

## **ADMINISTRATIVE PANEL DECISION**

Majid Al Futtaim Properties LLC v. Ayman Bajnaid  
Case No. D2022-4129

### **1. The Parties**

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

The Respondent is Ayman Bajnaid, Saudi Arabia.

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

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

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 2, 2022. On November 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 2, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on November 2, 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 November 7, 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 November 8, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 28, 2022. The Response was filed with the Center on November 22, 2022.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on December 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 Complainant is a limited liability company registered in Dubai on February 4, 1994. It is part of the Majid Al Futtaim group of companies, established in 1992, which has operations in 15 countries and employs more than 40,000 people. The Complainant is a developer of shopping malls, hotels, and mixed-use community projects in the Middle East and North Africa. It is presently the owner and operator of 29 shopping malls, 13 hotels, and five mixed-use communities, and has further developments underway.

The Complainant states that it began its use of the “Matajer” brand in connection with the operation of the “Matajer Al Quoz” mall, opened in 2011, with other similarly named malls opening in 2012. The Complainant has now expanded said brand into a neighborhood retail concept. The Complainant provides information relating to its various “Matajer” shopping malls via the website “www.matajersharjah.com”, the corresponding domain name for which was registered on May 10, 2016.

The Complainant’s affiliated joint-venture company, Sharjah Holding Co. J.S.C. (“Sharjah Holding”) owns various trademark registrations for MATAJER. For example, Sharjah Holding owns Bahrain Registered Trademark No. 87486 for the device and word mark MATAJER (in English and Arabic), registered on January 23, 2013, in Class 36 (insurance, financial affairs, monetary affairs, and real estate affairs). The Complainant itself owns registered trademarks such as M MATAJER AL RAHMANIYA, and MATAJER AL MUSALLA that do not require to be further described here.

The disputed domain name was registered on August 2, 1999. The disputed domain name does not resolve to any active website. The Respondent is a private individual with an address in Jeddah, Saudi Arabia. The Respondent maintains that it is the original registrant of the disputed domain name and has exhibited registrar correspondence demonstrating that it received the renewal notices for the disputed domain name on August 12, 2001, when the disputed domain name was renewed for two years, and on March 6, 2008, when the disputed domain name was renewed for five years. The two different email addresses to which these renewal notices were sent each correspond to the Respondent’s personal name.

#### **5. Parties’ Contentions**

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

In summary, the Complainant contends as follows:

Identical or confusingly similar

The Complainant’s affiliate is the owner of the MATAJER registered trademarks. Relationship documents show that Sharjah Holding’s shareholders are subsidiaries of the Complainant. The Complainant enjoys a substantial degree of public recognition in the “Matajer” brand and engages in related marketing and advertising, extending to social media such as YouTube, Facebook, Twitter, and Instagram. Said brand is also associated with the Complainant in entries at “www.wikipedia.com” and “www.google.com”. Accordingly the Complainant has established both registered and unregistered rights in the MATAJER trademark. The disputed domain name is identical to such mark, and confusingly similar to the M MATAJER AL RAHMANIYA, and MATAJER AL MUSALLA marks.

Rights or legitimate interests

There is no evidence that the Respondent owns any trademark rights in any way related to the disputed domain name. The Complainant has never authorized or licensed the Respondent to use the MATAJER

trademark, nor to seek the registration of a corresponding domain name. The Respondent is not affiliated with the Complainant in any way. The Complainant's operation of the "Matajer" brand dates back to 2011. There is no evidence of prior rights or legitimate interests vesting in the Respondent before the date of the Complainant's usage of said brand. The Respondent is not commonly known as the disputed domain name and its name does not resemble the disputed domain name in any manner. The disputed domain name does not resolve to an active website. Failure to make an active use of the disputed domain name is not a *bona fide* offering of goods or services or a legitimate noncommercial or fair use thereof. There is no evidence of demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services. Given the global fame of the Complainant's brands, there is no use to which the disputed domain name could be put that would confer any legitimate interest upon the Respondent. The disputed domain name will mislead Internet users and such a domain name does not confer rights or legitimate interests. Merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests upon the Respondent as such word has not been used in connection with the relied-upon dictionary meaning.

#### Registered and used in bad faith

The historic Whois does not provide records of the disputed domain name when it was registered in 1999. The first records available date from March 20, 2011, showing a last updated date of March 5, 2008, suggesting that this is when the Respondent acquired the disputed domain name. From May 5, 2018, the Respondent employed a privacy service on the Whois record. This occurred after the Complainant gained protection for the MATAJER trademark. This confirms the Respondent's bad faith registration of the disputed domain name.

The Respondent has not used the disputed domain name and there is no evidence of corresponding actual or contemplated good faith use. In light of the Complainant's trademark rights and business activities, any use of the disputed domain name will inevitably cause consumer confusion and/or infringement of the Complainant's trademark. The lack of any active use does not prevent a finding of bad faith. The Complainant's marks are well-known worldwide and in the Middle East countries where the Respondent has its address. Bad faith is clear from the fact that the disputed domain name is so obviously connected with a well-known trademark. The Respondent must have had the Complainant's trademark in mind since the mark is widely known and associated exclusively with the Complainant.

The Respondent acted in opportunistic bad faith when the disputed domain name was registered as it is so obviously connected with the Complainant's services that its selection by an unconnected party such as the Respondent suggests that it was registered with a deliberate intent to create an impression of an association with the Complainant. Registration of a well-known trademark can itself constitute registration in bad faith since it is unlikely that the registrant was unaware of the established rights in the mark at the time the disputed domain name was registered.

## **B. Respondent**

In summary, the Respondent contends as follows:

### General

Matajer refers to the Arabic word ( متاجر ) which means "shops" in Arabic. It can be written in different ways in English such as "matajer", "matajir" or "matager". The disputed domain name was registered in 1999, long before the registration of the Complainant's trademarks. The Complainant has not carried its tripartite burden of proof under the Policy. The Respondent is a good faith registrant of a generic word which is in wide use and is the original registrant since 1999. The Respondent has owned the disputed domain name for 23 years and some 12 years before the Complainant started to use its trademark.

#### Rights or legitimate interests

The Respondent has shown rights or legitimate interests in the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy. The fact that the disputed domain name is generic and usable for any variety of generic purposes establishes the Respondent's legitimate interest in the disputed domain name.

#### Registered and used in bad faith

The Respondent is a good faith registrant of the disputed domain name.

The issue of bad faith registration is moot once a panel under the Policy finds that a respondent has rights or legitimate interests in the domain name concerned.

Whatever the merits of the Complainant's argument as to use in bad faith, the complainant must prove both bad faith registration and bad faith use in order to prevail under the Policy. The Respondent registered the disputed domain name long before the Complainant's trademark registration. The Complainant did not have any rights in the disputed domain name at the moment of its registration.

As the Respondent has not registered the disputed domain name in bad faith, it has not violated any of the factors listed in paragraph 4(b) of the Policy or engaged in any other conduct that would constitute bad faith registration and use under the Policy. The Respondent did not register the disputed domain name primarily for the purpose of preventing the owner of the trademark from reflecting such mark in a corresponding domain name because the Respondent did not have knowledge of the Complainant prior to the Complainant contacting the Registrar and demanding the transfer of the disputed domain name. The Respondent did not intend to create a likelihood of confusion or disrupt the Complainant's business.

#### Doctrine of laches

If the Complainant believed the disputed domain name was used in conflict with its trademark rights it would have acted long ago. The Panel may consider the doctrine of laches as additional evidence towards the Respondent. Delay in bringing proceedings is likely to place a higher burden on a complainant attempting to prove a state of affairs long ago and may make it more difficult for a complainant to establish its case on the merits, particularly in relation to the second and third elements.

#### Reverse domain name hijacking

The Complainant had no *bona fide* basis for commencing this Complaint and is culpable for reverse domain name hijacking. This is an attempt to seize a domain name with no right to do so. The Complainant knows there is no plausible basis for the Complaint. The Complainant had to be aware that a generic word would not have protection under the Policy.

## 6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 first element assessment under the Policy is typically conducted in two parts. First, the Complainant must demonstrate that it possesses UDRP-relevant rights in a trademark. Secondly, the disputed domain name is compared to the trademark concerned in order to determine the question of identity or confusing similarity. The comparison usually proceeds on a relatively straightforward side-by-side basis, excluding the Top-Level Domain (“TLD”) as being required for technical purposes only. If the Panel considers that the disputed domain name appears to be identical to the trademark on the basis of this comparison, identity will generally be found. If the Panel finds that the trademark is otherwise recognizable in the disputed domain name, confusing similarity will usually be found.

In the present case, the Complainant claims rights in a registered trademark owned by a joint venture company in which it is a participant. Section 1.4.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”) notes that a trademark owner’s affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint. The Complainant has produced evidence of its affiliation with Sharjah Holding, the owner of the MATAJER trademark described in the factual background section above, by way of the Complainant’s consolidated financial statement, which lists its interest in Sharjah Holding, together with the commercial licenses of its subsidiaries, and the trading license of Sharjah Holding, which demonstrates that said subsidiaries are two of Sharjah Holding’s three partners to the extent of a 50% ownership. In these circumstances, it is not necessary to look beyond the MATAJER mark at the others owned by the Complainant directly, which feature the MATAJER element along with other words, or to consider the Complainant’s alleged unregistered trademark rights in said mark.

The registered mark in which the Complainant claims rights is a device and word mark, featuring the word MATAJER in both transliterated English and Arabic, together with a design of multi-colored interlocking shapes. The Panel is satisfied that the design elements may be severed from the word component, and that the Arabic word may be disregarded for the purposes of the comparison process, as a non-internationalized domain name such as the disputed domain name contains ASCII characters only. Accordingly the Panel compares the non-Arabic word component of the trademark concerned with the Second-Level Domain of the disputed domain name and finds these to be identical.

The Respondent does not take issue with any of the Complainant’s submissions on this particular topic.

In all of these circumstances, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights, and accordingly, that the Complainant has carried its burden in respect of paragraph 4(a)(i) of the Policy.

## **B. Rights or Legitimate Interests**

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel’s finding in connection with registration and use in bad faith, it is unnecessary for the Panel to address the issue of the Respondent’s rights or legitimate interests in the disputed domain name.

## **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out of pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location".

It should be noted particularly that as the above examples are expressed to be non-exclusive, they do not describe the only circumstances in which bad faith registration and use may be found under the Policy. Nevertheless, it is generally accepted that for a finding of bad faith to be made, there must be a degree of targeting of the Complainant or its mark to be found in the Respondent's registration and use of the disputed domain name, and/or at least that the Respondent must have had the Complainant or its trademark in mind when registering the disputed domain name (see, for example, *Flexspace No 2 LLP v. Michael Angelo Justiniano, Flexspace AS*, WIPO Case No. [D2021-4135](#)).

As noted in section 3.8 of the [WIPO Overview 3.0](#), subject to certain scenarios involving nascent, usually as-yet unregistered trademark rights, panels under the Policy will not normally find bad faith on the part of a respondent where it registers a domain name before the complainant's trademark rights accrue. That is the situation in the present administrative proceeding. The Complainant notes that it adopted the MATAJER trademark in 2011, and the earliest registered mark which it has supplied appears to date from January 2, 2012, with a filing date of June 23, 2011.

The Respondent asserts that it has owned the disputed domain name since 1999, and has provided supporting evidence by way of the renewal notice of August 12, 2001, which demonstrates to the Panel's satisfaction by the email address to which it was addressed that the Respondent was likely to have been the registrant of the disputed domain name at least by that date. That is around a decade before the Complainant adopted the MATAJER trademark, and in those circumstances, there is no reasonable case that the Respondent could have registered the disputed domain name in anticipation of the Complainant's trademark rights coming into being. Accordingly, the registration of the disputed domain name cannot have been made to target the Complainant's rights in its MATAJER trademark.

Furthermore, the Panel takes note of the panel's similar finding in *Majid Al Futtaim Properties LLC v. Ayman Bajnaid*, WIPO Case No. [D2022-4130](#), where the panel found that the Complainant's own evidence demonstrated that "Matajer" is a term which means 'shops' in Arabic. The Respondent asserts, and the Panel believes, that the Respondent registered the disputed domain name (not knowing of the Complainant) because the disputed domain name is a term that means 'shops' in Arabic and thus has intrinsic value as a domain name". In the absence of any evidence to the contrary, noting the identical Parties and fact patterns, the Panel here concurs.

In these circumstances, the disputed domain name cannot have been registered in bad faith within the meaning of the Policy. It is unnecessary to examine the question of use in bad faith as the Complainant must demonstrate the conjunctive elements of both registration and use in bad faith to make out a case under the third element. Accordingly, the Complainant has failed to carry its burden in terms of paragraph 4(a)(iii) of the Policy and the Complaint fails.

#### **D. Reverse Domain Name Hijacking ("RDNH")**

RDNH is defined in paragraph 1 of the Rules as "using the Policy in bad faith to attempt to deprive a registered domain-name holder of a domain name". Paragraph 15(e) of the Rules provides that if, after considering the submissions, the panel finds that the complaint was brought in bad faith, for example in an

attempt at RDNH or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding. Mere lack of success of a complaint is not sufficient for a finding of RDNH by itself.

The typical circumstances in which panels will issue a finding of RDNH are set out in section 4.16 of the [WIPO Overview 3.0](#). The listed example which is particularly relevant in the present case is the first, namely facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to the filing of the complaint, including relevant facts on the website at the disputed domain name or readily available public sources such as the Whois database.

It is clear that the Complainant knew that the original registration date of the disputed domain name was August 2, 1999, although due to a lack of historic Whois records from that date, the Complainant did not know whether the Respondent was necessarily the registrant at that time. In an attempt to bring the Respondent's likely date of acquisition closer to the date on which the Complainant began to use the MATAJER trademark, the Complainant notes that the first available historic Whois record that it could find showing the Respondent's interest dates from March 20, 2011<sup>1</sup>. As this record shows a "last updated" date of March 5, 2008, the Complainant speculates that the Respondent must have acquired the disputed domain name at that time. This date, therefore, is the foundation of the Complainant's allegation of registration in bad faith. However, even if the Respondent had acquired the disputed domain name as late as March 2008, there is no stateable case to be made that the Respondent was thereby seeking to target the Complainant's then non-existent rights.

The Complainant knew, or should have known, that the foundations of its case on registration in bad faith were on less than solid ground unless it could identify that the disputed domain name was acquired by the Respondent after it established its rights in the MATAJER mark, or in anticipation of these coming into being. Yet it does not appear to have called upon the Respondent to state when it acquired the disputed domain name by way of pre-complaint correspondence. Had it done so, and had the Respondent failed to reply to that inquiry, the Complainant might conceivably have avoided a finding of RDNH here. However, the likelihood is that the Respondent would have answered any such correspondence by providing the evidence which it has tendered along with the Response in this case, and the entire administrative proceeding would have been avoided. Instead, the Respondent has been put to the time and effort of preparing a Response to a Complaint which could never have succeeded on the basis of the record before the Panel. The Complainant is represented by professional advisers in this proceeding, and it is clear from the cases listed in the Complaint, and the citations made to the [WIPO Overview 3.0](#), that the Complainant either was, or ought to have been, familiar with the Policy and associated jurisprudence.

In all of these circumstances, a finding of RDNH is merited in this case, and the Panel declares that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

## 7. Decision

For the foregoing reasons, the Complaint is denied.

*/Andrew D. S. Lothian/*

**Andrew D. S. Lothian**

Sole Panelist

Date: December 22, 2022

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<sup>1</sup> In fact, a historic Whois record for the disputed domain name of a considerably earlier date is available from "www.domaintools.com", namely an entry from May 7, 2007, which demonstrates that the Respondent was the registrant as at that date. With regard to the Panel conducting limited factual research into matters of public record, such as consulting relevant publicly available websites, see section 4.8 of the [WIPO Overview 3.0](#).