

ADMINISTRATIVE PANEL DECISION

MakeMyTrip (India) Private Limited v. Felipe Lopez Case No. D2022-3555

1. The Parties

The Complainant is MakeMyTrip (India) Private Limited, India, represented by Sim And San, Attorneys At Law, India.

The Respondent is Felipe Lopez, France.

2. The Domain Name and Registrar

The disputed domain name <makemytrips.com> (the “Disputed Domain Name”) is registered with TLD Registrar Solutions Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 26, 2022. On September 27, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 21, 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 (Whois Privacy Corp.) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed the first amended Complaint on October 21, 2022. On October 22, 2022, the Center invited the Complainant to modify its amended Complaint in compliance with paragraph 11(a) of the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”). On October 25, 2022, the Complainant filed the second amended Complaint.

The Center verified that the Complaint together with the second 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 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 October 26, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 15, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 18, 2022.

The Center appointed Lynda M. Braun as the sole panelist in this matter on December 7, 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 was incorporated in the year 2000 and initially began its business with airline ticket bookings. Today the Complainant is a large travel company in India with its presence all across India and in several other jurisdictions worldwide, now being a popular one-stop travel website. Over the years, the Complainant has expanded its range of products and services beyond online travel bookings. Presently, the Complainant, through its official website, "www.makemytrip.com", offers an extensive range of travel services and products, both in India and abroad. The Complainant's services include the booking of airline tickets, rail tickets, bus tickets, hotel reservations, car hire, domestic and international holiday packages, and ancillary travel requirements such as travel insurance, visa assistance, and forex exchange. Due to extensive use, spanning more than 22 years, the Complainant's trademarks are synonymous with high standards of quality in respect of services provided by the Complainant.

The Complainant has common law and registered rights in the MAKEMYTRIP trademark. The Complainant owns numerous trademark registrations in the MAKEMYTRIP trademark in many jurisdictions throughout the world, in connection with travel and tourism services.

The earliest trademark of the Complainant was filed as early as July 24, 2002, with the date of first use on August 15, 2000 (United States of America (the "United States") Trademark Registration No. 2812872). Even though the registration has lapsed, it evidences the prior use claim of the Complainant. The Complainant has submitted evidence that it holds exclusive rights in the MAKEMYTRIP trademark by virtue of common law use since at least 2001.

Moreover, the Complainant owns registered trademarks in India and in numerous other jurisdictions worldwide, including, but not limited to Canada, the United States, the United Arab Emirates, and Saudi Arabia.

The foregoing common law and registered trademarks referenced above will hereby collectively be referred to as the "MAKEMYTRIP Mark".

The Complainant states that it is also the owner of numerous domain names consisting of or incorporating the MakeMyTrip Mark, including, for instance, <makemytrip.ae>, <makemytrip.in>, <makemytrip.net>, <makemy-trip.co.in>, <make-my-trip.net.in>, <makemy-trip.in>, <makemytripdeals.com>, <makemytriphotels.com>, <makemytripmails.com>, <makemytrip.sg>, <makemytrip.jp>, <makemytrip.com.sg>, <makemytrip.ph>, <emails-makemytrip.com>, <mails-makemytrip.com>, <makemytripreviews.com>, <makemytripbus.com>, <makemytripflights.com>, and <makemytrip.co.in>.

Since the launch of its App in 2012, the Complainant's App has become an extremely fast-growing and popular mobile applications for travel and tourism, with over 50 million downloads in the Google Apps Store, including in India. In addition, the Complainant entered into collaboration agreements with numerous travel companies, hotels, and airlines, including but not limited to British Airways, Turkish Airlines, Gulf Air, Singapore Airlines, Lufthansa, Hilton, and Expedia.

The Disputed Domain Name was registered on June 20, 2002. At some point, the Disputed Domain Name resolved to a website that competed with the Complainant's, offering travel services through the website. The Complainant asserted that the Respondent also previously offered the website for sale. The Disputed Domain name currently resolves to an inactive error website.

5. Parties' Contentions

A. Complainant

The following are the Complainant's contentions:

- the Disputed Domain Name is confusingly similar to the Complainant's MAKEMYTRIP Mark;
- the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- the Disputed Domain Name was registered and is being used in bad faith.

The Complainant seeks the transfer of the Disputed Domain Name from the Respondent to the Complainant in accordance with paragraph 4(i) of the Policy.

B. Respondent

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

6. Discussion and Findings

In order for the Complainant to prevail and have the Disputed Domain Name transferred to the Complainant, the Complainant must prove the following (Policy, paragraph 4(a)):

- (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

Paragraph 4(a)(i) of the Policy requires a two-fold inquiry: a threshold investigation into whether a complainant has rights in a trademark, followed by an assessment of whether the disputed domain name is identical or confusingly similar to that trademark. The Panel concludes that in the present case, the Disputed Domain Name is confusingly similar to the MAKEMYTRIP Mark.

It is uncontroverted that the Complainant has established rights in the MAKEMYTRIP Mark based on its years of use as well as its registered and common law trademarks for the MAKEMYTRIP Mark in the United States and jurisdictions worldwide. The consensus view is that the registration of a mark satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Thus, the Panel concludes that the Complainant has common law and registered trademark rights in the MAKEMYTRIP Mark.

In the Panel's view, paragraph 4(a)(i) of the Policy refers merely to a "trademark or service mark" in which the complainant has rights and does not expressly limit the application of the Policy to a registered trademark or service mark. Therefore, the fact that in this case the Complainant did not have at the time of the registration of the Disputed Domain Name an active registered trademark or service mark for the MAKEMYTRIP Mark does not preclude a finding that it has established trademark or service mark rights in that name. See *Imperial College v. Christophe Dessimoz*, WIPO Case No. [D2004-0322](#). See also [WIPO Overview 3.0](#), section 1.1.1.

Further, the Panel concludes that as here, common law trademark and service mark rights exist when a party demonstrates that there is sufficient goodwill and reputation in a name – and therefore acquired distinctiveness – to establish sufficient association of the name with the party itself. *Id.*

The Disputed Domain Name consists of the MAKEMYTRIP Mark in its entirety, although misspelled by only adding one letter – the letter “s” in “trip”, and then followed by the generic Top-Level Domain (“gTLD”) “.com”. Such a minor modification to a trademark is commonly referred to as “typosquatting” (and seeks to wrongfully take advantage of errors by a user in typing a domain name into a web browser). The misspelling of the Disputed Domain Name does not prevent a finding of confusing similarity to the MAKEMYTRIP Mark. See [WIPO Overview 3.0](#), section 1.9 (“A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element”); see also *Silversea Cruises, Ltd. v. Whois Agent, Domain Protection Services, Inc. / Domain Vault, Domain Vault LLC*, WIPO Case No. [D2018-2306](#) (“The Domain Name [] is virtually identical to the [] trademark but for the addition of the letter ‘s’ creating a plural version of the [] trademark. The addition of the letter ‘s’ does not distinguish the Domain Name from the [] trademark and is a common form of typosquatting.”).

Further, the addition of a gTLD such as “.com” in a domain name is technically required. Thus, it is well established that such element may typically be disregarded when assessing whether a domain name is identical or confusingly similar to a trademark. See *Proactiva Medio Ambiente, S.A. v. Proactiva*, WIPO Case No. [D2012-0182](#) and [WIPO Overview 3.0](#), section 1.11.1. Thus, the Panel concludes that the Disputed Domain Name is confusingly similar to the Complainant’s MAKEMYTRIP Mark.

Accordingly, the Panel finds that the first element of paragraph 4(a) of the Policy has been met by the Complainant.

B. Rights or Legitimate Interests

Under the Policy, a complainant has to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of production of evidence that demonstrates rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant may be deemed to have satisfied paragraph 4(a)(ii) of the Policy. See [WIPO Overview 3.0](#), section 2.1.

In this case, given the facts as set out above, the Panel finds that the Complainant has made out a *prima facie* case. The Respondent has not submitted any arguments or evidence to rebut the Complainant’s *prima facie* case. Furthermore, the Complainant has not authorized, licensed, or otherwise permitted the Respondent to use its MAKEMYTRIP Mark. Nor does the Complainant have any type of business relationship with the Respondent. There is also no evidence that the Respondent is commonly known by the Disputed Domain Name or by any similar name, nor any evidence that the Respondent was using or making demonstrable preparations to use the Disputed Domain Name in connection with a *bona fide* offering of goods or services. See Policy, paragraph 4(c).

As the Disputed Domain Name resolved to a website that competed with the Complainant and passed off as the Complainant’s website, such conduct misled consumers into thinking that the website is one belonging to the Complainant. Such use demonstrates neither a *bona fide* offering of goods or services nor does it confer rights or legitimate interests on the Respondent. See [WIPO Overview 3.0](#), section 2.13.1 (“Panels have categorically held that the use of a domain name for impersonation/passing off can never confer rights or legitimate interests on a respondent.”). Moreover, the construction of the Disputed Domain Name, incorporating the Complainant’s MAKEMYTRIP Mark entirely, affirms the Respondent’s intention to confuse Internet users believing there to be an affiliation to the Complainant, contrary to the fact.

Furthermore, the Complainant maintains that the Respondent registered the Disputed Domain Name only to divert customers of the Complainant to the Respondent’s website and has in the past, offered competing services. The Respondent has used the Disputed Domain Name to intentionally attempt to attract, confuse,

and profit from Internet users seeking the Complainant's products and services. See *ACCOR v. Acortel s.l.*, WIPO Case No. [D2003-0711](#), which has held that "an offering of goods and services by the Respondent which comprises: (1) the use by it of a name similar to that of the Complainant's trademarks and (2) which is in relation to identical services and (3) is in a country where the Complainant has an established and extensive business conducted under the trademarks does not constitute a bona fide offering." It follows that the use of a nearly identical mark [...] by the Respondent in relation to identical services does not constitute a *bona fide* offering.

Thus, the Panel concludes that nothing on the record before it would support a finding that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, the Panel finds that the Respondent is using the Disputed Domain Name – a typo of the Complainant's own mark – for commercial gain with the intent to mislead by defrauding the Complainant's customers. Such use cannot conceivably constitute a *bona fide* offering of a product/service within the meaning of paragraph 4(c)(i) of the Policy.

Accordingly, the Panel finds that the second element of paragraph 4(a) of the Policy has been met by the Complainant.

C. Registered and Used in Bad Faith

The Panel finds that based on the record, the Complainant has demonstrated the existence of the Respondent's bad faith pursuant to paragraph 4(b) of the Policy.

First, the Panel finds that the Respondent had actual knowledge of the Complainant's MAKEMYTRIP Mark and targeted the Complainant when it registered the Disputed Domain Name, demonstrating the Respondent's bad faith. Based on the widespread use of the MAKEMYTRIP Mark worldwide, it strains credulity to believe that the Respondent had not known of the Complainant or its MAKEMYTRIP Mark when registering the Disputed Domain Name – again, a typo. The Respondent's awareness of the Complainant and its MAKEMYTRIP Mark additionally suggests that the Respondent's decision to register the Disputed Domain Name was intended to cause confusion with the Complainant's MAKEMYTRIP Mark and to disrupt the Complainant's business. Such conduct indicates that the Respondent registered and used the Disputed Domain Name in bad faith.

Second, the Panel concludes that the Respondent registered and used the Disputed Domain Name in bad faith in an attempt to attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's MAKEMYTRIP Mark as to the source, sponsorship, affiliation, or endorsement of the Disputed Domain Name's resolving website. The Respondent's registration and use of the Disputed Domain Name indicate that such registration and use had been done for the specific purpose of trading on the name and reputation of the Complainant and its MAKEMYTRIP Mark. See *Madonna Ciccone, p/k/a Madonna v. Dan Parisi and "Madonna.com"*, WIPO Case No. [D2000-0847](#) ("[t]he only plausible explanation for Respondent's actions appears to be an intentional effort to trade upon the fame of Complainant's name and mark for commercial gain").

Third, the Panel concludes that the Respondent knew about the Complainant's rights in the MAKEMYTRIP Mark when it registered the Disputed Domain Name, since it added the letter "s" to "trip" to misdirect users from the Complainant's website to the Respondent's website by capitalizing on typing mistakes made by users. See *Nutricia International BV v. Eric Starling*, WIPO Case No. [D2015-0773](#). The Respondent's registration of the Disputed Domain Name that contains an intentional misspelling of the MAKEMYTRIP Mark in an effort to take advantage of a typographical error is evidence of bad faith registration and use. Since the Respondent misspelled the Disputed Domain Name to misdirect users from the Complainant's website to the Respondent's landing page by capitalizing on potential typing mistakes, such conduct is *per se* evidence of bad faith. See *ESPN, Inc. v. XC2*, WIPO Case No. [D2005-0444](#) ("It is well-settled that the practice of typosquatting, of itself, is evidence of the bad faith registration of a domain name.").

Accordingly, the Panel finds that the third element of paragraph 4(a) of the Policy has been met by the Complainant.

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 <makemytrips.com> be transferred to the Complainant.

/Lynda M. Braun/

Lynda M. Braun

Sole Panelist

Date: December 21, 2022