

## **ADMINISTRATIVE PANEL DECISION**

TUI AG v. Kuichuan Wang

Case No. D2024-0358

### **1. The Parties**

The Complainant is TUI AG, Germany, internally represented.

The Respondent is Kuichuan Wang, Hong Kong, China.

### **2. The Domain Names and Registrar**

The disputed domain names <musement-tour.com> and <musement-tours.com> are registered with Cosmotown, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 26, 2024. On January 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On January 27, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent (unknown registrant) and contact information in the Complaint. The Center sent an email communication to the Complainant on January 29, 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 February 2, 2024.

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 February 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was February 26, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 27, 2024.

The Center appointed Edoardo Fano as the sole panelist in this matter on February 29, 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.

The Panel has not received any requests from the Complainant or the Respondent regarding further submissions, waivers or extensions of deadlines, and the Panel has not found it necessary to request any further information from the Parties.

Having reviewed the communication records in the case file provided by the Center, the Panel finds that the Center has discharged its responsibility under the Rules, paragraph 2(a), "to employ reasonably available means calculated to achieve actual notice to [the] Respondent". Therefore, the Panel shall issue its Decision based upon the Complaint, the Policy, the Rules and the Supplemental Rules and without the benefit of a response from the Respondent.

The language of the proceeding is English, being the language of the Registration Agreements, as per paragraph 11(a) of the Rules.

#### **4. Factual Background**

The Complainant is TUI AG, a German company operating in the field of tourism, and, since the acquisition of the Italian technology start-up Musement in 2018, owning several trademark registrations for MUSEMENT, among which the following ones:

- German Trademark Registration No. 302018022048 for MUSEMENT, registered on November 21, 2018;
- International Trademark Registration No. 1444684 for MUSEMENT, registered on September 24, 2018, also extended to China;
- United Kingdom Trademark Registration No. UK00801444684 for MUSEMENT, registered on June 19, 2019;
- United States of America Trademark Registration No. 5,929,285 for MUSEMENT, registered on December 10, 2019.

The Complainant also operates on the Internet, its main website being "www.musement.com" for the activities related to the Musement's business.

The Complainant provided evidence in support of the above.

According to the WhoIs records, the disputed domain names were both registered on August 9, 2023. Before the Complaint was filed, they both resolved to identical websites, very similar to the Complainant's official website "www.musement.com", purportedly offering the same services as the Complainant and prominently reproducing the Complainant's trademark and logo. The Complainant provided evidence that the disputed domain name <musement-tour.com> was used to conduct a fraudulent phishing activity. In addition, according to the information disclosed within the "victim's report", it seems that social media were used in connection with the disputed domain name <musement-tour.com> to promote a fraudulent scheme in connection with "an online job". They are currently both inactive when accessing from a computer, while they are visible when accessing from a mobile device.

#### **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 names.

Notably, the Complainant states that the disputed domain names are confusingly similar to its trademark MUSEMENT.

The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain names since it has not been authorized by the Complainant to register the disputed domain names or to use its trademark within the disputed domain names, it is not commonly known by the disputed domain names and it is not making either a bona fide offering of goods or services or a legitimate noncommercial or fair use of the disputed domain names. The disputed domain names resolved to websites very similar to the Complainant's official website, purportedly offering the same services as the Complainant and reproducing the Complainant's trademark and logo, and the disputed domain name <musement-tour.com> was used to conduct a fraudulent phishing activity.

The Complainant submits that the Respondent has registered the disputed domain names in bad faith, since the Complainant's trademark MUSEMENT is distinctive. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain names and the Complainant contends that the use of the disputed domain names to conduct a fraudulent phishing activity and to attract, for commercial gain, Internet users to the Respondent's websites, creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites, qualifies as bad faith registration and use.

## **B. Respondent**

The Respondent has made no reply to the Complainant's contentions and is in default. In reference to paragraphs 5(f) and 14 of the Rules, no exceptional circumstances explaining the default have been put forward or are apparent from the record.

A respondent is not obliged to participate in a proceeding under the Policy, but if it fails to do so, reasonable facts asserted by a complainant may be taken as true, and appropriate inferences, in accordance with paragraph 14(b) of the Rules, may be drawn. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (["WIPO Overview 3.0"](#)), section 4.3.

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy lists three elements, which the Complainant must satisfy in order to succeed:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

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 Complainant's trademark and the disputed domain names. [WIPO Overview 3.0](#), section 1.7.

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

The Panel finds the entirety of the mark MUSEMENT is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here "tour", "tours" and two hyphens, may bear on assessment of the second and third elements, the Panel finds the addition of such terms and elements does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

It is also well accepted that a Top-Level Domain, in this case “.com”, is typically ignored when assessing the similarity between a trademark and a domain name. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the first element of the Policy has been established.

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

Paragraph 4(c) of the Policy provides a list of circumstances in which the respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible 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 names. 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 present record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. The Respondent has not rebutted the Complainant’s prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain names such as those enumerated in the Policy or otherwise.

The disputed domain names resolved to websites very similar to the Complainant’s official website, purportedly offering the same services as the Complainant and prominently reproducing the Complainant’s trademark and logo, and the disputed domain name <musement-tour.com> was used for phishing and fraudulent activities. Panels have held that the use of a domain name for illegal activity, here phishing and impersonation/passing off, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Moreover, the Panel finds that the composition of the disputed domain names, both of them incorporating the Complainant’s trademark MUSEMENT in its entirety together with the term “tour(s)” (a term connected to the Complainant’s business), carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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

## **C. Registered and Used in Bad Faith**

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent’s registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

In the present case, regarding the registration in bad faith of the disputed domain names, the reputation of the Complainant’s trademark in the field of tourism is clearly established. The Panel finds that the Respondent knew of the Complainant and deliberately registered the confusingly similar disputed domain names, especially because they resolved to websites very similar to the Complainant’s official website, purportedly offering the same services as the Complainant and reproducing the Complainant’s trademark and logo.

The Panel further notes that the disputed domain names were also used in bad faith since the Respondent was trying to impersonate the Complainant with the purpose of intentionally attempting to create a likelihood of confusion with the Complainant's trademark as to the disputed domain names' source, sponsorship, affiliation, or endorsement, and, as regards the disputed domain name <musement-tour.com>, in connection to a phishing scheme, an activity clearly detrimental to the Complainant's business. See [WIPO Overview 3.0](#), sections 3.1.4 and 3.4. In addition, noting that the disputed domain name <musement-tour.com> differs only in one letter from <musement-tours.com>, and both resolve to the same website, the Panel considers more likely than not that the Respondent's intention towards <musement-tours.com> would have been the same as with <musement-tour.com>, so there is a likely risk that the disputed domain name <musement-tours.com> is being used or maybe used for a phishing scheme.

The above suggests to the Panel that the Respondent intentionally registered and was using the disputed domain names in order both to disrupt the Complainant's business, and to attract Internet users to its websites in accordance with paragraphs 4(b)(iii) and 4(b)(iv) of the Policy.

The Panel notes the disputed domain names are both inactive when accessing from a computer, although they are still visible when accessing from a mobile device. While the disputed domain names do not resolve to an active website from a computer, that does not prevent a finding of bad faith, particularly noting their use when accessed from a mobile device. Noting the "victims report" provided by the Complainant which points to the Respondent (or a person connected to the Respondent) using WhatsApp (among probably other social media) to perpetrate the fraud in connection with the disputed domain name <musement-tour.com>, the Panel finds that the likely intention of the Respondent with these disputed domain names was to target users via mobile devices.

Furthermore, the Panel considers that the nature of the inherently misleading disputed domain names, both of them including the Complainant's trademark MUSEMENT in its entirety with the mere addition of the terms "tour", "tours" (namely terms related to the Complainant's services) and two hyphens, further supports a finding of bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

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

## 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 names, <musement-tour.com> and <musement-tours.com>, be transferred to the Complainant.

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: March 14, 2024