

ADMINISTRATIVE PANEL DECISION

MarineMax, Inc. v. Ariana Cheyanne
Case No. D2024-3510

1. The Parties

Complainant is MarineMax, Inc., United States of America (“U.S.”), represented by Holland & Knight, LLP, U.S.

Respondent is Ariana Cheyanne, U.S.

2. The Domain Name and Registrar

The disputed domain name <marinemaxcruise.com> (the “Domain Name”) is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 28, 2024. On August 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On August 30, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registration Private) and contact information in the Complaint.

The Center sent an email communication to Complainant on September 2, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on September 9, 2024.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on September 11, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 1, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on October 4, 2024.

The Center appointed Kimberley Chen Nobles as the sole panelist in this matter on October 8, 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

Complainant is a Florida-based company located in the U.S., involved in the marketing and selling of boating equipment and supplies and marine vacation services, all conducted under the MARINEMAX trademark. Complainant owns numerous registered trademarks with the MARINEMAX mark, either alone or in combination with other marks or terms, including:

- U.S. registered trademark number 2,317,088 for the MARINEMAX word mark, registered on February 8, 2000;
- U.S. registered trademark number 2,401,921 for the MARINEMAX design and word mark, registered on November 7, 2000; and
- U.S. registered trademark number 4,395,636 for the MARINEMAX VACATIONS word mark, registered on September 3, 2013.

Complainant also owns the domain name <marinemax.com>, which was registered on October 19, 1997, and which redirects to its primary business website.

The Domain Name was registered on July 18, 2024, and at the time of the filing of the Complaint, redirected to a website which prominently featured the MARINEMAX trademark, with a banner stating “Where Every Voyage Is A Win”, and content that prominently marketed “MarineMax Casino”, offering cruising trips of “Luxury and excitement” and prompted users to provide their names and email addresses. It also featured an email address with the term “marinemax”. The website remains the same at the time of the Decision.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Complainant contends that (i) the Domain Name is confusingly similar to Complainant’s trademarks; (ii) Respondent has no rights or legitimate interests in the Domain Name; and (iii) Respondent registered and is using the Domain Name in bad faith.

In particular, Complainant contends that it has trademark registrations and rights for MARINEMAX and that Respondent registered and is using the Domain Name with the intention to confuse Internet users looking for well-known MARINEMAX products and services.

Complainant notes that it has no affiliation with Respondent, nor authorized Respondent to register or use a domain name, which includes Complainant’s trademarks, and that Respondent has no rights or legitimate interests in the registration and use of the Domain Name. Rather, Complainant contends that Respondent has acted in bad faith in acquiring and setting up the Domain Name, when Respondent clearly knew of Complainant’s rights.

B. Respondent

Respondent did not respond to Complainant’s contentions.

6. Discussion and Findings

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

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

Section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") states that failure to respond to the complainant's contentions 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.

Thus, although in this case Respondent has failed to file a formal response, the burden remains with Complainant to establish the three elements of paragraph 4(a) of the Policy by a preponderance of the evidence.

A. Identical or Confusingly Similar

Ownership of a trademark registration is generally sufficient evidence that a complainant has the requisite rights in a mark for purposes of paragraph 4(a)(i) of the Policy. See [WIPO Overview 3.0](#), section 1.2.1. Complainant has provided evidence of its rights in the MARINEMAX trademarks, as noted above. Complainant has also submitted evidence which supports that the MARINEMAX trademarks are widely known and a distinctive identifier of Complainant's products and services. Complainant has therefore proven that it has the requisite rights in the MARINEMAX trademarks.

With Complainant's rights in the MARINEMAX trademarks established, the remaining question under the first element of the Policy is whether the Domain Name, typically disregarding the Top-Level Domain in which it is registered (in this case, ".com"), is identical or confusingly similar to Complainant's trademark. See, e.g., *B & H Foto & Electronics Corp. v. Domains by Proxy, Inc. / Joseph Gross*, WIPO Case No. [D2010.0842](#).

Here, the Domain Name is confusingly similar to Complainant's MARINEMAX trademarks. These MARINEMAX trademarks are recognizable in the Domain Name. In particular, the Domain Name's inclusion of Complainant's trademark MARINEMAX in its entirety, with the addition of the term "cruise" after the MARINEMAX trademark does not prevent a finding of confusing similarity between the Domain Name and the MARINEMAX trademarks. See section 1.8 of the [WIPO Overview 3.0](#).

Thus, the Panel finds that Complainant has satisfied the first element of the Policy.

B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant must make a prima facie showing that a respondent possesses no rights or legitimate interests in a disputed domain name. See, e.g., *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#). Once a complainant makes such a prima facie showing, the burden of production shifts to the respondent, though the burden of proof always remains on the complainant. If the respondent fails to come forward with relevant evidence showing rights or legitimate interests, the complainant will have sustained its burden under the second element of the UDRP.

From the record in this case, it is evident that Respondent was, and is, aware of Complainant and its MARINEMAX trademarks, and does not have any rights or legitimate interests in the Domain Name. Complainant has confirmed that Respondent is not affiliated with Complainant, or otherwise authorized or licensed to use the MARINEMAX trademarks or to seek registration of any domain name incorporating the trademarks. Respondent is also not known to be associated with the MARINEMAX trademarks and there is

no evidence showing that Respondent has been commonly known by the Domain Name.

In addition, Respondent has not used the Domain Name in connection with a bona fide offering of goods or services or a legitimate noncommercial or fair use. Rather, at the time of the filing of the Complaint, the Domain Name was used in connection with a website that featured the MARINEMAX trademarks, redirected to a website which prominently featured the MARINEMAX trademark, and a banner stating “Where Every Voyage Is A Win”, with content that prominently marketed “MarineMax Casino”, offering cruising trips of “Luxury and excitement” and which prompted users to provide their names and email addresses. It also featured an email address with the term “marinemax”. The website remains the same at the time of the Decision.

Furthermore, users may perceive the content of the website associated with the Domain Name was from Complainant which is not the case here. Therefore, such use does not constitute a bona fide offering of goods or services nor a legitimate noncommercial or fair use and cannot under the circumstances confer on Respondent any rights or legitimate interests in the Domain Name.

Moreover, the composition of the Domain Name, which incorporates the MARINEMAX trademarks together with “cruise” referring to Complainant’s boating and marine vacation business, carries a risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by Complainant. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, Complainant has provided evidence supporting its prima facie claim that Respondent lacks any rights or legitimate interests in the Domain Name. Respondent has failed to produce countervailing evidence of any rights or legitimate interests in the Domain Name.

Thus, the Panel concludes that Respondent does not have any rights or legitimate interests in the Domain Name and Complainant has met its burden under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel finds that Respondent’s actions indicate that Respondent registered and is using the Domain Name in bad faith.

Paragraph 4(b) of the Policy provides a non-exhaustive list of circumstances indicating bad faith registration and use on the part of a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

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

The Panel finds that Complainant has provided ample evidence to show that registration and use of the MARINEMAX trademarks predate the registration of the Domain Name. Complainant is also well

established and known. Indeed, the record shows that Complainant's MARINEMAX trademarks and related products and services are widely known and recognized. The Domain Name was created on July 18, 2024, and incorporates Complainant's MARINEMAX trademarks together with the descriptive word "cruise" which directly relate to Complainant's services, industry and business. Therefore, Respondent was aware of the MARINEMAX trademarks when it registered the Domain Name. See section 3.2.2 of the [WIPO Overview 3.0](#); see also *TTT Moneycorp Limited v. Privacy Gods / Privacy Gods Limited*, WIPO Case No. [D2016-1973](#).

The Panel therefore finds that Respondent's awareness of Complainant's trademark rights at the time of registration suggests bad faith. See *Red Bull GmbH v. Credit du Léman SA, Jean-Denis Deletraz*, WIPO Case No. [D2011-2209](#); *Nintendo of America Inc v. Marco Beijen, Beijen Consulting, Pokemon Fan Clubs Org., and Pokemon Fans Unite*, WIPO Case No. [D2001-1070](#); and *BellSouth Intellectual Property Corporation v. Serena, Axel*, WIPO Case No. [D2006-0007](#).

Further, the registration of the Domain Name incorporating Complainant's MARINEMAX trademark in its entirety and use of Complainant's MARINEMAX trademark for allegedly providing cruising services while prominently displaying Complainant's MARINEMAX trademarks, and referring to cruising or marine vacation services which are in Complainant's direct field of business and industry, further increase the likelihood of confusion. It suggests Respondent's actual knowledge of Complainant's rights in the MARINEMAX trademarks at the time of registration of the Domain Name and its effort to opportunistically capitalize on the on the reputation and goodwill of Complainant's trademark.

In addition, Respondent's unauthorized use of Complainant's well-known trademarks to divert traffic to its website, is most likely targeted to induce Internet users to sign up for cruising or vacations services allegedly provided by Respondent, based on a false or at the very least, confusing impression to Internet users who may think there is an affiliation or connection to Complainant. This false or confusing impression is further enhanced through the placement and use of Complainant's MARINEMAX trademark in the Domain Name, the use of Complainant's MARINEMAX trademarks on the website – which are prominent and repeated - and the offering of cruising services, including signing up through the website.

Further, the Panel notes the reputation of the MARINEMAX marks, the failure of Respondent to submit a Response or to provide any evidence of actual or contemplated good-faith use, and the implausibility of any good-faith use to which the Domain Name may be put.

Accordingly, the Panel finds that Respondent registered and is using the Domain Name in bad faith and Complainant succeeds under the third element of paragraph 4(a) 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 Domain Name <marinemaxcruise.com> be transferred to Complainant.

/Kimberley Chen Nobles/
Kimberley Chen Nobles
Sole Panelist
Date: October 18, 2024