

## **ADMINISTRATIVE PANEL DECISION**

Comair Limited v. Milen Radumilo

Case No. D2022-3584

### **1. The Parties**

The Complainant is Comair Limited, South Africa, represented by Adams & Adams, South Africa.

The Respondent is Milen Radumilo, Romania.

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

The disputed domain name <discoverykulula.com> is registered with Tucows Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 28, 2022. On September 28, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 28, 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 (Contact Privacy Inc. Customer 0164916805) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 3, 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 4, 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 6, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 26, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 27, 2022.

The Center appointed Nicolas Ulmer as the sole panelist in this matter on November 11, 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 traded South African company that has provided extensive air service in Africa, a low cost car rental service, as well as related financial and other services. The Complainant is the proprietor of the trademark KULULA, which it has registered in various classes worldwide including, *inter alia*, International trademark registration No. 2001/000235 for KULULA, registered on November 16, 2004, as well as the domain name <kulula.com> which was first registered in 2001.

The Complaint points out that although the Complainant was historically profitable it was, following losses during the Covid pandemic, placed in liquidation on June 14, 2022. The Complainant asserts that its KULULA trademark remains a valuable asset with enormous goodwill, and represents that the Complaint is submitted with the authority and consent of the liquidator.

Little is known of the Respondent who appears to be an individual in Romania, partially obscured by a privacy service.

The disputed domain name was registered on July 31, 2022. It previously resolved to a website displaying pay-per-click ("PPC") links.

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

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

The Complainant maintains that in addition to trademarks rights and applications, it also has common law rights in the trademark KULULA, and that this trademark has been widely used in South Africa and a number of other countries for more than twenty years, acquiring significant renown. The Respondent, the Complainant asserts, has registered and used the disputed domain name in order wrongly to benefit from the goodwill and reputation the Complainant built in its KULULA trademark and its established commercial relationships with programmes employing the term "discovery" in connection with the Complainant's business.

The Complainant further asserts that its rights in its distinctive trademark KULULA have been confirmed in a number of UDRP cases including *Comair Limited v. Ebrahim Kaskar, Shalimar*, WIPO Case No. [D2016-1252](#); see also *Comair Limited v. Kagiso Interactive RSA, Domain Management*, WIPO Case No. [D2018-1396](#), and that, as with those cases the Respondent here has no licence, permission, or right to use its trademark. The Complaint also reveals that in August 2022, the Complainant's lawyers sent two cease and desist letters concerning the disputed domain name to the Respondent's email address under the privacy service, but received no reply.

Thereupon the Complainant asserts that the disputed domain name is confusingly similar to its trademark, that the Respondent has no rights or legitimate interest in the disputed domain name, and that the Respondent has registered and used the disputed domain name in bad faith.

The Complainant requests that the disputed domain name be transferred to it.

##### **B. Respondent**

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

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The disputed domain name contains the entirety of the Complainant's well-known trademark preceded by the word "discovery." The dominant and distinctive element of the disputed domain name is the trademark KULULA; the word "discovery", the remaining element, does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark, or here materially diminish such confusing similarity.

The generic Top-Level Domain ".com" is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.

For all these reasons, the disputed domain name is here found to be confusingly similar to the Complainant's trademark within the meaning of paragraph 4(a)(i) of the Policy.

### B. Rights or Legitimate Interests

The Complainant has clearly stated that the Respondent is not its licensee, business partner or in any relationship or association with the Complainant, and has been given no right or authorisation to use its trademark in the disputed domain name or otherwise. There is furthermore no evidence that the Respondent is commonly known by the disputed domain name or any variation thereof. The record in this case, likewise provides no evidence or indicia that would suggest that the Respondent has any rights or legitimate interests in the disputed domain name, or was making any legitimate noncommercial or fair use of the disputed domain name.

Section 2.1 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") provides that where, as here, the Complainant has clearly denied any rights or legitimate interests of the Respondent in the disputed domain name, this establishes a *prima facie* case with the effect that the burden of production shifts to the Respondent to come forward with relevant evidence demonstrating a right or legitimate interest in the disputed domain name.

The Respondent having failed to answer the Complaint or otherwise rebut the Complainant's *prima facie* case, it follows that the Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

### C. Registered and Used in Bad Faith

The Complainant has here demonstrated that its KULULA mark is very well known and widely used and promoted by it in connection with its business; it is implausible that the Respondent registered the disputed domain name containing the Complainant's trademark by chance. Moreover, the word "discovery" is associated with and can suggest travel, which is the Complainant's core business. Furthermore, the Complainant has documented that it is in well-known commercial partnership with Discovery Health and its Discovery Vitality programme. Both of the foregoing factors suggest that the addition of the word "discovery" to the Complainant's trademark in the disputed domain name was not serendipitous. The evidence and indicia in this matter rather show that the Respondent wrongly registered the disputed domain name in order to take advantage of the Complainant's goodwill and reputation.

As to specific bad faith use, the Complainant has submitted evidence that the disputed domain name has prior resolved to a page containing numerous PPC links or "sponsored listings", which relate to booking air flight tickets; the attempt to attract Internet users for commercial gain by the unauthorised use of another's trademark is constitutive of bad faith use within the meaning of the Policy. The failure of the Respondent to reply to the Complainant's cease and desist letters concerning the disputed domain name, and to reply to the Complaint in this case, are further indicia of bad faith on the part of the Respondent.

The Complainant has accordingly met its burden of demonstrating bad faith registration and use within the meaning of paragraph 4(a)(iii) of the Policy.

## **7. Decision**

For the foregoing reasons, the Panel, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, orders that the disputed domain name <discoverykulula.com> be transferred to the Complainant.

*/Nicolas Ulmer/*

**Nicolas Ulmer**

Panelist

Date: November 24, 2022