



ARAB CENTER FOR DISPUTE RESOLUTION

ADMINISTRATIVE PANEL DECISION

Mutlibank International Corporation, Multibank (Europe) Limited and Multibank Exchange Group v.
Tuan Nguyen Anh
Case No. A2019-0016

1. The Parties

The Complainants are Mutlibank International Corporation, Multibank (Europe) Limited and Multibank Exchange Group, represented by Amir A Kolahzadeh of IT SEC, Dubai, UAE.

The Respondent is Tuan Nguyen Anh, Vietnam.

2. The Domain Name and Registrar

The disputed domain name <multibankscam.com> was registered with Namecheap Inc. (the "First Registrar"). It has since been registered with Shinjuru Technology Sdn. Bhd. t.a. ILOVEWWW instead (the "Second Registrar").

3. Procedural History

An undated Complaint was filed with the Arab Center for Dispute Resolution (the "Center") on Sunday. On May 26, 2019, the Center transmitted by email to the First Registrar a request for registrar verification in connection with the disputed domain name. On April 16, 2019, the First Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

On May 1, 2019, the First Registrar transmitted by email to the Center notification that the disputed domain name was no longer registered with the First Registrar. On May 1, 2019, the Center transmitted by email to the Second Registrar an alert. On May 2, 2019, the Second Registrar suspended the disputed domain name.

The Center has verified that the Complaint satisfies 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 Arab Center for Dispute Resolution Supplementary Rules (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 April 16, 2019. In accordance with the Rules, paragraph 5, the due date for Response was May 6, 2019. No formal response was filed with the Center.

The Center appointed Syed Naqiz Shahabuddin as the sole panelist in this matter on May 14, 2019. 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.

It soon became apparent that the Complaint was defective as it did not state the intended relief, contrary to Rule 3(b)(x). On 23 May 2019, the Panel requested that the Complainants resubmit an amended Complaint. On 26 May 2019, the Complainants amended the Complaint by stating “*Transfer of the domain to owner of www.multibankfx.com*” as the remedy sought.

4. Factual Background

The following registered trademark is owned by MEX Group Worldwide Limited, a company incorporated in Hong Kong:

- U.K. Registration No. 00003235192 for the mark MULTIBANK EXCHANGE GROUP, effective as of June 5, 2017, covering financial services in International Class 36

In addition, there is a domain name purportedly belonging to the Complainant that incorporates elements of the MULTIBANK EXCHANGE GROUP mark, that being <multibankfx.com>, but the Complaint does not specify which entity is the registrant of that domain.

The disputed domain name was registered on November 1, 2018. As of the date of the decision, the disputed domain name has been suspended by the Second Registrar.

The Panel notes as well that although Complaint lists one of the Complainants as “Mutlibank International Corporation”, the British Virgin Islands Certificate of Incorporation is with respect to an entity known as “Multibank FX International Corporation”. This Panel is prepared to treat “Mutlibank” as a typographical error for “Multibank FX”.

5. Parties’ Contentions

A. Complainants

The Complainants contend that it has rights in the MULTIBANK EXCHANGE GROUP mark above and has produced a copy of a UKIPO certificate of registration, registered in the name of MEX Group Worldwide Limited.

The Complainants contend that the disputed domain name is identical or confusingly similar to the <multibankfx.com> domain name due to the common “multibank” elements. The Complainants further allege that this commonality will create confusion and constitutes trademark infringement and also violates copyright laws under the Digital Millennium Copyright Act, a United States copyright law.

The Complainants allege that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been referred to as ‘multibank’. The Complainants contend that since the Complainant’s domain name was registered on May 3, 2005 and the disputed domain was registered on November 1, 2018, this shows that the Respondent has no rights to use the email, which I will construe to mean the domain name.

Further, the Complainants allege that the Respondent has no rights or legitimate interests in the disputed domain name as its use of the domain name is to intentionally cause harm to the Complainants.

The Complainants further contend that the Respondent has registered the disputed domain name in bad faith. The Complainants submit that the disputed domain name is primarily for the purpose of disrupting the

business of a competitor by spreading negative and untruthful news about the Complainants. In addition, the Complainants allege that the content on the disputed domain name was stolen from the Complainants' website.

The Complainants also allege that the Respondent has used the disputed domain name in an intentional attempt to attract, for commercial gain, Internet users to the Respondent's website or other online location by creating a likelihood of confusion with the MULTIBANK EXCHANGE GROUP mark as to the source, sponsorship, affiliation, or endorsement of the Respondent. The Complainants contend that they have done this by way of copying content, logo videos and other content from the Complainants' website and by attracting and gaining Internet notoriety.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

Notwithstanding the fact that the Respondent defaulted in these proceedings, the Complainants may only prevail if, on the basis of the statements and documents submitted in accordance with the Policy, the Complainants establish each of the following: (i) that the dispute domain name is identical or confusingly similar to a trademark or service mark in which the Complainants have rights; (ii) that the Respondent has no legitimate rights or interest in the dispute domain names; and (iii) that the dispute domain name has been registered and/or is being used in bad faith.

We are guided by the rationale in *Nintendo of America, Inc. v. Pokemonplanet.net, Jerry Radl, and Fusion Media Solutions, Inc.*, WIPO Case No. D2001-1020 which stated that: "*Complainant bears the burden of proof on each item. Respondent's default does not automatically result in judgment for the Complainant.*"

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires two parts to be proved, namely that:

- (i) the Respondent's domain name is identical or confusingly similar to a trademark or service mark; and
- (ii) in which the Complainants have rights.

The disputed domain name comprises the 'MULTIBANK' element of the MULTIBANK EXCHANGE GROUP mark followed by the additional pejorative element "scam".

The Panel is guided by the advice of the panel in the decision of *Jackson National Life Insurance Company v Transure Enterprise Ltd*, WIPO Case No. D2012-0335, where it was stated: "*in comparing a mark and a domain name with respect to a likelihood of confusion, special attention should be paid to the first part of the mark*".

Whilst the disputed domain name does not contain the MULTIBANK EXCHANGE GROUP mark in its entirety, this Panel is of the view that it contains the dominant element of the MULTIBANK EXCHANGE GROUP mark. The words "EXCHANGE GROUP" do not have a relevant distinguishing function and the dominant part of the mark is the expression "MULTIBANK".

As to whether the addition of the word “scam”, this Panel is guided by the decision in *Sermo, Inc. v. CatalystMD, LLC*, WIPO Case No. D2008-0647, where it was decided that: “*The addition of other terms in the domain name, even derogatory ones, does not affect a finding that the domain name is identical or confusingly similar to the complainant’s trademark for purposes of the Policy.*”

Lastly, this Panel takes note that a gTLD indicator such as “.com” cannot be taken into consideration when judging confusing similarity and is guided by the decision in *Foundation Le Corbusier v. Mercado M.*, WIPO Case No. D2004-0723.

As such, this Panel is of the view that the disputed domain name is confusingly similar to the MULTIBANK EXCHANGE GROUP mark.

As to whether the Complainants have rights in the MULTIBANK EXCHANGE GROUP mark, this Panel is guided by the decision in *Applegate Directory Ltd. v. Interlution a/k/a Matthew Besette*, WIPO Case No. D2004-0181. In that case, the complaint was brought by a company other than the registered proprietor of the trademark and the panel held that in the absence of supporting documentary evidence, the complainant had failed to prove their rights in the mark.

Similarly in the current case, the registration certificate provided by the Complainants in evidence states that MEX Group Worldwide Limited is the registered proprietor of the MULTIBANK EXCHANGE GROUP mark in the United Kingdom. The Complaint has been brought in the name of Mutlibank International Corporation @ Multibank FX International Corporation, Multibank (Europe) Limited and Multibank Exchange Group, and not MEX Group Worldwide Limited, a separate legal entity based in Hong Kong. The Complainants have not provided any documentary evidence of any assignment or license of any right to enforce the MULTIBANK EXCHANGE GROUP mark, nor is there any evidence of consent or authorization from the registered proprietor for the Complainants to enforce the rights on the owner’s behalf. The Complainants have further not provided any evidence of any other relevant registered trademarks that they own.

Accordingly, the Complainants have not proved that they have rights in the MULTIBANK EXCHANGE GROUP mark for the purposes of paragraph 4(a)(i) of the Policy.

Even if the Complainants had provided sufficient evidence that established that they have rights in the MULTIBANK EXCHANGE GROUP trademark, the Complaint would fail for the reasons set out below.

B. Rights or Legitimate Interests

The Panel agrees with the Complainants that there is also no evidence to indicate that the Respondent is known by the name “multibank”, “scam”, or any combination thereof. The Complainants also alleges that the Respondent has no rights or legitimate interests because they are intentionally causing harm to the Complainants. However, this is not a relevant consideration under the second element of paragraph 4(a) of the Policy.

This issue at hand, as this Panel sees it, is whether the Respondent’s use of the disputed domain name is “*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*” in accordance with paragraph 4(c)(iii) of the Policy.

This Panel has found invaluable guidance in the decision of *Ironfx Global Limited v. MR Qaisar Saeed Butt / Moniker Privacy Services*, WIPO Case No. D2015-1221 (<ironfxscam.com>). In that case, which also involves the addition of the word ‘scam’ to a complainant’s mark, the panel took into account four key factors that they held established legitimate rights under paragraph 4(c)(iii) of the Policy:

1. *The disputed domain name does not consist purely of the Complainant's trade mark or, even, the Complainant's trade mark plus an anodyne descriptive term; rather it includes the derogatory term "scam", thereby clearly signalling its purpose.*
2. *There is no evidence that the Respondent has derived any commercial advantage from the website at the disputed domain name.*
3. *There is no evidence that the website reflects anything other than the Respondent's genuine views, albeit views which are objectionable to the Complainant.*
4. *It is immediately clear to Internet users visiting the website at the disputed domain name that it is not operated by the Complainant.*

With regard to the website, the Complainants have tendered only a single cropped image of the Respondent’s website. It includes an image taken from the www.multibankfx.com home page with a large “SCAM” graphic emblazoned onto it. An article follows entitled “Truth about MEX – Multibank Group SCAM”, followed by “Big SCAMMER”. This Panel is of the view that it is immediately clear to Internet users visiting the website at the disputed domain name that it is not operated by the Complainants. There is no evidence to suggest that the Respondent has derived any commercial advantage over the disputed domain name nor is there any evidence to suggest that the website reflects anything other than the Respondent’s genuine views. As the four criteria used in *Ironfx Global Limited v. MR Qaisar Saeed Butt / Moniker Privacy Services*, WIPO Case No. D2015-1221 are equally germane to the current case, the Panel is of the view that the Complainants have failed to satisfy the second element of paragraph 4(a) of the Policy.

We would also add the same addendum as the panel in the aforementioned decision:

“This conclusion does not of course reflect any finding by the Panel as to the veracity or otherwise of the content of the Respondent's website. The Panel is in no position to make any such assessment. This outcome simply means that, in the Panel's view, the Complainant has not proved that the circumstances of the case come within the relatively limited confines of the Policy. It remains open to the Complainant to pursue defamation or other court proceedings should the Complainant consider it appropriate to do so.”

For the avoidance of doubt, it is also pertinent to mention that such a conclusion does not reflect any finding of the Panel on the allegations made by the Complainants regarding violation of any provision of Digital Millennium Copyright Act, a United States copyright law. Such matters are beyond the ambit of these administrative proceedings and should only be decided by a court or tribunal of competent jurisdiction.

C. Registered and Used in Bad Faith

Given the Panel’s findings with respect to the first and second elements of the Policy, it is unnecessary to reach a conclusion with regard to this issue.

7. Decision

For the foregoing reasons, the Complaint is denied.



The Panel takes this opportunity to make the observation that, even in the event that the Complainants had proven the necessary elements above, this Panel would not have been able to order the requested relief as the Complainants have asked for a transfer of the dispute domain name “to owner of www.multibankfx.com”, but have not identified who the owner of the <multibankfx.com> domain name is. A *WhoIs* search reveals that the registrant is an individual or entity in “*Ying Guo*”, which does not seem to correlate with any of the Complainants’ certificates of incorporation.

This Panel is reminded of the terse comments in the decision of *Tiny Prints, Inc. v. Oceanside Capital Corp. c/o Web Admin*, NAF Claim No. FA1007001337650, where it was stated:

“The Panel notes that this Complaint, prepared by Complainant’s representative ... is so poorly drafted and difficult to read that the Panel found it necessary to study the exhibits and review online data to make sense of the allegations. ... the Panel therein noted that it was “quite troubled” by the apparent carelessness with which the complaint in that proceeding was prepared.”

This Panel faced similar difficulties in dealing with the current Complaint. The role of the Panel is not, and should not be, to act as counsel for the Complainant nor is it to independently import missing details into the Complaint when the Complainants have had ample opportunity to lay out their submissions, including through an amended Complaint. The importance of proper and careful drafting cannot be stressed enough.

Syed Naqiz Shahabuddin

Sole Panelist

Date: May 28, 2019