

ADMINISTRATIVE PANEL DECISION

Lumsa - Libera Università Maria SS. Assunta v. Host Master, 1337 Services LLC

Case No. D2023-1939

1. The Parties

The Complainant is Lumsa - Libera Università Maria SS. Assunta, Italy, represented by Francesca Gambardella and Barbara Antonaroli, Italy.

The Respondent is Host Master, 1337 Services LLC, Saint Kitts and Nevis.

2. The Domain Name and Registrar

The disputed domain name <lumsa.university> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 28, 2023. On April 28, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 1, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name that differed from the named Respondent (LAISAL: Libera Associazione Internazionale Stop Abusi Lumsa, REDACTED FOR PRIVACY, 1337 Services LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On May 19, 2023, the Complainant filed an amendment to the Complaint.

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 the Respondent of the Complaint, and the proceedings commenced on May 23, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 12, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 16, 2023.

The Center appointed Matthew Kennedy as the sole panelist in this matter on June 21, 2023. 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 private university founded in 1939, located in Italy. The Complainant registered the domain name <lumsa.it> on August 6, 1997, that it uses in connection with its official website in Italian and English titled “LUMSA Università” where it provides news and information about itself. The Complainant holds Italian trademark registration number 2022000084251 for LUMSA, registered on December 29, 2022, (application filed on May 30, 2022), specifying goods and services in Classes 25 and 41. That trademark registration is current.

The Respondent is a domain hosting company with a postal address in Charlestown, Saint Kitts and Nevis. The identity of the underlying registrant of the disputed domain name (*i.e.*, the Respondent’s client) was not disclosed by the Registrar.

The disputed domain name was created on September 6, 2022. It resolves to a website in Italian titled “Università LUMSA” with a subheading and sidebar indicating that it publishes opinions and reviews of that university. Another subheading on the homepage presents the site as an official forum for free discussion between students and alumni of LUMSA, although elsewhere the forum is described as independent. The site invites Internet users to contribute comments about LUMSA and it publishes questions and answers on topics such as LUMSA’s syllabus, examinations, scholarships, advertising, and alumni. The opinions expressed are highly critical, although the website claims that not all reviews are negative. The website also refers to a notorious case of a missing person. A notice at the bottom of each page claims copyright in the name of “LAISAL: Libera Associazione Internazionale Stop Abusi Lumsa”, with a street address in Charlestown, Saint Kitts and Nevis. LAISAL is described on the website as an entity protected by provisions of the Constitution of Saint Kitts and Nevis and the Universal Declaration of Human Rights regarding freedom of association.

On April 4, 2023, the Complainant sent an email communication to the Registrar, requesting that it shut down the disputed domain name. On April 6, 2023, the Registrar replied, suggesting alternative avenues of recourse.

5. Parties’ Contentions

A. Complainant

The disputed domain name is identical or highly confusingly similar to the Complainant’s LUMSA trademark.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not affiliated with the Complainant nor authorized by the Complainant in any way to use the LUMSA name and trademark. The Respondent’s sole interest is damaging the good name and excellent reputation of the Complainant.

The disputed domain name was registered and is being used in bad faith. The Respondent must have been aware of the existence of the Complainant’s trademark as the Complainant is a well-known private university founded in 1939 and has used its domain name since 1997. The disputed domain name is solely used by the Respondent to spread false and biased information that damages the good name and reputation of the Complainant and its major administrative personnel. The Respondent reports unsubstantiated and defamatory accusations towards the Complainant to damage its integrity as an institution, its method of teaching, and more generally its upstanding reputation. The Respondent is using the disputed domain name

with a website to negatively influence and raise a deprecating feeling among current students regarding the Complainant as well as to discourage and mislead prospective students from enrolling. The illicit use of this website clearly implies bad faith. Through its use of the disputed domain name, the Respondent aims to hinder the Complainant from lawfully using its rights.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must prove each of 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.

The burden of proof of each element is borne by the Complainant. The Respondent's default does not automatically result in a finding in favor of the Complainant. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Respondent has rights in the LUMSA mark. The Complainant's rights were in existence at the time when it filed the Complaint, which is sufficient for the purposes of the first element of paragraph 4(a) of the Policy. See [WIPO Overview 3.0](#), section 1.1.3. The Panel will consider the timing of the Complainant's trademark registration further in relation to the third element in section 6C below.

The disputed domain name wholly incorporates the LUMSA mark. Its only additional element is a generic Top-Level Domain extension ".university" which, as a standard requirement of domain name registration, may be disregarded in the comparison between the disputed domain name and the LUMSA mark. See [WIPO Overview 3.0](#), section 1.11. The Panel will consider the gTLD extension in relation to the second element in section 6B below.

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 of 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 third circumstance set out above, the disputed domain name is used in connection with a criticism website. The criticism covers various aspects of the Complainant's university, including its syllabus, examinations, scholarships, advertising, and alumni. The Complainant confirms that the Respondent is neither affiliated with, nor authorized by, it in any way. The Panel observes that the website is noncommercial: it offers nothing for sale, solicits no financial contributions, displays no sponsored content or advertising, and displays no links to websites offering goods or services, other than links to YouTube videos regarding a campaign to investigate the case of a missing person that do not appear to be commercial. Nor is the disputed domain name itself offered for sale. Although the Complainant submits that the criticism published on the website is false, biased, unsubstantiated and defamatory, the Panel is in no position to determine that it is not genuine criticism based on the limited record of this proceeding. The Complainant does not allege tarnishment of its mark in the specific sense in which that term is used in the Policy, and the Panel sees none.¹

Nevertheless, the Panel does not consider that the safe harbor for legitimate noncommercial or fair use in paragraph 4(c)(iii) of the Policy necessarily protects the use of a domain name to impersonate a trademark owner, as this creates an impermissible risk of user confusion. See [WIPO Overview 3.0](#), section 2.6.2, and *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#). In the present case, the disputed domain name is identical to the Complainant's LUMSA mark, which gives the false impression that the disputed domain name will resolve to a website operated by the Complainant, as confirmed by the fact that the disputed domain name is identical to the domain name associated with the Complainant's official website, but for the TLD. That false impression is compounded by the gTLD extension in the disputed domain name (".university"), which describes the nature of the Complainant's institution. Nothing in the disputed domain name suggests that it will resolve to a third party website, let alone one critical of the Complainant. Rather, it is used in a deliberate attempt to give the appearance of an official domain name of the Complainant for the purpose of deceiving Internet users into viewing material critical of the Complainant. By the time that Internet users realize that the Respondent's site is not authorized by the Complainant, they have been unfairly captured. In the Panel's view, this deception is not a fair use and does not support a legitimate interest for the purpose of the Policy. See *SwissCare Europe v. michael click, Active OutDoors LLC*, WIPO Case No. [D2022-1496](#).

As regards the second circumstance set out above, the Respondent's name is "Host Master, 1337 Services LLC", not the disputed domain name. The website content creator identifies itself as "LAISAL: Libera Associazione Internazionale Stop Abusi Lumsa", which contains the disputed domain name *in fine* but as a reference to the Complainant. There is no other evidence on the record of this proceeding regarding this international association. Nothing indicates that the Respondent (or LAISAL) is commonly known by the disputed domain name.

As regards the first circumstance set out above, the disputed domain name is used in connection with a not-for-profit website. Nothing indicates that it is used in connection with a *bona fide* offering of any goods or services, nor that there are any preparations to use it in that way.

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. The Respondent failed to rebut that case because it did not respond to the Complainant's contentions.

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.

¹ The Panel notes its general powers articulated *inter alia* in paragraphs 10 and 12 of the Rules and has visited the website associated with the disputed domain name, which is publicly available, to verify the Complainant's evidence and screen captures. The Panel considers this process of verification useful in assessing the case merits and reaching a decision. See [WIPO Overview 3.0](#), section 4.8.

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, but these circumstances are not an exhaustive list.

With respect to registration, the Panel observes that the disputed domain name was registered before the Complainant's registered trademark rights accrued. Specifically, the Respondent registered the disputed domain name on September 6, 2022, over three months before the Complainant's trademark was registered on December 29, 2022. The Panel recalls that, where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. See [WIPO Overview 3.0](#), section 3.8.1. However, there is an exception to that general proposition in certain limited circumstances where the facts of the case establish that the respondent's intent in registering the disputed domain name was to capitalize unfairly on the complainant's nascent trademark rights. See [WIPO Overview 3.0](#), section 3.8.2. In the present case, the disputed domain name was registered while the Complainant's trademark application was pending, years after the Complainant began using the acronym LUMSA to identify its university and its services, including on its website. The disputed domain name is identical to the LUMSA trademark, which is an acronym not a dictionary word, and the associated website is dedicated to content regarding the Complainant. Accordingly, the Panel finds that the disputed domain name was registered in anticipation of the Complainant's trademark rights and that its aim was to take unfair advantage of the reputation that would attach to that trademark as the Complainant continued to use it. See *BML Group Limited v. Rikard Beach, Proxy My Whois AB*, WIPO Case No. [D2015-1897](#).

With respect to use, the disputed domain name resolves to a criticism website. For the reasons set out in section 6B above, the Panel has found that the disputed domain name, which is identical to the Complainant's trademark, is used in a deliberate attempt to give the appearance of an official domain name of the Complainant for the purpose of deceiving Internet users into viewing material critical of the Complainant. That finding is confirmed by the title of the website associated with the disputed domain name, which identifies the Complainant's university ("Università LUMSA"), as well as by a subheading on the homepage that describes the forum as official (although elsewhere it is described as independent), and by the inconspicuous position of the content creator's name. This all appears intended to increase the likelihood that Internet users will read some of the criticism before realizing that the site is not affiliated with the Complainant. The Panel takes note that the website claims to have been inaugurated when the Complainant inaugurated its academic year and to have received more visitors than the Complainant did. The disputed domain name and associated website are evidently intended to secure maximum dissemination of the criticism by creating confusion. In view of these circumstances, the Panel considers that the Complainant has discharged its burden of showing that the registration and use of the disputed domain name is in bad faith. The fact that the Respondent uses its website to exercise its freedom of expression does not cure the inherent deception of the situation that it has brought about. See *Audacia Capital (Ireland) Plc v. Domain Admin, Whois Privacy Corp*, WIPO Case No. [D2021-2286](#); and *SwissCare Europe v. michael click, Active OutDoors LLC*, *supra*.

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.

D. Final Remark

Nothing in this decision should be taken as an endorsement or a criticism of any party's views of the issues presented on the Respondent's website. This decision does not prevent LAISAL from expressing its views regarding LUMSA nor does it interfere with LAISAL's freedoms of expression and association. Rather, this decision addresses the registration and use of a domain name that impersonates the Complainant as a vehicle to express those views.

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 <lumsa.university> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: July 4, 2023