

ADMINISTRATIVE PANEL DECISION

Complainant: Easy Travel Tours Limited
Respondent: Daisy Easy Travel / Aysha Mramba
Case Number: IR. #985110
Contested Domain: <daisyeasytravel.co.tz>

I. The Parties

1. The Complainant is EASY TRAVEL & TOURS LTD represented by Adv. John S. Massangwa, Enkikoto Attorneys, Shule Rd, Plot No 76, Tfa HQ, P. O. Box 10095, Arusha, Tanzania.
2. The Respondent is on behalf of <daisyeasytravel.co.tz>, Allen Malibate, NEXTBYTE ICT SOLUTIONS CO. LTD (“Nextbyte”), P.O. Box 32258, Dar es Salaam, Tanzania/ Aysha Mramba.

II. The Domain Name and Registrar

3. The disputed domain name < easytravel.co.tz > (“Domain Name”) is registered with Kilihost Limited (the “Accredited Registrar”).

III. Procedural History

4. The Complaint was filed with iResolve on November 9, 2022.
5. Upon review, the Case Administrator communicated to the Complainant the deficiencies and refiled the Complaint on December 2, 2022.
6. iResolve verified that the Complaint satisfied the formal requirements of the Electronic and Postal Communications (Domain Names Management) Regulations, 2020 GN. 940 of 2020; the Domain Names Dispute Resolution Guidelines 2021 (the “Guidelines”) and the iResolve’s Supplemental Rules for .tz 2022 (the “Supplemental Rules”).

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7. In accordance with the Rules, 6 (a) and (c) iResolve formally notified the Respondent of the Complaint on 5 December 2022, iResolve communicated to the Respondent the Complaint.
8. On 12 December 2022, due to no response from the Respondent, iResolve requested from the Country Registry, Tanzania Communications Regulatory Authority (TCRA) for the records and contacts of the Accredited Registrar and specific person maintained in the Central Registry for the domain name in dispute to enable effective service of the Complaint.
9. On December 13, 2022, the Registrar transmitted by email to iResolve its verification response disclosing registrant and contact information for the disputed domain names, which differed from the named Respondent and contact information in the Complaint. The Country Registry provided the following details:

Domain name holder;

Name: Allen Malibate
Organisation: NextByte ICT Solutions
Street: P.O. Box 32258
City: Dar es Salaam
Country code: TZ
Phone: [+255.713366303](tel:+255713366303)
Email: info@nextbyte.co.tz

Accredited Registrar;

Kilihost Ltd
Contact person;
M.Waseem A. Ghartey
Operations Director
Kilihost Ltd
3rd Floor Maktaba Complex
Landline: [+255 22 2134591](tel:+255222134591)
Mob: [+255 713 557787](tel:+255713557787) / [+ 255 788 557786](tel:+255788557786)

10. After the Country Registry disclosed the name of the underlying registrant, Easy Travel, the amended Complaint substituted him as Respondent. iResolve reissued its notification to the Respondents copying in the Accredited Registrar on 13 December 2022, thus commencing the proceedings. In accordance with the Rules, the due date for Response was 3 January 2023.

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11. The Respondent did not submit a response. On the 3 January 2023, iResolve notified the Respondents of the default. However, on the same day the Respondent's Accredited Registrar and the Domain Holder replied indicating their willingness to resolve the Complaint. The Complainant had no reservations.
12. The Accredited Registrar sent an email communication on January 3, 2023 saying:

Greetings,

Hope you are well. We have not received any response from the registrant of the domain therefore should a cancellation or transfer of the domain be required the needful can be done.

13. On the same date, Nextbyte, replied saying:

Greetings,

Hope you are well,

Fortunately, the owner [Copied in this email - Aysha Mramba] has no intention to continue possessing/using the domain [daisyeasytravel.co.tz].

It can be deleted or transferred to any party.

14. On the 4 January 2023, the Parties were requested to record the settlement terms in the standard Settlement Agreement and extended the Parties 7 days to conclude the settlement of the complaint.
15. On the same date, the Complainant's representative signed the Settlement Agreement. Also, the Accredited Registrar sent an unsolicited email saying:

Dear Allan,

Kindly proceed with signing on behalf of the client or the client will sign off so that we can proceed with the cancellation of the domain.

16. On 5 January 2023, Aysha Mramba wrote an ex parte email to iResolve (which was recirculated by the Case Administrator to all Parties) saying:

Hello

Hope you are well

I understand nothing here, what was the issue?

17. iResolve appointed Madeline Kimei, as the sole panelist in this matter on 20 January 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 to ensure compliance with the Rules, paragraph 12.

IV. Factual background

18. The Complainant is a limited liability Company registered on 30 December 1987 as Easy Travel Limited with Incorporation Number 14646 under the Companies Ordinance now the Companies Act No.12 of 2002¹ as tour operators.
19. The Complaint has instituted pursuant to Regulation 24 (1) and (4) of the Electronic and Postal Communications (Domain Names Management) Regulations, 2020 for cancellation of the Respondent's domain name pursuant to Regulation 13 (c), (f), (g) and (h) of the Regulations.
20. In connection with the tour operations, the Complainant has established a website www.easytravel.co.tz, which the Complainant uses to promote and sell tours.
21. The disputed domain name was registered on 5 January 2022 to a registrant different to the Respondent in the name of NEXTBYTE ICT SOLUTIONS CO LTD (Nextbyte). The Respondent is the legitimate owner and user of the disputed domain name in accordance to the email dated 4 January 2022 from Nextbyte.

¹ Appendix 3 of the Complaint

V. Parties Contentions

(A) Complainant

22. Firstly, the Complainant makes contentions to establish that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights; secondly, that the Respondent has no rights or legitimate interests in the disputed domain names; and thirdly, that the disputed domain names were registered and are being used in bad faith.
23. The Complainant says that as a registered company its name 'easy travel' is protected under Section 30 (2) of the Companies Act. The trademark to which the Complaint is based on the Complainant explained that its domain name was first registered on 21 September 2015 under Class 39 of the Nice Classification under Registration No. TZ/S/2015/641 dated 21/09/2015 under the Trade and Service Marks Act, 1986. The Trade and Service Mark Registration Certificate No. TZ/S/2018/376 under Class 41 issued on 23 November 2018².
24. The Complainant has over the years since its registration as a tour operator involved in providing travelling services including but not limited to air travel, guided tours for tourists in various touristic destinations in East Africa.
25. The Complainant submitted that it has dealt with copyright and trademark issues with third parties who sought to take advantage of the Complainant's reputation by confusing its clients since it is a very successful tour operation business which has over the years been a number one tour operator in a famous TripAdvisor website. It was the Complainant's contention that it obtains its clients or business who are mostly foreigners through the world wide web network registered with a domain name <easytravel.co.tz>.
26. The Complainant submitted that the Respondent's domain name which is the subject of the dispute is <daisyeasytravel.co.tz> registered with the Tanzania Communications Regulatory Authority on 5 January 2022.
27. The Complainant says that the said domain makes use of three words: 'daisy', 'easy' and 'travel' making an addition of the word 'daisy' to the Complainant's long term and reputable domain <easytravel.co.tz> which is recognized by the Companies Act, Trade

² Appendix 1 and Appendix 2 of the Complaint

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and Service Marks Act, 1986 and Electronic and Postal Communication (Domain Names Management) Regulations, 2020.

28. The Complainant alleges that the similarity in the domain names causes a confusion to the Clients as they are used in the same business industry and that in an algorithmic search the two words which are similar to those of the Complainant take precedent.
29. It was the Complainant's submission that the Respondent's domain name is registered to disrupt the Complainant's business by making unfair and illegal competition. The competition is made through intentionally attracting the internet or website users to the Respondent for commercial gains by creating confusion from use of protected words exclusively and legally owned by the Complainant engaged in the same business.
30. The Complainant asserts that the confusion extends not only to how they appear when written but also when spoken whereby the word 'daisy' is phonetically a shadow to the words 'easy travel' and that one Google search 'daisyeasytravel.co.tz' the famous search engine gives the Complainant's domain name as the first suggestion.
31. According to the Complainant, the Respondent's domain name is also preventing the Complainant from using the domain name corresponding to the Complainant's registered domain name which has been used and registered since 27 July 2009 and that the confusion make the name subject to cancellation as per Regulation 13 (c) of the Regulations.
32. The registered services to be provided are hiring of transport vehicle, services connected with the functioning of the airports, services consisting of information about journeys r transport of goods by brokers and tourist agencies, information relating to tariffs, timetables and methods of transport and services relating to the inspection of vehicles or goods before transport. It was the Complainant's submission that the second registration was done on 08 May 2018 under Class 41 of the Nice Classification under Registration Number TZ/S/2018/376 under the Trade and Service Marks Act, 1986³.
33. The Complainant contends that the Respondent is its business competitor because the Respondent's website <daisyeasytravel.co.tz> provides details of the services offered by it to be various safari itinerary and tour operating activities which is the center of the Complainant's business displayed in <easytravel.co.tz.>.

³ The Trade and Service Mark Registration Certificate in Class 41 was attached and marked as Appendix 2.

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34. The Complainant further asserts that the Respondent registered the domain name to attract internet and website users for commercial gain by creating confusion to users who overtime have seen and perhaps subscribed the Complainant's services and may subscribe again in the future. This allows the existence of the Respondent's domain name according to the Complainant will confuse its potential clients.
35. The Complainant sought for cancellation of the dispute domain name pursuant to Regulation 13 (c), (f), (g) and (h) of the Regulations.

(B) Respondent

36. The Respondent did not formally reply to the Complainant's contentions.
37. The Case Administrator received an unsolicited email on 25 January 2023 from Nextbyte saying the following:

Hi everyone,

I'm writing on behalf of the owner of the domain, who has limited access to the internet.

So apparently, she has changed her mind and we will keep the domain.

After we gave her the website performance stats for 2022, we noticed the website with the disputed domain name had an incredible number of visitors,

So we are not intending to sign off the document to release the domain, and soon the domain will be renewed for 2023.

Thanks,

For any further inquiries,

Contact: Allen Malibate

Business Development Manager

NEXTBYTE ICT SOLUTIONS CO. LTD (Domain Holder)

a.malibate@nextbyte.co.tz | 0713 366 303

VI. Discussion and Findings

- (I) Identical or confusingly similar
(Reg. 13 (c) of the Regulations)

38. The confusing similarity test of the first element serves as a standing requirement. In the present case, the disputed domain names incorporate the Complainant's trade mark EASY TRAVEL in its entirety, and the Complainant's name and trademark EASY

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TRAVEL is clearly recognizable in all of the disputed domain names. The addition of the terms “daisy” does not prevent a finding of confusing similarity under the first element.

39. Accordingly, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights.

(II) Rights or Legitimate Interests

(Reg. 13 (d) of the Regulations)

40. The Complainant has never authorized the Respondent to register any domain name incorporating its trade mark. In the present case, the Complainant has put forward a *prima facie* case that the Respondent has no rights or legitimate interests in the Domain Name which has not been rebutted by the Respondent. There is nothing on the record in this case to indicate that the Respondent might have any rights or legitimate interests in it, nor has the Respondent attempted to make out a case that it has.
41. The Respondent has not provided any evidence that it has been commonly known by, or has made a *bona fide* use of, the disputed domain name, or that it has, for any other reason, rights or legitimate interests in the disputed domain name.
42. Given the identity of the disputed domain name to the Complainant’s trademark, the absence of any relationship between the Respondent and the Complainant, and the failure to avoid the implied false affiliation with the Complainant, the Respondent’s use of the disputed domain name is neither a *bona fide* use nor a legitimate non-commercial or fair use.
43. The Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the Respondent has not rebutted this.
44. Moreover, the nature of the Domain Name is inherently misleading, and carries a risk of an implied affiliation as it suggests sponsorship or endorsement by the Complainant.
45. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(III) Registered or Used in Bad Faith

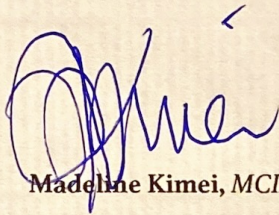
(Reg. 13 (f), (g) and (h) of the Regulations)

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46. The disputed domain names were all registered on 5 January 2022. On the other hand, the Complainant's business was incorporated on 30 December 1987 and the domain name was registered on 27 July 2009.
47. The Complainant has a trademark registered on 21 September 2015 with Registration No. TZ/S/2015/641 under the Trade and Service Marks Act, 1986.
48. The disputed domain name was registered many decades after the Complainant first registered, used and developed a reputation in its Easy Travel trademark.
49. Moreover, by using the Domain Name to offer competing services to those of the Complainant, it is clear that the Respondent has used the Domain Name in a manner intended to attract Internet users by creating a likelihood of confusion with the Complainant's registered marks.
50. Considering the Complainant's longevity in the tour operation business, it is inconceivable that the Respondent was unaware of their existence. The Panel finds that the Respondent intentionally chose the disputed domain names to cause confusion with the Complainant's trade mark EASY TRAVEL.
51. The evidence on the record provided by the Complainant indicates that the Respondent has used the disputed domain name in an attempt to attract, for commercial gain, internet users to a website by creating confusion in the minds of the public as to an association between the website and the Complainant. Since the Respondent's website is purportedly offers various safari packages with different prices, the same tour operation services, these activities appear to have been for commercial gain.
52. The Panel notes and makes allowable inferences from the evidence contained in the email submitted out of time extended to the Respondent, on 25 January 2023, which states *"After we gave her the website performance stats for 2022, we noticed the website with the disputed domain name had an incredible number of visitors.....So we are not intending to sign off the document to release the domain, and soon the domain will be renewed for 2023"*. This makes clear of the Respondent's intention to attract users for commercial gain by creating a likelihood of confusion as to the source or affiliation.
53. The Respondent's use of the disputed domain name in this manner is a bad faith use. Therefore, the Panel concludes that the disputed domain names were registered in bad faith.

VII. Decision

For the foregoing reasons, in accordance with paragraphs 5.8 of the Guidelines and 13 of the Rules, the Panel orders that the Domain Name < daisyeasytravel.co.tz> be cancelled.

A handwritten signature in blue ink, appearing to read 'M. Kimei', with a small checkmark above it.

Madeline Kimei, MCI Arb

Sole Panelist

Date: 8 February 2023