

## ADMINISTRATIVE PANEL DECISION

The Lumineers, LLC v. Emil Hasibul  
Case No. D2024-0266

### 1. The Parties

The Complainant is The Lumineers, LLC, United States of America (“United States”), represented by Creative Law Network, LLC, United States.

The Respondent is Emil Hasibul, Bangladesh.

### 2. The Domain Name and Registrar

The disputed domain name <thelumineerstour2025.net> is registered with Global Domain Group LLC (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 22, 2024. On January 23, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 23, 2024, 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 (Global Domain Group Privacy Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 24, 2024, 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 January 24, 2024.

The Center verified that the Complaint together with 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 January 25, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 15, 2024.

The Center appointed Daniel Peña as the sole panelist in this matter on February 21, 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 is an American musical group, owner of the following trademark registrations for the trademark THE LUMINEERS in multiple jurisdictions:

- United States Trademark Registration Nos. 4406893, registered on September 24, 2013; 4406895, registered on September 24, 2013; 4406896, registered on September 24, 2013; 5068636, registered on October 25, 2016; 5068637, registered on October 25, 2016; 5224267, registered on June 13, 2017; 6116205, registered on August 4, 2020, and 6116204, registered on August 4, 2020, for in International Classes 41, 25, 9, 16, 18 and 21.

-Australia Trademark Registration No. 1581220, registered on December 18, 2023.

-Brazil Trademark Registration Nos. 840609450 in class 25 and 840609477 in class 41, both registered on April 19, 2016.

-Canada Trademark Registration Nos. TMA900 and TMA905, registered on April 13, 2015.

- International Trademark Registration No. 1174772, registered on August 14, 2013, with designation to Australia, Switzerland, China, Japan, Korea (Republic of), Mexico, Norway, New Zealand, and Türkiye

- International Trademark Registration No. 1160926, registered on April 16, 2013.

- South Africa Trademark Registration Nos. 2013/21910, in class 9, 2013/21911, in class 25, and 2013/21912 in class 41, all registered on August 13, 2013,.

- Thailand Trademark Registration Nos. TM380955, in class 25, and SM69477 in class 41, both registered on August 16, 2013.

The disputed domain name was registered on November 30, 2023, and it resolves to a website referencing and purportedly providing information for a potential concert world tour of the Complainant in 2025.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant has used the registered trademark THE LUMINEERS in an actual, open, notorious, and exclusive manner in United States interstate commerce since at least July 9, 2009.

The Complainant has used the registered trademark THE LUMINEERS in an actual, open, notorious, and exclusive manner in other jurisdictions throughout the world.

The trademark THE LUMINEERS has become famous and distinctive.

The Complainant is a musical group that has had three number one albums on Billboard, has performed hundreds of shows for millions of fans around the world, has been nominated for two GRAMMY awards, has appeared on network and cable television on multiple occasions, and has sold millions of albums in digital and hard-copy formats.

The disputed domain name is confusingly similar to the Complainant's trademark.

The disputed domain name includes the Complainant's trademark. The only differences between the disputed domain name and the trademark THE LUMINEERS is the addition of the terms "tour" and "2025".

The Respondent's website provides information about the Complainant, lists the Complainant's planned live performances, redirects user traffic away from the Complainant's authorized websites and displays copyright protected works.

The Respondent has no connection or affiliation with the Complainant.

The Respondent is not making a legitimate noncommercial or fair use of the disputed domain name.

The Complainant argues that the disputed domain name was registered and is being used in bad faith as the website hosted by the disputed domain name contains links possibly designed to direct to third-party websites including third parties that benefit from the goodwill of THE LUMINEERS trademark without authorization, and that such links will direct to third-party websites once tickets are available for such tour. Thus, the Complainant claims that the Respondent has registered and is using the disputed domain name to divert user traffic in the event tickets for Complainant's 2025 tour are made available for sale.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules requires that the Panel's decision be made "on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". It has been a consensus view in previous UDRP decisions that a respondent's default (failure to submit a response) would not by itself mean that the Complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3). A complainant must evidence each of the three elements required by paragraph 4(a) of the Policy in order to succeed on the complaint, namely that: (i) the disputed 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 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 the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the trademark THE LUMINEERS on the basis of its multiple trademark registrations. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1.

It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such findings were confirmed, for example, within [WIPO Overview 3.0](#), section 1.7.

The incorporation of the Complainant's trademark THE LUMINEERS in its entirety in the disputed domain name is evidence that the disputed domain name is confusingly similar to the Complainant's mark.

The mere addition of the term “tour” and the number “2025” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s mark because the Complainant’s mark THE LUMINEERS remains clearly recognizable in the disputed domain name. As noted in [WIPO Overview 3.0](#), section 1.8, “[w]here 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.” Furthermore, the addition of the generic Top-Level Domain (“gTLD”) “.net” is viewed as a standard registration requirement and as such is typically disregarded under the first element confusing similarity test.

Accordingly, the Panel finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights, meaning that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

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

In accordance with paragraph 4(a)(ii) of the Policy, the Complainant must prove that the Respondent has no rights or legitimate interests in the disputed domain name.

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.

The Panel observes that there is no relationship, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Panel also finds that there is no indication that the Respondent is commonly known by the disputed domain name because the Respondent’s name is “Emil Hasibu” which has no connection with the trademark THE LUMINEERS. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s trademarks in a domain name or in any other manner.

Furthermore, the disputed domain name resolves to a website which provides information about the Complainant, lists the Complainant’s planned live performances, refers to tickets sales and displays copyright protected works, exacerbating the Internet user confusion as to the website’s affiliation to the Complainant.

Such use for deliberately attracting Internet users to its website in the mistaken belief that it is a website of the Complainant, or otherwise linked to or authorized by the Complainant supports a finding that the Respondent lacks rights to or legitimate interests in the disputed domain name. The Respondent did not submit a Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

In addition, the Panel wishes to note that, although, at the time of the filing of the Complaint and of this Decision, the website is not actually offering any tickets for sale, the composition of the disputed domain name and the content of the website hosted by it, indicates that the Respondent is attempting to impersonate or cause an undue association with the Complainant.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied. The Panel concludes that the Respondent deliberately chose to include the Complainant's THE LUMINEERS trademark in the disputed domain name, in order to achieve commercial gain by misleading third parties, and that such use cannot be considered as a legitimate noncommercial or fair use. The addition of the term "tour" and the number "2025", related to the activity of the Complainant, suggests that the disputed domain name refers to a concert tour that the Complainant is going to carry out that year, misleading the Internet users into believing that the misleading disputed domain name belongs to or is associated with the Complainant. The Panel further finds that the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

Given the above, the Panel finds that the Complainant has made out an un rebutted prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name and finds that the Complainant has satisfied the requirement under paragraph 4(a)(ii) of the Policy.

### **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 and use of a disputed domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant (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; (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 the respondent has engaged in a pattern of such conduct; (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 online 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.

In this case, the Complainant submits that at the date of registration of the disputed domain name the Respondent most likely knew of the Complainant's mark THE LUMINEERS considering the global renown of the Complainant's prior mark and the website content targeting the Complainant's information and related copyright protected content. The Panel takes note of the construction of the disputed domain name, which combines the mark THE LUMINEERS with the number "2025" and the term "tour" relevant to the Complainant's activity, as well as the fact that the disputed domain name resolves to a website that contains the Complainant's copyright protected material and purports as the official website for the Complainant's future concert tour. The Panel finds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website. [WIPO Overview 3.0](#), section 3.1.4. Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith.

The Complainant points out that the Respondent is hiding its identity behind a privacy service. It is well established that this, too, can be a further indicator of bad faith in certain circumstances. Having considered the Complainant's submissions and in the absence of a response, the Panel finds that the disputed domain name was registered and used by the Respondent in bad faith within 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 <thelumineerstour2025.net> be transferred to the Complainant.

*/Daniel Peña/*

**Daniel Peña**

Sole Panelist

Date: March 6, 2024