

ADMINISTRATIVE PANEL DECISION

Jardin Majorelle SCA v. Chitra Gurnani, Thrillophilia Adventure
Case No. D2024-2096

1. The Parties

The Complainant is Jardin Majorelle SCA, Morocco, represented by Casalonga Avocats, France.

The Respondent is Chitra Gurnani, Thrillophilia Adventure, India.

2. The Domain Name and Registrar

The disputed domain name <jardinmajorelle-tickets.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 20, 2024. On May 20, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 21, 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 (Registration Private Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 27, 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 May 29, 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 June 3, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 23, 2024. The Center received email communications on May 28, 2024, May 30, 2024, June 10, 2024, and July 11, 2024. The Respondent did not submit a formal response. Accordingly, the Center notified the Commencement of Panel Appointment Process on July 11, 2024.

The Center appointed Dr. Clive N.A. Trotman as the sole panelist in this matter on July 24, 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

In the 1980s the Majorelle Garden (Jardin Majorelle), Marrakech, created by Jacques Majorelle in 1923, was acquired and restored by Yves Saint-Laurent and Pierre Bergé. Ownership of the Majorelle Garden and its associated museums, namely the Pierre Bergé Museum of Berber Arts and the Musée Marrakech, was vested in the Complainant, a Moroccan company, registered in 2003.

The Fondation Jardin Majorelle is an independent entity established in 2001 under Moroccan law by Yves Saint Laurent, Pierre Bergé and Madison Cox. The Fondation Jardin Majorelle ensures the conservation, maintenance and prestige of the Majorelle Garden, the Pierre Bergé Museum of Berber Arts and the Musée Yves Saint Laurent. The Majorelle Garden and its museums receive some 900,000 visitors annually.

The Complainant has a number of trademarks of which the following are representative:

JARDIN MAJORELLE, French trademark, registration number 3768740, registered on February 4, 2011, in class 3;

JARDIN MAJORELLE, European Union trademark, registration number 013560503, registered on December 22, 2014 in classes 3, 4, 5, 14, 16, 20, 21, 24, 25, 26, 30, 41, 43, and 44;

JARDIN MAJORELLE, European Union trademark, registration number 013867891, registered on July 30, 2015, in classes 27, 29, and 30.

Fondation Jardin Majorelle owns the domain name "jardinmajorelle.com", registered in January 2005, which is used for its main website, and sells tickets through the subdomain "www.tickets.jardinmajorelle.com". This website is now the only way to purchase tickets to the garden or the museums. The Complainant or Fondation Jardin Majorelle also own the domain names "museeyslmarrakech.com" and "fondationjardinmajorelle.ma".

The Respondent has not provided any background information. According to the Complainant, the Respondent is the cofounder and CEO of Thrillophilia, which is not in any way connected with the Complainant and is India's largest platform for arranging travel experiences. The Respondent operates various inter-linked websites offering travel and ticket packages. The disputed domain name was registered on April 21, 2022. The website to which the disputed domain name has resolved (the "Respondent's website") has promoted and sold tickets to the Majorelle Garden, which the Complainant says are false and fake tickets. This website has previously displayed extensive web pages but is presently unresponsive.

On April 16, 2024, the Complainant sent cease and desist letters to the Respondent, with a reminder on April 24, 2024, requesting the transfer of the disputed domain name. Notification was also sent to the Respondent's web hosting company DigitalOcean LLC. There have been no replies.

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 the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant says its trademark is entirely reproduced within the disputed domain name. The additional word “tickets” could increase the likelihood of confusion by falsely suggesting a connection between the Respondent and the Complainant.

The Complainant says the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant states it has no relationship with the Respondent, which has never been permitted to use the Complainant’s trademarks or to register the disputed domain name, or to sell tickets representing the Complainant. The use of the disputed domain name does not constitute a bona fide offering of goods and services or a legitimate non-commercial or fair use, but leads the Internet visitor to an unauthorised website offering tickets to the Complainant’s attractions, replete with a purported date and time booking system, then to a payment website. In particular, the Respondent falsely claims to be “a reseller of Jardin Majorelle tickets”. Since January 30, 2023, the Fondation Jardin Majorelle’s website “www.tickets.jardinmajorelle.com” has been the exclusive source of legitimate tickets and the Respondent cannot meet the requirements for being a bona fide reseller of the Complainant’s goods or services. Furthermore the Respondent is not commonly known by the disputed domain name.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith. The Complainant’s trademarks are well-known and predate the registration of the disputed domain name. The Respondent knew or should have known of the Complainant’s trademarks when registering the disputed domain name.

The disputed domain name has the effect of intentionally misdirecting visitors to a website purporting to sell tickets for the Majorelle Garden. Internet users may be led to believe by confusion that the Respondent’s website is legitimate and belongs to or is endorsed by the Complainant, and therefore the disputed domain name was registered and is being used in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not provide a formal Response to the Complainant’s contentions.

On May 28, 2024, the Respondent sent an email to the Center and the Complainant that read: “Hi, Thanks for reaching out. Let me know how can I help you to resolve this issue. Looking forward to hearing from you.”

On May 30, 2024, the Respondent sent an email to the Center and the Complainant that read: “Hi, This is to bring to your notice that we have taken down the concerned website <https://www.jardinmajorelle-tickets.com/>. Let me know if anything else is required from our side.”

On June 10, 2024, the Respondent sent an email to the Center and the Complainant that read: “Hi Abderrahim, This website was powered by Thrillophilia.com and we source attraction tickets from multiple global OTAs like Klook, Get Your Guides, Globaltix, etc. We promote international attractions in the Indian market by offering content in different regional languages. This website was part of promoting attractions and tours in Morocco to the Indian audience. We have taken down the website when we got an escalation from your side. (...) If you need any further assistance let me know. Thanks and Regards, Girdhar”.

On July 11, 2024, the Respondent sent an email to the Center and the Complainant that read: “Hi, As informed earlier on June 10th we have taken down the concern website. If anything else is required let me know.”

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

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

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.

In particular, as further discussed below in the matter of bad faith, the disputed domain name contains the Complainant's trademark and has resolved to a website displaying that trademark and offering for sale goods or services, namely entry tickets to the Complainant's attractions, without the Complainant's authority. The Respondent's website states "...we are a reseller of Jardin Majorelle tickets", which the Complainant states to be false. The Respondent's selling of purported tickets in the Complainant's name without authority to do so cannot qualify as a bona fide offering of goods or services under the Policy or as use of the disputed domain name for a legitimate noncommercial or fair purpose. There is no evidence the Respondent has been commonly known by the disputed domain name or a similar name.

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)(iv) of the Policy is pertinent in this instance and reads:

“(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site 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 your website or location or of a product or service on your website or location”.

The Complainant has produced an accumulation of screen captures of the Respondent’s website, before it was taken down, running to some 89 pages and subpages featuring photographs and extensive information about the Jardin Majorelle and Marrakech. The first page was prominently headed “Jardin Majorelle Tickets”. The Respondent’s website carried photographs of relevant buildings, a fountain and garden scenes similar to some of those on the Fondation Jardin Majorelle website. Inescapably, on the totality of the evidence, the Respondent must have known of the Complainant, of the Jardin Majorelle, of the Complainant’s trademark, and of the availability of authentic entry tickets online. The Complainant has produced a copy of a press release by Fondation Jardin Majorelle dated January 12, 2023, announcing that with effect from January 30, 2023, tickets could only be obtained online, and solely through the Fondation Jardin Majorelle website “www.tickets.jardinmajorelle.com”.

Visitors to the Respondent’s website who follow the process of attempting to buy tickets are eventually sent by link to a facility for making payment. The Complainant says purchasers are provided with false and fake tickets.

The Respondent, by its choice of the disputed domain name featuring the Complainant’s trademark, and incidentally through the analogy of the disputed domain name to the legitimate Fondation Jardin Majorelle ticket outlet at “www.tickets.jardinmajorelle.com”, clearly has set out to target the Complainant and its business. There can be little doubt that at least some Internet users would likely be confused into believing the Respondent’s website to be owned by or at least endorsed by the Complainant, as a legitimate ticket outlet. The Panel finds in this instance that such confusion would not necessarily stop at initial interest confusion (as is often the case), but that because of the comprehensive and informative nature of the Respondent’s website, visitors would be at high risk of continued confusion to the point of payment and beyond.

Accordingly, on the evidence and on the balance of probabilities, the Panel finds the disputed domain name to have been registered and used in bad faith by the Respondent in the terms of paragraphs 4(b)(iv) and 4(a)(iii) of the Policy. 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 <jardinmajorelle-tickets.com> be transferred to the Complainant.

/Dr. Clive N.A. Trotman/

Dr. Clive N.A. Trotman

Sole Panelist

Date: August 8, 2024