

## **ADMINISTRATIVE PANEL DECISION**

### **Majid Al Futtaim Properties LLC v. Saud Alansary Case No. D2022-4107**

#### **1. The Parties**

The Complainant is Majid Al Futtaim Properties LLC, United Arab Emirates (“UAE”), represented by Talal Abu Ghazaleh Legal, Egypt.

The Respondent is Saud Alansary, Saudi Arabia.

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

The disputed domain name <matajer.org> (the “Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 1, 2022. On November 1, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On November 2, 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 (Registration Private, Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 3, 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 November 8, 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 November 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 29, 2022. The Response was filed with the Center on November 28, 2022.

The Center appointed Karen Fong as the sole panelist in this matter on December 7, 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.

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

The Complainant and its Group of companies (“Group”) own and run shopping malls, retail, leisure, and community spaces in the Middle East, Africa, and Asia. This includes various shopping malls under the brand name MATAJER. The Group includes the Complainant’s joint venture partner, Sharjah Holdings Co PJSC (“SHCP”). Their flagship mall, “Matajer Al Quoz” opened in October 2011, followed by “Matajer Al Juraina”, “Matajer Al Khan”, and “Matajer Al Mirgab” in 2012. The Complainant identifies the MATAJER brand as a neighbourhood retail concept.

The MATAJER brand is registered as a trade mark in various forms. Most of the trade mark registrations submitted in evidence are owned by SHCP whilst some are owned by the Complainant. The primary trade mark comprises the elements, MATAJER, in English and Arabic and a Device. These trade marks are owned by SHCP. The earliest trade mark registration submitted includes UAE Trade Mark number 158961 which was registered on January 3, 2012. SHCP also owns Oman Registered Trademark No. 69337 for the device and word mark MATAJER (in English and Arabic), registered on August 25, 2012, and Bahrain Registered Trademark No. 87486 for the device and word mark MATAJER (in English and Arabic), registered on January 23, 2013. The Complainant owns trade mark registrations for MATAJER AL MUSALLA, in English and Arabic and Device (UAE Trade Mark number 294698 registered on December 20, 2018) and MATAJER AL RAHMANIYA, in English and Arabic and Device (UAE Trade Mark number 295325 registered on January 16, 2019). These trade marks will collectively be referred to as the “Trade Mark”.

The Complainant owns and operates the domain name <matajersharjah.com> since 2016. Information about MATAJER malls is found on the website connected to this domain name.

The Respondent registered the Domain Name on September 4, 2017. The Domain Name resolved to a pay-per-click (“PPC”) webpage with link headings such as: “Dubai Sharjah Uae”, “Uae in Dubai”, and “Dubai Trading Company” (the “Website”). These links resolve to the websites of third parties. The Domain Name does not resolve to an active website at the time of writing this decision.

#### **5. Parties’ Contentions**

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

The Complainant contends that the Domain Name is confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

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

The Respondent contends that it paid the registration and renewal fees for the above Domain Name which is in accordance with the law as the registration and renewals were done in a correct and sound manner. The Respondent provides as evidence receipts for the payment of the registration and renewal fees for the Domain Name, along with a number of other domain names consisting entirely of the term “matajer” in various Top-Level Domains. In its Response, the Respondent identifies the Domain Name and its portfolio of “matajer”-formative domain names as an “online store domain” or “online stores” respectively.

## 6. Discussion and Findings

### A. General

According to paragraph 4(a) of the Policy, for this Complaint to succeed in relation to the Domain Name, the Complainant must prove each of the following, namely that:

- (i) the Domain Name is identical or confusingly similar to the trade marks or service marks in which the Complainant has rights; and
- (ii) the Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name was registered and is being used in bad faith.

### B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has shown that it has rights to the Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case, the Domain Name consists of the dominant portion of the Trade Mark, which is the English textual element of the Trade Mark, MATAJER. For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain (“gTLD”) which in this case is “.com”. It is viewed as a standard registration requirement under section 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)).

The Panel finds that the Domain Name is confusingly similar to the Trade Mark in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

### C. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent’s 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 it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a domain name, it is well established that, as it is put in section 2.1 of the [WIPO Overview 3.0](#), that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such a *prima facie* case is made out, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations of evidence of relevant rights or

legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that the Respondent is not commonly known by the Domain Name. It has not authorised, licensed, or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. Further, the display of PPC links on the Website does not constitute a *bona fide* offering of goods or services or legitimate noncommercial or fair use of the Domain Name given the revenue the Respondent derives from Internet users misled by the confusingly similar Domain Name.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for a reply from the Respondent. The Respondent argues that it registered the “online store domain in my name for two years” and provides evidence of its payment for the registration and renewal of various domain names consisting entirely of the term “matajer”, including the Domain Name. The Panel takes note of the findings of the panel in *Majid Al Futtaim Properties LLC v. Ayman Bajnaid*, WIPO Case No. [D2022-4130](#), involving the same Complainant relying on the same rights, but with clear differences to the present proceeding. The panel in that case noted that “matajer” is a term which, when transliterated/translated (“متاجر”), means “shops” in Arabic. Taking into consideration the Respondent’s purported residence in an Arabic-speaking country and its reference to “online store domain”, there could perhaps have been a connection between the Respondent’s registration of a portfolio of domain names, including the Domain Name, and the dictionary meaning of the term “matajer”, but the Panel finds that the fact that the Complainant was operating several malls under the different Matajer-formed names (with all the names repeating the “matajer” element) at the time of the registration of the Domain Name, and the promotion of the Complainant’s malls, incline the balance in favor of the Complainant.

In addition, further to section 2.10 of the [WIPO Overview 3.0](#), “[i]n order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trademark rights”. Here, the Domain Name has been used for pay-per-click links that refer exclusively to the geographic location of the Complainant and redirect Internet users to third-party websites, presumably for the commercial advantage of the Respondent, which cannot confer rights or legitimate interests upon the Respondent<sup>1</sup>. Further, the Respondent has furnished no evidence nor claimed any intention to use the Domain Name, or its portfolio of domain names consisting of the term “matajer”, for any noncommercial or *bona fide* offering of goods or services.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

#### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been both registered and used in bad faith. It is a double requirement.

The Panel is satisfied that the Respondent must have been aware of the Trade Mark when he registered the Domain Name given the reputation of the Trade Mark, which has been used and registered long before the Domain Name.

In the [WIPO Overview 3.0](#), section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a

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<sup>1</sup> For completeness, in exercise of its general powers under paragraph 10 of the Rules, the Panel visited the websites connected to a number of the domain names evidenced in the Respondent’s receipt. Similar to the Domain Name, the websites consist of PPC links that do not relate to the dictionary meaning of the term “matajer”. This reinforces the Panel’s view that the Respondent registered the Domain Name for the sole purposes of generating undue commercial gain from unsuspecting Internet users expecting the Complainant and engaging with the confusingly similar Domain Name.

respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

Given the Complainant's successful launch of its flagship mall, "Matajer Al Quoz" in October 2011, followed by "Matajer Al Juraina", "Matajer Al Khan", and "Matajer Al Mirgab" in 2012, as well as the Complainant's correlated registrations for the Trade Mark in various jurisdictions throughout the Middle East that predate the registration of the Domain Name, it stretches credulity that the Respondent registered the Domain Name without awareness of the Complainant and due to the generic value of the term "matajer". In light of the above, the Panel finds that the Respondent deliberately registered the Domain Name in bad faith with the intent to mislead Internet users as to the Domain Name's association with the Complainant.

The Panel also finds that the actual use of the Domain Name is in bad faith. The Website was a PPC site, which might have been deliberately set up for the commercial benefit of the Respondent or automatically generated by the Registrar, but the Respondent ultimately bears responsibility for the content (see section 3.5 of the [WIPO Overview 3.0](#)). It is highly likely that Internet users when typing the Domain Name into their browser, or finding them through a search engine would have been looking for a site operated by the Complainant rather than the Respondent. The Domain Name is likely to confuse Internet users trying to find the Complainant's website. Such confusion will inevitably result due to the fact that the Domain Name contains the dominant portion of the Complainant's Trade Mark.

The Respondent employs the reputation of the Trade Mark to mislead Internet users into visiting the Website at the Domain Name instead of the Complainant's. From the above, the Panel concludes that the Respondent intentionally attempted to attract for commercial gain, by misleading Internet users into believing that the Respondent's Website is that of or authorised or endorsed by the Complainant. The Panel therefore concludes that the Domain Name was registered and is being used in bad faith under paragraph 4(b)(iv) of the Policy.

The Panel finds that the Respondent has registered and used the Domain Name 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, <matajer.org>, be transferred to the Complainant.

*/Karen Fong/*

**Karen Fong**

Sole Panelist

Date: December 22, 2022