

## **ADMINISTRATIVE PANEL DECISION**

Dishoom Limited v. Rohan Agarwal  
Case No. D2022-0949

### **1. The Parties**

The Complainant is Dishoom Limited, United Kingdom, represented by Dechert LLP, United Kingdom.

The Respondent is Rohan Agarwal, India.

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

The disputed domain name <dishoombombaycafe.com> 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 March 17, 2022. On March 17, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 21, 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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 22, 2022.

The Center appointed Nayiri Boghossian as the sole panelist in this matter on April 28, 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 operates in the field of restaurants since 2010 and has enjoyed great reputation and obtained awards and recognition.

The Complainant own trademark registrations for DISHOOM and BOMBAYCAFE such as:

- European Union registration No. 007404239 registered on June 10, 2008, for DISHOOM;
- European Union registration No. 009305475 registered on August 10, 2010, for BOMBAYCAFÉ;
- United Kingdom registration No. 907404239 registered on November 18, 2008, for DISHOOM;
- United Kingdom registration No. 909305475 registered on August 19, 2010, for BOMBAYCAFÉ;
- India registration No. 2702284 registered on March 20, 2014, for DISHOOM;
- India registration No. 2702285 registered on March 20, 2014, for BOMBAY CAFÉ DISHOOM.

The disputed domain name was registered on February 2, 2022, and resolves currently to a webpage stating “Future home of something quite cool”. On February 2, 2022, the website contained the following message “Dishoom Bombay Café Our Café is opening very soon”. On March 7, 2022, it contained sponsored links related to food and restaurant services.

#### 5. Parties’ Contentions

##### A. Complainants

The Complainant contends that the disputed domain name is confusingly similar to a trademark or service mark in which the Complainant has rights. The generic Top-Level Domain (“gTLD”) “.com” should be disregarded. The disputed domain name consists of the Complainant’s both trademarks and is therefore identical to its trademarks. The use of both trademarks of the Complainant strengthens the association with the Complainant and also indicates that registration is done with the intent of taking advantage of internet users who are looking for the Complainant’s website.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name was registered around 12 years after the Complainant’s business was founded and therefore the Respondent must have been aware of the Complainant and its trademarks and reputation. The Respondent registered the domain name because (i) the Complainant and its trademarks are well known (ii) the use of the domain name would create association with the Complainant’s business (iii) the domain name would attract Internet traffic. In the alternative, the Respondent had constructive knowledge of the Complainant and its trademarks. This is not a *bona fide* registration. The Respondent is not making a legitimate non-commercial or faire use of the domain name without the intent for commercial gain. The website to which the disputed domain name resolves has been a holding page advertising the opening of the “Dishoom Bombay Café”. There has been preparation for commercial trade under the name “Dishoom Bombay Café”, which is not in connection with a *bona fide* offering of goods or services nor is fair use as it suggests affiliation with the Complainant. The disputed domain name now directs to a parking page containing pay-per-click (“PPC”) links to products that are identical or similar to the goods and services of the Complainant. The Respondent must be generating revenue from such links. The Complainant did not authorize the Respondent to use its trademarks in the disputed domain name. The Respondent is not commonly known by the disputed domain name or the trademarks.

The Complainant contends that the disputed domain name is registered and is being used in bad faith. The Respondent knew of the Complainant’s trademarks and is attempting to trade off the Complainant’s reputation and confuse Internet users and attract them to its website. The Respondent has attempted to make commercial use of the domain name by hosting a website advertising the opening of “Dishoom Bombay Café” and aims at disrupting the business of the Complainant. The Respondent aims at misleading users into believing that the disputed domain name is owned, affiliated, endorsed, operated or authorized by the Complainants. The disputed domain name dilutes the Complainant’s trademarks. the Respondent was aware of the Complainant and its trademarks or at least had constructive knowledge. The disputed domain

name is confusingly similar to the Complainant's trademarks and aims at attracting Internet traffic. The disputed domain name now directs to a parking page containing PPC links to products that are identical or similar to the goods and services of the Complainant. There has been a period of passive holding, which is another indication of bad faith in the current circumstances. The initial registrant of the domain name and the Respondent have engaged in cyber-flight. Use of privacy or proxy service is a further indication of bad faith.

## **B. Respondent**

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

## **6. Discussion and Findings**

### **A. Identical or Confusingly Similar**

The Complainant owns trademark registrations for DISHOOM, BOMBAYCAFE, and BOMBAY CAFÉ DISHOOM. The Panel is satisfied that the Complainant has established its ownership of the trademarks.

The disputed domain name incorporates the Complainant's trademarks DISHOOM and BOMBAYCAFE in their entirety and merely reorders the elements of the BOMBAY CAFÉ DISHOOM trademark, which remains recognizable in the disputed domain name. The gTLD ".com" is a standard registration requirement and as such is disregarded under the first element of confusing similarity test.

Consequently, the Panel finds that the disputed domain name is identical to the trademarks of the Complainant and that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

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

Under paragraph 4(a)(ii) of the Policy, a complainant must make at least a *prima facie* showing that a respondent does not have any rights or legitimate interests in the disputed domain name. Once such showing is made, the burden of production shifts to the respondent. In the instant case, the Complainant asserts that the Respondent is not authorized by the Complainant to use its trademarks. Therefore, the Complainant has established a *prima facie* case and the burden of production shifts to the Respondent to show that it has rights or legitimate interests.

In assessing whether the Respondent has rights or legitimate interests, the Panel finds it relevant to examine the various stages the webpage went through. The Complainant produced printouts of the webpage demonstrating the following:

- Currently, the webpage states "Future home of something quite cool".
- On March 7, 2022, the website contained sponsored links related to food and restaurant services.
- On February 2, 2022, the website stated, "Dishoom Bombay Café" and "Our Café is opening very soon".

On February 2, 2022, the website stated, "Dishoom Bombay Café" and "Our Café is opening very soon". This demonstrates that the Respondent was preparing to use the domain name in connection with a restaurant or café. However, the Respondent is using the trademarks belonging to the Complainant in order to provide services identical to those offered by the Complainant. This indicates that the Respondent is trying to trade off the reputation and the trademarks of the Complainant in order to confuse customers for commercial gain. Accordingly, even if the Respondent was indeed preparing to use the domain name in connection with offering goods or services, such potential use is not *bona fide* as it attempts to trade off the Complainant's reputation, goodwill, and trademarks.

On March 7, 2022, the website contained sponsored links related to food and restaurant services. Panels have found that the use of a domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links capitalize on the reputation and goodwill of the complainant's mark. The website to which the disputed domain name resolved contained a variety of PPC links which offer services related to food and restaurants. Bearing in mind that the Complainant's core business is the food and restaurant industry, it is the Panel's view that the Respondent was trying to capitalize on the reputation and goodwill of the Complainant's trademarks. In *Legacy Health System v. Nijat Hassanov*, WIPO Case No. [D2008-1708](#), it was found that the Respondent had no rights or legitimate interests as "the sole purpose of the disputed domain name is to resolve to PPC advertising websites and collect click-through revenue from advertising links. Such use demonstrates that the Respondent has used the disputed domain name to derive a commercial benefit. There is no indication on the website that the Respondent has made a *bona fide* use of the disputed domain name".

Currently, the webpage states "Future home of something quite cool". It is the Panel's view that the mere statement that the website will be used in the future is not sufficient to show preparations to use the domain name in connection with a *bona fide* offering of goods or services. The Respondent did not produce any material to demonstrate preparation for future use. Furthermore, even if the Panel accepts that the statement appearing on the webpage is sufficient to find that there will be a future offering of goods or services, given the history of the webpage set out above, the Panel finds it unlikely that the Respondent will make a *bona fide* offering of goods or services.

Lastly, the absence of Response by the Respondent allows the Panel to draw inferences and it is the Panel's view that under the circumstances, the absence of response corroborates that the Respondent lacks rights or legitimate interests in the disputed domain name (*Johnson & Johnson v. Daniel Wistbacka*, WIPO Case No. [D2017-0709](#)).

On the basis of all of the above, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

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

The Respondent must have been aware of the Complainant's trademarks as the Complainant's business and trademarks have a great reputation worldwide. Furthermore, the Respondent is based in India, the Complainant holds multiple trademark registrations in India, and the Complainant's business is an Indian restaurant concept and a number of outlets have been opened in India. Also, at one point the website to which the disputed domain name resolved mentioned the opening of a restaurant/café. Later, PPC links on the website related to food and restaurant services were posted. It is therefore clear that the Respondent was very much aware of the Complainant's business and its trademark and intended to trade off those trademarks.

Additionally, a parked page with sponsored links is an indication of bad faith under the circumstances. In *Mpire Corporation v. Michael Frey*, WIPO Case No. [D2009-0258](#), the Panel found that "While the intention to earn click-through-revenue is not in itself illegitimate, the use of a domain name that is deceptively similar to a trademark to obtain click-through-revenue is found to be bad faith use". Such conduct of using a domain name, to attract Internet users for commercial gain, would fall squarely within the meaning of paragraph 4(b)(iv) of the Policy.

Given the above, the Panel believes that the Respondent has registered the disputed domain name in order to trade off the reputation of the Complainant's trademarks. Accordingly, the Panel finds that the Complainant has satisfied paragraph 4(a)(iii) 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 <dishoombombaycafe.com> be transferred to the Complainant.

*/Nayiri Boghossian/*

**Nayiri Boghossian**

Sole Panelist

Date: May 10, 2022