

ADMINISTRATIVE PANEL DECISION

Raffles Education Corporation Limited v. Privacy service provided by
Withheld for Privacy ehf / Low KH
Case No. D2022-1269

1. The Parties

The Complainant is Raffles Education Corporation Limited, Singapore, represented by Ascendant Legal LLC, Singapore.

The Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Low KH, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <save-raffles-education.com> is registered with NameCheap, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 9, 2022. On April 11, 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. The Center sent an email communication to the Complainant on April 12, 2022 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 April 17, 2022.

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 April 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 11, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 12, 2022.

The Center appointed Steven A. Maier as the sole panelist in this matter on May 16, 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 a publicly-listed company incorporated in Singapore. It is a provider of education services in the Asia-Pacific region.

The Complainant is the owner of trademark registrations including Singapore trademark registration number T0719365H for a mark including the words RAFFLES EDUCATION CORP, registered on August 5, 2008 in International Class 41.

The disputed domain name was registered on September 12, 2020.

The Complainant submits that the disputed domain name has resolved to a website containing correspondence that is untrue and defamatory of it and its senior management. At the date of this Decision, the disputed domain name did not resolve to any active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that it is a premier provider of educational services and the largest private educational group in the Asia-Pacific region. It states that it was established in 1990 and currently operates 18 colleges and other educational establishments in ten countries, with over 18,000 students enrolled.

The Complainant submits that the disputed domain name is confusingly similar to its trademark RAFFLES EDUCATION CORP. It contends that the inclusion of the term "save" in the disputed domain name does not detract from such confusing similarity. It submits in the alternative that the term "save" is pejorative, in implying that the Complainant is in an adverse situation from which it requires to be rescued, and that the combination of a trademark with a pejorative term is considered to be confusingly similar to that trademark for the purposes of paragraph 4(a)(i) of the Policy: see section 1.13 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It contends in particular that it has not licensed or permitted the Respondent to use its trademark RAFFLES EDUCATION CORP and that the Respondent is making neither *bona fide* commercial use nor legitimate noncommercial or fair use of the disputed domain name. Instead, the Complainant submits that the Respondent is using the disputed domain name to make unfair, misleading and false statements about the Complainant.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It states that the Respondent's website to which the disputed domain name resolves purports to be a forum for shareholders of the Complainant, but is in fact used to publish a series of letters containing scandalous, false and defamatory allegations about the Complainant and its senior management, including allegations of corruption, nepotism and the siphoning of funds to family members. The Complainant submits that the Respondent has no basis for various of these allegations. While the Complainant fails to exhibit any direct evidence of the relevant website content, it produces transcripts of nine letters dated between February 8, 2021 and October 29, 2021, which it claims were published on that website.

The Complainant refers to long-running litigation which it says has been brought in Singapore by two named individuals pursuing what it calls "personal vendettas" against the Complainant and its senior

management. Eight of the letters referred to above appear to have been written by the first of those individuals and the ninth by the second individual. The Complainant provides particulars of the litigation to which it refers and states that the first individual's claim has been unsuccessful and that the second individual's claim is ongoing. The Complainant submits in the circumstances that the Respondent's website is being used by the first individual as retaliation against the Complainant, and by the second individual to obtain leverage in the ongoing litigation, which includes a judgment debt that has been obtained against a company operated by him.

The Complainant relies in particular on section 3.12 of [WIPO Overview 3.0](#), which states:

"Noting that noncommercial fair use without intent to tarnish a complainant's mark is a defense under the second element, using a domain name to tarnish a complainant's mark (e.g., by posting false or defamatory content, including for commercial purposes) may constitute evidence of a respondent's bad faith."

The Complainant also submits that the Respondent has provided false contact details in connection with the registration of the disputed domain name. In addition to the fact that the Respondent has used a privacy service, the Complainant contends that the Respondent's postal address disclosed by the Registrar cannot be genuine, as it includes the term "PO Box" and a location, but no number for the PO Box. The Complainant also says that the Respondent's registered name, "Low KH", is not a full name and does not enable the Complainant to ascertain the Respondent's true identity. The Complainant also provides evidence that the telephone number provided by the Respondent is registered to an individual other than "Low KH". The Complainant submits that the provision of false contact information is an indication of bad faith on the Respondent's part.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established that it is the owner of a registered trademark RAFFLES EDUCATION CORP. The disputed domain name includes the whole of the term "raffles education", which the Panel finds to comprise the dominant element of the Complainant's trademark. The addition of the term "save" does not prevent the Complainant's trademark from being recognizable within the disputed domain name and the Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Since the Complainant has failed to provide direct evidence of the Respondent's website content, the Panel has conducted its own brief enquiry via "www.archive.org" within the parameters set out in section 4.8 of the [WIPO Overview 3.0](#). That enquiry produced one image of the relevant website, dated December 20, 2021. The website appeared to include a number of the letters referred to by the Complainant as well as other material. The website contains the following statement:

"This website aims to educate investors in Raffles Education about issues surrounding the company which are likely to see the company's financial performance, share price and dividends continue to deteriorate.

The website highlights challenges in its education business and its continuing diversification into property; its questionable governance and management; the lack of transparency relating to remuneration of its directors, chairman/CEO and family members; its poor engagement with shareholders; concerns raised by stakeholders; and, other issues that have contributed to its poor financial and share price performance.

Raffles Education shareholders should carefully consider how they vote their shares for any resolutions proposed at AGMs and EGMs with a view to promoting changes in the company, before it's too late.

They should act to Save Raffles Education!"

The website does not identify the operator of the website.

In the view of the Panel, the Respondent's website appears *prima facie* to constitute a protest or criticism site concerning the management of the Complainant and, therefore, a potentially legitimate use of the disputed domain name under paragraph 4(c)(iii) of the Policy, namely: "you are making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."

There is no evidence that the website is intended for commercial gain. Nor does the Panel consider the disputed domain name to be inherently misleading, since (as the Complainant itself submits) the inclusion of the term "save" in the disputed domain name suggests that it is under the control of a third party (who on its face seemingly wishes to "save" in the sense of "rescuing" the Complainant) and not the Complainant itself.

The factors typically considered in assessing potential fair use of this nature (criticism) are discussed in detail in section 2.6 of [WIPO Overview 3.0](#). Notably Section 2.6.3 informs that panels have looked at whether the use is "prima facie noncommercial, genuinely fair, and not misleading or false."

In this case, it is far beyond the scope of the UDRP for the Panel to engage in any detailed examination of the content of the letters published on the Respondent's website or to assess the truth or falsity of their contents. However, the Complainant has submitted that the contents of the letters are false, that the Respondent has published certain of its allegations without any basis to support them, and that the Respondent's true motivation is to tarnish the Complainant's trademark by way of retaliation or to gain leverage in the ongoing litigation between the parties. Mindful of the seriousness of labelling something as libellous, and that truth is a defense, the Panel in particular notes that the Complaint is signed with an attestation by counsel as to the truthfulness of the facts and claims made therein (including challenging the Respondent's claims that the Complainant's senior management had broken the law) and thereby takes the Complainant's claims as to the falseness of the content on the Respondent's site at face value. In the view of the Panel, these submissions raise a case for the Respondent to answer as to the veracity of the claims made on its website, which it could easily have addressed by filing a Response in this proceeding. Since it has elected to file no such Response, the Complainant's case remains unanswered in this regard and the Panel is unable therefore to conclude that the Respondent has rights or legitimate interests in respect of the disputed domain name. The second requirement under paragraph 4(a) of the Policy has therefore been met.

C. Registered and Used in Bad Faith

By reason once again of the Respondent's failure to participate in this proceeding, it has provided no response to the Complainant's claim that it has published false material and damaging material on its website primarily for the purpose of tarnishing the Complainant's trademark and with a view to the litigation between the Parties,¹ and not fairly for the purpose of legitimate criticism of the Complainant. While the Respondent could easily have disputed the Complainant's assertions it has chosen not to do so, and in those circumstances the Panel accepts the Complainant's submissions on balance.

The Panel also notes the Complainant's allegations that the Respondent has provided false contact details, including the use of an incomplete registrant name, the lack of a PO Box number and the registration of the Respondent's telephone number to an individual other than the Respondent. The Panel accepts in this regard that there is a lack of clarity as to the registration details for the disputed domain name, which chimes also with the absence of any information on the Respondent's website to identify the operator of that website (other than by reference to the disputed domain name itself) and with the Respondent's decision not to participate in this proceeding. In the view of the Panel, while these matters are not in themselves conclusive of bad faith, they do support an inference in that regard.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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 <save-raffles-education.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: May 25, 2022

¹ Per the Complaint, to date, the first individual (a former substantial shareholder of the Complainant) has been unsuccessful in his claims against the Complainant in Suit No. 1059 of 2017 in the High Court of the Republic of Singapore, which was dismissed in the reported decision of *Oei Hong Leong & another v Chew Hua Seng* [2020] SGHC 39; said individual appealed against this decision to the Court of Appeal of the Republic of Singapore in Civil Appeal No. 36 of 2020, which was dismissed in the reported decision of *Oei Hong Leong & another v Chew Hua Seng* [2020] SGCA 78 in August 2020; and said individual then commenced an Originating Summons and Summons for Interim Injunction in a bid to prevent the Complainant from entering into a transaction which he disagreed with (the Originating Summons was eventually withdrawn, and the Summons for Interim Injunction was dismissed by the High Court of Singapore in September 2020). The second individual is involved in an ongoing civil suit in the High Court of the Republic of Singapore (Suit No. 709 of 2019) initiated by the Complainant for fraudulent misrepresentation and deceit; an application to stay the suit on the grounds of *forum non conveniens* was dismissed in the reported decision of *Raffles Education Corp Ltd and others v Shantanu Prakash and another* [2020] SGHC 83.