

ADMINISTRATIVE PANEL DECISION

MBC IP FZ LLC and MBC FZ LLC v. Hamersley Rebecca, shahids.tv
Case No. DTV2022-0002

1. The Parties

Complainant is MBC IP FZ LLC and MBC FZ LLC, United Arab Emirates, represented by BSA Ahmad Ben Hezeem & Associates LLP, United Arab Emirates.

Respondent is Hamersley Rebecca, shahids.tv, Australia.

2. The Domain Name and Registrar

The disputed domain name <shahids.tv> (the “Domain Name”) is registered with Name.com, Inc. (Name.com LLC) (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 7, 2022. On April 7, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On April 14, 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 and contact information in the Complaint. The Center sent an email to Complainant on April 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 18, 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 Respondent of the Complaint, and the proceedings commenced on April 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 20, 2022.

The Center appointed Robert A. Badgley as the sole panelist in this matter on June 2, 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 two Complainant companies are part of the MBC Group, and they and the MBC Group will be collectively referred to hereafter in the singular as “Complainant.” Founded in London, United Kingdom in 1991, Complainant subsequently moved its global headquarters to Dubai, United Arab Emirates.

Complainant describes itself as “one of the world’s leading companies in media and broadcasting services and entertainment events, with a large network of offices and business units.” Complainant states that it “runs and manages a number of well-known TV channels with a global audience.” Complainant’s main website is located at the domain name <mbc.net>.

Complainant not only owns and operates numerous satellite television channels, but it also owns and operates a web-based streaming service under the trademark SHAHID.NET. In 2019, this streaming service had more than 27 million active subscribers. According to the Complaint, the SHAHID streaming service “is considered the Netflix of the Arab world.”

Complainant’s SHAHID streaming service is available via the domain name <shahid.net>, a domain name Complainant has owned since 2000. Complainant also maintains a robust social media presence. For instance, its SHAHID page on Facebook has more than 14.3 million followers.

Complainant holds various trademark registrations for SHAHID.NET, including the mark SHAHID.NET registered in the European Union on August 17, 2011 under Reg. No. 009843913; and the mark SHAHID.NET registered on July 26, 2015, in the United Arab Emirates under Reg. No. 302136.

The Domain Name was registered on March 3, 2022. Complainant has provided evidence that the Domain Name resolved to a website which closely resembled Complainant’s own commercial website at the domain name <shahid.net>. Respondent’s web page bore the following purported copyright notice: “All rights reserved © MBC Group 2021.”

5. Parties’ Contentions

A. Complainant

Complainant contends that it has established all three elements required under the Policy for a transfer of the Domain Name.

B. Respondent

Respondent did not reply to Complainant’s contentions.

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- (ii) 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 Panel concludes that Complainant has rights in the trademark SHAHID.NET through registration and use demonstrated in the record. The Panel also concludes that the Domain Name is confusingly similar to that mark. The mark is clearly recognizable within the Domain Name. The Domain Name is comprised of the term "Shahid" from the SHAHID.NET mark plus the letter "S." This minor difference does not significantly reduce the confusing similarity between the Domain Name and Complainant's mark.

Complainant has established Policy paragraph 4(a)(i).

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Name, among other circumstances, by showing any of the following elements:

- (i) before any notice to you [Respondent] of the dispute, your use of, or demonstrable preparations to use, the Domain Name or a name corresponding to the Domain Name in connection with a *bona fide* offering of goods or services; or
- (ii) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Domain Name, even if you have acquired no trademark or service mark rights;
or
- (iii) you [Respondent] are making a 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 Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Name. Respondent has not come forward in this proceeding to articulate or prove any legitimate reason why she registered the Domain Name. Based on the content at the website to which the Domain Name resolved, it is obvious that Respondent's motive *vis-à-vis* the Domain Name was to create a website impersonating Complainant. This cannot possibly vest Respondent with a legitimate interest in respect of the Domain Name.

The Panel concludes that Complainant has established Policy paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that the following circumstances, "in particular but without limitation," are evidence of the registration and use of the Domain Name in "bad faith":

- (i) circumstances indicating that Respondent has registered or has acquired the Domain Name primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registration to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Name; or
- (ii) that Respondent has 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 Respondent has engaged in a pattern of such conduct; or

- (iii) that Respondent has registered the Domain Name primarily for the purpose of disrupting the business of a competitor; or
- (iv) that by using the Domain Name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

The Panel concludes that Respondent has registered and used the Domain Name in bad faith. The Panel incorporates its discussion above in the "Rights or Legitimate Interests" section. Again, it is obvious from Respondent's website that Respondent was aware of Complainant's SHAHID.NET trademark.

Complainant argues: "The only real explanation for the Respondent's conduct is that Respondent is laying the foundation for an illegal or fraudulent scheme, *i.e.*, the illegal publication of copyright protected material in order to circumvent the access controls implemented by the Complainant." Respondent has not denied this assertion, despite having had the opportunity to do so in this proceeding.

The Panel finds, on this undisputed record, that Respondent has engaged in bad faith use of the Domain Name by setting a website evidently designed to impersonate Complainant, ultimately for the purpose of ill-gotten financial gain.

Complainant has established Policy paragraph 4(a)(iii).

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 <shahids.tv> be transferred to Complainant.

/Robert A. Badgley/

Robert A. Badgley

Sole Panelist

Date: June 13, 2022