



NATIONAL ARBITRATION FORUM

DECISION

Hidroservice Engenharia LTDA v. Luca Mueller
Claim Number: FA0909001282351

PARTIES

Complainant is **Hidroservice Engenharia LTDA** ("Complainant"), represented by **Michael N. Cohen**, of **Law Office of Michael N. Cohen P.C.**, California, USA.
Respondent is **Luca Mueller** ("Respondent"), Germany.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is <**maksoudplaza.com**>, registered with **About Domain Dot Com Solutions Pvt. Ltd.**

PANEL

The undersigned certifies that he has acted independently and impartially and to the best of his knowledge has no known conflict in serving as Panelist in this proceeding.

James A. Carmody, Esq., as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the National Arbitration Forum electronically on August 31, 2009; the National Arbitration Forum received a hard copy of the Complaint on September 3, 2009.

On September 8, 2009, About Domain Dot Com Solutions Pvt. Ltd. confirmed by e-mail to the National Arbitration Forum that the <**maksoudplaza.com**> domain name is registered with About Domain Dot Com Solutions Pvt. Ltd. and that Respondent is the current registrant of the name. About Domain Dot Com Solutions Pvt. Ltd. has verified that Respondent is bound by the About Domain Dot Com Solutions Pvt. Ltd. registration agreement and has thereby agreed to resolve domain-name disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On September 11, 2009, a Notification of Complaint and Commencement of Administrative Proceeding (the "Commencement Notification"), setting a deadline of October 1, 2009 by which Respondent could file a response to the Complaint, was transmitted to Respondent via e-mail, post and fax, to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts, and to postmaster@maksoudplaza.com by e-mail.

Having received no response from Respondent, the National Arbitration Forum transmitted to the parties a Notification of Respondent Default.

On October 7, 2009, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the National Arbitration Forum appointed James A. Carmody, Esq., as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the National Arbitration Forum has discharged its responsibility under Paragraph 2(a) of the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") "to employ reasonably available means calculated to achieve actual notice to Respondent." Therefore, the Panel may issue its decision based on the documents submitted and in accordance with the ICANN Policy, ICANN Rules, the National Arbitration Forum's Supplemental Rules and any rules and principles of law that the Panel deems applicable, without the benefit of any response from Respondent.

RELIEF SOUGHT

Complainant requests that the domain name be transferred from Respondent to Complainant.

PARTIES' CONTENTIONS

A. Complainant makes the following assertions:

1. Respondent's <**maksoudplaza.com**> domain name is identical to Complainant's MAKSOUND PLAZA mark.
2. Respondent does not have any rights or legitimate interests in the <**maksoudplaza.com**> domain name.
3. Respondent registered and used the <**maksoudplaza.com**> domain name in bad faith.

B. Respondent failed to submit a Response in this proceeding.

FINDINGS

Complainant, Hidroservice Engenharia LTDA, operates a five-star hotel in Sao Paulo, Brazil, that Complainant promotes under the MAKSOUND PLAZA mark. Complainant registered the MAKSOUND PLAZA mark with the National Institute of the Industrial Property of Brazil on November 4, 1995 (Reg. No. 815,050,259). Complainant has operated the hotel for over 29 years; its hotel and the MAKSOUND PLAZA mark is advertised through over 600,000 international travel agents and internet merchant sites.

Respondent, Luca Mueller, registered the <**maksoudplaza.com**> domain name on March 15, 2008. The disputed domain name resolves to a parking page that contains links to third-party websites, some of which compete with Complainant's hospitality business.

DISCUSSION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

In view of Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of Complainant's undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. *See Vertical Solutions Mgmt., Inc. v. webnet-marketing, inc.*, FA 95095 (Nat. Arb. Forum July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); *see also Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

Identical and/or Confusingly Similar

The Panel finds that Complainant has established sufficient rights in the MAKSOD PLAZA mark through registration with the National Institute of the Industrial Property of Brazil (Reg. No. 815,050,259 issued November 4, 1995) pursuant to Policy ¶ 4(a)(i). *See Renaissance Hotel Holdings, Inc. v. Renaissance Cochin*, FA 932344 (Nat. Arb. Forum Apr. 23, 2007) (finding that it does not matter whether the complainant has registered its trademark in the country in which the respondent resides, only that it can establish rights in some jurisdiction); *see also KCTS Television Inc. v. Get-on-the-Web Ltd.*, D2001-0154 (WIPO Apr. 20, 2001) (holding that it does not matter for the purpose of paragraph 4(a)(i) of the Policy whether the complainant's mark is registered in a country other than that of the respondent's place of business).

Complainant contends that Respondent's <**maksoudplaza.com**> domain name is identical to its MAKSOD PLAZA mark. The <**maksoudplaza.com**> domain name differs from Complainant's mark in two ways: (1) the space has been removed from the mark; and (2) the generic top-level domain (gTLD) ".com" has been added. Neither the removal of a space nor the addition of the gTLD ".com" does anything to distinguish a domain name from the incorporated mark for the purposes of Policy ¶ 4(a)(i). *See Victoria's Secret v. Hardin*, FA 96694 (Nat Arb. Forum Mar. 31, 2001) (finding that the

<bodybyvictoria.com> domain name is identical to the complainant's BODY BY VICTORIA mark); *see also Fed'n of Gay Games, Inc. v. Hodgson*, D2000-0432 (WIPO June 28, 2000) (finding that the domain name <gaygames.com> is identical to the complainant's registered trademark GAY GAMES). The Panel finds that because these changes do not minimize or eliminate the resulting likelihood of confusion, Respondent's disputed domain name is not sufficiently distinguished from, and therefore remains identical to Complainant's mark pursuant to Policy ¶ 4(a)(i).

The Panel finds that Policy ¶ 4(a)(i) has been satisfied.

Rights or Legitimate Interests

Complainant contends that Respondent lacks all rights and legitimate interests in the <maksoudplaza.com> domain name. Under Policy ¶ 4(a)(ii), after the complainant makes a *prima facie* case against the respondent, the respondent then has the burden of showing evidence that it does have rights or legitimate interests in the disputed domain name. The Panel finds that Complainant has made a *prima facie* case under Policy ¶ 4(a)(ii). Respondent has not responded in this case, and therefore has not met its burden of showing rights or legitimate interests. *See Do The Hustle, LLC v. Tropic Web*, D2000-0624 (WIPO Aug. 21, 2000) (holding that once the complainant asserts that the respondent has no rights or legitimate interests with respect to the domain, the burden shifts to the respondent to provide "concrete evidence that it has rights to or legitimate interests in the domain name at issue"); *see also BIC Deutschland GmbH & Co. KG v. Tweed*, D2000-0418 (WIPO June 20, 2000) ("By not submitting a response, Respondent has failed to invoke any circumstance which could demonstrate, pursuant to ¶ 4(c) of the Policy, any rights or legitimate interests in the domain name").

Complainant contends that Respondent is not commonly known by the <maksoudplaza.com> domain name nor has it ever been the owner or licensee of the MAKSOUND PLAZA mark. The WHOIS listing for the disputed domain name lists Respondent as "Luca Mueller." Respondent also has failed to present any evidence that is contrary to Complainant's contentions. The Panel therefore finds that Respondent is not commonly known by the <maksoudplaza.com> domain name pursuant to Policy ¶ 4(c)(ii). *See Reese v. Morgan*, FA 917029 (Nat. Arb. Forum Apr. 5, 2007) (concluding that the respondent was not commonly known by the <lilpunk.com> domain name as there was no evidence in the record showing that the respondent was commonly known by that domain name, including the WHOIS information as well as the complainant's assertion that it did not authorize or license the respondent's use of its mark in a domain name); *see also Am. W. Airlines, Inc. v. Paik*, FA 206396 (Nat. Arb. Forum Dec. 22, 2003) ("Respondent has registered the domain name under the name 'Ilyoup Paik a/k/a David Sanders.' Given the WHOIS domain name registration information, Respondent is not commonly known by the [<awvacations.com>] domain name.").

Complainant contends that the website resolving from the <maksoudplaza.com> domain name contains links to third-party websites offering hospitality services that compete

with Complainant's business. The Panel finds that Respondent's competitive use of the disputed domain name in favor of third-parties is neither a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) nor a legitimate noncommercial or fair use of the <**maksoudplaza.com**> domain name under Policy ¶ 4(c)(iii). See *Metro. Life Ins. Co. v. Bonds*, FA 873143 (Nat. Arb. Forum Feb. 16, 2007) (concluding that using a confusingly similar domain name to divert Internet users to competing websites does not represent a *bona fide* offering of goods or services under Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use under Policy ¶ 4(c)(iii)); see also *Bond & Co. Jewelers, Inc. v. Tex. Int'l Prop. Assocs.*, FA 937650 (Nat. Arb. Forum Apr. 30, 2007) (finding that the use of the disputed domain name to operate a website displaying links to competing goods and services was not a *bona fide* offering of goods or services pursuant to Policy ¶ 4(c)(i) or a legitimate noncommercial or fair use pursuant to Policy ¶ 4(c)(iii)).

The Panel finds that Policy ¶ 4(a)(ii) has been satisfied.

Registration and Use in Bad Faith

Complainant contends that Respondent is diverting Internet customers from Complainant's website to Respondent's website that resolves from the disputed domain name, registered on March 15, 2008, through the confusion caused by the similarity between the MAKSOUND PLAZA mark and the <**maksoudplaza.com**> domain name. Complainant also contends that Respondent intended to disrupt Complainant's business by further diverting the confused Internet customers to the competing third-party websites. Respondent's disruption of Complainant's business by its diversion of Internet customers to competing websites compels the Panel to find that Respondent has registered and used the disputed domain name in bad faith pursuant to Policy ¶ 4(b)(iii). See *Puckett, Individually v. Miller*, D2000-0297 (WIPO June 12, 2000) (finding that the respondent has diverted business from the complainant to a competitor's website in violation of Policy ¶ 4(b)(iii)); see also *Disney Enters., Inc. v. Noel*, FA 198805 (Nat. Arb. Forum Nov. 11, 2003) ("Respondent registered a domain name confusingly similar to Complainant's mark to divert Internet users to a competitor's website. It is a reasonable inference that Respondent's purpose of registration and use was to either disrupt or create confusion for Complainant's business in bad faith pursuant to Policy ¶¶ 4(b)(iii) [and] (iv).").

Complainant also contends that Respondent is gaining commercially from the diversion of Internet customers, through the "click-through" fees that Respondent presumably collects every time the Internet customers click on the third-party links. The Panel finds that Respondent's commercial gain from the diversion of confused Internet customers is evidence of Respondent's registration and use of the disputed domain name in bad faith pursuant to Policy ¶ 4(b)(iv). See *Williams-Sonoma, Inc. v. Fees*, FA 937704 (Nat. Arb. Forum Apr. 25, 2007) (holding that the use of a confusingly similar domain name to display links to various third-party websites demonstrated bad faith registration and use pursuant to Policy ¶ 4(b)(iv)); see also *Luck's Music Library v. Stellar Artist Mgmt.*, FA 95650 (Nat. Arb. Forum Oct. 30, 2000) (finding that the respondent engaged in bad faith

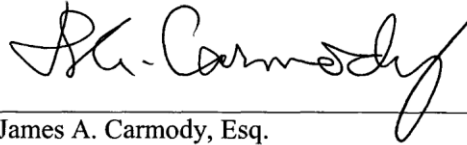
use and registration by using domain names that were identical or confusingly similar to the complainant's mark to redirect users to a website that offered services similar to those offered by the complainant).

The Panel finds that Policy ¶ 4(a)(iii) has been satisfied.

DECISION

Having established all three elements required under the ICANN Policy, the Panel concludes that relief shall be **GRANTED**.

Accordingly, it is Ordered that the <**maksoudplaza.com**> domain name be **TRANSFERRED** from Respondent to Complainant.



James A. Carmody, Esq.
Arbitrator

James A. Carmody, Esq., Panelist
Dated: October 12, 2009

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