

ADMINISTRATIVE PANEL DECISION

Majid Al Futtaim Properties LLC v. Khaled Saleh
Case No. D2022-3547

1. The Parties

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

The Respondent is United States of America ("U.S.") / Khaled Saleh, Egypt.

2. The Domain Name and Registrar

The disputed domain name <mallofegypt.net> (the "Domain Name") is registered with GoDaddy.com, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 26, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. Also on September 26, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domains By Proxy, LLC) and contact information in the Complaint.

The Center sent an email communication to the Complainant on September 28, 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 October 2, 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 October 4, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 24, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 25, 2022.

The Center appointed Willem J. H. Leppink as the sole panelist in this matter on October 27, 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.

The Respondent sent an email communication to the Center on November 9, 2022.

4. Factual Background

The following facts are undisputed.

The Complainant was founded in 1992. The Complainant is a leading shopping mall, retail and leisure group, with activities across the Middle East and North Africa. The Complainant's businesses spans 15 international markets and employs over 40,000 people.

The Complainant owns and operates 29 shopping malls, 13 hotels and three mixed-use communities in the Middle East and North Africa, with further developments underway in the region. This includes the Mall of the Emirates, the Mall of Egypt, the Mall of Oman and the City Centre malls.

The Complainant has several registrations in Egypt for the trademark MALL OF EGYPT in Latin and Arabic scripts. Those marks include registrations nos. 196982 and 196980 in class 36 and 196981 in class 35, registered on May 4, 2009, as well as registration no. 196979, filed on February 27, 2007, and registered on August 19, 2009. These registrations are hereinafter also in singular referred to as the "Trademark".

The Complainant is the owner of several registrations in the region for the "MALL OF" brand. This started with the opening of the Mall of the Emirates in 2005, in Dubai, United Arab Emirates, the region's first shopping resort. The Mall of Egypt was opened in 2017.

The Domain Name was registered on November 10, 2007. At the time of filing the Complaint, the Domain Name resolved to a parked page, *inter alia* with some sponsored pay-per-click ("PPC") links to Tours and Hotels in Egypt ("Website"). Currently, the Domain Name resolves to a Registrar parked website with no PPC links.

5. Parties' Contentions

A. Complainant

The Complainant has submitted a very extensive Complaint. To the extent relevant for rendering this decision the Complainant alleges the following.

The Complainant also acquired common law rights in its MALL OF EGYPT trademark, by virtue of its extensive commercial use.

The Domain Name is identical to its MALL OF EGYPT trademark because that mark is entirely incorporated in the Domain Name.

The Complainant contends that the Respondent does not have any rights or legitimate interests in the Domain Name for the following reasons: (i) The Respondent is not affiliated with the Complainant in any way; (ii) The Complainant has not authorized the Respondent to use its trademarks, or to seek the registration of any domain name incorporating the trademark MALL OF EGYPT; (iii) The Respondent has no prior rights or legitimate interests in the Domain Name; since the fact that the Complainant's registrations of the trademark dates back to early 2007, and preceded the Respondent's registration of the Domain Name at the end of 2007; (iv) the Respondent is not commonly known by the Domain Name.

The Respondent has not registered the Domain Name in connection with a *bona fide* intent as the Respondent is not a licensee of the Complainant with regard to the Trademark.

The Domain Name has been registered in bad faith and it is implausible that the Respondent was unaware of the Complainant's "MALL OF" trademarks when he registered the Domain Name. This is because the Complainant's company was established since 1994 and the Complainant has been operating under the "MALL OF" trademarks since 2005. This trademark and the Trademark are well-known throughout the world and this is also confirmed by public and media recognition.

The Domain Name does not resolve to an active website. This passive holding of the Domain Name does not prevent a find of use in bad faith.

B. Respondent

The Respondent did not formally reply to the Complainant's contentions. However, the Respondent sent an email communication on November 9, 2022, stating, "I want to renew my domain mallofegypt.net as I own this domain since 2007 before any business start in Egypt by this name about 8 years." This email communication was received long after the Response due date, but the Panel has considered it for the sake of completeness.

6. Discussion and Findings

Pursuant to paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements:

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

A. Identical or Confusingly Similar

The Complainant must demonstrate that it has rights in a trademark and, if so, the Domain Name must be shown to be identical or confusingly similar to such trademark. The first element serves as a standing requirement.

The Complainant has sufficiently proven to have rights in the Trademark. The Domain Name consists of the Trademark in its entirety and thus the Domain Name is identical to the Trademark.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant in its Complaint and as set out above has established a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name.

The Panel could not find any evidence by referring to the types of evidence set forth in paragraph 4(c) of the Policy from which the Panel might conclude that the Respondent has rights or legitimate interests in the Domain Name, such as:

- (i) use or preparation to use the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services prior to notice of the dispute; or

(ii) being commonly known by the Domain Name (as an individual, business or other organization) even if the Respondent has not acquired any trademark or service mark rights; or

(iii) making 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.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the Domain Name. However, the Respondent has not presented any evidence of any rights or legitimate interests it may have in the Domain Name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

Currently, the Respondent does not seem to make any use of the Domain Name, as the Domain Name does not resolve to an active website, but only to parked page.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in relation to the Domain Name and thus the Panel is satisfied that the second element of the Policy has been met.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or

(iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

The totality of the evidence in this case is at least suggestive of bad faith for the purpose of paragraph 4(b)(iv). The Respondent has registered the Domain Name that entirely incorporates the Complainant's well-known mark and provided no evidence to support a right or legitimate interest in doing so.

The Panel has considered that the Complainant only opened the Mall of Egypt in 2017, which is ten years after the Domain Name was registered. While the Respondent points out that the registration of the Domain Name took place before the Complainant opened the Mall of Egypt in 2017, the Panel notes that the Respondent did not provide any explanation for its registration. However, given the notoriety and magnitude of the Mall of the Emirates, as substantiated by the Complainant, and the fact that the Complainant applied for the registration of the Trademark in early 2007, several months before the registration of the Domain Name, the Panel finds that on a balance of probabilities, the Respondent must have registered the Domain Name, having the Complainant and/or its Trademark in mind and thus anticipated on the opening of the Mall of Egypt.

The Domain Name previously resolved to a PPC website that included sponsored links to third party sites that offered *inter alia*, Tours and Hotels in Egypt. The Panel notes the nature of the Domain Name, which is identical to the Trademark, the timing and circumstances of the registration, namely a few months after the Complainant filed an application for the Trademark in Egypt, and the lack of an explanation for the Respondent's choice. The circumstances of the case leads the Panel to consider for the purposes of the Policy that, on the balance of probabilities, the Domain Name has been registered and used in bad faith.

The fact that the Domain Name currently does not resolve to an active website, does not prevent a finding of bad faith under the doctrine of passive holding (see Section 3.3 of the [WIPO Overview 3.0](#)).

The Respondent has been hiding behind a privacy shield. By doing so the Respondent has tried to actively conceal its identity. Finally, although the lack of a formal or substantive response by the Respondent as such cannot by itself lead to the conclusion that there is registration and use in bad faith, this nonetheless supports for the Panel to find that the registration and use of the Domain Name by the Respondent is in bad faith. The Panel finally takes into account that the listed mail address of the Respondent appear to be non-existent.

For these reasons, the Panel finds that the Domain Name has been registered and used in bad faith for the purpose of paragraph 4(a)(iii) of the Policy and thus the Panel is satisfied that the third element of the Policy is met.

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 Domain Name, <mallofegypt.net>, be transferred to the Complainant.

/Willem J.H. Leppink/

Willem J. H. Leppink

Sole Panelist

Date: November 9, 2022