

ADMINISTRATIVE PANEL DECISION

MakeMyTrip (India) Private Limited v. Ram Chilukuri

Case No. DCO2022-0069

1. The Parties

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

The Respondent is Ram Chilukuri, India, self-represented.

2. The Domain Name and Registrar

The disputed domain name <makemytrip.co> 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 August 30, 2022. On August 31, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 31, 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 (Registration Private, Domains By Proxy, LLC United States of America) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 1, 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 September 1, 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 September 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 5, 2022. On October 4, 2022, the Respondent requested an extension to the Response due date. On October 4, 2022, in accordance with paragraph 5(b) of the Rules, the Center confirmed the due date for Response was extended to October 9, 2022. The

Response was filed with the Center on October 8, 2022. On October 18, 2022, the Center received Supplemental Filing filed by the Complainant.

The Center appointed Shwetashree Majumder as the sole panelist in this matter on October 20, 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 company registered in India and was incorporated in the year 2000. The Complainant has registered its trademark MAKEMYTRIP in many jurisdictions, including India. In India, it is the registrant of MAKEMYTRIP (figurative mark) since April 25, 2006 under Indian trademark number 1447892. The Complainant also owns several domain names containing the trademark MAKEMYTRIP, the earliest of which is the domain name <makemytrip.com> registered on May 8, 2000. According to the historical capture of the website “www.makemytrip.com” provided by the Complainant, the Complainant has been offering a range of travel services and ancillary travel requirements since at least 2001.

The disputed domain name <makemytrip.co> has been registered on July 21, 2010. The disputed domain name resolves to an active website offering travel services, IT services, and wedding planning services.

5. Parties' Contentions

A. Complainant

The Complainant states that it is one of the largest travel companies in India and has presence all across India and in several other countries around the world. The Complainant states that it changed its trade name to MakeMyTrip.com Pvt. Ltd on August 2, 2000, and since then was using the mark MAKEMYTRIP for its business activities. Through the Complainant's website “www.makemytrip.com” and other platforms, the Complainant offers a range of travel services and ancillary travel requirements such as facilitating access to travel insurance, visa assistance, and forex exchange.

The Complainant's trademark MAKEMYTRIP has been recognised by another UDRP panel in *MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org*, WIPO Case No. [D2012-0691](#). The Complainant has claimed statutory rights in its mark MAKEMYTRIP and has relied on Indian trademark registrations for MAKEMYTRIP dated May 25, 2011, and June 23, 2015 (Annex 20 of the Complaint).

The Complainant claims to have acquired goodwill and reputation for its mark MAKEMYTRIP. The Complainant has submitted certified particulars of its annual turnover in the financial year 2019-2020 (Annex 10), extracts of its apps available on Google Play Store and Apple App Store (Annex 8), copies of awards received (Annex 9), images of awards conferred upon it (Annex 15), and extracts of its social media pages (Annex 17). The Panel notes that some of these Annexes predate the date of registration of the disputed domain name.

The Complainant states that the disputed domain name <makemytrip.co> is identical to its mark MAKEMYTRIP. The Complainant contends that the Respondent has no rights of legitimate interests in the disputed domain name. The Complainant states that the Respondent offers identical services on its website and hence has used the disputed domain name to intentionally attempt to attract, confuse, and profit from Internet users seeking the Complainant's products and services. The Complainant states that such use cannot constitute a *bona fide* offering of goods and services under the Policy. The Complainant also states that the Respondent is not commonly known by the term “makemytrip”, in accordance with paragraph 4(c)(ii) of the Policy, and is not making a noncommercial or fair use of the disputed domain name.

The Complainant asserts that the Respondent registered and is using the disputed domain name in bad faith. The Complainant has submitted that the Respondent's registration and use meets the criteria laid down in paragraphs 4(b)(iii) and (iv) of the Policy.

B. Respondent

The Respondent has contended the following in its response:

- i. The Respondent claims that the disputed domain name <makemytrip.co> was registered on July 21, 2010, which is prior to the Complainant's registration of its mark MAKEMYTRIP, which was on May 25, 2011.
- ii. The Respondent states that the disputed domain name consists of a mark that is generic and descriptive to guide internet users to explore its website.
- iii. The Respondent claims that the disputed domain name is used for *bona fide* offering of services, including, renting/ leasing, offshore outsources, corporate events, wedding planning, IT services, Goa tour packages, yoga classes etc., which are not identical or in conflict with the Complainant's services.
- iv. The Respondent further argues that it has not received any complaints in the last 12 years since the commencement of its business, proving that the disputed domain name was never registered to disrupt the business of the Complainant.
- v. The Respondent states that the Complainant was not popular at the time of the registration of the disputed domain name.
- vi. That the Respondent's disputed domain name does not include the letter "m" in its Top-Level Domain ".co" in order to shorten the domain name and the same is not done in bad faith.

C. Complainant Supplementary Filing

The Complainant states that its mark MAKEMYTRIP (figurative mark) under Indian trademark number 1447892 is registered since April 25, 2006, which is prior to the disputed domain name. The Complainant claims to have common law rights in its mark MAKEMYTRIP prior to the disputed domain name. The Complainant has filed extracts of its website and internet archives that date back to the year 2001 as Annex 5 of the complaint. The Complainant states that the UDRP panel in *MakeMyTrip (India) Pvt. Ltd. v. Raj Kumar / PrivacyProtect.org*, WIPO Case No. [D2012-0691](#), acknowledged that the Complainant commenced operation in the year 2000.

The Complainant states that the Respondent admits to offer travel and tour services, which is in direct conflict with the Complainant's business under its mark MAKEMYTRIP. The Complainant argues that mere delay between registration of the disputed domain name and filing of the complaint does not bar the Complainant from relief.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a disputed domain name, a complainant must demonstrate each of the following:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

- (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. Supplementary Filing

Neither the Rules nor the Supplemental Rules make provision for supplemental filings, except at the request of the panel (see Rules, paragraph 12). Paragraph 10 of the Rules enjoins the panel to conduct the proceeding “with due expedition”, but also vests the panel with the authority to determine the admissibility, relevance, materiality, and weight of the evidence. Therefore, UDRP panels are typically reluctant to countenance delay through additional rounds of pleading and normally accept supplemental filings only to consider material new evidence or provide a fair opportunity to respond to arguments that could not reasonably have been anticipated. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.6, and cases cited therein.

The Complaint provides contentions and evidence of the Complainant’s trademark rights and related activities prior to the registration of the disputed domain name (albeit, apparently inadvertently, omitting evidence of a specific Indian trademark registration prior to the registration of the disputed domain name). The Response contends that the registration of the disputed domain name predates the earliest Indian trademark registration of the Complainant, that this fact impacts the analysis of the three elements of paragraph 4(a) of the Policy, and that the Complaint should accordingly be denied. The Complainant’s Supplemental Filing offers a rebuttal to the Respondent’s arguments that the disputed domain name is prior to the Complainant’s rights in the mark. Hence, the Panel finds it appropriate to exceptionally take the Complainant’s Supplemental Filing into consideration to the degree that such filing substantiates contentions in the Complaint that the Complainant had trademark rights prior to the registration of the disputed domain name.

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has produced trademark registration certificates in India, and other jurisdictions, in respect of the mark MAKEMYTRIP.

In the present case, the Complainant’s mark MAKEMYTRIP is incorporated and clearly recognizable in the disputed domain name. The [WIPO Overview 3.0](#), section 1.7, provides the consensus view of UDRP panels: “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing.”

The country code Top-Level Domain (“ccTLD”) “.co” is generally disregarded for the purposes of comparison under this element.

In view of the above-mentioned findings, the Panel concludes that the disputed domain name is identical to the Complainant’s trademarks and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

C. Rights or Legitimate Interests

The consensus view of the second element under paragraph 4(a) of the Policy requires the Complainant to establish on a *prima facie* basis that the Respondent lacks rights or legitimate interests in the disputed domain name. The Panel notes that the Complainant has already submitted evidence that it holds exclusive rights in the trademark MAKEMYTRIP by virtue of statutory registrations and by common law use since at least 2001, which rights have accrued in the Complainant’s favour.

The view of previous UDRP panels on the burden of proof under paragraph 4(a)(ii) of the Policy has been summarized in section 2.1 of the [WIPO Overview 3.0](#), which states: “[...] where a Complainant makes out a *prima facie* case that the Respondent lacks rights or legitimate interests, the burden of proof on this element shifts to the Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name.”

According to paragraph 4(c)(ii) of the Policy, the Respondent may demonstrate its rights to or legitimate interests in the disputed domains by proving that before any notice to the Respondent of the dispute, the Respondent’s use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services.

The Respondent admits to offering Goa tour packages on its website. Upon review of the Respondent’s website this Panel notes that the Respondent also offers rental/lease of properties in Goa. These services are related to or competing with the Complainant’s business under its mark MAKEMYTRIP. The Respondent purportedly also offers IT services. This Panel is unable to agree with the Respondent’s statement that the service offerings under the disputed domain name are wholly different from or unrelated to the Complainant’s service offerings. Accordingly, it cannot be said that the disputed domain name is being used in connection with a *bona fide* offering of services.

On the contrary, the adoption of an identical mark in the disputed domain name, particularly in relation to similar service offerings, carries a high risk of implied affiliation (see section 2.5.1 of the [WIPO Overview 3.0](#)). Moreover, the Respondent claims to have chosen the disputed domain name because of its descriptive meaning, and the “.co” ccTLD was used to create a shorter domain name (presumably in reference to the “.com” TLD) for a better user experience. However, in the full context of the case, noting in particular the identical adoption of Complainant’s trademark in the disputed domain name and the similarity to the Complainant’s domain name registered in 2000 – different only in the use of the “.com” TLD, the Panel does not consider the Respondent’s vague contentions regarding its choice of domain name convincing, but rather finds it likely that the Respondent was aware of and sought to trade off the reputation of the Complainant and its trademark.

The Respondent’s use of the disputed domain name for commercial activity also contradicts a claim of any fair, let alone legitimate, use.

Thus, the Respondent has failed to sufficiently rebut the Complainant’s *prima facie* case that the Respondent lacks rights to or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

In order to prevail under the Policy, the Complainant must demonstrate that the disputed domain name has been registered and is being used in bad faith according to paragraph 4(a)(iii) of the Policy. According to the Policy, bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark (see, section 3.1 of the [WIPO Overview 3.0](#)).

This Panel does not agree with the Respondent’s statement that at the time of registration of the disputed domain name, the Complainant’s mark was non-existent. This is simply not true if one peruses the timeline of the Complainant’s formation, activities, and trademark use (and relating evidence) identified in the Complaint, and as further substantiated by the Complainant’s Indian trademark registration number 1447892. Noting the identical nature of the disputed domain name, as well as the Complainant’s domain name registration, provision of services under the MAKEMYTRIP trademark, and at least one trademark registration all being several years earlier than the registration of the disputed domain name, the Panel finds it likely that the Respondent was aware of and sought to trade off the reputation of the Complainant and its trademark.

The Respondent's website provides holiday packages which can be said to be related to and competing with the Complainant's business. In the backdrop of the findings under the second element, it is apparent that the Respondent's conduct is demonstrative of bad faith registration and use set out at paragraph 4(b)(iv) of the Policy, namely that, by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) of Policy.

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 disputed domain name <makemytrip.co> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: November 3, 2022