

## **ADMINISTRATIVE PANEL DECISION**

The Lumineers, LLC v. Shishir Ahmed  
Case No. D2022-1800

### **1. The Parties**

The Complainant is The Lumineers, LLC, United States of America (“United States”), represented by Creative Law Network, LLC, United States.

The Respondent is Shishir Ahmed, Bangladesh.

### **2. The Domain Name and Registrar**

The disputed domain name <2022thelumineers.com> (“the Domain Name”) is registered with 123-Reg Limited (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 18, 2022. On May 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On May 24, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on May 26, 2022 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 May 28, 2022.

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 June 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 30, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on July 4, 2022. 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 July 5, the Center received an informal email communication from the Respondent.

#### **4. Factual Background**

The Complainant owns the rights to the mark THE LUMINEERS which relates to a well-known American folk rock group. The Complainant owns, *inter alia*, the trade mark registration No. 4406895 in the United States for THE LUMINEERS for entertainment services registered since 2013.

The Domain Name registered in 2022 has been used for a website offering tickets to shows for The Lumineers which features prominent images of the group and use of THE LUMINEERS mark without making it clear there is no connection between that website and the Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant's contentions can be summarised as follows:

The Complainant owns the rights to the mark THE LUMINEERS which relates to a well-known American folk rock group. It owns, *inter alia*, trade mark registration no. 4406895 in the United States for THE LUMINEERS for entertainment services registered in 2013.

The Domain Name registered in 2022 features the entire THE LUMINEERS trade mark as the dominant portion of the Domain Name with the numerals or date "2022" (the next date when there will be tour dates to see THE LUMINEERS live) and the gTLD ".com". The Domain Name plainly misappropriates the Complainant's mark and ordinary Internet users familiar with THE LUMINEERS mark would upon seeing any of the Domain Name likely think that an affiliation exists between the website at the Domain Name and the Complainant or its mark THE LUMINEERS and the group.

The addition of a gTLD to the Domain Name is irrelevant to the confusing similarity analysis.

The Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not known by the Complainant's mark. The Complainant has not licensed the Respondent to use its mark. The Respondent uses the Domain Name to redirect Internet users to the Respondent's commercial website which prominently uses the Complainant's mark and photos of THE LUMINEERS group to appear to be an official site offering tickets for THE LUMINEERS shows including links to third party sites offering such services. The use is commercial so it cannot be noncommercial fair use.

The registration and commercial use of a domain name to redirect Internet users to a web site falsely suggesting an affiliation with a complainant evidences bad faith registration and use.

The Domain Name was registered with actual knowledge of the Complainant's rights in THE LUMINEERS marks as evidenced by the Respondent's reference to and images of The Lumineers group. Registration of a confusingly similar domain name that is obviously connected with a particular trade mark owner by someone with no connection with the trade mark owner suggests bad faith. Even if the site were not pretending to be an official site, the Complainant suggest that the reselling of tickets is often unlawful.

##### **B. Respondent**

The Respondent did not provide a formal response. On July 5, 2022, the Respondent sent an email to the Center saying "transfer or cancel domain".

## 6. Discussion and Findings

### A. Identical or Confusingly Similar

The Domain Name consists of the Complainant's mark THE LUMINEERS (which is registered, *inter alia* in the United States since 2013 for entertainment services), the date "2022", and the gTLD ".com".

Adding numerals or a calendar date and a gTLD to an otherwise recognizable mark does not prevent a disputed domain name being confusingly similar to that mark under Policy 4(a)(i). WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.8. The addition of the date or numerals "2022" and the gTLD ".com" does not prevent confusing similarity between the Domain Name and the Complainant's mark which is still recognisable in the Domain Name.

Accordingly, the Panel holds that the Domain Name is confusingly similar for the purpose of the Policy to a mark in which the Complainant has rights.

As such the Panel holds that paragraph 4(a)(i) of the Policy has been satisfied.

### B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. There is no evidence or reason to suggest the Respondent is, in fact, commonly known by the Domain Name.

The website to which the Domain Name redirects purports to operate in competition with the Complainant using the Complainant's name to offer entertainment services without making it clear that there is no commercial connection with the website attached to the Domain Name/the Respondent, and the Complainant. The Panel finds this use is confusing and arguably even impersonates the Complainant or its affiliate. As such it cannot amount to the *bona fide* offering of goods and services. Using a disputed domain name to deceive Internet users into believing an affiliation exists between respondent and complainant may not constitute a *bona fide* offering of goods or services or a legitimate noncommercial or fair use under Policy 4(c)(i) or (iii).

The Respondent did not provide a formal response to the Complaint nor offered any explanation.

As such the Panel finds that the Complainant has satisfied the second limb of the Policy.

### C. Registered and Used in Bad Faith

In the opinion of the Panel the use made of the Domain Name in relation to the website is confusing and disruptive in that visitors to the website might reasonably believe that the Domain Name and the website it is connected to are approved by the Complainant due to prominent use of the Complainant's mark and images of The Lumineers group on that website without any attempt to explain that there is no commercial connection. The references on the website to The Lumineers group and the use of images of the group shows that the Respondent was aware of the goodwill in THE LUMINEERS mark.

Accordingly, the Panel holds that the Respondent has intentionally attempted to attract for commercial gain Internet users to his website by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation or endorsement of the web site attached to the Domain Name and services offered on it.

As such, the Panel believes that the Complainant has made out its case that the Domain Name was registered and used in bad faith.

## 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 <2022thelumineers.com> be transferred to the Complainant.

*/Dawn Osborne/*

**Dawn Osborne**

Sole Panelist

Date: July 18, 2022