

ADMINISTRATIVE PANEL DECISION

Tata Sons Private Ltd. and Tata Consultancy Services Limited v. Pascal Flamur Musaj

Case No. D2024-3799

1. The Parties

The Complainants are Tata Sons Private Ltd. (“Complainant No. 1”) and Tata Consultancy Services Limited (“Complainant No. 2”), India, represented by Anand & Anand, India.

The Respondent is Pascal Flamur Musaj, Switzerland.

2. The Domain Name and Registrar

The disputed domain name <tcsempowers.com> (the “Domain Name”) is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 18, 2024. On September 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On September 22, 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 (Redacted for Privacy (DT), Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 26, 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 September 30, 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 October 7, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 27, 2024. The Respondent did not submit any response.

Accordingly, the Center notified the Respondent’s default on October 29, 2024.

The Center appointed Gregor Vos as the sole panelist in this matter on November 5, 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 No. 1 is the holding company and promotor of the TATA group of companies that collectively employ over 900,000 employees worldwide and its brand is listed as one of the most valuable brands in India. Complainant No. 2 was first established in 1968 as a division of Complainant No. 1 and incorporated as a separate company with effect from April 1, 2004. It is a company active in the field of IT services, consulting, and business solutions.

Complainant No. 1 is the owner of inter alia the following trademark registrations, of which Complainant No. 2 is the licensee (hereinafter jointly referred to as: the "Trademarks"):

- India Trade Mark Registration No. 1240826 for the mark TCS, registered on October 1, 2003; and
- United States of America Trade Mark Registration No. 3022846 for the mark TCS registered on December 6, 2005.

Several domain names containing the Trademarks have been registered by the Complainants, among which the domain name <tcs.com>. The Trademarks are also used by Complainant No. 2 for carrying out various philanthropic activities under the sign "TSEMPOWERS".

The Respondent registered the Domain Name on October 29, 2023. At the time of filing the Complaint, the Domain Name resolved to a website providing escort, adult dating, and pornographic services. Currently, the Domain Name is inactive.

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the Domain Name.

Notably, the Complainants contend that the Domain Name is identical or confusingly similar to the Trademarks of the Complainants, the Respondent has no rights or legitimate interests in the Domain Name, and the Domain Name has been registered and is being used in bad faith.

Firstly, according to the Complainants, the Domain Name is identical to its well-known Trademarks. The Domain Name incorporates the Trademarks in their entirety with the addition of the word "empowers", which does not prevent a likelihood of confusion. Also, Complainant No. 2 carries out various philanthropic activities under the name "TSEMPOWERS", which is identical to the Domain Name.

Secondly, the Respondent has no rights or legitimate interests in the Domain Name. The Respondent has never received a license or any other form of authorization from the Complainants to use the Trademarks, has no prior rights to the Domain Name and is not commonly known by the Domain Name. Also, at the time of filing the Complaint the Domain Name resolved to a website on which escort, adult dating and pornographic services were provided. Therefore, the use of the Trademarks does not constitute legitimate commercial or non-commercial use of the Domain Name.

Finally, according to the Complainants, the Respondent has registered and is using the Domain Name in bad faith. In light of the well-known character of the Complainants' Trademarks, it is inconceivable that the Respondent registered the Domain Name without knowledge of the Complainants and their Trademarks.

Therefore, the registration and use of the Domain Name qualifies as opportunistic bad faith. Also, according to the Complainants, the Domain Name is being used in bad faith. The Respondent is using the Domain Name to impersonate the Complainants, using the reputation and goodwill of the Complainants' Trademarks by directing Internet traffic to a website providing escort, adult dating, and pornographic services.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

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 Complainants' Trademark and the Domain Name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainants have 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 Trademarks is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here "empowers", may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the Domain Name and the Trademarks 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 Complainants have established a prima facie case that the Respondent lacks rights or legitimate interests in the 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 Domain Name such as those enumerated in the Policy or otherwise.

Further, the Respondent used the Domain Name for a webpage featuring pornographic content and offering escort and dating services, which given the identical nature of the Domain Name as compared to the name

through which Complainant No. 2 carries out its philanthropic activities, reflects the Respondent's intent to mislead Internet users expecting to find the Complainants for the Respondent's commercial gain. Further, given the Complainant No. 2's philanthropic activities under the "TCSEMPOWERS" name, the content of the Domain Name is likely to tarnish the reputation of the Complainants when Internet users are unexpectedly directed there when finding the identical Domain 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) 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.

The Complainants have sufficiently substantiated that the Trademarks are well-known, at least in India. In light of the reputation of the Trademarks, the lack of any rights or legitimate interest in the Domain Name by the Respondent, and in the absence of any conceivable good faith use of the Domain Name, the Panel finds from the present circumstances that the Respondent has intentionally sought to take unfair advantage of or otherwise abuse the Trademarks. This is reinforced by the strong reputation of the Complainant's Trademarks, as referenced above and substantiated by the Complainants in the case file. Also, because of the composition of the Domain Name and the fact that the Domain Name used to resolve to a website on which inter alia the Trademarks were prominently depicted, there is a risk of implied affiliation with the Complainants' Trademarks.

Further, the Domain Name was being used by the Respondent for a website featuring pornographic content, which demonstrates the Respondent is making commercial gain from the website by attracting Internet users by creating a likelihood of confusion with the Complainant's Trademarks. Further, the pornographic materials on the website to which the Domain Name resolves tarnish the Trademarks and this has been found by previous UDRP panels to constitute evidence of registration and use of a domain name in bad faith.

Finally, even when taking into account the current non-use of the Domain Name, Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3. Having reviewed the available record, the Panel notes the well-known character and the reputation of the Complainants' Trademarks and finds that in the circumstances of this case the current passive holding of the Domain Name does not prevent a finding of bad faith under the Policy.

The Panel finds that 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 Domain Name <tcsempowers.com> be transferred to the Complainant No. 1.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: November 22, 2024