

## **ADMINISTRATIVE PANEL DECISION**

Advance Magazine Publishers Inc. v. Trilochan Bhattacharya, Digital Solutions

Case No. D2022-0916

### **1. The Parties**

The Complainant is Advance Magazine Publishers Inc., United States of America (“United States”), represented by Rahul Chaudhry & Partners, India.

The Respondent is Trilochan Bhattacharya, Digital Solutions, India, represented by Souvik Biswas, India.

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

The disputed domain name <glamour.business> is registered with BigRock Solutions Pvt Ltd. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 17, 2022, the Registrar 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 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 April 4, 2022. In accordance with the Rules, paragraph 5, the original due date for Response was April 24, 2022. On April 24, 2022, at the request of the Respondent and in accordance with paragraph 5(e) of the Rules, the due date for Response was extended to May 6, 2022. The Response was filed with the Center on May 5, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on May 24, 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 magazine publisher. Its subsidiary Conde Nast Publications Inc. publishes various magazines including Vogue, The New Yorker, Wired, Vanity Fair, GQ, and Glamour, a fashion magazine founded in 1939 that has been published under its current name since 1943. There are 4 million readers of the print version of Glamour, and 46 million unique users of the digital version. The Complainant owns multiple registrations for the trademark in multiple jurisdictions, including Indian trademark registration numbers 682147 and 1302821, both for GLAMOUR, registered from September 29, 1995 and August 16, 2004, respectively, and specifying goods and services in classes 16 and 41, respectively. Those trademark registrations remain current. The Complainant has also registered multiple domain names with the trademark GLAMOUR, including <glamour.com>, registered on May 17, 1994, that it uses in connection with a website where it publishes the United States version of its magazine and also redirects users to international versions of the magazine. This website received over 400,000 visits from India in 2021.

The Respondent is an individual named “Trilochan Bhattacharya” from the organization “Digital Solutions”.

The disputed domain name was created on October 21, 2016. It resolves to a website in English that publishes magazine articles about beauty, fashion, photography, and wellness. It was formerly titled “Glamour” with a half-moon logo. The privacy notice indicated that Glamour Business was published by the Respondent which, it claimed, published 12 of the world’s leading multi-media brands in India, listing 12 magazines actually published by the Complainant, including Glamour. According to evidence presented by the Complainant, many stories shown on the Respondent’s website (including the accompanying photographs in some cases) are identical to stories published elsewhere, including in Glamour, Teen Vogue, GQ, Emirates Woman, Who What Wear, Well+Good, US Weekly and mindbodygreen. The Respondent’s website displays advertising. The copyright notice on the website claims rights in the name of “Glamour.Business”. The menu at the bottom of the homepage is still headed “Glamour”.

The Complainant’s legal representative sent a cease-and-desist letter to the Respondent on April 27, 2021, to which the Respondent’s legal representative replied on May 11, 2021, denying all the allegations. Certain changes were then made to the Respondent’s website; notably, its title was changed from “Glamour” to “Glamworld”. The Complainant’s legal representative sent a follow-up letter on May 17, 2021 seeking removal of all references to the Complainant’s marks on the website and cancellation or transfer of the disputed domain name, to which the Respondent’s legal representative replied on July 4, 2021 offering to transfer the disputed domain name for USD 10 million or no less than USD 8 million.

#### **5. Parties’ Contentions**

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

The disputed domain name is identical to the Complainant’s GLAMOUR mark. The Complainant’s Glamour magazine has been in use in India since September 1985.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant never granted the Respondent any right to use or register the GLAMOUR mark. The Respondent is deliberately attempting to mislead traffic by falsifying a connection with the Complainant, which is not a *bona fide* offering of goods or services. The Respondent cannot claim to be commonly known by the disputed domain name. The Respondent earns revenue from the website because it displays advertising.

The disputed domain name was registered and is being used in bad faith. The Respondent was willing to sell the disputed domain name for USD 8 million (originally USD 10 million) which is clearly in excess of the Respondent's out-of-pocket costs. The Respondent copied the Complainant's privacy policy and seems to plagiarize the Complainant's articles regularly. The Respondent attempted to attract Internet users for financial gain by creating a likelihood of confusion as to the source of his website.

## **B. Respondent**

The Respondent ran his business under the identical name "Glamour" for five years without any objection. When the Respondent opened his website, it was never within his knowledge that the Complainant was also running an online business under the name GLAMOUR since 1939. The Respondent learnt of this fact for the first time when he received the cease-and-desist letter. So there is no question of infringement of the Complainant's trademark and copyright. The Respondent opened his website from the Registrar's sales team. The Respondent is running his business under the name GLAMOUR and his website has several followers and subscribers all over India and also outside India. If the disputed domain name is completely destroyed or obliterated then the Respondent shall suffer immeasurable losses from which a new business cannot be recovered. The disputed domain name has never been registered in bad faith and is not being used in bad faith by the Respondent. The Response reiterates that the Respondent, in a letter from its legal representative dated July 4, 2021, offered to transfer the disputed domain name to the Complainant for the price of USD 8 million.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (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. Identical or Confusingly Similar**

Based on the evidence submitted, the Panel finds that the Complainant has rights in the GLAMOUR mark.

The disputed domain name wholly incorporates the GLAMOUR mark as its operational element. Its only additional element is a generic Top-Level Domain ("gTLD") extension which, as a standard requirement of domain name registration, may be disregarded under the first element test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

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

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) 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; or

- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances above, the disputed domain name resolves to a website now titled “Glamworld” that displays magazine articles about beauty, fashion, photography, and wellness. The disputed domain name is identical to the Complainant’s GLAMOUR trademark and the associated website’s magazine articles are directly competitive with, or even the same as, those in the Complainant’s Glamour magazine. The Complainant submits that it has never granted the Respondent any right to use or register the GLAMOUR mark. The Panel notes that the term “glamour” also has a dictionary meaning which, in some circumstances, can generate a right or a legitimate interest in a domain name. See [WIPO Overview 3.0](#), section 2.10. In the present case, the word “glamour” describes, or is relevant to, the content of the Respondent’s website. However, the fact that the website reproduces stories and photographs from the Complainant’s Glamour magazine and other magazines without permission, indicates that the disputed domain name is being used to trade off the Complainant’s rights in the GLAMOUR mark. The Panel also notes that the Respondent’s site displays advertising. In the Panel’s view, these circumstances indicate that the Respondent is neither using the disputed domain name in connection with a *bona fide* offering of goods or services, nor making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent individual is identified in the Response as “Trilochan Bhattacharya” and his company “Digital Solutions”, not the disputed domain name. Apart from the former title of the Respondent’s own website, there is no evidence that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Turning to the Respondent’s arguments, he submits that he has run his business since 2016 and had received no objection until he received the Complainant’s cease-and-desist letter in April 2021. However, continuous use does not demonstrate a right or a legitimate interest in the disputed domain name if that use has been infringing upon the Complainant’s rights in its mark. The period of over five years that elapsed since the registration of the disputed domain name neither bars the Complainant from filing the Complaint nor prevents it from prevailing on the merits. See [WIPO Overview 3.0](#), section 4.17.

The Respondent submits that his website has followers and subscribers all over India and abroad. However, he does not substantiate this assertion nor provide any other evidence that he is commonly known by the disputed domain name. Accordingly, the Panel finds that the Respondent has failed to rebut the Complainant’s *prima facie* case.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

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

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith. The first and fourth circumstances are as follows:

- (i) circumstances indicating that [the respondent has] registered or [the respondent has] 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 [the respondent’s] documented out-of-pocket costs

directly related to the [disputed] domain name;

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain name was registered in 2016, years after the registration of the Complainant's GLAMOUR mark, including in India where the Respondent operates. The Respondent's website reproduces content from the Complainant's Glamour magazine and other magazines. The privacy policy on the Respondent's website was a copy of the Complainant's privacy policy and falsely claimed that the Respondent was the publisher of the Complainant's magazines, listing their titles, including Glamour. The Respondent denies that he knew of the Complainant not only when he registered the disputed domain name but also later, when he was reproducing stories, photographs and the privacy policy of the Complainant's Glamour magazine. The Panel considers this denial to be implausible. In view of the circumstances, the Panel considers that the Respondent had the Complainant's GLAMOUR mark in mind when he registered the disputed domain name.

As regards use, the disputed domain name resolves to a website formerly titled "Glamour" and now titled "Glamworld" that publishes magazine articles about beauty, fashion, photography, and wellness. The disputed domain name is identical to the Complainant's GLAMOUR trademark. The associated website's magazine articles are directly competitive with, or even the same as, those in the Complainant's Glamour magazine. The website displays advertising, which demonstrates that it is operated for commercial gain. In view of these circumstances and the findings in Section 6.B above, the Panel finds that by using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with the Complainant's GLAMOUR mark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on that website, within the terms of paragraph 4(b)(iv) of the Policy.

Moreover, the Respondent, via its legal representative, offered to sell the disputed domain name to the Complainant for at least USD 8 million. That offer was reiterated in the Response. The Panel considers this price to be far in excess of the Respondent's out-of-pocket costs directly related to the disputed domain name and, in any case, the Respondent documents no such costs. Accordingly, the Panel also finds that the circumstances of this case fall within the terms of paragraph 4(b)(i) of the Policy.

The Respondent alleges that if the disputed domain name is completely destroyed or obliterated, he will suffer immeasurable losses. This allegation is not substantiated and, in any case, provides no justification where such losses stem from the bad faith registration and use of a domain name.

Therefore, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 name <glamour.business> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: June 7, 2022