

Administrative Panel Decision

In the Matter of Domain Name Dispute

Between

Ada Health GmbH

(‘the Complainant’)

and

Visi Finsight Sdn Bhd,

(‘the Respondent’)

Case No: AIAC/DNDR-1087-2022

1. The Parties

The Complainant is Ada Health GmbH, Germany, represented by Stobbs (IP) Ltd., Tom Ambridge, United Kingdom.

The Respondent is Visi Finsight Sdn Bhd, Malaysia, unrepresented.

2. The Domain Name and Registrar

The disputed domain name is <adahealth.my>. The Registrar is MYNIC.

3. Procedural History

The Complaint was filed with the Asian International Arbitration Centre, Kuala Lumpur (‘the Centre’) by email on 24 June 2022 and in hard copy on 27 July 2022. On 1 July 2022, the Centre transmitted by email to MYNIC a request for registrar verification in connection with the disputed domain name. On 5 July, 2022, MYNIC transmitted by email to the Centre its verification response, confirming that the Respondent was listed as the registrant and providing the contact details for the administrative contact.

The Centre verified that the Complaint satisfied the formal requirements of the MYNIC (.my) Domain Name Dispute Resolution Policy (the "Policy"), the Rules for the MYNIC (.my) Domain Name Dispute Resolution Policy (the "Rules"), and the Supplemental Rules of the Centre (the "Supplemental Rules").

In accordance with the Rules, the Centre formally notified the Respondent of the Complaint and the proceedings commenced on 29 July 2022. In accordance with the Rules, the due date for Response was 17 August 2022. No response was received from the Respondent.

The Centre appointed Dr. Clive N.A. Trotman as the sole panellist in this matter on 22 August 2022. The Panel finds that it was properly constituted. The Panel has submitted the Declaration of Impartiality and Independence as required by the Centre to ensure compliance with the Rules.

4. Factual background

Complainant

The Complainant is a German company, with offices in London, Munich, Berlin and New York, engaged in the application of artificial intelligence (AI) in the healthcare sector. The Complainant's main product is a mobile software application named "Ada", which was launched in 2016. The application has some 10 million users in many countries including Malaysia, is available in seven languages and provides access to 50 medical experts.

The Complainant is the holder of numerous trademarks internationally, including the following representative Malaysian registered trademarks:

ADA, registered on 16 January 2018, registration number 2018050932, in class 9, including computer software;

ADA, registered on 16 January 2018, registration number 2018050933, in class 38, including telecommunication services;

ADA, registered on 16 January 2018, registration number 2018050934, in class 44, including medical services.

The Complainant holds and uses the domain name <ada.com> and the corresponding website, which in recent times has received about a million visitors per month. The Complainant is also represented on social media including Twitter, Instagram and Facebook.

Respondent

The Respondent has not provided any background information except for the contact information provided for the purpose of registration of the disputed domain name on 23 October 2021. The disputed domain name resolves to a website (the "Respondent's website") displaying material related to goods and services in the sphere of healthcare, and apparently has an active mail exchange (MX) server enabled.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. The Complainant's registered trademark is ADA and the disputed domain name is <adahealth.my>, which incorporates the entirety of the Complainant's trademark. The country code Top-Level Domain (ccTLD) of the disputed domain name is a technical requirement and may be excluded in the consideration of similarity to the Complainant's trademark. The additional word "health" in the disputed domain name is a descriptive dictionary word and is the field in which the Complainant does business.

The Complainant says that the Respondent does not have any rights or legitimate interests in the disputed domain name. The Complainant seeks to pre-empt any claim by the Respondent to have any such rights or legitimate interests. The Complainant's use of the trademark ADA, registered in Malaysia in January 2018, predates the registration of the disputed domain name in October 2021. Furthermore the disputed domain name has not been used in any *bona fide* way but has been used with intent to divert Internet users to the Respondent's website for commercial purposes. The

disputed domain name has an active mail exchange (MX) server and the corresponding website is equipped to provide a communication channel capable of gaining commercially useful information from visitors and to divert visitors to competing services. There is no evidence the Respondent has been commonly known by the disputed domain name and there has been no legitimate non-commercial or fair use of it without intent for commercial gain.

The Complainant further contends that the disputed domain name was registered and is being used in bad faith.

The Complainant says the disputed domain name was registered or is being used by the Respondent in order to prevent the Complainant from reflecting its trademark in the same domain name. It is not plausible that the Respondent was unaware of the Complainant and its well-known trademark at the time of registration of the disputed domain name. The Respondent was under an obligation to check for instance the Malaysian register of trademarks before registering the disputed domain name, where it would have found the Complainant's trademark and the classes in which it is registered.

The Complainant says the Respondent's website uses the words "ADA HEALTH" and its content appears to offer services in healthcare similar to the Complainant's services. The Respondent's website falsely represents that the disputed domain name is associated with the Complainant.

The Complainant says the Respondent's website has login facilities and a communication facility with end-to-end encryption that invites users to disclose certain data about themselves such as may be commercially valuable or may be used for phishing purposes (*i.e.*, the disclosure of personal or commercial information through deception). The Respondent registered the disputed domain name with the intention of disrupting the Complainant's business and in order to benefit by trading on the Complainant's trademark.

The Complainant has cited a number of previous decisions, including decisions under the Uniform Dispute Resolution Policy (UDRP), that it considers relevant to its position.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

Paragraph 5 of the Policy states:

"5.1 If the Complainant disputes your [the Respondent's] registration or use of the Domain Name, the Complainant may file a Complaint with a Provider.

5.2 The Complainant must establish BOTH of the following elements in the Complaint:-

(i) the Domain Name is identical or confusingly similar to a trade mark or service mark to which the Complainant has rights; and

(ii) you have registered and/or used the Domain Name in bad faith.

(5.3 ...)"

A. Identical or Confusingly Similar

The Panel is satisfied by the evidence produced in the form of copies of trademark registration documents that the Complainant has the requisite rights under the Policy in the Malaysian registered trademark ADA.

The disputed domain name is <adahealth.my>, which may be read as ADA, being the Complainant's trademark, followed by "health", being a field in which the Complainant does considerable business, and part of its name. The ccTLD, in this instance ".my", may generally be disregarded in the determination of confusing similarity. By an objective comparison the disputed domain name, in that it features the entirety of the Complainant's trademark, is found to be confusingly similar to the trademark. The additional generic or descriptive word "health" is found not to detract from the confusing similarity and may exacerbate the confusion. The Panel finds for the Complainant in the terms of paragraph 5.2(i) of the Policy.

B. Registered and/or Used in Bad Faith

The Complainant must prove under paragraph 6 of the Policy that the disputed domain name has been registered and/or is being used in bad faith. Paragraph 6 of the Policy lists four alternative circumstances, without limitation, that may be evidence of the registration and/or use of a domain name in bad faith by a respondent, namely:

- "(i) you registered and/or are using the Domain Name mainly to sell, rent or transfer the Domain Name for profit to the Complainant, its competitor or the owner of the trade mark or service mark; or
- (ii) you registered and/or are using the Domain Name to prevent the owner of a trade mark or service mark from using the domain name which is identical with its trade mark or service mark; or
- (iii) you registered and/or are using the Domain Name to disrupt the business of the Complainant; or
- (iv) you registered and/or are using the Domain Name for the purposes of and with the intention to attract or divert, for commercial gain, Internet users to:-
 - (a) your web site;
 - (b) a web site of the Complainant's competitor; or
 - (c) any other web site and/or online location,

by creating a possibility of confusion or deception that the web site and/or online location is operated or authorised by, or otherwise connected with the Complainant and/or its trade mark or service mark".

Paragraph 7 of the Policy provides illustrative grounds upon which the Respondent may establish that the disputed domain name has not been registered or used in bad faith. The absence of any submission from the Respondent in this instance does not absolve the Complainant from the requirement to prove its case.

A screen capture made by the Complainant on 21 June 2022 of the Respondent's website, to which the disputed domain name resolved, shows a large photograph depicting a mother and a baby, and a number of smaller photographs on health-related themes. The main photograph has been captioned "adahealth" with a larger placard that reads "One Stop Baby Health Services At Your Fingertips". A search facility is also provided.

Further down the screen capture, a section headed "How Adahealth Works" shows a progression of three steps directed to the visitor: "Type your keyword and select the type of services you want," "Browse and compare multiple selections based on your budget and location", and "Book an appointment and pay online now!" The last of these steps makes clear that the website is involved in taking payments.

Further down, boxes with photographs have active links headed "Nutrition and Diet During Pregnancy", "Important Nutrients During Preconception" and "Tips for a healthy and succesful [sic] pregnancy". These headings are active links to different pages residing under the disputed domain name that provide extensive health information. Whilst the information provided might be authentic, it appears under and above the banner "adahealth", incorporating the Complainant's trademark.

These linked pages lead to further optional links. For example the page "Important Nutrients During Preconception" leads to an extensive array of 53 different Confinement Centres available in Malaysia, each with an individual display advertisement and a facility to "Request A Quote".

On the evidence, the Respondent's website, to which the disputed domain name resolves, purports to offer advice and services on maternity and other health matters. The means of attracting Internet users to the Respondent's website is the disputed domain name, which clearly incorporates the Complainant's trademark and the word "health". The Respondent's website reinforces an impression of being an authentic website of the Complainant by further displays of the Complainant's trademark. It may reasonably be concluded there is a possibility of at least some visitors being confused into believing they had reached the Complainant's website. The Respondent's commercial motive is confirmed by its offering of information and links to services such as the advertisements promoting Confinement Centres and the provision of facilities to "pay online now" or to "Request A Quote".

The Respondent's website also has the potential to collect personal information. A correspondence box invites the visitor to disclose their name, email address and website, which visitors may provide in the mistaken belief they are communicating with the Complainant.

Thus, on the totality of the evidence and on the balance of probabilities, the Panel finds in the terms of paragraph 6(iv) of the Policy that the disputed domain name was registered and is being used primarily with intent to attract Internet users to the Respondent's website by confusion with the Complainant's trademark for the Respondent's commercial gain, constituting registration and use of the disputed domain name in bad faith under paragraph 5.2(ii) of the Policy.

The Panel does not find any realistic prospect that the Respondent might have established any possible case in its favour under the provisions of paragraph 7 of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraph 12 of the Policy and paragraph 17 of the Rules, the Panel orders that the disputed domain name <adahealth.my> be transferred to the Complainant.



Dr. Clive N.A. Trotman

Sole Panellist

Date: September 5, 2022