

ADMINISTRATIVE PANEL DECISION

**MBIP Nominees Pty Ltd v. Web Commerce Communications Limited,
Client Care
Case No. D2023-4846**

1. The Parties

Complainant is MBIP Nominees Pty Ltd, Australia, represented by Bespoke, Australia.

Respondent is Web Commerce Communications Limited, Client Care, Malaysia.

2. The Domain Name and Registrar

The Disputed Domain Name <meccasale-au.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 22, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 23, 2023, 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 (Unknown Respondent) and contact information in the Complaint.

The Center sent an email communication to Complainant on November 28, 2023 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 November 29, 2023.

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 November 29, 2023. In accordance with the Rules, paragraph 5, the

due date for Response was December 19, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on December 21, 2023.

The Center appointed Richard W. Page as the sole panelist in this matter on December 28, 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

Complainant is part of the Mecca group of companies, a leading retailer of local and international beauty, skin care, and cosmetic services and products since 1997 and operating via the websites located at "www.mecca.com", "www.mecca.com.au", and "www.meccabeauty.co.nz".

Complainant has been one of the fastest growing and most recognized brands in Australia and New Zealand and is currently the holder of an extensive list of registered trademarks for the name and logos of MECCA, in, among other jurisdictions, Australia, New Zealand, United States of America, Canada, European Union, China, and Hong Kong, China. Referred to herein as the "MECCA Mark". This trademark portfolio of the MECCA Mark includes the term "MECCA" and may derivatives thereof. Complainant owns the following registrations, among others:

Australia No. 1655731 for MECCA (fancy) registered October 31, 2014 in classes 3, 35 and 44;

Australia No. 1655735 for MECCA (word) registered October 31, 2014 in classes 3, 35 and 44; and

New Zealand No. 1037447 for MECCA registered February 17, 2016.

The Disputed Domain Name was registered on October 30, 2023. The record shows that the Disputed Domain Name has resolved to a site that offers cosmetic products at a discounted price under the MECCA brand.

5. Parties' Contentions

A. Complainant

Complainant contends that it has enforceable rights in the MECCA Mark and that the Disputed Domain Name is confusingly similar to the MECCA Mark.

Complainant further contends that the Disputed Domain Name contains the entirety of the phrase "Mecca" which is the prominent element of the MECCA Mark. The additional term in the Disputed Domain Name "sale-au" is descriptive and does not defeat the confusing similarity.

Complainant asserts that the MECCA Mark is widely used in Complainant's Mecca stores, outlets, and online channels to advertise, market and promote the Mecca brand, its retail products and services, and its retail outlets.

Complainant further asserts that there is no indication that Respondent has engaged in any *bona fide* offering of good or services under the Disputed Domain Name. Nor is there any indication that Respondent is commonly known by the Disputed Domain Name.

Complainant further asserts that Respondent's website not only copies and uses Complainant's logo, but displays several products which are either identical or substantially similar to those listed on Complainant's

website. Complainant is the copyright owner or licensee with regards to these logos and images, which being used by Respondent without authorization.

Complainant further asserts that Respondent could not possibly have a legitimate interest in the Disputed Domain Name as the website attempts to impersonate Complainant's business which is well known internationally.

Complainant alleges that Respondent's website uses layouts, functions, products and logos which are either identical, or substantially similar, to those used by Complainant in legitimate e-commerce operations.

Complainant further alleges that Respondent's website also takes payment via credit card, thereby inappropriately leveraging the brand, trademark, and goodwill of Complainant for commercial gain.

Respondent's intention is to use the MECCA brand in order to confuse consumers and receive money from consumers who assume that they are dealing with Complainant, when they are not.

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs the Panel as to the principles the Panel is to use in determining the dispute: "A Panel shall decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules, and any rules and principles of law that it deems applicable."

Even though Respondent has failed to file a Response or to contest Complainant's assertions, the Panel will review the evidence proffered by Complainant to verify that the essential elements of the claims are met. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following three elements:

- i) that the Disputed Domain Name registered by Respondent is identical or confusingly similar to the MECCA Mark in which Complainant has rights; and,
- ii) that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name; and
- iii) that the Disputed Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

[WIPO Overview 3.0](#), section 1.2.1 states that registration of a trademark is *prima facie* evidence of Complainant having enforceable rights in the MECCA Mark.

Complainant has identified several trademark registrations.

Based on the available record, the Panel finds Complainant has shown rights in respect of the MECCA Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the MECCA Mark and the Disputed Domain Name. [WIPO Overview 3.0](#), section 1.7.

[WIPO Overview 3.0](#), section 1.7 says that inclusion of the entire trademark in a domain name will be considered confusingly similar. [WIPO Overview 3.0](#), section 1.8 states that the addition of other terms (whether descriptive, geographical, pejorative, meaningless or otherwise) does not prevent a finding of confusing similarity. [WIPO Overview 3.0](#), section 1.11.1 instructs that generic Top-Level Domains (“gTLDs”) such as (“.com”) may be disregarded for purposes of assessing confusing similarity.

Complainant contends that the Disputed Domain Name contains the entirety of the term “Mecca” which is the prominent element of the MECCA Mark. The additional term in the Disputed Domain Name “sale-au” is descriptive and does not prevent the confusing similarity.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Although the overall burden of proof in UDRP proceedings is on Complainant, panels have recognized that proving Respondent lacks rights or legitimate interests in the Disputed Domain Name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of Respondent. As such, where Complainant makes out a *prima facie* case that Respondent lacks rights or legitimate interests, the burden of production on this second element shifts to Respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name (although the burden of proof always remains on Complainant). If Respondent fails to come forward with such relevant evidence, Complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a Disputed Domain Name:

- (i) before any notice to you [Respondent] of the dispute, your 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) you [Respondent] (as an individual, business, or other organization) have been commonly known by the Disputed Domain Name, even if you have acquired no trademark or service mark rights; or
- (iii) you [Respondent] are 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 MECCA Mark.

Complainant asserts that there is no indication that Respondent has engaged in any *bona fide* offering of good or services under the Disputed Domain Name.

Complainant further asserts that the MECCA Mark is widely used in Complainant’s Mecca stores, outlets, and online channels to advertise, market and promote the Mecca brand, its retail products and services, and its retail outlets.

Complainant further asserts that Respondent’s website not only copies and uses Complainant’s logo, but displays several products which are either identical or substantially similar to those listed on Complainant’s website. Complainant is the copyright owner or licensee with regards to these logos and images, which being used by Respondent without authorization. Such use can be neither *bona fide*, nor legitimate.

There is not any indication that Respondent is commonly known by the Disputed Domain Name.

Having reviewed the available record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the Disputed Domain Name. Respondent has not rebutted Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the Disputed Domain Name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Complainant alleges that Respondent registered and is using the Disputed Domain Name in bad faith in violation of paragraph 4(a)(iii) of the Policy.

Paragraph 4(b) of the Policy sets forth four nonexclusive criteria for Complainant to show bad faith registration and use of the Disputed Domain Name. Paragraph 4(b)(iv) states:

(iv) by using the Disputed Domain Name, you [Respondent] have intentionally attempted to attract, for commercial gain, Internet users to your website or other online location, by creating a likelihood of confusion with the MECCA Mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your web site or location.

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Complainant alleges that Respondent's website uses layouts, functions, products and logos which are either identical, or substantially similar, to those used by Complainant in legitimate e-commerce operations.

Complainant further alleges that Respondent's website also takes payment via credit card, thereby inappropriately leveraging the brand, trademark, and goodwill of Complainant for commercial gain.

Respondent's intention is to use the "Mecca" brand in order to confuse consumers and receive money from consumers who assume that they are dealing with Complainant, when they are not.

In the present case, the Panel notes that Respondent has violated paragraph 4(b)(iv) of the Policy by intentionally attempting to attract, for commercial gain, Internet users by creating a likelihood of confusion with the MECCA Mark.

Based on the available record, the Panel finds that Complainant has established the third element 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 <meccasale-au.com> be transferred to Complainant.

/Richard W. Page/

Richard W. Page

Sole Panelist

Date: January 9, 2024