

## **ADMINISTRATIVE PANEL DECISION**

MTN Group Management Services (Pty) Ltd v. Muhammad Zaheer Abbas,  
MTN DUBAI

Case No. D2022-3168

### **1. The Parties**

Complainant is MTN Group Management Services (Pty) Ltd, South Africa, represented by Edward Nathan Sonnenbergs Inc., South Africa.

Respondent is Muhammad Zaheer Abbas, MTN DUBAI, Pakistan.

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

The disputed domain name <mtndubai.com> is registered with OnlineNic, Inc. d/b/a China-Channel.com (the "Registrar").

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on August 26, 2022. On August 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 29, 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 Complainant on September 15, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 19, 2022.

The Center verified that the Complaint together with the amendment to 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 Respondent of the Complaint, and the proceedings commenced on September 21, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 11, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on October 17, 2022.

The Center appointed Scott R. Austin as the sole panelist in this matter on October 31, 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**

Complainant states in its Complaint and provides evidence in the respective Annexes sufficient to support that Complainant is a multinational mobile operator that since 1994 has provided telecommunications services, including voice and data services, financial services, and enterprise solutions across Africa and the Middle East under the trademark MTN (the “MTN Mark”). As part of a group of companies known as the “MTN Group” Complainant also licenses the MTN Mark to the MTN Group’s operating companies only under Complainant’s consent and strict control such that all use of the MTN Mark inures to the benefit of Complainant.

As the one of the largest telecommunications operators in the world, Complainant’s operating companies have telecommunications licenses offering their services in 22 countries to 279.8 million subscribers as of 2020 and its data users are expected to reach 111.3 million. Its enterprise solutions are provided to corporate and public-sector customers in 24 countries. In 2020 and 2021, Complainant was recognized as the most valuable and recognizable brand in Africa by the world’s leading independent brand valuation and strategy consultancy, Brand Finance.

Since 2008, Complainant has operated in the United Arab Emirates, where Dubai is located, under the corporate name MTN Dubai Limited. MTN Dubai Limited serves as a holding company for various MTN subsidiaries and provides management services to them. MTN Dubai’s subsidiaries registered in Dubai on registries accessible by the public, include MTN’s sourcing entities, which provide procurement services to Complainant’s operating companies across the 23 jurisdictions in which Complainant operates using the MTN Mark.

Complainant has used the MTN Mark as a source identifier for its telecommunications services and a range of related services for over 28 years and owns numerous trademark registrations around the world, including:

1. United Arab Emirates Registration No. 130537, MTN, registered on January 31, 2011 for a range of telecommunications services, including computer-aided transmission of messages and images; voice and non-voice telecommunications services; Internet communication services including fixed and mobile Internet services; telecommunication multimedia services in International Class 38.
2. India Registration No. 1727775, MTN, registered on February 8, 2011, for telecommunications services in International Class 38.
3. Bangladesh Registration No. 114083, MTN, registered on March 10, 2013, for telecommunications services in International Class 38.
4. South Africa Registration No. 1994/00191, MTN and design, registered on July 5, 1996 for telecommunications services in International Class 38.

Complainant, and its licensees, have registered numerous domain names comprising or incorporating the MTN Mark, including Complainant’s official website located at “www.mtn.co.za”, that went live in 1996 (the “Official MTN Website”). Complainant has used the MTN Mark on the Official MTN Website, Twitter, and Facebook platforms since inception of each.

The disputed domain name was registered on March 7, 2020 and resolves to what appears to be an active website where the MTN Mark is used in a prominent manner but provides no indication why the MTN Mark is used in the disputed domain name or throughout the website where the MTN Mark often appears as “MTN”

alone. The business showcased at Respondent's website appears to be based in Dubai, features cleaning services, pest control, handyman, and international moving services but shows zero employees, zero "On Going Projects", and zero "Completed Projects", uses an obviously fictitious phone number for international moving services, the landing page headings are greyed out and inoperable, and the chat service says "We're offline Leave a message".

## 5. Parties' Contentions

### A. Complainant

Complainant contends that the disputed domain name is identical or confusingly similar to Complainant's trademark; that Respondent has no rights or legitimate interests in respect of the disputed domain name; and that the disputed domain name was registered and is being used in bad faith.

### B. Respondent

Respondent did not reply to Complainant's contentions.

## 6. Discussion and Findings

There are no exceptional circumstances within paragraph 5(e) of the Rules to prevent this Panel from determining the present dispute based upon the Complaint (as amended), notwithstanding the failure of any person to lodge a substantive formal Response in compliance with the Rules. Under paragraph 14 of the Rules, where a party does not comply with any provision of the Rules, the Panel shall "draw such inferences therefrom as it considers appropriate".

Where no substantive Response is filed, however, Complainant must still make out its case in all respects under paragraph 4(a) of the Policy. To succeed, Complainant must demonstrate that the requirements for each of the elements listed in paragraph 4(a) of the Policy have been satisfied.

The Panel will address its findings on each of these elements in more detail below.

The standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.2.

### A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. [WIPO Overview 3.0](#), section 1.2.1. Complainant has demonstrated its rights because it has shown that it is the holder of multiple valid and subsisting trademark registrations for the MTN Mark. See *Advance Magazine Publishers Inc., Les Publications Conde Nast S.A. v. Voguechen*, WIPO Case No. [D2014-0657](#).

For purposes discussed further under 6B. and 6C. below, Complainant also contends that the MTN Mark qualifies as distinctive and well-known in its industry in Africa and the Middle East, where Respondent's business appears to be located, based on applicable trademark law in that region where the MTN Mark is registered and the Paris Convention. The Panel finds it reasonable to conclude that Complainant's MTN Mark is "well-known" given the credible evidence provided by Complainant of decades of use, a credible third-party source's acknowledgement of the MTN Mark as the most recognizable brand in Africa, and that Complainant has been ranked as one of the largest telecommunications operators in the world.

With Complainant's rights in the MTN Mark established, the remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's MTN Mark.

Prior UDRP panels have held a domain name which wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy despite the addition of other words to such marks. [WIPO Overview 3.0](#), section 1.8 ("Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element"); see also *BNP Paribas v. Ronan Laster*, WIPO Case No. [D2017-2167](#); *Guccio Gucci S.p.A. v. Brenda Hawkins*, WIPO Case No. [D2013-0603](#).

The disputed domain name incorporates Complainant's MTN Mark in its entirety and adds the trailing term "dubai". Respondent's addition of this geographic term to Complainant's MTN Mark does not prevent a finding of confusing similarity as noted above. The addition of the generic Top-Level Domain ("gTLD") ".com" is irrelevant in determining whether the disputed domain name is confusingly similar. See, *Research in Motion Limited v Thamer Ahmed Alfarshooti*, WIPO Case No. [D2012-1146](#); [WIPO Overview 3.0](#), section 1.11.

This Panel finds that the added term "dubai" does not prevent a finding of confusing similarity between the disputed domain name and Complainant's well-known MTN Mark, which remains fully recognizable as incorporated in its entirety into the disputed domain name.

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

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

Under the second element of the Policy, a complainant is first required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. If a complainant makes that showing, the burden of production on this element shifts to the respondent to come forward with relevant evidence of such rights or legitimate interests in the domain name. If the respondent fails to come forward with such evidence, a complainant is generally deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

Complainant has established, *prima facie*, that Respondent lacks rights or legitimate interests in the disputed domain name. First, Complainant asserts that it has not licensed, or otherwise authorized Respondent to use the MTN Mark in any manner, nor is Complainant in any way or manner associated with or related to Respondent. Complainant has also claimed with persuasive evidence submitted that Respondent is not commonly known by the disputed domain name because Muhammad Zaheer Abbas, clearly bears no resemblance to the term "mtn", the MTN Mark, or the disputed domain name.

And although the registrant organization is essentially identical to Complainant's corporate name for its holding company in Dubai, MTN Dubai Limited, Complainant has used the name for its holding company since 2008, a dozen years prior to Respondent's creation of the disputed domain name, and a brief search on the Google search engine conducted by the Panel for "MTN Dubai", it returned a result ranking Complainant's entity name first, ahead of Respondent's website based on the disputed domain name. More importantly, prior UDRP panels have held that a respondent must not only respond, but produce concrete credible evidence that the respondent, whether individual or registrant organization, is commonly known by the domain name; mere assertions that a respondent is commonly known by the domain name will not suffice. See [WIPO Overview 3.0](#), section 2.3. In this case, the Panel finds it more likely than not that Respondent's organization was deliberately chosen to suggest or affirm an affiliation with Complainant that does not exist.

Most importantly, Complainant's evidence shows the disputed domain name resolves to a website which features a business which appears to be located in Dubai, featuring Respondent's cleaning services, pest control, handyman, and international moving services. Upon closer review however, it appears the website

may be a trap because it contains a landing page with headings linked to pages that do not work and are grayed out, provides an online counter that shows “zero employees”, zero “On Going Projects”, and zero “Completed Projects”, uses an obviously fictitious phone number for its international moving services, and the chat service says “We’re offline Leave a message”. These facts shown in Complainant’s screen shot evidence of Respondent’s website lead the panel to reasonably conclude the website is a ruse, using the MTN Mark throughout Respondent’s website, sometimes followed by Dubai but often times not, to confuse consumers into believing an affiliation exists between Complainant’s well-known telecommunications services, its outsourcing subsidiaries in Dubai, and Respondent’s business services, and thereby draw internet users to Respondent’s infringing website for Respondent’s commercial gain through additional consumer traffic diverted from Complainant’s website to Respondent’s site. In this regard, the Panel also notes the use of the disputed domain name does not appear to correspond to any plausible descriptive meaning of the disputed domain name or the term “mtn”.

Prior UDRP panels have held that the use of a complainant’s mark to redirect users to a respondent’s site with reference to respondent’s business would not support a claim to rights or legitimate interests nor a noncommercial fair use but would tend to show the respondent’s intent to unfairly profit from the complainant’s reputation. See [WIPO Overview 3.0](#), section 2.5.3.

Similarly, if the site is in fact a false front with certain areas disabled in order to funnel users to the “Contact Us” page to contact Respondent and thereby give up personal contact information as part of a phishing scheme, prior UDRP panels have categorically held that the use of a domain name for illegal activity (e.g. phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See [WIPO Overview 3.0](#), section 2.13.1

Prior UDRP panels have also held that a domain name created merely to mislead Internet users to a competing commercial website controlled by a respondent used as a pretext does not correspond to a *bona fide* offering of goods or a noncommercial fair use. See, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. [D2006-0451](#).

Respondent, therefore, is not making a legitimate noncommercial or fair use of the disputed domain name nor using it in connection with a *bona fide* offering of goods or services because the disputed domain name is being used for the purpose of creating consumer confusion obtaining search results to divert Internet traffic from Complainant to Respondent for Respondent’s commercial gain through an implied affiliation with Complainant and its MTN Mark. The Panel finds Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, so as to confer rights or legitimate interests in it in accordance with paragraph 4(c)(i) of the Policy and that the composition of the disputed domain name being essentially identical to Complainant’s mark and the publicly registered business name of Complainant’s holding company operated in Dubai fosters an implied affiliation with Complainant. [WIPO Overview 3.0](#), section 2.5.1.

These facts establish Complainant’s *prima facie* showing. Respondent has not provided any basis on which that showing may be overcome. Complainant has successfully met its burden under paragraph 4(a)(ii) of the Policy.

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

Finally, Complainant must prove, by a preponderance of the evidence, that the disputed domain name has been registered and used in bad faith under paragraph 4(a)(iii) of the Policy. See, e.g., *Hallmark Licensing, LLC v. EWebMall, Inc.*, WIPO Case No. [D2015-2202](#).

Paragraph 4(b) of the Policy sets out a non-exhaustive list of circumstances that point to bad faith conduct on the part of a respondent. The panel may, however, consider the totality of the circumstances when analyzing bad faith under Policy, paragraph 4(a)(iii) and may make a finding of bad faith that is not limited to the enumerated factors in Policy, paragraph 4(b). See *Do the Hustle, LLC v. Tropic Web*, WIPO Case No. [D2000-0624](#).

First, Complainant contends, and this Panel has found in Section 6A above, that the MTN Mark is well-known. See, e.g., *Sugartown Worldwide LLC v. Xuemei Kuang* WIPO Case No. [D2022-2562](#).

Complainant further contends that given its MTN Mark is well-known, and the disputed domain name incorporates the MTN Mark in its entirety, shows both Respondent's actual knowledge of the MTN Mark and widespread recognition, especially in the United Arab Emirates where Respondent's business is ostensibly located, and the MTN Mark has been registered for almost thirty years, and in Dubai at least 9 years, before Respondent registered the disputed domain name. Prior UDRP panels have found that where, as here, it would be implausible to believe that Respondent selected and was using the disputed domain name for any other purpose than to trade on Complainant's trademark rights and reputation, establishes a fact pattern that repeatedly has been held to constitute bad faith registration and use. See *Houghton Mifflin Co. v. Weathermen, Inc.*, WIPO Case No. [D2001-0211](#); see also *Philip Morris Inc. v. Tsytkin*, WIPO Case No. [D2002-0946](#).

Prior UDRP panels have also held that a respondent's selection of a disputed domain name that comprises the complainant's mark in its entirety may demonstrate a respondent's actual knowledge to support a finding of bad faith in registering and using the domain name. See, e.g., *Lloyds Bank Plc v. Marc Wiese*, WIPO Case No. [D2015-0914](#); see also, *Heineken Brouwerijen B.V. v Mark Lott*, WIPO Case No. [D2000-1487](#).

Moreover, panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

Finally, as noted in section 6B above, Respondent has intentionally configured the disputed domain name to enhance confusing similarity to Complainant's MTN Mark by adding a geographic term "dubai", which reflects not only a location where Complainant operates, but also where it has publicly registered the corporate name MTN Dubai Limited. Respondent, therefore, has configured the disputed domain name to create a false association with Complainant to direct or redirect consumers to Respondent's website providing Respondent's commercial business services for Respondent's commercial gain. Prior UDRP panels have found these facts demonstrate a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with Complainant's MTN Mark as to the source, sponsorship, affiliation or endorsement of Respondent's website, and, therefore, evidence of registration and use of the disputed domain name in bad faith under paragraph 4(b)(iv) of the Policy. See, e.g., *Microsoft Corporation v. Gioacchino Zerbo*, WIPO Case No. [D2005-0644](#); *Royal Bank of Canada v. China Capital Investment Limited*, WIPO Case No. [D2017-1025](#); *Travelscape, LLC v. WhoisGuard Protected, WhoisGuard, Inc. / Irwin Periola*, WIPO Case No. [D2020-2741](#).

The Panel finds Complainant's arguments and evidence persuasive and has received no arguments or evidence from Respondent to the contrary. Considering all the circumstances, the Panel concludes that Respondent has registered and used the disputed domain name in bad faith and 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 <mtndubai.com> be transferred to Complainant.

*/Scott R. Austin/*

**Scott R. Austin**

Sole Panelist

Date: November 14, 2022