

ADMINISTRATIVE PANEL DECISION

Majid Al Futtaim Properties LLC v. IT Awy
Case No. D2022-3548

1. The Parties

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

The Respondent is IT Awy, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <mallegyy.shop> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2022. On September 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 26, 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 (Privacy Service Provided by Withheld for Privacy ehf) 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 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 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 31, 2022.

The Center appointed Antony Gold as the sole panelist in this matter on November 3, 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 of companies, which has its head office in Dubai, United Arab Emirates and owns shopping malls, together with other retail and leisure establishments, in the Middle East and elsewhere. The Complainant is the primary company within the group which develops shopping malls. Its property portfolio includes Mall of Egypt, Mall of Oman and Mall of the Emirates. The Complainant first commenced use of its “Mall of []” branding style in 2005 and its Mall of Egypt, which provides leisure, entertainment and shopping facilities, was opened in Cairo, Egypt in 2017. The launch of the mall was extensively promoted by the Complainant on its own website, in social media and through press releases.

The Complainant owns several trade marks for MALL OF EGYPT, including Egyptian trade mark No.345474, registered in Class 35 on September 3, 2019. This is for a stylized representation of “MALL OF EGYPT”, in Roman and Arabic characters, in combination with a distinctive device comprising a series of arches, which the Complainant uses extensively on its website. The Complainant also owns and operates the domain name <mallofegypt.com>, which resolves to a website promoting shopping and other services available at the mall.

The disputed domain name was registered on November 23, 2020. Screen shots provided by the Complainant establish that, as at March 2021, the disputed domain name resolved to a website which purported to be the official website of Mall of Egypt and to provide information about the shops and services available at it. In addition to using the Complainant’s MALL OF EGYPT mark, it displayed the same figurative device which forms part of the Complainant’s trade mark described above. The disputed domain name presently resolves to a “Coming Soon!” holding page.

5. Parties’ Contentions

A. Complainant

The Complainant says that the disputed domain name is identical or confusingly similar to a trade mark in which it has rights. The deletion of the preposition “of” and the abbreviation of the word “egypt” to the letters “egy” do not serve to distinguish the disputed domain name from the Complainant’s MALL OF EGYPT trade marks. The disputed domain name is clearly intended to be an abbreviation of, or referable to, the Complainant’s MALL OF EGYPT mark. In addition, the Respondent previously used the disputed domain name to impersonate the Complainant, which suggests that the Respondent intended it to be confusingly similar to the Complainant’s trade mark.

The Complainant says also that the Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no indication that the Respondent has made use of, or demonstrable preparations to use, the disputed domain name in connection with a *bona fide* offering of goods and services. Nor is there any evidence that the Respondent owns any trade or service mark rights that are identical or similar to the disputed domain name. The Complainant has never authorized or licensed the Respondent to use its MALL OF EGYPT mark, nor to seek the registration of any domain name incorporating its mark. Nor is the Respondent affiliated with the Complainant. Having regard to the fact that the Complainant’s MALL OF EGYPT mark was in use for almost three years preceding the Respondent’s registration of the disputed domain name, there is no evidence of any prior rights or legitimate interests on the part of the Respondent in the disputed domain name.

Moreover, the disputed domain name previously resolved to a website featured one of the Complainant's MALL OF EGYPT marks, as well as copying the stylization and content of the Complainant's website. The fact that the disputed domain name does not currently resolve to an active website is evidence of the fact that the Respondent has no rights or legitimate interests in the disputed domain name.

Lastly, the Complainant says that the disputed domain name was registered and is being used in bad faith. The Complainant's MALL OF EGYPT trade mark is well known and the Respondent was undoubtedly aware of it when it registered the disputed domain name in order to lure and mislead people by diverting them to its website. Additionally, the generic Top Level Domain ("gTLD") ".shop" is descriptive of shopping activities and Internet users will expect a website that uses this gTLD to relate to the Complainant's field of activity. The fact that the website previously connected to the disputed domain name was an almost exact copy of the Complainant's website indicates that the Respondent was intentionally creating a likelihood of confusion with the Complainant's trade mark as to the source or sponsorship of its website. Furthermore, the current passive holding of the disputed domain name does not prevent a finding of bad faith. Finally, the Respondent's use of a privacy service is a further indicator of bad faith.

B. Respondent

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

6. Discussion and Findings

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant proves each of the following three elements in order to succeed in its Complaint:

- (i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and
- (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 provided details of its trade mark registrations for MALL OF EGYPT, including the registration in respect of which full details are set out above, and has thereby established its rights in this mark.

As a technical requirement of registration, the gTLD, that is ".shop" in the case of the disputed domain name, is typically disregarded when assessing confusing similarity. The disputed domain name comprises the first word of the Complainant's MALL OF EGYPT trade mark, followed by the letters "egy", which comprise the first three letters of the EGYPT component of the Complainant's mark.

As explained at section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") "[I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing". By a relatively narrow margin, the Panel finds the elements of the Complainant's mark which feature in the disputed domain name to comprise, in combination, a dominant feature of that mark. However, to the extent

that there is any doubt about the position, section 1.7 also explains that “...Panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant”. See also section 1.15 of the [WIPO Overview 3.0](#) and *Philip Morris Products S.A. v. Domain Admin, Isimtescil.net / Whoisprotection.biz / Mahir Sultanov*, WIPO Case No. [D2021-3543](#).

Whilst the disputed domain name does not presently resolve to an active website, the website to which it previously resolved purported to be that of the Complainant’s official website for its Mall of Egypt. This clearly establishes that the Respondent registered the disputed domain name because it believed it to be confusingly similar to the Complainant’s MALL OF EGYPT trade mark.

The Panel accordingly finds that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides, without limitation examples of circumstances whereby a respondent might demonstrate that it has rights or legitimate interests in a domain name. In summary, these are if a respondent has used or prepared to use the domain name in connection with a *bona fide* offering of goods and services, if a respondent has been commonly known by the domain name, or if a respondent has made a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trade mark in issue.

The previous use of the disputed domain name, as described above, establishes that the Respondent’s intent was to mislead Internet users into thinking that its website was that of the Complainant. Use of the disputed domain name in order to masquerade as the Complainant self-evidently does not amount to use in connection with a *bona fide* offering of goods and services.

There is no evidence to indicate that the Respondent has been commonly known by the disputed domain name and the second circumstance set out at paragraph 4(c) of the Policy is therefore inapplicable. Nor is the Respondent making a legitimate noncommercial or fair use of the disputed domain name. Lastly, the current inactive status of the disputed domain name comprises neither a *bona fide* offering of goods and services nor a legitimate noncommercial or fair use of it; see, by way of example, *G4S Plc v. Muyou Chen, wer*, WIPO Case No. [D2020-0715](#).

Additionally, section 2.14.1 of the [WIPO Overview 3.0](#) explains that “Particularly when the TLD is descriptive of or relates to goods or services (including their natural zone of expansion), a geographic region, or other term associated with the complainant, the respondent’s selection of such TLD would tend to support a finding that the respondent obtained the domain name to take advantage of the complainant’s mark and as such that the respondent lacks rights or legitimate interests in the domain name”. See also *LIDL Stiftung & Co. KG v. Lards Renoud*, WIPO Case No. [D2022-0709](#). The “.shop” gTLD is apt to be associated by Internet users with shopping and retail activities. In the circumstances of this Complaint, its use as a component of the disputed domain name serves to confirm the Respondent’s intent that Internet users will associate it with the Complainant’s mall and thereby affirms its lack of rights or legitimate interests.

For the above reasons, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The fact that, within a few months of registration of the disputed domain name in November 2020, the Respondent had used it in order to resolve to a website that purported to be the official website of the Complainant’s Mall of Egypt mall, establishes, on at least a balance of probabilities, that the Respondent was aware of the Complainant’s MALL OF EGYPT mark as at the date of its registration and that it was

registered in order to target the Complainant and take advantage of its repute in its mark. As explained at section 3.1.4 of the [WIPO Overview 3.0](#). “[p]anelists have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith”. See also *Costco Wholesale Membership Inc. and Costco Wholesale Corporation v. Almantas Kakareka and Hostmaster Oneandone, 1&1 Internet, Inc.*, WIPO Case No. [D2007-1833](#). The Panel therefore finds the registration of the disputed domain name to have been in bad faith.

Turning to bad faith use, paragraph 4(b) of the Policy sets out, without limitation, circumstances which, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The circumstance set out in paragraph 4(b)(iv) of the Policy is if a respondent 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. The use to which the Respondent has previously put the disputed domain name, as described above, comprises paradigm bad faith use within the meaning of paragraph 4(b)(iv) of the Policy; see *Majid Al Futtaim Properties LLC v. Ahmed Ghaleb, QQ*, WIPO Case No. [D2022-1217](#).

The current inactive status of the disputed domain name 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 factors that are typically considered when applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent’s concealment of its identity by its use of a privacy service and (iv) the implausibility of any good faith use to which the domain name may be put. See also *Majid Al Futtaim LLC v. Khaled Saleh*, WIPO Case No. [D2022-3547](#).

These factors are fulfilled in the current circumstances in that: (i) the Complainant has established the repute of its MALL OF EGYPT trade mark; (ii) the only use made of the disputed domain name to date has been in bad faith; (iii) the Respondent has sought to conceal its identity by its use of a privacy service; (iv) there is no plausible good faith use to which the disputed domain name is likely to be put by the Respondent as, due to its composition, it is apt to be associated by Internet users with the Complainant.

The Panel therefore finds that the disputed domain name has been registered and 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, <malleghy.shop>, be transferred to the Complainant.

/Antony Gold/

Antony Gold

Sole Panelist

Date: November 17, 2022