

ADMINISTRATIVE PANEL DECISION

DP World FZE v. Gunmeet Chadha

Case No. DAE2023-0002

1. The Parties

The Complainant is DP World FZE, of United Arab Emirates (“UAE”), represented by Rouse and Co. International, UAE.

The Respondent is Gunmeet Chadha, UAE.

2. The Domain Name and Registrar

The disputed domain name <searates.ae> (the “Domain Name”) is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 10, 2023. On May 12, 2023, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the Domain Name. On May 15, 2023, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 16, 2023. In accordance with the Rules, paragraph 5(a), the due date for Response was June 5, 2023. The Respondent submitted its Response on June 5, 2023. The Complainant submitted a supplemental filing on June 26, 2023. The Panel issued Procedural Order No. 1 on July 17, 2023 in which the Panel admitted the Complainant’s supplemental filing and granted the Respondent until July 26, 2023 to file a response to the Complainant’s supplemental filing, which was filed by the Respondent on July 26, 2023.

The Center appointed Jeremy Speres, Nayiri Boghossian, and Dinant T. L. Oosterbaan, as the panelists in this matter on July 11, 2023. 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

Formed in 2005, the Complainant is a large provider of global supply chain solutions, specialising in cargo handling services and logistics, port terminal operations, and maritime services. The Complainant handles 70 million containers annually, representing roughly 10 percent of global container traffic, through 82 marine and inland terminals present in over 40 countries.

The Complainant, through a wholly owned subsidiary, acquired a business trading as SEARATES in 2020. That business has operated under the SEARATES mark since 2005 from the domain name <searates.com> as a community marketplace helping to arrange international cargo delivery through maintaining a tariff search engine for international shipping offered by third party shipping providers. The Complainant owns trade mark registrations for its SEARATES mark in numerous jurisdictions, including UAE Trade Mark Registration No. 370264 SEARATES (word) in class 39 with registration date November 24, 2022.

The Respondent, an individual based in the UAE, has over 20 years' experience in the shipping and logistics industries in the Middle East. The Respondent, amongst other shipping related businesses, has used the Domain Name to operate a digital sea freight platform under the "searetes.ae" mark since March 2021. The Respondent operates that platform through his UAE registered company – Sea Rates L.L.C – which was registered in March 2021.

In 2022, the Parties were involved in trade mark oppositions and non-use cancellation actions in UAE where the Complainant obtained the cancellation of the Respondent's trade mark registration "searetes.ae" based on prior use of the mark SEARATES, and successfully defended an opposition to its UAE Trade Mark Registration No. 370264 SEARATES (word) filed by the Respondent.

The Domain Name was registered on August 20, 2020. As at the date of drafting of this Decision, the Domain Name resolved to a website of the hosting provider stating that the Domain Name was not connected to a website yet. The evidence in the record, however, establishes that the Domain Name resolved to a website for the Respondent's sea freight platform from 2021 until some time after the Complaint was filed.

5. Parties' Contentions

A. Complainant

The Complainant contends as follows. The Domain Name is confusingly similar to the Complainant's registered SEARATES trade mark.

The Respondent must have been aware of and targeted the Complainant with a view to benefitting commercially from user confusion when he registered and used the Domain Name for the following reasons:

- The Complainant's mark is reputed in its industry, including in the Middle East where the Respondent is located.
- The Respondent has worked in the same industry as the Complainant, also in the Middle East, since 2005.
- The Respondent's website prominently includes an identical mark and imitates the general design and look and feel of the Complainant's website at "www.searates.com", using the same combination of colours (white and blue), the same composition, and similar images.
- The Respondent's website competes with the Complainant's SEARATES business.

B. Respondent

The Respondent contends as follows. The Respondent has legitimate interests in the Domain Name given that he has, through his company, operated a legitimate business under a mark comprising the Domain Name since 2021, and has been granted a commercial licence by the government of Dubai to trade as Sea Rates L.L.C. Transferring the Domain Name to the Complainant will be highly prejudicial to the Respondent's business.

The Respondent's good faith is evidenced by the following factors:

- Placing of a disclaimer on the Respondent's website and invoices, disassociating the Respondent's business from that of the Complainant.
- The term "sea rates" is a generic term for sea freight rates and no party should be able to monopolise it.
- The Parties' offerings are different, targeting different users.

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name is plainly identical to the Complainant's registered SEARATES mark.

The Complainant has satisfied the requirements of paragraph 6(a)(i) of the Policy.

B. Rights or Legitimate Interests

In light of what is discussed below in relation to bad faith, it is more likely than not that the Respondent's intention was to take advantage of the Complainant's reputation in its SEARATES mark for its own financial gain. The Respondent's usage of the Domain Name in these circumstances plainly cannot represent a *bona fide* offering of goods or services under paragraph 6(c)(i) of the Policy and cannot otherwise confer rights or legitimate interests under the Policy (*Sistema de Ensino Poliedro Vestibulares Ltda., Editora Poliedro Ltda. v. Anonymize, Inc. / STANLEY PACE*, WIPO Case No. [D2022-1981](#)).

The Complainant has satisfied paragraph 6(a)(ii) of the Policy.

C. Registered or is Being Used in Bad Faith

Cumulatively the following factors lead the Panel to conclude that it was, on balance of probabilities, the Respondent's intention, when registering and using the Domain Name, to take advantage of the Complainant's reputation in the SEARATES mark for the Respondent's commercial gain, in line with paragraph 6(b)(iv) of the Policy.

The Respondent claims that the term "sea rates" is generic and that the Complainant should not be entitled to monopolise it. There are three problems with this argument. Firstly, the term "sea rates" does not appear to be generic for tariffs applicable to sea freight. Rather, terms such as "shipping rates", "freight rates" and "carrier rates" appear to be the accepted terms in the industry's lexicon. In fact, the Respondent itself preferred to use the term "carrier rates" on its erstwhile website and did not use "sea rates" in that form. Secondly, the Respondent does not use the term in a descriptive way, in the form of "sea rates" (two words), as opposed to the composite form "searates". The former arguably has a suggestive or descriptive meaning; the latter is not a dictionary word and based on the evidence before the Panel does not form part of the lexicon of the industry other than as a trade mark referring to the Complainant. Thirdly, Internet searches for the composite term "searates", as used by the Respondent, reveal results overwhelmingly relating to the Complainant. This is so even if such searches are limited in time such that they return search results relating only to websites published before the Domain Name was registered. The Respondent therefore used

“searates” as a brand, not in any generic or descriptive sense, in circumstances where the term was by all appearances, at the time of registration and first use of the Domain Name, firmly associated with the Complainant’s business as a trade mark in the industry concerned.

The Complainant is a major global ports operator. It acquired the SEARATES business in 2020. The Panel’s independent searches of publicly available news reports reveal that such acquisition was widely publicised in industry trade publications, including those focussed on the Middle East, prior to registration of the Domain Name, and the Domain Name was registered within months of the Complainant’s acquisition being reported. Given this timing, and in light of the further indicators of bad faith discussed in this section, it is likely that the Respondent, having worked in the shipping industry in the Middle East since 2005, was made aware of the acquisition through this reporting or otherwise and sought to capitalise on the likely increased exposure of the SEARATES business after its acquisition by a major player.

The Complainant’s evidence establishes that the Respondent subscribed to the Complainant’s Digital Freight Alliance platform, which includes its SEARATES business, in November 2020 – three months after the Domain Name was registered. The invoice expressly identifies the SEARATES service as part of the Complainant’s offering. Although this occurred after the Domain Name was registered, it did occur very soon afterwards, and certainly before the Respondent began using the Domain Name in March 2021. Thus, there is direct evidence showing that shortly after the Domain Name was registered, and before it was put into use, the Respondent was exposed to the Complainant’s SEARATES mark. The fact that the Respondent sought out the Complainant’s services shortly after registering the Domain Name shows an awareness of the Complainant and its broader activities probably predating registration of the Domain Name and certainly before it was used.

The look and feel of the Respondent’s website incorporates a highly similar colour scheme to that of the Complainant’s website, with the Complainant’s colour scheme pre-dating the Respondent’s by many years. There are also less obvious similarities in the content and structure of the two websites, which, taken together, are unlikely to have been mere coincidence.

The Respondent argues that the Complainant’s services differ from the Respondent’s. Regardless of any specific differences, ultimately both platforms offer users a way to find means and rates for purposes of shipping goods by sea, and to that extent they are competitive.

The record shows that the Respondent offered to sell the Domain Name to the Complainant for AED 5,000,000 in response to the Complainant’s offer to refund the Respondent’s out-of-pocket expenses associated with the Domain Name. The mere fact that a party offers to sell a Domain Name for a premium is not conclusive proof of bad faith, and much will turn on whether such offer was unsolicited, and any rights or legitimate interests enjoyed by the respondent (*William Grant & Sons Limited v. Daniel Scotto*, WIPO Case No. [D2000-1656](#)). However, in this case the Complainant did not solicit the offer to purchase; it merely offered to refund expenses. The Panel finds that the Respondent’s unsolicited offer to sell the Domain Name for an amount far in excess of any normal out-of-pocket expenses (in the absence of direct evidence as to the same from the Respondent) is a further indicator of bad faith in the circumstances of this case. Selling the Domain Name to the Complainant may not have been the Respondent’s primary intention, for the purposes of paragraph 6(b)(i) of the Policy, but the Respondent’s conduct in this respect does point to a general intention to target the Complainant, and undermines the Respondent’s claims to have a genuine desire to run the platform operated at the Domain Name as a legitimate going concern.

The fact that the Domain Name was no longer in use at the time of drafting of this decision conflicts with the Respondent’s claims that he operates a legitimate business enjoying goodwill, and that he would be severely prejudiced if the Domain Name were to be transferred to the Complainant. Under the doctrine of passive holding, non-use does not prevent a finding of bad faith (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)) at section 3.3).

The Respondent applied a disclaimer to its invoices and website, although this only appears to have been applied after filing of the Complaint. Where the overall circumstances of a case point to a respondent’s bad faith, as they do in this case, the mere existence of a disclaimer cannot cure such bad faith. In such cases,

panels may consider the respondent's use of a disclaimer as an admission by the respondent that users may be confused ([WIPO Overview 3.0](#) at section 3.7). On balance, considering the cumulative effect of the factors addressed above, the Panel finds that the Respondent's disclaimer is a tacit admission of the Complainant's prior goodwill and the likelihood of confusion.

The Complainant has satisfied paragraph 6(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name, <searates.ae>, be transferred to the Complainant.

/Jeremy Speres/
Jeremy Speres
Presiding Panelist

/Nayiri Boghossian/
Nayiri Boghossian
Panelist

/Dinant Oosterbaan/
Dinant Oosterbaan
Panelist
Date: August 7, 2023