

ADMINISTRATIVE PANEL DECISION

Majid Al Futtaim Properties LLC v. Ahmed Ghaleb, QQ
Case No. D2022-1217

1. The Parties

The Complainant is Majid Al Futtaim Properties LLC, United Arab Emirates, represented by Talal Abu Ghazaleh Legal, Egypt.

The Respondent is Ahmed Ghaleb, QQ, Germany.

2. The Domain Name and Registrar

The disputed domain name <mallofegypt.online> is registered with IONOS SE (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 6, 2022. On April 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 11, 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, and informing that the language of Registration agreement is German. The Center sent an email communication to the Complainant on April 22, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same day, the Center sent a notification to the Parties that the language of Registration Agreement was different was the language of the Complaint. The Complainant filed an amended Complaint on April 26, 2022, and requested English as language of proceeding.

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 in both German and English, and the proceedings commenced on May 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 24, 2022. The Respondent sent several emails to the Center on April 23, April 27, April 29, May 4, May 10, and June 2, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on June 2, 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

The Complainant is part of the Majid Al Futtaim group, founded in 1992, which operates in the field of retail, leisure, and shopping malls in Middle East, Africa, and Asia. The Complainant is a leading developer of shopping malls including Mall of Egypt. The Complainant owns many trademark registrations for MALL OF EGYPT such as:

- Egyptian trademark registration No. 196979 registered on August 19, 2009;
- Egyptian trademark registration No. 196980 registered on May 4, 2009.

The first use of “Mall of” was in 2005 when the Complainant built the Mall of Emirates in Dubai, United Arab Emirates. Mall of Egypt was opened in 2017 in Cairo, Egypt.

The disputed domain name was registered by the Respondent on September 11, 2021. The disputed domain name resolves to a website which appears to be an online shopping platform. It includes various categories of products such as clothing and accessories for women, bikes, clothing for men, home furniture, *etc.* By clicking on a specific category, the user is directed to another website which offers the relevant products for sale. The words Mall of Egypt appear on the top left side of the webpage.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant owns the trademark MALL OF EGYPT and MALL OF and has registered it in many countries. The Complainant has acquired common law rights in the trademark MALL OF EGYPT. The Complainant's trademark MALL OF has been recognized by prior UDRP panels. The disputed domain name is identical to the Complainant's trademark MALL OF EGYPT as it incorporates it in its entirety. The disputed domain name is confusingly similar to the Complainant's trademark MALL OF combined with names of countries. The addition of the generic Top-Level Domain (gTLD) “.online” is irrelevant in determining confusing similarity.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not affiliated with the Complainant nor is he authorized by the Complainant to use its trademark nor is he a licensee. The Complainant's use of the trademark MALL OF EGYPT precedes the registration of the disputed domain name by four years. The Respondent is not commonly known by the disputed domain name which is evident by the fact that he has registered the disputed domain name anonymously. The Respondent has not registered the disputed domain name in connection with a *bona fide* offering of goods or services. Instead, the disputed domain name resolves to a website offering services competing with those of the Complainant and has copied the Complainant's trademark. The Respondent was clearly aware of the Complainant's trademark. The Respondent is not an authorized dealer, distributor or licensee of the Complainant. The Respondent is attempting to take unfair advantage of the Complainant's trademark to confuse Internet users and divert traffic to its site.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent knew of the Complainant's trademark as the use of the trademark MALL OF EGYPT precedes the registration of the disputed domain name by four years and as the Complainant's trademark is well known and the Complainant is known in the shopping mall industry. The disputed domain name was registered with the intent to attract Internet users by creating confusion with the Complainant's trademark. It

has been established that the incorporation of a well-known trademark can itself constitute registration in bad faith. The disputed domain name resolves to a website offering services competing with those of the Complainant and has copied the Complainant's trademark. Thus, intentionally creating a likelihood of confusion with the Complainant's trademark.

B. Respondent

The Respondent sent several emails to the Center on April 23, April 27, April 29, May 4, May 10, and June 2, 2022.

In its email on April 23, 2022, the Respondent offered to transfer the disputed domain name against the payment of EUR 10,000 as compensation and provided the bank account details.

In its email on April 24, 2022, the Respondent explained why the domain name is in German and mentioning that it has previously requested the Complainant to provide some compensation for the financial and commercial losses if the disputed domain name is transferred. Another email was sent on the same date regarding the language to be used.

In its email on April 27, 2022, the Respondent stated that the Complainant may not claim monopoly over the use of the "Arab Egyptian Republic name". The Respondent has escalated the matter to the President's office and the People's Assembly. The Respondent argues that the disputed domain name is an online shopping platform which markets major German companies. The lives of the Respondent's employees will be affected if the disputed domain name is transferred. The Respondent will lose its customers and its marketing channels as well as logistical channels will be adversely affected. The Respondent claims it will suffer losses reaching EUR 100,000. The Respondent claims a fair compensation if the domain name would be transferred.

In its email on April 29, 2022, the Respondent explained that the city of Cairo is historically called "Egypt". The Complainant's activity is limited to a specific area in Cairo and has no online platform contrary to the Respondent's online international platform.

6. Discussion and Findings

A. Procedural issue: Language of the proceedings

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is German. Nevertheless, the Complainant filed its Complaint in English, and requests that English be the language of the proceeding. The Center has notified the Complaint in both English and German. The Respondent has made submissions in both German and Arabic and was apparently able to understand the Complaint in English. In the interests of efficiency, the Panel has accepted filings of both Parties in their respective language and renders this decision in English.

B. Identical or Confusingly Similar

The Complainant owns trademark registrations for MALL OF EGYPT. The Panel is satisfied that the Complainant has established its ownership of the trademark MALL OF EGYPT.

The disputed domain name incorporates the Complainant's trademark MALL OF EGYPT in its entirety. It is established by prior UDRP panels that when a domain name incorporates a complainant's registered trademark, such incorporation is sufficient to establish identity or confusing similarity for the purposes of the

Policy (*Delta Dental Plans Association v. Fundacion Private Whois / PPA Media Services*, WIPO Case No. [D2012-1440](#)).

The generic Top-Level Domain (“gTLD”) “.online” should typically be ignored when assessing confusing similarity as established by prior UDRP decisions.

Consequently, the Panel finds that the disputed domain name is identical to the trademark of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not affiliated with nor authorized by the Complainant to use its trademark. The Complainant further asserts that the Respondent is not using the disputed domain name for a *bona fide* offering of goods or services or for a legitimate noncommercial or fair use, and the Respondent is not commonly known by the disputed domain name. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

The Respondent made a number of submissions none of which show that he has rights or legitimate interests in the disputed domain name. Most of what has been put forward is not relevant in assessing the Respondent’s rights or legitimate interests except that the Panel finds it necessary to assess whether the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services as the Respondent argues that the disputed domain name is an online shopping platform which markets major German companies. The Panel visited the webpage of the Respondent and notes that indeed it is an online shopping platform. However, the Panel does not find such use to constitute a *bona fide* offering of goods or services because the Respondent has targeted the Complainant and its trademark when choosing its business name. The Respondent never denied being aware of the Complainant and its business. Furthermore, the trademark of the Complainant is placed to the left corner of the homepage. By clicking on a specific category, the user is directed to another website which offers the relevant products for sale. The Respondent’s website provides an online platform for sale while the Complainant operates physical platforms for sale of variety of goods. On this basis, it is clear that the Respondent was targeting the Complainant’s trademark when choosing the disputed domain name. Taking into account the overall facts and circumstances of the case, the Respondent has not provided relevant evidence to demonstrate fair use, and it is not clear to Internet users visiting the Respondent’s website that it is not operated by the Complainant.

In the current case, the website to which the domain name resolves offers for sale products such as clothing and accessories for women, bikes, clothing for men, home furniture. When the Internet user clicks on a specific type of product, it is directed to another website through which it can buy the specific product type. The products appearing on the said webpage are identical to the type of goods and products that the Complainant sells through its shopping malls. Therefore, the Panel is of the view that the Respondent is trying to capitalize on the reputation and goodwill of the Complainant’s trademark.

Accordingly, the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

The Respondent must have been aware of the Complainant’s trademark as the website to which the disputed domain name resolves to a website offering for sale products such as clothing and accessories for women, bikes, clothing for men, home furniture. By clicking on a specific category, the Internet user is directed to others website which offer the relevant products for sale. Furthermore, the website of the Respondent shows the trademark of the Complainant, which clearly indicates that the Respondent is trying to pass off as being connected with the Complainant. Such conduct of using a domain name, to attract

Internet users for commercial gain, would fall squarely within the meaning of paragraph 4(b)(iv) of the Policy.

Also, the Respondent offered the disputed domain name for sale at the exorbitant price of EUR 10,000. Given the above, the Panel believes that the Respondent has registered and is using the disputed domain name in bad faith. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) of the Policy.

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 <mallofegypt.online> be transferred to the Complainant.

/Nayiri Boghossian/
Nayiri Boghossian
Sole Panelist
Date: June 14, 2022