

ADMINISTRATIVE PANEL DECISION

Emirates Draw L.L.C v. EWINGS LLC, Ewings LLC
Case No. DAE2024-0002

1. The Parties

The Complainant is Emirates Draw L.L.C, United Arab Emirates, represented by BSA Ahmad Ben Hezeem & Associates LLP, United Arab Emirates.

The Respondent is EWINGS LLC, Ewings LLC, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <emiratesdraw.ae> (“Disputed Domain Name”) is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 8, 2024. On January 9, 2024, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the Disputed Domain Name. On January 10, 2024, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 17, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was February 6, 2024. The Respondent filed a response on February 6, 2024.

The Center appointed Nasser A. Khasawneh as the sole panelist in this matter on February 22, 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.

On March 5, 2024, the Complainant submitted a Supplementary Filing (“Complainant Supplementary Filing”) on the basis of new information indicated in the Response.

On March 26, 2024, the Panel issued Administrative Panel Procedural Order 1 pursuant to paragraphs 10 and 12 of the Rules, providing the Respondent an opportunity to comment on the Complainant Supplementary Filing, and requesting the Respondent to provide evidence for the following assertions made in its own submissions and an opportunity to the Complainant to comment on those:

1. the disputed domain name <emiratesdraw.ae> was purchased by it on September 21, 2020
2. at the time it purchased the disputed domain name, it was the first and only lottery operator in the United Arab Emirates
3. all lottery/draws in the United Arab Emirates have been suspended by the General Commercial Gaming Regulatory Authority since January 1, 2024, pending the award of a single federal national lottery operator for the United Arab Emirates (the “FNL Licence”).

On March 29, 2024, the Respondent provided the requested information and its comments on the Complainant Supplementary Filing (“Respondent Supplementary Filing”).

On April 1, 2024, the Complainant provided its comments on the Respondent Supplementary Filing (“Complainant Final Comments”).

4. Factual Background

The Complainant is a gaming operator, licensed to run and manage lottery services in the United Arab Emirates (“UAE”). The Complainant’s business was formed and launched in September 2021.

The Complainant holds the following trademark registrations with the Ministry of Economy for trademarks in the UAE:

Trademark	Reg. No.	Filing Date	Class
EMIRATES DRAW (in Arabic)	357863	July 22, 2021	41
EMIRATES DRAW (in English)	357858	July 22, 2021	41

The trademarks were registered on December 5, 2021, and are in force until August 22, 2031. (Annex 4 of the Complaint)

The Complainant also holds the following WIPO International Registration which is effective in the United States of America and the European Union:

Trademark	Reg. No.	Filing Date	Class
EMIRATES DRAW (in English)	15423	August 17, 2023	41

The Complainant is the owner of a number of domain names containing the Complainant’s trademark, such as <emiratesdraw.com>, <emiratesdraw.ai>, <emiratesdraw.co.uk> and <emiratesdraw.in> etc. The domain name <emiratesdraw.com> was registered on November 28, 2019.

The Respondent operates a digital lottery in the Gulf Cooperation Council (“GCC”) region. The digital lottery was formed on January 14, 2020, first launched under the name “Emirates Loto” on March 21, 2020, and

was subsequently rebranded as “Mahzooz” on November 28, 2020. The Respondent has filed for various trademarks under “Mahzooz” (filed on 1 October 2019) and “Emirates Loto” (filed on 5 May 2020) in the UAE.

The Parties agree that the Disputed Domain Name was registered by the Respondent on September 21, 2020.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows.

The Complainant submits that the relevant part of the Disputed Domain Name “emirates draw” is identical and/or confusingly similar to the Complainant’s registered EMIRATES DRAW trademarks, as well as the Complainant’s domain name <emiratesdraw.com>. The Complainant relies on *MVH I, Inc. v. Firdos Aashiq Awan*, Case No. DAE2022-0004 to argue that in making a comparison between the Complainant’s trademarks/domain name and the Disputed Domain Name, the country code Top-Level Domain (“ccTLD”) “.ae” should be disregarded.

According to the Complainant, the Respondent does not have any connection with the Complainant and has not been licensed or authorized to use the Complainant’s trademarks or to register a domain name that is identical to the Complainant’s domain name. The Complainant emphasizes that it has made significant investment in promoting the EMIRATES DRAW trademarks and as the “largest and most popular lottery service in the UAE” it generates extensive sales revenue on the basis of its trademarks. The Respondent is not making any legitimate use of the Disputed Domain Name but is holding it to prevent the Complainant from securing the Disputed Domain Name and/or to divert consumers away from the Respondent’s main website.

The Complainant states that it was not aware when the Disputed Domain Name was purchased, as this is not public information and does not feature on an AEDA domain WHOIS report.

Nevertheless, the Complainant argues that the Respondent’s registration of the domain name is an example of cybersquatting, as it prevents the Complainant from securing the rights to the ccTLD “.ae” for EMIRATES DRAW. As the Complainant and the Respondent are direct competitors in the UAE, the Respondent would be aware of the Complainant’s operations and registered trademarks. There is no plausible reason for the Respondent to use the Disputed Domain Name, other than for the purpose of misleading consumers into thinking the Complainant’s website is inactive and re-directing consumers to its own website.

In the Complainant’s Supplementary Filing and the Complainant Final Comments, the Complainant alleges that the Disputed Domain Name is being used in bad faith for a number of reasons: (i) the Respondent has never used the Disputed Domain Name, or made any meaningful preparations to do so; (ii) it is not known by the corresponding name EMIRATES DRAW (and never could be), and (iii) it has announced that it may use the Disputed Domain Name in the future, recognizing that this would inevitably infringe the Complainant’s rights, and would lead to confusion between the Complainant and the Respondent.

The Complainant alleges that the Respondent is therefore guilty of “passive holding” and that “several cases” including *Telstra Supra* have held that passive holding of a domain name amounts to bad faith as per paragraph 4(a)(iii) of the Policy.

In the Complainant’s Final Comments, the Complainant also alleges that the evidence that the Respondent has provided to prove that its trade mark *Emirates Loto* is valid until May 5, 2030, in the UAE is a “deliberate attempt to mislead the Panel”, and that the Web TMS report provided by the Respondent does not support its assertion that the Emirates Loto trade mark is registered in the UAE.

The Complainant accordingly primarily requests that the Disputed Domain Name be transferred to the Complainant or alternatively be cancelled.

B. Respondent

The Respondent's defenses may be summarized as follows.

The Respondent was unaware that the <emiratesdraw.com> domain name was purchased on November 28, 2019. While the Respondent is not aware as to who purchased the <emiratesdraw.com> domain name, the Respondent acknowledges that it is in fact the Complainant's domain name.

The Respondent purchased the Disputed Domain Name on September 21, 2020, over one year prior to the launch of Emirates Draw. In the Respondent Supplementary Filing (Annex 1), the Respondent provides proof of such purchase. The Complainant is aware that the Respondent commenced purchasing domain names from late 2018 to date, in light of its intended launch of Emirates Loto, its rebrand and its intention to be the national lottery operator for the UAE. Moreover, the Complainant's domain name <emiratesdraw.com> appears immediately in any search for Emiratesdraw.ae.

It is disingenuous for the Complainant to claim that there is no connection between the Complainant and the Respondent. The management team of the Complainant's parent/operating company, Tycheros Investments LLC includes former Emirates Loto personnel. The Respondent launched Emirates Loto in March 2020, prior to the Complainant's launch. The Respondent was the first and only lottery operator in the UAE and Emirates Loto was the only weekly draw in the region as of September 2021. The Respondent provides evidence of this, notably along with the Respondent Supplementary Filing (Annexes 2 and 3)

It is thus the Complainant who set up in competition with the Respondent and chose to enter the market with the name "Emirates Draw" knowing that it was confusingly similar to "Emirates Loto". The Respondent denies that it has not made any legitimate use of the Disputed Domain Name. Although the Disputed Domain Name has never been used, it is held in anticipation of the opportunity to use the same on appointment by the Respondent as the UAE national lottery operator.

The Complainant has produced no evidence of bad faith on the part of the Respondent. The Complainant has failed to demonstrate that the Respondent has used the Disputed Domain Name to drive traffic to its website, and there is in fact no evidence to this effect. When the Respondent purchased the Disputed Domain Name, it was entitled to do so as it was the first and only operator in the UAE, that already owned and traded under the "Emirates Loto" brand. Evidence of registration of the Emirates Loto brand in the UAE has been provided along with the Respondent Supplementary Filing (Annex 7). Moreover, it purchased the Disputed Domain Name with the intention of using it if it was appointed as the only national lottery operator by the UAE Government.

6. Discussion and Findings

The Panelist notes at the outset that the general powers of a panel are set out at Paragraph 10 of the Rules, which states in relevant part as follows:

Paragraph 10(a) gives the Panelist wide powers to "[...] conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules."

Paragraph 10(b) mandates that "In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case."; and

Paragraph 10(d) gives the Panel the discretion to "[...] determine the admissibility, relevance, materiality and weight of the evidence."

In making this Decision, the Panel is guided by the aforementioned provisions. Specifically, in accordance with the powers granted by these provisions, the Panel has admitted the Complainant Supplementary Filing, the Respondent Supplementary Filing, and the Complainant Final Comments. The Panelist has reached the decision below after considering the totality of both Parties' submissions on record.

A. Identical or Confusingly Similar

The Disputed Domain Name <emiratesdraw.ae> is plainly identical to the Complainant's EMIRATES DRAW trademark.

The TLD is irrelevant to establishing whether a disputed domain name is identical or confusingly similar (WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.11).¹

The Complainant has satisfied the requirements of paragraph 6(a)(i) of the Policy.

B. Rights or Legitimate Interests

Although the Policy requires a complainant to prove that a respondent has no rights or legitimate interest in a disputed domain name, the consensus among panelists is that given the inherent difficulty in proving a negative, a complainant must first advance a prima facie case in this regard. Once a prima facie case has been made, the burden shifts on to the respondent to put forth evidence of rights or legitimate interests ([WIPO Overview 3.0](#), section 2.1).

Here, the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark EMIRATES DRAW.

Paragraph 6(c) of the Policy provides a list of circumstances, any of which is sufficient to demonstrate that a respondent has rights or legitimate interests in a domain name:

- (i) before any notice to the respondent of the dispute, use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent acknowledges that it has never used the Disputed Domain Name, and claims that it purchased the Disputed Domain Name with the intention to use it if and when it was appointed as the UAE national lottery operator by the Government. The Respondent has provided no evidence (correspondence, business plans, promotional material etc.) to support the alleged reason for which it claims to have purchased the Disputed Domain Name and even if it had, the Panel notes that its claimed name uses "loto" and not "draw" which makes it clear that its intention would be to capitalize on users seeking the latter rather than having registered a domain name corresponding to its own business name. The requirement at point (i) above is therefore not met by the Respondent.

¹The Panel notes that the UAE Domain Name Dispute Resolution Policy is substantially similar to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and will in this case refer to prior UDRP cases and principles as well as the applicable sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where applicable.

For the same reason, the Respondent, whose brand names (on its own case) are Emirates Loto/Mahzooz, is similarly not commonly known by the Disputed Domain Name (again, using “draw” not “loto”), which as it admits, it does not use. The Respondent has failed to demonstrate the requirement at point (ii).

As regards point (iii), it is reiterated that the Respondent’s claim that it is making legitimate noncommercial or fair use of the Disputed Domain Name by holding it on the presumption that it will be nominated as the Emirates national lottery operator is entirely speculative and unsubstantiated. If anything, the Respondent’s admission to use the Disputed Domain Name if it is named as Emirates national lottery operator points to an intention to benefit from the Complainant’s goodwill. This conclusion is further reinforced by the fact that the Disputed Domain Name bears no resemblance to any of the Respondent’s brand names or other domain names.

Finally, given the Panel’s finding that the Disputed Domain Name (using “draw”) bears no resemblance to the Respondent’s Emirates Loto brand, the Panel does not consider it necessary to opine on whether the trade mark Emirates Loto has been validly registered in the UAE, and whether the Respondent has made a “deliberate attempt to mislead the panel” by putting forth the evidence at Annex 7 to the Respondent Supplementary Filing (as alleged by the Complainant).

The Complainant has therefore satisfied paragraph 6(a)(ii) of the Policy.

C. Registered or is Being Used in Bad Faith

Under the Policy, the Complainant is required to show that the domain name is registered or is being used in bad faith. Thus, even if the registration itself was not in bad faith, subsequent use in a manner that contravenes another party’s registered trademark rights would be sufficient to demonstrate bad faith.

It is relevant to note that the list of examples in paragraph 6(b) of the Policy to indicate bad faith is non-exhaustive, and there is thus room for a panel to find abuse in another form. (see in this regard, *537397 Ontario Inc. operating as Tech Sales Co. v. EXAIR Corporation*, WIPO Case No. [D2009-0567](#)).

Panelists have consistently found that non-use of a domain name will not prevent a finding of bad faith under the doctrine of passive holding. Indeed, in *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#), as well as in other WIPO decisions since (see, *Kangwon Land, Inc. v. Bong Woo Chun (K.W.L. Inc)*, WIPO Case No. [D2003-0320](#), and cases listed under [WIPO Overview 3.0](#), section 3.3) it has been held that passive holding of a domain name may be sufficient to constitute bad faith, taking into consideration the overall context of the Respondent’s behavior.

In this regard, the Respondent acknowledges that the <emiratesdraw.com> domain name belongs to the Complainant and that it was purchased on November 28, 2019, before its registration of the Disputed Domain Name on September 21, 2020. For the reasons explained above, the Respondent has not demonstrated that it is making a legitimate noncommercial or fair use of the Disputed Domain Name. Rather, its declaration that it may use the Disputed Domain Name in future, being fully aware that this would lead to confusion between the Complainant and Respondent, points to the fact that the Respondent is holding the domain name in a manner that meets the threshold of bad faith under the Policy.

The Complainant has therefore satisfied paragraph 6(a)(iii) of the Policy.

The Panel notes that the Respondent’s exclusive lottery operation status in the UAE at the time of acquiring the Disputed Domain Name, alongside the notable involvement of several members of the Complainant’s Operator (“Tycheros Investments LLC” or “Tycheros”) in Emirates Loto and Mahzooz prior to the establishment of the Complainant’s company, and the claimed suspension of all lottery activities in the UAE by the General Commercial Gaming Regulatory Authority since January 1, 2024, pending the selection of a single federal national lottery operator (referred to as the “FNL Licence”), are matters outside the scope of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the domain name <emiratesdraw.ae> be transferred to the Complainant.

/Nasser A. Khasawneh/

Nasser A. Khasawneh

Panelist

Date: April 25, 2024