

ADMINISTRATIVE PANEL DECISION

Malala Yousafzai v. syed haider
Case No. D2024-1157

1. The Parties

The Complainant is Malala Yousafzai, United States of America (“United States”), represented by Law Office of Richard J. Greenstone, United States of America.

The Respondent is syed haider, Australia.

2. The Domain Name and Registrar

The disputed domain name <malalayousafzai.com> is registered with Porkbun LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 16, 2024. On March 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 18, 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 (JOHN DOE and WHOIS PRIVACY, C/O PRIVATE BY DESIGN, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 19, 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 March 22, 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 March 22, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 11, 2024. The Response was filed with the Center on April 11, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on April 17, 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 Malala Yousafzai, an internationally famous human rights activist who was born in Mingora, Pakistan, in 1997. The Complainant serves as Chair of the Malala Fund, a nonprofit organization located in Washington, D.C., United States, and as President of Extracurricular Productions, Inc., a film production company with its principal place of business in Los Angeles, United States.

The Complainant rose to international prominence in 2009 when The New York Times released a two-part documentary on the Complainant's struggle to get an education while her community of Swat Valley, Pakistan, was under the influence of the Taliban. Since then, the Complainant has been known particularly as an advocate for girls' right to an education. The Complainant published its first book, *I am Malala: The Girl Who Stood Up for Education and Was Shot by the Taliban*, in 2013. The Complainant won the Nobel Peace Prize in 2014. Since 2017, the Complainant has written four more books. The Complainant is described on the "www.amazon.com" page for its book *Malala's Magic Pencil* (2017) as a "New York Times bestselling author". The Complainant was nominated by human rights activist Desmond Tutu for the International Children's Peace Prize in October 2011 and was awarded Pakistan's National Youth Peace Prize on November 24, 2011 (since renamed the National Malala Peace Prize).

The disputed domain name was registered on December 24, 2011. The Respondent is an individual based in Australia. The Complainant has supplied screenshots for the website associated with the disputed domain name from March 4, 2012, to October 6, 2023. Originally, the disputed domain name was parked with the parking company and domain name aftermarket broker Sedo on a page that stated it may be for sale by its owner, and with a "BUY THIS DOMAIN" option. Thereafter, although the said option was not always shown, the disputed domain name appears to have remained with Sedo until October 6, 2023, when it moved to the domain name aftermarket broker "www.dan.com", at which point the corresponding website stated "[the disputed domain name] is for sale! / Listed by Domain seller / Make an offer".

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.

Notably, the Complainant contends that it has trademark rights in its personal name, asserting that the Complainant has used its name extensively in commerce such that consumers associate said name with its products, notably five books which the Complainant has authored, and which are currently available for sale via "www.amazon.com" and elsewhere. The Complainant asserts that it enjoyed extensive public and media recognition internationally prior to the registration of the disputed domain name, which gave rise to considerable economic benefit. This included the Complainant's advocacy work earning the Complainant USD 18,000 in 2011 alone. The Complainant contends that the disputed domain name is identical to its name, disregarding the ".com" Top-Level Domain in terms of the confusing similarity test.

The Complainant asserts that no evidence suggests that the Respondent used the disputed domain name in connection with a bona fide offering of goods or services or in connection with a legitimate noncommercial or fair use, adding that there is no evidence that the Respondent has been commonly known by the disputed domain name. The Complainant believes that it is reasonable to infer that the Respondent's intention was to sell the disputed domain name to the Complainant, given the manner in which it was parked with the "BUY THIS DOMAIN" call to action soon after registration.

The Complainant asserts that a registrant's contemplation of a complainant's future reputation or goodwill is sufficient to establish bad faith registration for Policy purposes, contending that, at the time that the disputed domain name was registered, it is likely that the Respondent would have knowledge of the future goodwill that would be associated with the Complainant's name because, by then, the Complainant was already internationally famous. The Complainant also contends that the disputed domain name is being used in bad

faith as the associated webpage announces unequivocally, “The domain name MALALAYOUSAFZAI.COM is for sale!” and offers are invited to an anonymous seller listed as “Domain seller”.

B. Respondent

The Respondent contends that the Complainant has not satisfied the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Respondent contends that it registered the disputed domain name after due diligence regarding registered trademarks and that the name is a common name used by people across the world, especially the Indian subcontinent. The Respondent asserts that the Complainant was not “so famous” when the Respondent registered the disputed domain name and that the Respondent had no idea that the Complainant would become famous in future. The Respondent cites *Gordon Sumner, p/k/a Sting v Michael Urvan*, WIPO Case No. [D2000-0596](#), a case regarding <sting.com>, to support its contention that celebrities without registered trademarks are not necessarily entitled to a transfer of a domain name corresponding to their professional name.

The Respondent contends (but does not evidence) that it registered the disputed domain name for the primary purpose of giving it to the Respondent’s daughter, whose name is also Malala Yousafzai, adding that, “As she is still a minor, she will build her website using this domain name when she becomes an adult. I can provide a birth certificate in the court of law proving this”. The Respondent asserts that the disputed domain name is parked with a free parking service but has not been used to misdirect users or attract Internet traffic for commercial gains. The Respondent notes that it is not using the disputed domain name to offer for sale any products or services. It adds that “I have not sold this domain name because of the above reasons otherwise I could have sold this domain a long time ago”.

The Respondent asserts that the disputed domain name was not acquired to sell it to the Complainant or to prevent the Complainant from reflecting a mark in a corresponding domain name, and that the Respondent has not engaged in a pattern of such conduct. The Respondent points out that there was no trademark registered corresponding to the Complainant’s name at the time of registration of the disputed domain name, adding that the Complainant has not registered any other domain name with its personal name, such as under the country code Top-Level Domain for Pakistan. The Respondent adds that the Parties are not competitors, and that the disputed domain name was not registered primarily to disrupt the Complainant’s business.

The Respondent submits that anyone had a right to register a common person’s name on a “first come first served” basis, unless there was a trademark in existence, adding that when the disputed domain name was registered, the Respondent was in Australia and did not know that the Complainant “had written in some media”.

6. Discussion and Findings

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 name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

The UDRP does not explicitly provide standing for personal names which are not registered or otherwise protected as trademarks. In situations however where a personal name is being used as a trademark-like identifier in trade or commerce, the complainant may be able to establish unregistered or common law rights in that name for purposes of standing to file a UDRP case where the name in question is used in commerce as a distinctive identifier of the complainant’s goods or services. Merely having a famous name (such as a businessperson or cultural leader who has not demonstrated use of their personal name in a

trademark/source-identifying sense), or making broad unsupported assertions regarding the use of such name in trade or commerce, would not likely demonstrate unregistered or common law rights for purposes of standing to file a UDRP complaint. [WIPO Overview 3.0](#), section 1.5.2.

Here, it is clear that the Complainant is an internationally famous personality, known under its own name for its advocacy work in particular. However, as the [WIPO Overview 3.0](#), section 1.5.2 indicates, having a famous name on its own is not sufficient to establish standing in respect of such name for the purposes of the Policy. What is needed is evidence of the use of the name as a trademark-like identifier in trade or commerce. In the present case, there is ample evidence that the Complainant is a bestselling author under its own name, that its name has been used as an indication of the source of the books that it has written, and that it has become distinctive of that source.

It has long been recognized in cases under the Policy that unregistered trademark rights may be established for Policy purposes in a personal name by a successful author publishing books under such name (see, for example, *Dr. Michael Crichton v. In Stealth Mode*, WIPO Case No. [D2002-0874](#), “Complainant has claimed to be the author of the numerous works already identified. Respondent has not contested this. The Panel therefore infers that Complainant has, through use, acquired common law trademark rights in his name” and, more recently, *Monsieur le Président de la République française, Emmanuel Macron v. Samy Thellier*, WIPO Case No. [D2022-0036](#), “The Panel observes that the use of the name “Emmanuel Macron” by the Complainant is not limited to the Complainant’s political activities. Notably, the Complainant has also published a number of books under his name, which are offered for sale. Given such commercial use of the name “Emmanuel Macron”, the Panel is of the opinion that the Complainant has established unregistered trademark rights in this name for the purposes of the Policy” [Panel’s translation].). The Panel is presented with broadly the same situation in the present case, in that the Complainant’s use of the name Malala Yousafzai is not limited to public advocacy, as the Complainant has published a number of books under such name that are available for sale.

The Panel notes for completeness that *Gordon Sumner, p/k/a Sting v Michael Urvan*, WIPO Case No. [D2000-0596](#), which was relied upon by the Respondent in support of its contentions, is not strictly relevant here; the Panel also notes that this case was decided under the third element and that the panel in that case did not make a determination under the first element, and that in either event, in the more than 20 years since its rendering at the very outset of the UDRP, a consensus view has emerged among panelists that merely because a word is capable of multiple meanings (e.g., “apple”) does not mean that it cannot also function as a trademark, registered or otherwise. The panel in that case was reluctant to find that the complainant had rights in the unregistered mark “sting”, even though the complainant was a world-famous entertainer using such name, because the word was also a common word in the English language, and presumably therefore that it would be more difficult to establish the distinctiveness of the identifier. While, in the present case, the Respondent seems to be suggesting that the Complainant’s name is a similarly common term, it does not to the Panel’s mind amount to a common word or phrase in any language, nor in any event has the Respondent provided any evidence supporting its assertion as to the commonality of the name, whether in the Indian subcontinent or otherwise. The name is distinctive of the Complainant’s services and has been used in a trademark-like manner to denote the source of those services. That is sufficient to establish an unregistered mark for the purposes of the first element under the Policy.

The Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

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 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 name such as those enumerated in the Policy or otherwise.

The main plank of the Respondent’s case is that it is associated with a person who is commonly known by the disputed domain name, and that the disputed domain name was registered on behalf of that person. However, the Respondent produces no evidence whatsoever to support its assertion. In order to establish rights and legitimate interests on this basis, the Panel considers that a respondent would need to provide independent evidence of a genuine connection to the name concerned, such as, for example, an extract from a register of births, a passport, or an identity card in that name. In other words, merely making a conclusory allegation as the Respondent has done here is not enough.

For the Respondent to have been able to evidence its connection to the name to the Panel’s satisfaction, it would be necessary for the Panel to be satisfied that the name concerned has not been adopted opportunistically in order to give a spurious air of legitimacy to an otherwise questionable registration (see *G. A. Modefine S.A. v. A.R. Mani*, WIPO Case No. [D2001-0537](#)). The Panel might have been so satisfied if, for example, as well as establishing the genuine connection to the name by way of public documents, the Respondent had also been able to support its contention as to the widespread and common usage of the name by people other than the Complainant. As matters stand, however, it has done neither, and the Panel cannot find that it has rights or legitimate interests on that basis.

The Panel notes for completeness that it is in any event skeptical of the Respondent’s claims on this topic given the manner in which the disputed domain name has been used. Had the Respondent registered the disputed domain name for its daughter to use when she becomes an adult, the Panel doubts that the Respondent would have parked the disputed domain name with not one but two popular providers of aftermarket brokerage services whereby the disputed domain name was offered for sale, or whereby it was strongly hinted to Internet users that such domain name was likely to be available for sale upon inquiry.

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.

A finding that a domain name has been registered and is being used in bad faith typically requires an inference to be drawn that the respondent has registered and is using such domain name to take advantage of its significance as a trademark owned by (usually) the complainant (see: *British Airways Plc v. Softline Studios*, WIPO Case No. [D2023-2188](#)). It follows that the Complainant, on whom the burden of proof lies, must show on the balance of probabilities that the Respondent registered the disputed domain name in the knowledge of and with intent to target the Complainant and/or its rights in the trademark concerned.

In the present case, the issue is materially affected by the fact that, while the Complainant had become internationally famous by the date when the disputed domain name was registered, the Complainant's unregistered trademark rights are likely to have arisen thereafter. The general rule is 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. [WIPO Overview 3.0](#), section 3.8.1. However, this is qualified by an exception in the [WIPO Overview 3.0](#), section 3.8.2, which notes that, in certain limited circumstances, where the facts of the case establish that the respondent's intent in registering the domain name was to unfairly capitalize on the complainant's nascent (typically as yet unregistered) trademark rights, panels have been prepared to find that the respondent has acted in bad faith. The section goes on to note that such scenarios include registration of a domain name [...] further to significant media attention (e.g., in connection with a product launch or prominent event).

In the present case, the Panel notes that the Respondent registered the disputed domain name shortly after the Complainant was nominated by human rights activist Desmond Tutu for the International Children's Peace Prize, and only about a month after the Complainant was awarded Pakistan's National Youth Peace Prize (now renamed the National Malala Peace Prize). Either or both of these could be described as prominent events which are likely to have given rise to significant media attention worldwide, including in Australia where the Respondent is based.

Given the Complainant's prominence in international media by the relevant date, although still a girl aged in the middle teens at the time,¹ it would have been clear to any reasonable observer that the Complainant would go far, and would be likely to serve as a rallying point, for example in connection with fundraising, for the causes that the Complainant was already espousing publicly. More importantly for present purposes, as early as 2009, the Complainant had shown promise as a budding writer by way of its authorship of an online diary for BBC Urdu which prefigured a career as a successful author. In these circumstances, the Panel considers that it is reasonable to infer, on the balance of probabilities, that the Respondent registered the disputed domain name with full knowledge of the Complainant and in contemplation of the reputation and goodwill that the Respondent knew the Complainant would shortly develop or was already in the process of developing (see, on this topic, *Stoneygate 48 Limited and Wayne Mark Rooney v. Huw Marshall*, WIPO Case No. [D2006-0916](#)).

The Panel notes for completeness that it has considered the Respondent's contentions that the Complainant's name is a common one, that the Respondent was unaware of the Complainant's prominence in the media at the material time, and that the Respondent allegedly registered the disputed domain name on behalf of its daughter, who allegedly coincidentally shares the same name as the Complainant. The Panel notes that the Respondent's case consists solely of assertion, and in particular, that no evidence was produced concerning the extent to which the Complainant bears a common name, and/or that this is the name of the Respondent's daughter. The countervailing evidence from the Complainant as to the Complainant's international prominence, including at the point when the disputed domain name was registered, is on the other hand entirely convincing. The Panel notes the Respondent's statement that it is prepared to back up its assertions in a court of law (though not, it seems, in an administrative proceeding under the Policy) and the Panel observes that the Respondent is entitled should it choose to do so to refer the dispute to a court of competent jurisdiction for independent resolution after the administrative proceeding is concluded in terms of the Policy, paragraph 4(k).

The Panel finds that the Complainant's evidence of the historic use of the disputed domain name adds to the picture that it has been both registered and used in bad faith. The disputed domain name was placed with aftermarket/brokerage domain name services shortly after it was registered, and has seemingly remained with such a service throughout its life, changing once between brokers. This does not strike the Panel as an arrangement that would be put in place by someone who has registered the disputed domain name for an eponymous member of their family, as the Respondent contends. On the contrary, it suggests that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant in

¹ In fact, to the Panel's personal recollection, the Complainant's age actually enhanced the Complainant's worldwide notoriety as it was itself a widely reported part of the Complainant's story at the material time.

terms of paragraph 4(b)(i) of the Policy, bearing in mind the strong likelihood at that time that the Complainant was developing, or would go on to develop, trademark rights in its personal name.

In all of these circumstances, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Panel therefore finds that the 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 <malalayousafzai.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: May 1, 2024