

ADMINISTRATIVE PANEL DECISION

Mahindra and Mahindra Limited v. Vaibhav Agarwal
Case No. D2023-4383

1. The Parties

The Complainant is Mahindra and Mahindra Limited, India, represented by Saikrishna & Associates, India.

The Respondent is Vaibhav Agarwal, India.

2. The Domain Names and Registrar

The disputed domain names <aimahindra.com> and <mahindraai.com> are registered with OwnRegistrar, Inc. (the "Registrar").

3. Procedural History

The Complaints were filed with the WIPO Arbitration and Mediation Center (the "Center") on October 23, 2023. On October 24, 2023, the Center transmitted by email to the Registrar requests for registrar verification in connection with the disputed domain names. On October 25, 2023, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (WhoisSecure) and contact information in the Complaint.

The Center sent email communications to the Complainant on November 1, 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 a consolidated amended Complaint on November 6, 2023. On November 16, the Registrar confirmed the lock for both domain names.

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 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 6, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 12, 2023.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on December 19, 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

The Complainant is Mahindra and Mahindra Limited which is a company primarily engaged in manufacturing of automobiles in India. The Complainant owns several trademark registrations worldwide for MAHINDRA, among which are :

- Indian Trademark Registration No. 322911 for MAHINDRA, registered on February 10, 1977;
- Indian Trademark Registration No. 338997 for MAHINDRA stylised mark, registered on July 27, 1978;
- International Trade Mark Registration No. 1706287 for MAHINDRA stylised mark, registered on August 09, 2022.

The Complainant's trademark MAHINDRA has been declared as a well-known mark by the Supreme Court of India and is also included in the list of well-known trademarks maintained by the Indian Trademarks Office.

The Complainant also operates on the Internet, its main website being "www.mahindra.com".

The Complainant provided evidence in support of the above.

According to the Whois records, the disputed domain names were registered on May 22, 2023. At the time of filing the Complaint, the disputed domain names were parked with pay-per-click advertisement links on them. Some of such links included advertisements from Complainant's rival car manufacturers. The parked webpages also showed that the disputed domain names were available for sale for USD 3,499 each. However, as of date of this decision, the disputed domain names have no pay-per-click advertisement links.

As disclosed by the Registrar, the Respondent is based in India. Otherwise, no information is known about the Respondent.

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 names.

Notably, the Complainant contends that disputed domain names are confusingly similar to its trademark MAHINDRA. It has argued that the term "ai" as a suffix or prefix does not render the disputed domain names dissimilar from the trademark MAHINDRA. According to the Complainant, the term "ai" may be interpreted as an abbreviation of "artificial intelligence".

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names, since it has not been authorized by the Complainant to register the disputed domain names or to use its trademark within the disputed domain names, it is not commonly known by the disputed domain names, and it is not making either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names. The disputed domain names are parked with pay-per-click advertisements and several of these links are of Complainant's competitor's products in the same industry.

The Complainant asserts that its trademark MAHINDRA is a well-known trademark and has cited the order of the Supreme Court of India in support of this contention. The Complainant submits that the Respondent has

registered the disputed domain names in bad faith, since the Complainant's trademark MAHINDRA is well-known in several industries such as automotive, agriculture, construction, information technology. The Complainant argues that given the well-known character of its trademark MAHINDRA, the Respondent knew or should have known of its existence when they registered the disputed domain names.

The Complainant contends that the Respondent registered the disputed domain names for creating confusion with the Complainant's trademarks and to divert or mislead third parties for the Respondent's illegitimate profits.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

As per paragraph 5(e) of the Rules where a respondent does not submit a response, in the absence of exceptional circumstances, the panel may decide the dispute based upon the Complaint. The Panel does not find any exceptional circumstances in this case preventing it from determining the dispute based upon the Complaint, notwithstanding the failure of the Respondent to file a response. A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.3.

It remains incumbent on the Complainant to make out its case in all respects under paragraph 4(a) of the Policy. Under paragraph 4(a) of the Policy, the Complainant must prove each of the following three elements required under by a preponderance of evidence:

- 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

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 Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other term "ai" may bear on assessment of the second and third elements, the addition of such term does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. The term "ai" in the disputed domain names used as a suffix and prefix to its trademark MAHINDRA, may be interpreted as an abbreviation for "artificial intelligence" and does not make the disputed domain names dissimilar to the Complainant's trademark MAHINDRA.

It is also well-accepted that a generic Top-Level Domain, in this case ".com", is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

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

B. 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.

Having reviewed the available record as set out above, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

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

C. 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. One of these circumstances is where a respondent has intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark.

Circumstances indicating that the domain name was registered primarily for the purpose of selling to the complainant or its competitor, for valuable consideration in excess of your documented out-of-pocket expenses, is also probative of bad faith under the third element of the Policy.

In the present case, the Panel notes that the Respondent has incorporated the Complainant’s mark in the disputed domain names in entirety. Further, the Respondent has pay-per-click advertisements links on the disputed domain names. The Panel is of the view that registration of the disputed domain names is an intentional attempt to attract, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark. Further, offering the disputed domains for sale for USD 3,499 each, is also indicative of Respondent’s bad faith. The Panel is convinced based on the reputation of the Complainant that the Respondent registered the disputed domain names primarily for the purpose of selling them to the Complainant (or its competitor) for a profit.

The Panel is of the view that the Complainant’s trademark MAHINDRA is a well-known trademark. As set out in [WIPO Overview 3.0](#), section 4.8, a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. Accordingly, the Panel perused the list of well-known trademarks maintained by the Indian Trademarks Office and found that Complainant’s trademark MAHINDRA is included in the list as a well-known mark.

In the present case, the Panel notes that Respondent is based in India where the Complainant’s trademark MAHINDRA is already popular and well-known. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark

by an unaffiliated entity can by itself create a presumption of bad faith. [WIPO Overview 3.0](#), section 3.1.4. Hence, the Panel is satisfied that the Respondent knew, or in any event ought to have known, of the mark's existence and renown.

The Panel finds that the Complainant has established the third element of the 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 names <aimahindra.com> and <mahindraai.com> be transferred to the Complainant.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: January 2, 2024