Decision for dispute CAC-UDRP-101255

Case number	CAC-UDRP-101255
Time of filing	2016-08-22 10:09:23
Domain names	MAHARISHI.XYZ , MAHARISHIS.XYZ

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	Maharishi Vedic University Limited

Complainant representative

Organization	Zacco Denmark A/S

Respondent

Organization	Colo Cleanse

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided legal proceedings which relates to the disputed Domain names

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademarks consisting of, or containing, MAHARISHI in many countries around the world.

It produces a listing of its MAHARISHI trademarks.

The Complainant failed to produce any registration certificate.

Given this situation and according to the General Powers of the Panel, as provided in Paragraph 10 (a) of the Rules, the Panel decided to check by himself on the ROMARIN database that the Complainant is indeed owner of MAHARISHI international trademarks registrations.

For example, the Complainant is owner of:

- an international MAHARISHI trademark registration No. 1149691, filed in 2012 in classes 41, 42 and 44 and protected for teaching, scientific research and medical care;
- an international MAHARISHI trademark registration No. 521148 filed in 1988.

The disputed Domain names <maharishi.xyz> and <maharishis.xyz> were registered on June 2, 2016 using a Whois identity shield service. They resolve to a parking website and are offered for sale.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Maharishi Vedic University Ltd (MVU Ltd) has been established in Malta in 2012 and was officially registered under No. C 55529 5 March 2012. The main purpose of the company is to serve as the holder of the intellectual property of the Transcendental Meditation Movement. Since its incorporation, MVU Ltd has received assignments of a number of trademarks (at present approx. 30) hitherto owned by various national organizations under the international Transcendental Meditation Movement, and has applied for several hundreds of national as well as WIPO and EU registrations of the main trademarks of the Movement - mainly TRANSCENDENTAL MEDITATION (in local languages) and MAHARISHI (hereunder several trademarks containing MAHARISHI).

The registrant behind the two domain names is the same, as shown by the Registrar Verification. Furthermore, the registrant name was protected by the same privacy proxy. The proxy names have very close serial numbers (2122244 and 2122241). The domain names were registered on exactly the same day. The websites to which the domain names resolve display the very same background picture. Both domain names are for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

The Respondent’s domain name <maharashi.xyz> consists of the Complainant’s trademark MAHARISHI in addition to the top level “.xyz”. Similarly, the domain name <maharashis.xyz> consists of the Complainants trademark with the addition of a possessive "s" suggesting Maharishi as the origin. The addition of the top level .xyz does not in any way remove the risk of confusion with the Complainant’s trademark and service mark. The Complainant asserts that this should be sufficient for the Panel to find identity between the disputed domain name and the Complainant’s trademark as the applicable top-level suffix in a domain name is usually disregarded, except in cases where the applicable top-level suffix may itself form part of the relevant trademark.

The use of the Complainant's trademarks in the disputed domain names is likely to create confusion amongst Internet users as to whether the domain name is connected with the Complainant in some manner, or to induce the Complainant to attempt to buy the domain names.

According to the Complainant, the Respondent has no known personal or trademark rights or any other legitimate interests in respect of the domain names that are the subject of this proceedings. There is no evidence of the Respondent’s use of, or demonstrable preparations to use, the domain names in connection with a bona fide offering of goods or services. The Complainant has neither authorized the Respondent’s use of its MAHARISHI trademark, nor has the Complainant licensed any of the rights attached to its trademark to the Respondent.

The Complainant states that according to the established administrative case-law, the Panel must examine all the circumstances of the case to determine whether the Respondent is acting in bad faith. Examples of what may be cumulative circumstances found to be indicative of bad faith include the Complainant having multiple trademark registrations and the registrant's lack of any real use of the domain. The Panel may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and vice versa.

The trademark MAHARISHI of the Complainant is registered in a number of countries and is used worldwide. The Complainant is of the opinion that it is most likely that the Respondent was aware of the Complainant, and its trademarks when the disputed domain names were registered, and attempted to gain a profit by means of a pay-per-click scheme and/or by selling the domain names.

As mentioned, the websites to which the disputed domain names resolve are “for sale”, cf. the text on the red band at the top-right corner of the websites. Both domain names are listed for sale for USD 1.000, which is way in excess of the registration costs.

In addition, the websites display links to MAHARISHI UNIVERSITY, a name which is highly similar to the Complainant’s trade name, and by clicking on such link a further page with links to i.a. a “Vedic Yagaya Foundation”, as well as links to other universities and colleges, are displayed. Many of the links displayed contain the trademark MAHARISHI. While the Respondent may not have a direct influence on the links displayed, use of domain names identical or nearly identical to Complainant’s trademark for display links to websites offering competing goods and services constitute an act of trademark infringement, and using the Complainant’s trademark to attract internet users to commercial websites having no relation with the Complainant and its trademark, or simply to gain money through pay-per-click schemes, would be deemed an act of unfair competition in many jurisdictions, besides representing evidence of the Respondent’s bad faith.

Finally, the registrant is hiding behind a proxy which, in conjunction with the circumstances mentioned above, supports a conclusion of bad faith on part of the Respondent.

RIGHTS

Paragraph 15(a) of the Rules instructs the 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 the Respondent’s failure to submit a Response, the Panel shall decide this administrative proceeding on the basis of the Complainant’s undisputed representations pursuant to paragraphs 5(e), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules.

Paragraph 4(a) of the Policy requires that the Complainant proves 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 the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) the 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.

The disputed Domain Names <maharishi.xyz> and <maharishis.xyz> are composed with the trademark MAHARISHI in which the Complainant has rights.

The addition of an "s" does not have any impact on the likelihood of confusion.

Therefore, the Complainant has, to the satisfaction of the Panel, shown the Domain Names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Paragraph 4(c) of the Policy provides for the Respondent to establish rights or legitimate interests in a disputed domain name by demonstrating:

“(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate noncommercial 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 did not submit a Response to the Complaint. Therefore, it has not provided any evidence or circumstances required to establish that it has rights or legitimate interests in the disputed Domain names, according to Paragraph 4(c) of the Policy.

The evidences submitted by the Complainant adequately support its assertions.

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Names (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

Paragraph 4(b) of the Policy sets out examples of circumstances that will be considered by the Panel to be evidence of the bad faith registration and use of a domain name. It provides that:

“For the purposes of paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or the Respondent has 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) the Respondent has 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 the Respondent has engaged in a pattern of such conduct; or

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

(iv) by using the domain name, the Respondent has 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 the Respondent’s website or location or of a product or service on your web site or location.”

On the balance of probabilities the Panel is convinced that the Respondent has registered the disputed Domain Names in bad faith because given the reputation of the Complainant it must have been aware of the Complainant's MAHARISHI trademarks' rights, when registering the disputed Domain Names.

Furthermore, using a Whois privacy shield service to hide one's identity is an indication for bad faith registration.

The disputed Domain names are used to resolve to a parking website offering links to third parties' websites, among which universities and websites devoted to meditation, ayurveda, yoga (...).

Last but not least it should be noted that no response to the complaint has been filed.

For the reasons above, the Respondent's action is in line with paragraph 4(b)(iv) of the Policy as the Respondent is intentionally attempting to attract Internet users for commercial gain to <www.maharishi.xyz> and <www.maharishis.xyz> websites by creating a likelihood of confusion with Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of Respondent's website and services which are not in any way affiliated with the Complainant.

The Respondent obviously profits from pay-per-click revenue generated by the parking websites available from the Domain names at issue, which constitutes commercial gain. This is further evidence of Respondent's bad faith pursuant to Policy paragraph 4(b)(iv).

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainant has established rights in the MAHARISHI trademarks. The disputed Domain names <maharishi.xyz> and <maharishis.xyz> are incorporating the MAHARISHI trademarks and are therefore identical or confusingly similar with the MAHARISHI trademarks.

As far as legitimate rights or interests are concerned, the Panel notes that the Complainant has successfully made a prima facie case. In other words, there is no indication whatsoever that the Respondent has rights or legitimate interests in the disputed Domain Names.

Finally, the Panel finds that the Respondent has registered and is using Domain Names in bad faith within the meaning of paragraph 4(b)(iv) of the Policy. This finding is supported inter alia by(i) using a Whois identity shield service to register the disputed Domain Names; (ii) a pay per click system to use them, offering links to third parties' websites in relation with the evices for which the opposed trademarks are protected and (iii) the fact that the Respondent has chosen not to come forward to defend its position (i.e. no administratively compliant response has been filed).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MAHARISHI.XYZ** : Transferred
2. **MAHARISHIS.XYZ**: Transferred

PANELLISTS

Name	**Marie Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2016-10-03

Publish the Decision