



DECISION

Madrivo Media, LLC v. Shital Dungarani / Adsrivo

Claim Number: FA2102001931132

PARTIES

The Complainant is **Madrivo Media, LLC** (“Complainant”), represented by **Sarah R. Frankfort of de Diego Law LLC**, Texas, United States. The Respondent is **Shital Dungarani / Adsrivo** (“Respondent”), India.

REGISTRAR AND DISPUTED DOMAIN NAME

The domain name at issue is **<adsrivo.com>**, registered with **GoDaddy.com, LLC**.

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.

David L. Kreider, Chartered Arbitrator, as Panelist.

PROCEDURAL HISTORY

Complainant submitted a Complaint to the FORUM electronically on February 5, 2021; the FORUM received payment on February 5, 2021.

On February 8, 2021, GoDaddy.com, LLC confirmed by e-mail to the FORUM that the **<adsrivo.com>** domain name is registered with GoDaddy.com, LLC and that Respondent is the current registrant of the name. GoDaddy.com, LLC has verified that Respondent is bound by the GoDaddy.com, LLC registration

agreement and has thereby agreed to resolve domain disputes brought by third parties in accordance with ICANN's Uniform Domain Name Dispute Resolution Policy (the "Policy").

On February 9, 2021, the FORUM served the Complaint and all Annexes, including a Written Notice of the Complaint, setting a deadline of March 1, 2021 by which Respondent could file a Response to the Complaint, via e-mail to all entities and persons listed on Respondent's registration as technical, administrative, and billing contacts, and to postmaster@adsrivo.com. Also on February 9, 2021, the Written Notice of the Complaint, notifying Respondent of the e-mail addresses served and the deadline for a Response, was transmitted to Respondent via post and fax to all entities and persons listed on Respondent's registration as technical, administrative and billing contacts.

A timely Response was received and determined to be complete on February 25, 2021.

On March 1, 2021, pursuant to Complainant's request to have the dispute decided by a single-member Panel, the FORUM appointed David L. Kreider as Panelist.

Having reviewed the communications records, the Administrative Panel (the "Panel") finds that the 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" through submission of Electronic and Written Notices, as defined in Rule 1 and Rule 2.

RELIEF SOUGHT

Complainant requests that the Disputed Domain Name be transferred from the Respondent to the Complainant.

PARTIES' CONTENTIONS

A. Complainant

The Complainant contends that the Disputed Domain Name <adsrivo.com> is identical or confusingly similar to the Complainant's MADRIVO registered marks. The Respondent's Disputed Domain Name removes the letter "m" and adds the letter "s" and the generic top-level domain ".com", which is insufficient to distinguish the domain name from the Complainant's MADRIVO marks.

The Complainant alleges that it has used the MADRIVO marks for over 8 years, beginning in January 2012, in connection with its digital advertising services and that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Name. The Complainant's own domain name, <madrivo.com>, was registered on October 25, 2011. The Respondent registered the Disputed Domain Name on November 26, 2020. The Complainant has not given the Respondent permission to use the MADRIVO marks.

The Respondent's removal of the letter "m" and addition of the letter "s" to the MADRIVO marks in the Disputed Domain Name, the Complainant avers, further supports the Respondent's lack of rights or legitimate interests. "Where a Respondent has merely 'appropriated and slightly altered the spelling of the Complainant's trademark without permission,' as Respondent has done here, such actions 'giv[e] rise to the *prima facie* assumption that [Respondent] did so for an illegitimate purpose, namely registering the domain name with the intention of misleading consumers.'" *JumpSport, Inc. v. WebContents, Inc.*, FA 1104001381422 (NAF May 2, 2011) (quoting *Amazon.com, Inc. v. Banks*, FA785586 (NAF Oct. 11, 2006)). Along similar lines, "[t]ypo-squatting is itself

evidence of Respondent's lack of rights to or legitimate interests..." See *Benchmark Brands, Inc. v. Transure Enterprise Ltd c/o Host Master*, FA 1006001330855 (NAF July 20, 2010).

As further evidence that the Respondent lack rights or legitimate interests in the Disputed Domain Name, the Complainant observes that the website to which the Disputed Domain Name resolves markets identical performance-based advertising services as the Complainant's own performance-based advertising services offered under the MADRIVO marks.

The Respondent's website promotes its services as a "leading global ad company leveraging innovative, performance-driven brand and marketplace solutions to connect consumers and advertisers", incorporating various third-party logos from its supposed advertisers, some of which overlap with those displayed on the Complainant's own website. Also, the Respondent's website utilizes a similar green and white color scheme and site layout which bears a striking similarity to the Complainant's own website.

The Respondent appears to be passing itself off as a performance-based marketing network and utilizing the goodwill that the Complainant has worked to acquire. Through its use of the Disputed Domain and corresponding website, the Respondent is attempting to attract web visitors and divert affiliates and advertisers to its own marketing services, and generally confuse online visitors and divert traffic away from the Complainant. See *Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1806001790949 (Forum July 9, 2018) (finding the respondent did not use the domain name to make a *bona fide* offering of goods or services per Policy ¶ 4(c)(i) or for a legitimate noncommercial or fair use per Policy ¶ 4(c)(iii) where it used the disputed domain name to promote and advertise its own services under the guise that it was the complainant or was affiliated with the complainant).

All of the advertising network services advertised through the Respondent's website are covered by the MADRIVO marks. The Respondent is using the Disputed Domain Name to intentionally attempt to attract, for commercial gain, web users to its own corresponding website, by creating a likelihood of confusion with the MADRIVO marks as to the source, sponsorship, affiliation, or endorsement of its site and advertising network. The Respondent's use of the Disputed Domain Name and corresponding website to advertise its competing performance-based marketing services constitutes bad faith under UDRP Policy ¶ 4(b)(iii). *JumpSport, Inc. v. WebContents, Inc.*, FA 1104001381422 (NAF May 2, 2011).

B. Respondent

The Respondent avers in its brief Response that he has already applied to register the brand name ADSRIVO with the trademark registry in India; that ADSRIVO and MADRIVO are different words and are "highly distinguished", one from the other; and that the place of operation of both companies is such that it is "highly unlikely to cause any kind of confusion" in the mind of the customer.

The Respondent submitted no documents or evidence with its Response in support of its allegations.

FINDINGS

The Complainant claims rights in the MADRIVO marks through its registration of the marks with the United States Patent and Trademark Office ("USPTO") (*e.g.*, Reg. No. 4,348,993, registered June 11, 2013; Reg. 5,204,750, registered May 16, 2017; and World Intellectual Property Office ("WIPO") Reg. 1,507,062, registered Jan. 2, 2020).

The Respondent, Shital Dungarani / Adsrivo, registered the Disputed Domain Name on November 26, 2020.

The Respondent has adduced no evidence to show any right or legitimate interest in the Disputed Domain Name.

The Response does not meet the mandatory requirements of Rule 5(c), in that it does not, *inter alia*, conclude with the signature of the Respondent and a certification that the information contained in the Response is, to the best of the Respondent's knowledge, complete and accurate and is not being presented for any improper purpose.

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."

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 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.

Identical and/or Confusingly Similar

The Complainant has established its rights in the MADRIVO marks under Policy ¶ 4(a)(i) by producing evidence of registration with the USPTO. *See Anheuser-Busch, Incorporated v. Ryan Forrester a/k/a TheForrester.com a/k/a R H Busch Botanicals*, FA 726106 (FORUM July 21, 2006).

It is well established in UDRP jurisprudence that minor changes will not prevent a finding, on objective comparison, of confusing similarity of second level domain and trademark. The Respondent's <adsrivo.com> domain name is identical or confusingly similar to the Complainant's MADRIVO mark, as it incorporates the mark, removing the "m" and adding an "s". These changes are insufficient to distinguish the Disputed Domain Name. Further, the addition of the ".com" generic top-level domain ("gTLD") is a mere administrative requirement, of no relevance to the inquiry.

A visual and aural comparison, moreover, reflects that the Disputed Domain Name incorporates the word "ADS", a ubiquitous abbreviation for the plural of "advertisement", which relates to the Complainant's core business, *i.e.*, providing performance-based digital ads and advertising services.

The Panel finds that the Respondent's Disputed Domain Name is identical or confusingly similar to the Complainant's registered MADRIVO mark under Policy ¶ 4(a)(i).

Rights or Legitimate Interests

The Complainant alleges that it has granted no rights in the mark, nor licenses or permission of any kind to the Respondent. Moreover, the Panel finds that the Respondent is not commonly known by the <adsrivo.com> domain name, as is apparent from the WHOIS data and the Registrar's verification email.

The Complainant having made out a *prima facie* case that the Respondent lacks rights and legitimate interests in the disputed domain name under Policy ¶ 4(a)(ii), the burden then shifts to the Respondent to show it does have rights or legitimate interests. *See Advanced International Marketing Corporation v. AA-1 Corp*, FA 780200 (FORUM Nov. 2, 2011) (finding that a complainant must offer some evidence to make its *prima facie* case and satisfy Policy ¶ 4(a)(ii)); *see also Neal & Massey Holdings Limited v. Gregory Ricks*, FA 1549327 (FORUM Apr. 12, 2014) (“Under Policy ¶ 4(a)(ii), Complainant must first make out a *prima facie* case showing that Respondent lacks rights and legitimate interests in respect of an at-issue domain name and then the burden, in effect, shifts to Respondent to come forward with evidence of its rights or legitimate interests”).

The Panel observes that the Respondent’s Response is defective and does not meet the mandatory requirements of Rule 5(c), in that it does not, *inter alia*, conclude with the signature of the Respondent and a certification that the information contained in the Response is, to the best of the Respondent’s knowledge, complete and accurate and is not being presented for any improper purpose. Further, the Respondent submits no evidence whatsoever to support the naked and conclusory allegations contained in the Response.

Significantly, the Respondent’s Response does not refute the Complainant’s allegations (nor could it), that the Respondent is using the Disputed Domain Name and corresponding website, which has a similar “look and feel” to the Complainant’s website, to advertise the Respondent’s competing performance-based digital advertising services. Where a Respondent uses a disputed domain name to pass off as a Complainant and offer competing services, this will generally not be considered a *bona fide* offering of goods or services, nor a legitimate noncommercial or fair use. *See Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (FORUM July 9, 2018) (finding the respondent did not use the domain name to make a *bona fide* offering of goods or services

per Policy ¶ 4(c)(i) or for a legitimate noncommercial or fair use per Policy ¶ 4(c)(iii) where the website resolving from the disputed domain name featured the complainant's mark and various photographs related to the complainant's business).

The Panel finds that the Respondent lacks rights and legitimate interests in the disputed domain name and is completely lacking in rights as a mere "typosquatter", within the meaning and purview of Policy ¶ 4(a)(ii).

Registration and Use in Bad Faith

The Complainant avers that the Respondent registered and is using the <adsrivo.com> domain name in "bad faith" to disrupt the Complainant's business for its own commercial gain. Under Policy ¶¶ 4(b)(iii) and (iv), using a Disputed Domain Name to pass off and imitate a Complainant to divert Internet users to a competing website where the Respondent offers similar or competing services, will generally be considered bad faith disruption for commercial gain. *See ZIH Corp. v. ou yang lin q*, FA1761403 (FORUM December 29, 2017) (Finding bad faith where Respondent used the infringing domain name to disrupt Complainant's business by diverting Internet users from Complainant's website to Respondent's website where it offered competing printer products).

Having considered the evidence adduced in these administrative proceedings, the Panel has no difficulty in finding, by a preponderance of the evidence, that the Respondent registered and is using the <adsrivo.com> domain name in bad faith to disrupt the Complainant's business for the Respondent's own commercial gain.

DECISION

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

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

David L. Kreider, Chartered Arbitrator, Panelist

Dated: March 2, 2021