

## **ADMINISTRATIVE PANEL DECISION**

Fortnum & Mason PLC v. Ahsan Iqbal  
Case No. D2022-2876

### **1. The Parties**

The Complainant is Fortnum & Mason PLC, United Kingdom, represented by Boulton Wade Tennant LLP, United Kingdom.

The Respondent is Ahsan Iqbal, United Kingdom.

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

The disputed domain name <fortnumandmason.com> (the “Disputed Domain Name”) is registered with 123-Reg Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 4, 2022. On August 5, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On August 8, 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 August 10, 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 August 12, 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 August 15, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 5, 2022.

The Center appointed Michael D. Cover as the sole panelist in this matter on September 9, 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 the proprietor of its FORTNUM & MASON trademark, a list of which is set out in Annex 4 to the Complaint. These are registered across a wide range of jurisdictions. In particular, European Union Trade Mark No. 9036278 was registered as of October 28, 2010, and United States of America Registration No. 0939980 was registered as of August 1, 1972, and United Kingdom Trademark No. UK00800877106 (figurative) was registered as of April 9, 2007.

These Trademark Registrations of the Complainant cover a range of both goods and services, including food and retail services. The Complainant's FORTNUM & MASON trademark has been used since 1707 in relation to its large department store in Piccadilly for retailing a wide range of household items but more particularly for food and tea. There are also FORTNUM & MASON shops at a number of travel centres around the world, including London Heathrow Airport, which opened more than 6 years ago, and St Pancras International Railway Station, in London.

The Complainant operates through partners in countries outside the United Kingdom, for example in the United States of America, Japan, and Europe. The Complainant also has an online portal at "www.fortnumandmason.com", the Complainant being the owner of the domain name <fortnumandmason.com>.

The Respondent's details were initially masked but were later confirmed as Ashan Iqbal, London.

The Disputed Domain Name was registered on May 8, 2022. The Disputed Domain Name has been redirecting to a geo-locked gambling website "www.iLucki.com".

#### **5. Parties' Contentions**

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

The Complainant submits that its trademark FORTNUM & MASON is well-known and that this trademark has been used extensively with respect to its large department store and the range of goods sold through the various channels that the Complainant uses. The Complainant notes that its store in Piccadilly, London is much visited by visitors and is particularly known for its afternoon teas and that, in the United Kingdom, the Complainant could be regarded as what it calls a "household name".

The Complainant also submits that it has rights in that trademark and these rights were in existence many years before the Complaint was filed and many years before the Disputed Domain Name was registered. The Complainant concludes that it is the clear owner of rights in FORTNUM & MASON by virtue of its trademark registrations and that its trademark has become extremely well known over its long history for the goods and services provided under that trademark. The Complainant notes that it is the owner of the domain name <fortnumandmason.com>, which was registered on April 3, 1997, which has acted as an online store and virtual shop window for its London home, as it calls it, and has so done for many years.

##### **Identical or Confusingly Similar**

Having recapped that the Complainant is the proprietor of a variety of rights in its trademark FORTNUM & MASON and also of the domain name <fortnumandmason.com>, notes that the Disputed Domain Name is <fortnumandmaison.com>. The Complainant submits that the Disputed Domain Name contains the identical

“fortnumand” element of the Complainant’s rights and that the only difference is that the Disputed Domain Name uses the word “maison” in place of “mason”, as in the Complainant’s trademark, and that the only difference is the additional “i”. The Complainant also states that the “fortnum” element is a highly distinctive word, which is not a dictionary term and that the Respondent has taken the dominant feature of the Complainant’s trademark with only a minor change.

The Complainant submits that there is a clear case of typosquatting here and that this is a case of “purposeful misspelling” and that, as a result of incorporating the dominant and distinctive elements of the Disputed Domain Name, the Respondent is clearly setting out to confuse consumers into believing that the Disputed Domain Name is under the control of the Complainant.

The Complainant concludes that the Disputed Domain Name must be considered confusingly similar to the rights of the Complainant.

### **Rights or Legitimate Interests**

The Complainant sets out that the Complainant’s position is that the Respondent has no rights or legitimate interests in the Disputed Domain Name.

Under the heading “Targeting of the Complainant”, the Complainant notes that the Disputed Domain Name was initially hidden behind a privacy shield and that, now that the privacy shield has been lifted, it can be seen that there is no indication that the Respondent is or has been known by the name “fortnum and maison”. The Complainant also states that the Complainant has no knowledge of the Respondent.

The Complainant confirms that it has not given permission, licensed or authorized the use by the Respondent of the Disputed Domain Name and continues that it is therefore clear that the Respondent cannot claim to have any rights or legitimate interests in the Disputed Domain Name due to being itself known by that name.

The Complainant submits that the Disputed Domain Name was chosen for the sole reason that it contains the identical elements of the Complainant’s core mark, subject to an obvious typographical error, designed to be as close as possible to the Complainant. The Complainant continues that the Respondent aim to confuse consumers into believing the Disputed Domain Name belongs to the Complainant and that this type of behaviour on the part of the Respondent is expressly noted as not providing the Respondent with a legitimate interest in the Disputed Domain Name.

The Complainant concludes that, for the reasons set out, it is therefore submitted that the Respondent has no cause to claim that it has a legitimate interest in the Disputed Domain Name.

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

The Complainant then turns to showing why the Disputed Domain Name has been registered and used in bad faith and notes that it is long established that the four examples of bad faith are only examples in the Policy are not an exhaustive list. The Complainant states that its primary argument falls within the fourth example of the Policy, which relates to using the Disputed Domain Name in any manner intentionally to attempt to attract to the Respondent’s website, for commercial gain, Internet users by creating a likelihood of confusion with the Complainant’s mark, as to the source etc of that website or the like.

The Complainant had stated in the Complaint that it believed that the address details of the Respondent were falsified. The Complainant continues in this section that the postcode given by the Respondent is not recognized by Google Maps nor the Post Office Post Code Checker Service. From this, the Complainant determines that the Respondent has provided a false address and notes that section 3.6 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”) states that “Panels additionally view the provision of false contact information (or an additional privacy or proxy

service) underlying a privacy or proxy service as an indication of bad faith” and concludes that the falsified data adds to the above indications that this can only be a bad faith domain name.

The Complainant also submits that typosquatting, as here it says, is indicative of bad faith and cites in support section 1.9 of the [WIPO Overview 3.0](#).

The Complainant submits that it is clear that the Respondent must have had knowledge of the Complainant’s trademark and the rights and reputation of the Complainant and that the Respondent was clearly targeting those rights. The Complainant notes that the Respondent claimed to be based in the United Kingdom, which is the home market of the Complainant and where the Complainant is strongest.

The Complainant continues that the Complainant’s FORTNUM & MASON trademark is well-known and that a simple Internet search would have revealed the rights of the Complainant. The Complainant then concludes that the Respondent must have been aware of the Complainant and that the use of the Disputed Domain Name identical to the Complainant’s core domain name but for one minor difference, which would go unnoticed, is clear evidence of knowledge.

Under the heading of Current Use of the Domain Name, the Complainant notes that Appendix 7 to the Complaint shows the use to which the Disputed Domain Name was being put, namely redirecting to a geo-locked gambling website, called “iLucki.com”. The Complainant states that it has no control over this website and that this redirection supports the idea the Respondent is seeking to attract, for commercial gain, Internet users to its website.

For these reasons, says the Complainant, the Complainant submits that the Respondent can only be seen to have registered and used the Domain Name in Bad Faith.

#### **Remedy requested by the Complainant**

The Complainant requests that the Panel order the Disputed Domain Name be transferred to the Complainant.

#### **B. Respondent**

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

#### **6. Discussion and Findings**

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark in which the Complainant has rights; and that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that the Disputed Domain Name has been registered and is being used in bad faith.

The Panel accepts that the Complainant has established registered rights in its FORTNUM & MASON trademark. The Complainant is the owner of an extensive portfolio of registrations for this trademark. That is sufficient for paragraph 4 a. (i) of the Policy but, out of deference to the extensive submissions of the Complainant, the Panel could also have decided that the Complainant had established common law rights in its FORTNUM & MASON trademark, such use having taken place over many years. The Panel accepts the submissions of the Complainant that its trademark has become well-known, in view of the extensive portfolio of registrations of that trademark and the extensive use that has taken place of the trademark over many years.

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

The Panel finds that the Complainant has established registered rights in its trademark FORTNUM & MASON.

The Panel also finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark FORTNUM & MASON, in which the Complainant has rights. The Disputed Domain Name incorporates the main elements of that trademark, with only minor and insignificant alterations, consisting of the substitution of "and" for "&" and the addition of the letter (i) to the word "mason". The Panel accepts this last addition is an instance of typosquatting.

It is also well established that the addition to the Disputed Domain Name of the generic Top-Level Domain ("gTLD") as "com" is viewed as a standard registration requirement and, as such, is to be disregarded in assessing confusing similarity.

The Panel accordingly finds that the Disputed Domain Name is confusingly similar to the Complainant's trademark FORTNUM & MASON, in which the Complainant has rights, and that the provisions of the Policy, paragraph 4(a)(i), have been met.

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

The Panel accepts and finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. The Panel accepts and finds that the Respondent has not been permitted, authorized, or licensed by the Complainant to register or use the Disputed Domain Name.

The Respondent has not, before any notice to the Respondent of the dispute, made use or demonstrable preparations to use the Disputed Domain Name or a name corresponding to it in connection with a *bona fide* offering of goods or services nor has the Respondent been commonly-known by the Disputed Domain Name nor has the Respondent made 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. Such use as has taken place involves the Disputed Domain Name resolving to a gambling website, which has nothing to do with the Complainant.

Accordingly, the Panel finds that the provisions of the Policy, paragraph 4(a)(ii), have been met.

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

The Panel accepts and finds that the Disputed Domain Name has been registered and is being used in bad faith. It is a reasonable inference that the Respondent knew of the Complainant's FORTNUM & MASON trademark, which, the Panel accepts, is well-known, at the time of registration of the Disputed Domain Name and finds that the Respondent could have had no reason to register the Disputed Domain Name if not for the significance of the dominant FORTNUM & MASON element as the trademark of the Complainant, which has been adopted in full in the Disputed Domain Name, with the minor addition of the "i" in "maison".

With regard to the use of the Disputed Domain Name, this has been in association with a gambling website, over which the Complainant has no control. In addition, the Respondent has failed to avail the Respondent of the opportunity to file a Response to the Complaint and, in particular, to file evidence of any good faith use. The Panel finds that the Respondent has been seeking to attract, for commercial gain, Internet users to the website to which the Disputed Domain Name redirects.

The Panel accordingly finds that the Respondent has registered and used the Disputed Domain Name in bad faith and the provisions of the Policy, paragraph 4(a)(iii) have been met.

## 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, <fortnumandmaison.com>, be transferred to the Complainant.

*/Michael D. Cover/*

**Michael D. Cover**

Sole Panelist

Date: September 21, 2022