

ADMINISTRATIVE PANEL DECISION

**MakeMyTrip (India) Private Limited v. Mohammed Malik,
www.TravelonEmi.com
Case No. D2023-2355**

1. The Parties

The Complainant is MakeMyTrip (India) Private Limited, India, represented by Sim and San, Attorneys At Law, India.

The Respondent is Mohammed Malik, www.TravelonEmi.com, India.

2. The Domain Name and Registrar

The disputed domain name <makemytrip.holiday> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 31, 2023. On May 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 1, 2023, the Registrar transmitted by email to the Center its verification response, disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Contact Privacy Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 14, 2023, 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 June 15, 2023.

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 19, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 9, 2023. The Response was filed with the Center on July 6, 2023.

The Center appointed Ashwinie Kumar Bansal as the sole panelist in this matter on July 21, 2023. 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 is a travel company incorporated on August 2, 2000, and currently runs a global business under the name MakeMyTrip which was adopted by it on June 28, 2002. The Complainant offers an extensive range of travel services and products in India and abroad through its primary website "www.makemytrip.com" which was registered on May 8, 2000 as well as through its app MakeMyTrip which was launched in 2012. The Complainant has also been recognised and certified as a travel agent by the Ministry of Tourism, Government of India.

The Complainant has furnished evidence of registration of the Trademark MAKEMYTRIP in various jurisdictions including Indian Trademarks No. 2149947 dated July 4, 2018, No. 2149948 dated August 8, 2017 and No. 2991097 dated November 15, 2017. The Complainant is also the owner of multiple other domain names with different Top-Level Domains ("TLD") consisting of the Trademark MAKEMYTRIP.

The disputed domain name was registered on March 3, 2023. The disputed domain name previously resolved to an active and competing website being hosted thereat in the past. At present, the disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant in its Complaint has, *inter alia*, raised the following contentions:

The Complainant has continuously and uninterruptedly used the Trademark MAKEMYTRIP for all its business activities since June 28, 2002. The Complainant's Trademark MAKEMYTRIP is a coined and invented mark. Due to extensive use, now spanning more than twenty-two years, the Complainant's Trademark MAKEMYTRIP is synonymous with the high standards of quality in respect of services provided by the Complainant.

The Complainant was the first company to conceptualize and ideate the use of three different words, to form, phonetically, visually and structurally, one word and further use the word MY as a linking/connecting element between the other two words. The Complainant's Trademark MAKEMYTRIP is an essential feature of all the composite label or logo marks of the Complainant.

Since its launch in 2012, MakeMyTrip App has acquired a considerable reputation and goodwill worldwide, including in India where the Respondent is based. Furthermore, Condé Nast Traveler India awarded the Complainant's App as the favorite travel app of 2017. The value of gross bookings undertaken by the Complainant in the financial year 2019-20 amounts to approximately Rs. 3133.97 Crores.

The Complainant has undertaken massive advertising and promotional endeavours over the past several years and has also actively sponsored various national and international events, wherein the Trademark MAKEMYTRIP has been prominently featured. Illustratively, the value of advertisement and business promotion undertaken by the Complainant in the financial year 2019-2020 amounts to approximately Rs. 1025.10 Crores. Owing to the spectacular success of the Complainant's business and services under the Trademark MAKEMYTRIP, the same has been the subject matter of widespread unsolicited media comment and publicity in leading Indian and International publications including newspapers and magazines.

The Complainant also has a significant presence on different social media platforms. The Complainant's Facebook page ("www.facebook.com/makemytrip/") currently has more than 2.5 million "likes" and "followers", Twitter page has more than 1.28 lakh "followers", and the Instagram page has more than 1.89 lakh "followers". Similarly, the Complainant also has an official channel on YouTube where it posts, *inter alia*, past and present television commercials for its Trademark MAKEMYTRIP. Currently, the Complainant's YouTube channel has over 72 thousand "subscribers" and more than 66 Crore views

The Respondent is not a licensee of the Complainant, nor has it been otherwise authorized or allowed by the Complainant to make any use of the Complainant's Trademark MAKEMYTRIP in a domain name or otherwise.

The disputed domain name is identical to the Complainant's Trademark MAKEMYTRIP. The disputed domain name consists of the Complainant's well-known Trademark MAKEMYTRIP in its entirety and therefore, the registration itself can create a presumption of bad faith. The disputed domain name has been registered in the gTLD "holiday". As the primary business of the Complainant is in the travel and holiday industry, it does not carry any distinctiveness. The intent of the Respondent is to register the Complainant's Trademark MAKEMYTRIP deliberately and preemptively as a domain name and thereafter, intentionally attempt to attract, confuse, and profit from Internet users seeking the Complainant's products and services who search for the Complainant's Trademark MAKEMYTRIP with the term "holiday".

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name. The disputed domain name resolves to an active webpage offering identical services. Further, the disputed domain name is being held by privacy protect service to hide the Respondent's identity. This clearly indicates that the Respondent neither holds any rights in the Complainant's Trademark MAKEMYTRIP nor is popularly known to be associated with it.

The Complainant contends that the public is likely to be confused into thinking that the disputed domain name has a connection with the Complainant and that there is a likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the website to which the disputed domain name is pointed. Such use is not a legitimate noncommercial or fair use of the disputed domain name, as it uses the goodwill of the Complainant's Trademark MAKEMYTRIP to generate revenue and mislead online users to the disputed domain name.

The Respondent is not commonly known by the term "MakeMyTrip", in accordance with paragraph 4(c)(ii) of the Policy, particularly given the notoriety surrounding the Complainant's Trademark MAKEMYTRIP internationally and its exclusive association with the Complainant. Furthermore, the Respondent operates a website "www.travelonemi.com", which offers identical services as of the Complainant. Therefore, the Respondent is commonly known by the term "www.travelonemi.com" and not by the Complainant's Trademark MAKEMYTRIP.

Given the distinctiveness and premium quality of the Complainant's services under its Trademark MAKEMYTRIP, there simply cannot be any actual or contemplated good faith use of the disputed domain name as this would invariably result in likelihood of confusion as to source, sponsorship, affiliation, or endorsement of the website and taking unfair advantage of the Complainant's rights. The Respondent chose the disputed domain name which reproduces the Complainant's well-known Trademark MAKEMYTRIP in its entirety despite being aware of the same as the Respondent operates in the same industry. The Respondent was most likely aware of the Complainant's Trademark MAKEMYTRIP at the time of the registration of the disputed domain name. The Complainant, therefore, submits that the Respondent registered the disputed domain name in full knowledge of the Complainant's rights. The Complainant has relied upon decisions by prior panels holding that actual and constructive knowledge of a Complainant's rights at the time of registration of a domain name constitutes strong evidence of bad faith.

There has been no use of, and/or demonstrable preparations to use, the Complainant's Trademark MAKEMYTRIP or the disputed domain name by the Respondent in connection with a *bona fide* offering of goods or services before being aware of the Complainant's dispute. The Respondent, therefore, does not have any legitimate rights and interest in the disputed domain name. The Respondent has registered the disputed domain name with the mala fide of making illegitimate and illegal commercial gains. The Respondent has used and registered the disputed domain name to intentionally attempt to attract, confuse and profit from Internet users seeking the Complainant's products and services. Such use of the disputed domain name cannot constitute a *bona fide* offering of goods and services under the Policy as the Respondent is taking unfair advantage of the goodwill in the Complainant's Trademark MAKEMYTRIP to offer identical services. The disputed domain name is being used for the sole purpose of misdirecting internet users, who may be seeking the Complainant's website, to the Respondent's website.

The Complainant pleads that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent submits that it has registered the disputed domain name in March 2023, and even though the disputed domain name sounds similar to the Complainant's company name, it has a different prefix and a different logo as well. The Respondent has also given a disclaimer on the website to establish that it has no connection with the Complainant.

The Respondent contends that the disputed domain name has not been registered in bad faith. The Respondent submits that it has legally established its business with a physical office and that the disputed domain name was not registered to do spamming or phishing or for attracting the attention of the Complainant's customers nor is the Respondent in any capacity to do so. There is not a single legal complaint against the Respondent wherein it has posed or tried to phish or scam or tried to pass off as the Complainant.

The Respondent pleads that the disputed domain name should not be transferred or cancelled as the disputed domain name is its only bread and butter and Respondent has already spent a lot financially in order to promote its small-town business. The Respondent requests that the Panel consider its case as a lower middle class struggling with the marketing expenses and establishment of its business as compared to the Complainant who has a multi-million-dollar business.

6. Discussion and Findings

The Complainant is required to make out its case in all respects under paragraph 4(a) of the Policy, which sets out the three elements that must be present for the proceeding to be brought against the Respondent, which the Complainant must prove to obtain a requested remedy. It provides as follows:

"Applicable Disputes. You are required to submit to a mandatory administrative proceeding in the event that a third party (a "complainant") asserts to the applicable Provider, in compliance with the Rules of Procedure, that:

- (i) your domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) you have no rights or legitimate interests in respect of the domain name; and
- (iii) your domain name has been registered and is being used in bad faith.

In the administrative proceeding, the complainant must prove that each of these three elements are present."

The Panel will address all three aspects of the Policy listed above hereunder:

A. Identical or Confusingly Similar

The Complainant has furnished certificates registering the Trademark MAKEMYTRIP in India, Canada, United States, UAE, etc. as an evidence of its rights in this trademark. The Panel has considered and examined all the documents submitted by the Complainant in support of its claim. There is no doubt that the Complainant has rights in the Trademark MAKEMYTRIP.

The disputed domain name incorporates the entire Trademark MAKEMYTRIP of the Complainant. The WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7 provides the consensus view of panelists: "While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant trademark is recognizable in the domain name, the domain name will normally be considered

confusingly similar to that trademark for purposes of UDRP standing.” The Respondent’s contention that it has used a different prefix is incorrect. The disputed domain name only consists of the entirety of Complainant’s Trademark MAKEMYTRIP with a new gTLD “holiday”. No suffix or prefix have been used in the disputed domain name.

[WIPO Overview 3.0](#), section 1.11.2 states that “the practice of disregarding the TLD in determining identity or confusing similarity is applied irrespective of the particular TLD (including with regard to “new gTLDs”); the ordinary meaning ascribed to a particular TLD would not necessarily impact assessment of the first element.” It is pertinent to note that in this particular case, the confusing similarity is affirmed as the disputed domain name uses the new gTLD “holiday” which relates to the primary business of the Complainant in travel and holiday industry. As is especially relevant under the second and third elements, the use of gTLD “holiday” further intentionally creates an impermissible likelihood of confusion between the disputed domain name and the Complainant’s Trademark MAKEMYTRIP.

Therefore, the Panel finds that the Complainant has successfully established the first element of paragraph 4(a) of the Policy that there is a confusing similarity between the disputed domain name and the Complainant’s Trademark.

B. Rights or Legitimate Interests

The Complaint is based on the Trademark MAKEMYTRIP registered in the Complainant’s favor and used in connection with the services offered by it. Further, the Complainant has shown extensive, continuous and uninterrupted usage of the Trademark MAKEMYTRIP since 2002.

The Panel finds that in consideration of the status and fame of the Complainant’s Trademark MAKEMYTRIP, the Respondent cannot claim any rights or legitimate interests in the disputed domain name, which incorporates the Complainant’s Trademark MAKEMYTRIP entirely.

The Panel also notes that the Respondent is commonly known as “TravelonEmi” and offers similar services as the Complainant through its primary website “www.travelonEmi.com” (which fact completely undercuts some of the Respondent’s arguments about its need for the disputed domain name and the supposed loss it would incur from a transfer in the Complainant’s favor). The Panel finds that the Respondent neither holds any rights in the Complainant’s Trademark MAKEMYTRIP nor is popularly, known to be associated with it.

Paragraph 4(c) of the Policy lists circumstances, but without limitation, which, if found by the Panel to be proved, may demonstrate the Respondent’s rights or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy.

[WIPO Overview 3.0](#), section 2.14.1 provides that “particularly when the TLD is descriptive of or relates to goods or services (including their natural zone of expansion), a geographic region, or other term associated with the complainant, the respondent’s selection of such TLD would tend to support a finding that the respondent obtained the domain name to take advantage of the complainant’s mark as such that the respondent lacks rights or legitimate interests in the domain name”. The Respondent has used the new gTLD “.holiday” in the disputed domain name, which directly relates to the Complainant’s renowned services within the tour and holiday industry.

The Panel also considers it relevant to consider the [WIPO Overview 3.0](#), section 2.5, which provides that, “Fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry.” The Respondent is in no way related to the Complainant; neither is the Respondent an agent of the Complainant, nor does it in any way or manner carry out activities for or on behalf of the Complainant. However, the Respondent’s usage of the entire Complainant’s Trademark MAKEMYTRIP in the disputed domain name and offering similar services as the Complainant suggests affiliation with the Complainant. Therefore, the Panel finds that the Respondent’s use of disputed domain name cannot be considered to be fair.

[WIPO Overview 3.0](#), section 2.1 states that: “While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of ‘proving a negative’, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element”.

The Trademark MAKEMYTRIP indisputably vests in the Complainant as evidenced by the statutory registrations secured by the Complainant and its continuous usage of the Trademark MAKEMYTRIP since 2002. There is no evidence before the Panel that the Respondent has any trademark rights associated with the disputed domain name or has actually been commonly known by the disputed domain name, apart from registration of the disputed domain name. Considering the evidence submitted by the Complainant, the Panel finds that the Complainant has satisfied its burden to make out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has failed to rebut the Complainant’s *prima facie* case and demonstrate any rights or legitimate interests in the disputed domain name as per paragraph 4(c) of the Policy or otherwise. The Panel is satisfied that the second element of the Policy has been met.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy identifies, in particular but without limitation, four circumstances which, if found by the Panel to be present, shall be the evidence of the registration and use of the disputed domain name in bad faith. The Complainant is required to prove both that the disputed domain name was registered in bad faith and that it is being used in bad faith. Hence, circumstances at the time of registration and thereafter have to be considered by the Panel.

The Complainant has produced evidence of registrations of the Trademark MAKEMYTRIP since 2013 nationally as well as internationally. The Complainant has also produced evidence of registration of its primary website <makemytrip.com> on May 8, 2000, and launch of its app called MakeMyTrip in 2012. The Respondent registered the disputed domain name on March 3, 2023, incorporating in it the entirety of the Complainant’s Trademark MAKEMYTRIP. The Complainant has not granted the Respondent permission or a license of any kind to use its Trademark MAKEMYTRIP and register the disputed domain name. Such unauthorized registration by the Respondent suggests opportunistic bad faith in these circumstances.

The website hosted on the disputed domain name was active on May 29, 2023, as revealed by a snapshot captured on this date produced before the Panel by the Complainant. There was an actual connection between the Complainant’s Trademark MAKEMYTRIP in the disputed domain name and the corresponding website content. The Panel finds that offering services similar to that of Complainant using the disputed domain name by the Respondent demonstrates the Respondent’s attempt to intentionally mislead Internet users for its commercial gain through the incorporation of the Complainant’s entire Trademark MAKEMYTRIP in the disputed domain name.

The Panel also notes that currently, the disputed domain name does not resolve to an active website and is only being held passively by the Respondent. The non-use of a domain name is not a conclusive proof against bad faith under the doctrine of passive holding. [WIPO Overview 3.0](#), section 3.3 states that “From the inception of UDRP, panelist have found that the non-use of a domain name (including a blank or “coming soon” page) would not prevent a finding of bad faith under the doctrine of passive holding”.

[WIPO Overview 3.0](#), section 3.2.2 states: “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 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.” The Complainant’s Trademark MAKEMYTRIP has acquired

significant uniqueness and repute due to its long and continuous usage by the Complainant. There is virtually no possibility, noting *inter alia* the well-known nature of the Complainant's Trademark MAKEMYTRIP within the travel and holiday industry and the well established reputation and goodwill associated with it that the Respondent – a competitor in the same industry – was unaware of the existence of the Complainant's Trademark MAKEMYTRIP.

In view of the above, the Panel concludes that the third and last condition provided for by paragraph 4(a)(iii) of the Policy is met. The Panel therefore, finds that the disputed domain name has been registered and is being used by the Respondent 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 disputed domain name <makemytrip.holiday> be transferred to the Complainant.

/Ashwinie Kumar Bansal/

Ashwinie Kumar Bansal

Sole Panelist

Date: August 4, 2023