

ADMINISTRATIVE PANEL DECISION

MakeMyTrip (India) Private Limited v. mukesh sharma
Case No. D2023-5201

1. The Parties

The Complainant is MakeMyTrip (India) Private Limited, India, represented by Sim And San, Attorneys At Law, India.

The Respondent is Mukesh Sharma, India, represented by Annu Bhardwaj, India.

2. The Domain Name and Registrar

The disputed domain name <makemypaisa.com> 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 December 14, 2023. On December 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 2024, 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 (Registration Private Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 2023, 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 December 17, 2023.

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 December 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2024. On January 5, 2024, the Respondent requested a four-calendar day extension as per paragraph 5(b) of the Rules. The due date for filing a Response was extended to January 12, 2024. The Response was filed with the Center on January 9, 2024.

The Center appointed Meera Chature Sankhari as the sole panelist in this matter on January 17, 2024. 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.

On January 19, 2024, the Panel was notified that the Complainant had, on January 18, 2024, filed an unsolicited supplemental filing in the form of further statements. On January 31, 2024, the Respondent requested to submit a supplemental filing in response to the Complainant's further statements.

4. Factual Background

MakeMyTrip (India) Private Limited, the Complainant, is a company registered under the Indian Companies Act of 1956. The Complainant was first formed on April 13, 2000, under the trade name "Travel by Web Private Limited." On August 2, 2000, it amended its trade name to "Makemytrip.com Pvt. Ltd" and on June 28, 2002, further changed its name to the current name i.e., MakeMyTrip (India) Pvt. Ltd. The Complainant asserts that "The trademark MakeMyTrip is an essential feature of all the composite label or logo marks of the Complainant." The Complainant started its business initially with airline ticket bookings alone, and is today one of the largest travel companies in India.

The Complaint is based, inter alia, on the following registered trademarks belonging to it:

MARK	Registration No.	Class	Date of registration	Status	Jurisdiction
MAKEMYTRIP	2149947	39	May 25, 2011	Registered	India
MAKEMYTRIP	2991098	35	June 23, 2015	Registered	India
MAKEMY	3869251	09	December 21, 2018	Registered	India

The Complainant is also the proprietor of registrations for the trademark MAKEMYTRIP in the United States of America, United Arab Emirates, Saudi Arabia, and other jurisdictions.

The Complainant also owns the domain name <makemytrip.com> since May 2000 and claims to own many other "domain names consisting of the MakeMyTrip trade mark, including, for instance, <makemytrip.ae>, <makemytrip.in>, <makemytrip.net>."

The disputed domain name was registered by the Respondent on November 08, 2017, under the ".com" generic Top Level Domain ("gTLD") with the Registrar, GoDaddy.com, LLC. There is an operational website providing financial services under the disputed domain name. The Respondent has produced an invoice dated February 25, 2008, proving the purchase of the disputed domain name along with another domain name through a vendor. The Respondent has also submitted screen prints of the website from June 26, 2008, procured through "www.archive.org".

The Respondent has also produced a copy of the Search Certificate dated June 7, 2023, and issued by the Indian Trade Marks Registry, which states that in relation to the registration of the artistic work depicted therein, no trademarks similar to such an artistic work was registered or applied for by any other person other than the applicant of such a certificate. The mark in question was MAKEMYPAISA, represented in an artistic manner, using the colors blue and the sign of "chartered accountants" (in green), used and issued by the Institute of Chartered Accountants of India.

Before initiating this Complaint, the Complainant also sent a cease & desist letter to the Respondent on September 15, 2023, to which no response was received. Thereafter, on September 27, 2023, opposition proceedings have been initiated against the Respondent's trademark application for MAKEMYPAISA and the Respondent is contesting the same by filing an appropriate response thereto, which is also produced.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant contends that it was forced to file the current Complaint to request the transfer of the disputed domain name under the Policy to safeguard its legitimate business interests and the rights of its user community due to the Respondent's use of privacy services and the blatantly abusive registration and use of the disputed domain name. The Complainant argues that the disputed domain name has a misleading resemblance to their well-known MAKEMYTRIP trademark. The misleading similarity of the disputed domain name persists even if a generic suffix is used to replace a component of a mark. The replacement of the word "trip" with "paisa" seen together with the similar services offered on the website, does not prevent a finding of confusing similarity. The Complainant has relied upon several UDRP and other decisions where the rights in and to MAKEMYTRIP were protected.

The Complainant claims that the Respondent has no rights or legitimate interests in the disputed domain name. It alleges that the disputed domain name resolves to an active webpage offering identical services. The Complainant claims that it also provides financial services through its Forex services and payment services through its subdomain <payments.makemytrip.com>. Further, the Complainant asserts that the disputed domain name is being held by privacy protect service to hide the Respondent's identity. According to the Complainant, this clearly indicates that the Respondent neither holds any rights in the trademark MAKEMYTRIP nor is popularly known to be associated with it.

The Complainant has clarified that the Respondent is not associated with it either as a licensee or otherwise being authorised. The Complainant claims that there has been no use of, and/or demonstrable preparations to use the MAKEMYTRIP marks or the disputed domain name by the Respondent in connection with a bona fide offering of goods or services before being aware of the Complainant's dispute. The Complainant further alleges that the Respondent has used and registered the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's products and services and that such use cannot constitute a bona fide offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's MAKEMYTRIP mark to offer identical services. The Complainant also asserts that the Respondent is not commonly known by the term "makempaisa" and that neither can it assert to be making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant contended that the term "makemy" is one of the distinguishing features of the Complainant's mark, which differentiates the Complainant's services from other businesses. The Complainant asserts that the Respondent registered/acquired the disputed domain name to take advantage of the users who search for the trademark MAKEMYTRIP or MAKEMY for commercial gain and creating a likelihood of confusion, and thus bad faith is implicit. The Complainant alleges that the Respondent registered the disputed domain name having full knowledge of the Complainant's rights in and to the trademark MAKEMYTRIP, which is a highly distinctive coined mark and well known throughout the world. The Complainant's trademark has been continuously and extensively used since 2000 in connection with travel-related goods and services and has rapidly acquired considerable goodwill and renown worldwide.

Furthermore, the Complainant states that the disputed domain name started hosting the current website only as recently as per the Internet archive records and it was listed for sale in 2019. This makes it evident that the disputed domain name was acquired for the sole purpose of selling or transferring the domain name registration for valuable consideration more than the Respondent's out-of-pocket expenses. The Complainant alleges that the refusal of the Respondent to transfer the disputed domain name for free or for a reasonable consideration to the Complainant is a strong indication of their intention to transfer the disputed domain name only in return for an amount of money over and above their registration costs.

According to the Complainant, the Respondent has registered the disputed domain name primarily for the purpose of disrupting the Complainant's business and has caused actual disruption in its business by preemptively registering the disputed domain name. That this is causing a likelihood of confusion as to source, affiliation, etc. and is taking unfair advantage of the Complainant's rights by offering identical services, which the Respondent is admittedly engaged in and competes with those of the Complainant.

For the reasons stated above, the Complainant seeks that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

The Respondent claims to have coined a new and unique term, "makemypaisa", combining the terms "make" and "my," with the word "paisa," which in the Respondent's vernacular language of Hindi denotes "money". The Respondent contests that the disputed domain name is not comparable to the MAKEMYTRIP trademarks. The Respondent contends that the English words "make" and "my" are general terms but when they are combined with the Hindi word "Paisa", which means "money," the combination of the Hindi and English phrases creates the unique mark MAKEMYPAISA. The Respondent denies the Complainant's marks being conceptually and syntactically identical as utterly unfounded and absurd given the stark differences in meaning and language between the terms "paisa" and "trip." The latter is a Hindi term that means "money," whereas the former is an English word that means "an outing." Furthermore, there is no phonetic or visual similarity between the two terms. In this instance, according to the Respondent, a comparison of the entirety of the disputed domain name and the Complainant's trademark MAKEMYTRIP would make it abundantly evident that there are no similarities at all between the two.

The Respondent asserts that it is unaware that the Complainant offers financial services under the domain names <payments.makemytrip.com.> and <fxkart.com>. Even if this were the case, the Respondent contends that the Complainant's trademark is not registered in Class 36 for financial services, and the aforementioned terms are not similar to the disputed domain name.

The Respondent contends that in an honest endeavor to link its unique mark to the financial services that it provides, which are entirely unrelated to the Complainant's services and trademark, the Respondent created and adopted this disputed domain name. As a result, the Respondent is the rightful owner of the disputed domain name, and the Complainant's attempt to assert otherwise may be dismissed.

The Respondent admits that it was aware of the Complainant's trademark at the time of the disputed domain name's registration. However, it argues that the services offered by the Complainant were completely different from the financial services which was intended to be rendered by the Respondent. The Respondent argues that the travel and hotel industries are the source of all the Complainant's purported goodwill and popularity, whereas the Respondent offers no services that are comparable to or even connected to the same. The offerings provided by the Respondent and the intended clientele are entirely dissimilar. As a result, the Complainant's allegations have no basis and should be rejected.

6. Discussion and Findings

A. Procedural Matter

An unsolicited supplemental filing was made by the Complainant on January 18, 2024, after the Panel was appointed. On January 31, 2024, the Respondent filed a request to submit a supplemental filing in response to the Complainant's further statements.

As mentioned in the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ([“WIPO Overview 3.0”](#)), section 4.6 “Unsolicited supplemental filings are generally discouraged, unless specifically requested by the panel.” Moreover, “In all such cases, panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (e.g., owing to some “exceptional” circumstance).”

Furthermore, as succinctly stated in the case of *Starwood Hotels & Resorts Worldwide, Inc., The Sheraton LLC, Sheraton International IP, LLC, Preferred Guest, Inc., Société des Hotels Méridien, Worldwide Franchise Systems, Inc., Westin Hotel Management, L.P. v. Lei Qi*, WIPO Case No. [D2015-1539](#), “..generally the panels frown upon the unsolicited supplement filings, particularly after a panel has been fully appointed and the case provided to it for decision -- for the simple reason that such submissions tend to complicate the process, delay decision of the underlying dispute and run counter to the goals, embodied in the Policy, of providing a dispute resolution mechanism that is relatively simple, expeditious and cost-effective to the parties. Nevertheless, situations may well arise where either party believes it needs such a filing to adequately present its case and presents sufficient justification for that filing. It is in those instances, as here, that a panel in assessing the underlying circumstances of a case will determine, in its sole discretion and on a case-by-case basis, whether to accept such a submission or not.”

The Complainant states that it owns registrations of the mark MAKEMY, MAKEMYTRIP MYBUSINESS and MAKE MY DAY marks in Class 36 in India. According to the Complainant, the prior two marks pre-date the disputed domain name registration.

The Complainant also asserts that one of the distinguishing factors of the mark MAKEMYTRIP is “MAKEMY”, which is a registered trademark and differentiates the Complainant’s goods and services from those of the others.

Needless to mention, this information and the related material was available with the Complainant at the time of filing the Complaint and the Complainant has not explained “why it was unable to provide the information contained therein in its complaint” as indicated in [WIPO Overview 3.0](#), section 4.6 quoted above.

In its Supplemental filing, the Complainant has refuted the Respondent’s claims of the registration and use of the disputed domain name since 2008, the Complainant highlights the discrepancy between the Respondent’s claim and the Whois extracts, which show the registration date as November 8, 2017, and questions the authenticity of the documents submitted by the Respondent. Furthermore, the Complainant alleges that the Respondent’s Internet archives indicate that they did not use the disputed domain name for any goods or services until at least 2014. In addition, the Complainant claims that the website was also unavailable for a long period between 2015 and 2020 (including a brief period when it was listed for sale). It alleges that the current website of the Respondent is of recent origin. Lastly, the Complainant highlights that the Respondent filed the trademark application on a “proposed to be used” basis only on May 17, 2023. Therefore, the Respondent has no legitimate or prior use of the disputed domain name.

At this point, the Panel understands that the Complainant could not have anticipated the claim of disputed domain name registration nor use of the same from February 25, 2008, particularly given that neither in the Whois records revealed the disputed domain name to be registered since then nor was the trademark application filed by the Respondent claiming use of the mark MAKEMYPAlSA from 2008.

Be that as it may, an exception is being made and the Panel allows and admits the Complainant’s Supplemental Filing but only as to that limited registration timing matter.

Noting the outcome of the dispute, the Panel finds that here is no need in the circumstances for the Respondent to make further submissions.

B. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. [WIPO Overview 3.0](#), section 1.7.

The Complainant has shown rights in respect of a trademark and service marks for MAKEMY and MAKEMYTRIP for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark MAKEMY is reproduced and is therefore recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the term "paisa" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

The Panel finds that, before notice to the Respondent of the dispute, the Respondent appears to have used or at least made demonstrable preparations to use the disputed domain name in connection with a bona fide offering of services insofar as a literal reading of the Policy elements are concerned. [WIPO Overview 3.0](#), section 2.2. The Complainant, in this case, has acknowledged in its supplemental filing that the disputed domain name has been linked to an active website, albeit intermittently, at least since 2014. In the said website, the Respondent has been offering its services in a what appears to be an otherwise bona fide manner.

The services offered under the disputed domain name supports the claimed purpose and the Panel therefore finds the second element of the Policy has not been established.

D. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The evidence in the case file as presented leaves open the question as to whether the Respondent's aim in registering the disputed domain name was to profit from or exploit the Complainant's trademark. It would be important to mention here that there is competing evidence as to the registration date: the Respondent claims the disputed domain name was registered as on February 25, 2008, through a vendor (the invoice

does not actually list the domain name but does say “Make My Paisa [Website]”) and has presented the screen prints of the website from June 2008, extracted from the Internet Archive, “www.archives.org”. At the same time, while its other marks date from 2011 (and its domain name from 2000), the Complainant's trademark MAKEMY, which is found in the disputed domain name in its entirety, was registered by the Complainant in the year 2018 – and even this date is after the Registrar's confirmed registration date for the disputed domain name, albeit claiming use since August 2, 2000. The Complainant has not disclosed or relied upon a MAKEMYTRIP registration in Class 36 and was not able to show that the trademarks MAKEMY or MAKEMYTRIP were used in connection with financial services at the time of the disputed domain name's registration. Thus, the disputed domain name was registered prior to the registration of the mark “MAKEMY”. Moreover, the Complainant has not adduced any evidence of use and/or reputation as attached to the mark “MAKEMY” stand alone. The question of profiting or exploiting the rights that were not established at the time of registration of the disputed domain name does not arise.

It is the admitted position that the Complainant commenced its activities primarily as a travel industry in 2000 onwards and that they diversified into finance subsequently. The Complainant claims to offer financial services under the domain names <payments.makemytrip.com> and <fxkart.com>. Of these, the first is not available to public and upon inserting this URL in the search box online, an “access denied” message pops up. On the other hand, <fxkart.com> was registered on August 7, 2014, as per Whois database. Moreover, the Complainant has not clearly demonstrated from when and how the financial services are being offered.

The Panel also notes that the Respondent has not denied knowledge of the Complainant and that they are into travel industry but denies having knowledge about the financial services, allegedly being offered by the Complainant. Moreover, there does not appear to be any pattern or history indicating bad faith registration of domain name on behalf of the Respondent nor is there any evidence that the disputed domain name was registered for the purpose of disrupting the business of a competitor.

The Panel finally notes that insofar as the Respondent admitted being aware of the Complainant's MAKEMYTRIP trademark at the time of registration, and while it is certainly conceivable that the disputed domain name was registered and used to evoke the Complainant's mark, this raises a more complicated trademark law question and requires further and substantial enquiry, which the Policy does not permit nor able to deal with.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Meera Chature Sankhari/

Meera Chature Sankhari

Sole Panelist

Date: February 8, 2024