shown to have been targeting the complainant's mark (e.g., based on the manner in which the related website is used) may support the complainant's assertion that its mark has achieved significance as a source identifier". The Panel notes also that the Complainant's application for its mark was published for opposition purposes on May 11, 2021, that is just a few weeks prior to the registration of the disputed domain name. It is possible that this was what prompted the Respondent to register the disputed domain name.

In any event, having regard to the identity between the Complainant's MEGAPERSONALS trading style and the disputed domain name, coupled with the use to which the disputed domain name has been put following registration, the Panel finds that the Respondent was aware of the Complainant's unregistered rights in MEGAPERSONALS as at the date of registration of the disputed domain name and registered it in order to take unfair advantage of the Complainant's rights. The Panel therefore finds the Respondent's registration of the disputed domain name to have been in bad faith.

As the Policy provides that a complainant is required to establish either bad faith registration or bad faith use, the above finding is determinative of the Complaint. However, for completeness, the Panel considers the question of bad faith use. In addition to the inherently misleading nature of the Respondent's website, Internet users aware of the Complainant's MEGAPERSONALS service mark who visited it will have been apt to assume from the confusing similarity between the disputed domain name and the Complainant's mark that it was owned by the Complainant or that it was operated with its authority. The fact that the wording on the home page of the website to which the disputed domain name now redirects has now been changed to suggest that the Respondent, or any third party operating the website, is a competitor of the Complainant rather than the Complainant, does not change the position because the Respondent is still using the identity of the disputed domain name with the Complainant's mark to attract Internet visitors to its

website. Once there, it has gained the opportunity to earn money from their visit.

For the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, 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. The Respondent's use is in bad faith in that it has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website; see paragraph 4(b)(iv) of the Policy, and the [WIPO Overview 3.0](#), section 3.1.4.

For the above reasons, the Panel finds the Respondent's registration and also its use of the disputed domain name is in bad faith and that 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 <megapersonals.io> be transferred to the Complainant.

*/Antony Gold/*

**Antony Gold**

Sole Panelist

Date: September 20, 2023