

ADMINISTRATIVE PANEL DECISION

MakeMyTrip (India) Private Limited v. Gacb, GACB COIN
Case No. D2023-5184

1. The Parties

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

The Respondent is Gacb, GACB COIN, India.

2. The Domain Name and Registrar

The disputed domain name <boardmytrip.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2023. On December 13, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 14, 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 (Domain Admin, Privacy Protect, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 15, 2023, 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 December 16, 2023.

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 December 21, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 10, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on January 16, 2024.

The Center appointed Vinod K. Agarwal as the sole panelist in this matter on January 22, 2024. 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, MakeMyTrip (India) Private Limited, is a company registered under the Indian Companies Act, 1956. The Complainant, incorporated in the year 2000, and started its business initially with airline ticket bookings alone, is today one of the largest travel companies in India with its presence all across India and in several other countries around the world including in the United States of America, the United Arab Emirates, Mauritius, European Union, Australia, and United Kingdom, amongst others.

The Complainant was originally incorporated on April 13, 2000, with the trade name "Travel by Web Private Limited" and subsequently, vide a fresh Certificate of Incorporation, dated August 2, 2000, the Complainant changed its trade name to "Makemytrip.com Pvt. Ltd." Thereafter, on June 28, 2002, the Complainant effected another change that remains its current and present name, i.e., "MakeMyTrip (India) Pvt. Ltd." Copies of Certificate of Incorporation and Certificate of Incorporation pursuant to change in the name were provided as Annex-4 to the Complaint.

The trademark MakeMyTrip is an essential feature of all the composite label or logo marks of the Complainant. Due to extensive use, now spanning more than twenty-two (22) years, the MakeMyTrip marks are synonymous with the services provided by the Complainant.

The Complainant's domain name <makemytrip.com> was registered in 2000. The Complainant has been hosting an interactive website on the said domain name, since as early as 2001. Reflecting its global reach, the Complainant is also the owner of numerous domain names consisting of the MakeMyTrip trade mark, including, for instance, <makemytrip.ae>, <makemytrip.in>, <makemytrip.net>, <makemytrip.co.in>, <make-my-trip.net.in>, <make-my-trip.in>, <makemytrip.deals.com>, etc. Annex-6 to the Complaint provides copies of WHOIS records of these domain names.

The Complainant has been, and currently is, a part of several renowned national as well as international trade associations like the International Air Transport Association (IATA), Indian Association of Tour Operators (IATO), Travel Agents Federation of India (TAFI), Travel Agents Association of India (TAAI), and the Ministry of Tourism, Govt. of India recognized and certified the Complainant as a travel agent. Copies of the certificates issued by the above-named trade associations evidencing the Complainant's membership have been provided as Annex-12 to the Complaint.

The Complainant has registered numerous trademarks consisting of the term MAKEMYTRIP in many jurisdictions throughout the world, including in India where the Respondent is based. For instance:

Mark	Registration No.	Class	Date of Registration	Status
MAKEMYTRIP	2149947	39	May 25, 2011	Registered
MAKEMYTRIP	2149948	43	May 25, 2011	Registered
MAKEMYTRIP	2991097	35	June 23, 2015	Registered
MAKEMYTRIP	2991098	09	June 23, 2015	Registered
MAKEMY	3869251	09	June 25, 2018	Registered
MAKEMY	3869255	43	June 25, 2018	Registered
MYTRIP	4030490	43	December 18, 2018	Registered

Registered Copies of these trade mark registration certificates/legal certificates are attached at Annex 20.

The disputed domain name was registered on March 23, 2019, and resolves to a website offering travel services.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In relation to element (i), the Complainant contends that it promotes and advertises its products and services through its website, "www.makemytrip.com". As has been indicated above, the Complainant also owns a large number of domain names with the expression "makemytrip" which have been registered long back, i.e. on August 2, 2000 and have been used by the Complainant continuously since then.

The Complainant contends that due to the fame and reputation associated with the trademark MAKEMYTRIP, the first impression in the minds of the consumers shall be that the Respondent's website originates from, is associated with, or is sponsored by the Complainant.

One of the distinguishing features of the Complainant's mark is the term "MYTRIP" which differentiates the Complainant's services business from other businesses. The only difference between the combinations of words forming the disputed domain name and the Complainant's mark is the substitution by the Respondent of the word "board" for "make". Moreover, the Complainant's mark and the disputed domain name are syntactically and conceptually similar.

The Complainant further contends that the disputed domain name is confusingly similar to the Complainant's MakeMyTrip marks. Merely replacing a portion of a mark with a generic prefix does not change the fact that the disputed domain name is confusingly similar. In terms of sound, appearance, connotation, and commercial impression, and "boardmytrip" are confusingly similar to the MakeMyTrip marks. One of the distinguishing features of the Complainant's mark is the term "MYTRIP" which differentiates the Complainant's services business from other businesses.

The Complainant's mark and the disputed domain name are syntactically and conceptually similar. Conceptually, both names suggest the idea of planning or booking a travel itinerary, such as flights, hotels, trains, buses, etc. The word "trip" implies a journey or a vacation, while the words "board" and "make" imply an action or a service that helps the traveler to arrange their trip. Both names are related to the travel industry and target customers want to find convenient and affordable travel options. Syntactically, both names follow the same pattern of verb + my + noun, which creates a catchy and memorable rhyme. The names also use the same number of syllables (three), which makes them visually and phonetically similar.

In view of the above, the requirements of paragraph 4(a)(i) of the Policy are satisfied. The disputed domain name confusingly similar to the trademark in which the Complainant has rights.

The Complainant submits that the Respondent registered the disputed domain name on March 23, 2019, with an intention to take advantage of the users who search for the trademark MakeMyTrip or MyTrip for commercial gain and creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the website and thus bad faith is implicit in the registration of the disputed domain name.

In relation to element (ii), the Complainant contends that the Respondent has no rights or legitimate interest in respect of the disputed domain name. The Respondent has not used, nor made, demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods or services. The Respondent (as

an individual, business, or other organization) is not commonly known by the disputed domain name and the Respondent has acquired no trademark rights.

None of the exemptions provided under paragraph 4(c) of the Policy apply in the present circumstances. The Complainant has not authorized, licensed, or permitted the Respondent to register or use the disputed domain name. The Complainant has prior rights in the MAKE MY TRIP trademark which precedes the registration of the disputed domain name by the Respondent.

Taking the above into consideration, Internet users are clearly misled regarding the relationship between the disputed domain name and the Complainant and will falsely believe that the website connected to the disputed domain name is owned by the Complainant. Such use of the disputed domain name cannot be considered a bona fide offering of services and does not establish legitimate interest on behalf of the Respondent.

Further that, the disputed domain name resolves to an active webpage offering identical services. The disputed domain name is being held by privacy protect service to hide the Respondent's identity.

As the Respondent has no rights or legitimate interests in relation to the disputed domain name, the second element as referred to in article 4(a)(ii) of the Policy has been satisfied.

Regarding the element (iii), the Complainant contends that the disputed domain name was registered in bad faith and with an ill-motive to gain unfair commercial advantage, at the expense of the Complainant. The Respondent is only trying to usurp the reputation and goodwill of the Complainant's trade/service mark MAKEMYTRIP through the disputed domain name. The Respondent has not made any legitimate offering of goods or services under the Complainant's trade/service mark MAKEMYTRIP through the disputed domain name.

Given the above and the general background of the matter, it is clear that the disputed domain name is registered and is being used in bad faith. The third element as referred to in article 4(a)(iii) of the Policy has been satisfied.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel as to the principles the Panel is to use in rendering its decision. It says that, "A panelist 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".

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) The Respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The disputed domain name is confusingly similar to the Complainant's marks, MAKEMYTRIP and MYTRIP. Merely replacing a portion of a mark with a different prefix in the former mark and adding the term "board" to the latter mark, does not change the fact that the disputed domain name is confusingly similar to a trademark in which the Complainant has shown rights. In terms of sound, appearance, connotation, and commercial impression, the MAKEMYTRIP and MYTRIP marks remain clearly recognizable in the disputed domain name which is confusingly similar to the MakeMyTrip marks.

Therefore, the Panel holds that the disputed domain name is confusingly similar or identical to the trademark of the Complainant. The Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

According to paragraph 4(c) of the Policy, the Respondent may demonstrate its rights to or legitimate interest in the domain name by proving any of the following circumstances:

- (i) before any notice to the Respondent of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the 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 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 domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

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

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not filed any response in this case. There is no evidence to suggest that the Respondent has become known by the disputed domain name. The Complainant has not authorized the Respondent to use their trademark. Further no information is available whether the Respondent has filed any application for the registration of a mark containing "boardmytrip" anywhere in the world.

It is evident that the Respondent can have no legitimate interest in the disputed domain name. Further, in view of the fact that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark or to apply for or use the domain name incorporating the trademark and that nobody would use the word "MAKEMYTRIP" unless seeking to create an impression of an association with the Complainant. Further, the Respondent's display of the webpage when considered in its entirety does not constitute bona fide offering of goods and services.

The manner in which the disputed domain name is used by the Respondent does not amount to the bona fide offering of goods or services. Based on the default and the evidence in the Complaint, the Panel finds that the above circumstances do not exist in this case and that the Respondent has no rights or legitimate interests in the disputed domain name. The second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration or use of the domain name in bad faith:

- (i) Circumstances indicating that the Respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of documented out-of-pocket costs directly related to the domain name; or
- (ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that it has engaged in a pattern of such conduct; or
- (iii) The Respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) By using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

The Complainant contends that the disputed domain name was registered or acquired primarily for the purpose of misleading the customers of the Complainant. The Respondent is not making a noncommercial or fair use of the disputed domain name. The disputed domain name is being used with the intent of wrongful commercial gains. This and other information submitted by the Complainant leads to the conclusion that the disputed domain name is registered and used by the Respondent in bad faith. Moreover, taking into account the Complainant's fame, the similarity of the Parties' businesses, and the fact that the Complainant and the Respondent are both located in India, makes it more likely than not that the Respondent had the Complainant's mark in mind when registering the disputed domain name.

Therefore, the Panel agrees with the said contention of the Complainant and concludes that the registration of the disputed domain name amounts to the registration and use of the disputed domain name in "bad faith". Paragraph 4(a)(iii) of the Policy is satisfied.

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 <boardmytrip.com> be transferred to the Complainant.

/Vinod K. Agarwal/

Vinod K. Agarwal

Sole Panelist

Date: February 5, 2024