

ADMINISTRATIVE PANEL DECISION

Moelis & Company v. Danel Mark

Case No. D2023-3459

1. The Parties

Complainant is Moelis & Company, United States of America (“U.S.”), represented by Soteria LLC, U.S.

Respondent is Danel Mark, U.S.

2. The Domain Name and Registrar

The disputed domain name <moelisventure.com> is registered with Wild West Domains, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 14, 2023. On August 15, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 16, 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 (Redacted for Privacy) and contact information in the Complaint.

The Center sent an email communication to Complainant on August 21, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on August 22, 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 Respondent of the Complaint, and the proceedings commenced on August 24, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on September 16, 2023.

The Center appointed Scott R. Austin as the sole panelist in this matter on September 27, 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 following facts appear from the Complaint and its attached Annexes, which have not been contested by Respondent, and which provide evidence sufficient to support:

Complainant is an investment bank that provides mergers and acquisition consulting and a range of financial advisory services to corporations, governments, and financial sponsors under the mark MOELIS & COMPANY (the “MOELIS Mark”). Since at least 2009, Complainant, referred to primarily as “MOELIS”, has provided its financial advisory and investment management services under the MOELIS Mark to a wide range of institutional investors, including private equity, venture and growth capital, mutual funds, as well as insurance, pension funds and family offices.

Complainant asserts that the MOELIS Mark is protected by Complainant as a registered trademark of record with the United States Patent and Trademark Office, for which a copy of the registration certificate is shown in an Annex attached to the Complaint:

U.S. Trademark Registration No. 4,904,062, MOELIS & COMPANY, registered February 23, 2016, for business sale, acquisition and merger consultation services in International Class 35, claiming a first use date of July 15, 2007, and a range of financial advisory, investment management and investment banking related services in International Class 36, claiming a first use date of March 17, 2009.

Complainant also owns the domain name incorporating the MOELIS Mark as its principal domain name, <moelis.com>, created on April 27, 2000, through which consumers access Complainant’s official website located at “www.moelis.com” (the “Official MOELIS Website”).

The disputed domain name was created on August 3, 2023. No evidence was provided in the Complaint displaying the actual use of the disputed domain name to inform the Panel of the extent or type of website activity by Respondent other than Complainant’s statement suggesting the extent of such activity, that it, “is likely malicious and harmful to the Moelis & Company brand, as it gives the false impression that domain is a Moelis & Company owned website”. The Panel’s independent investigation of the disputed domain name found that as of the date visited, October 9, 2023, Respondent’s disputed domain name resolved to what is generally referred to as a “copycat” website which displayed a landing page essentially identical to the landing page of the Official MOELIS Website, including Complainant’s logo, both on the landing page content and as a favicon in the Internet browser tab for the website, Complainant’s color scheme, font styles, graphics, infringing copies of Complainant’s copyright protected digital images and videos, as well as fraudulent contact data for Respondent to phish confidential personal and financial data from unsuspecting consumers visiting Respondent’s copycat website used to impersonate Complainant¹. Numerous cases support a panel’s power to undertake such limited factual research and the Panel has, in its discretion, examined Respondent’s <moelisventure.com> based website.

¹ “Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name . . .” WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 4.8. See e.g., *Humble Bundle, Inc. v. Domain Admin, Whois Privacy Corp.*, WIPO Case No. [D2016-0914](#); *Creative NetVentures, Inc. v. Webheads*, WIPO Case No. [D2000-1655](#).

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for the transfer of the disputed domain name.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

Paragraph 15 of the Rules provides that the Panel is to decide the Complaint on the basis of the statements and documents submitted in accordance with the Policy, the Rules, and any rules and principles of law that it deems applicable.

The *onus* is on Complainant to make out its case and it is apparent from the terms of the Policy that Complainant must show that all three elements set out in paragraph 4(a) of the Policy have been established before any order can be made to transfer a domain name. As the proceedings are administrative, the standard of proof under the Policy is often expressed as the "balance of the probabilities" or "preponderance of the evidence" standard. Under this standard, an asserting party needs to establish that it is more likely than not that the claimed fact is true. See, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.2.

Thus, for Complainant to succeed it must prove within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

1. The disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
2. Respondent has no rights or legitimate interests in respect of the disputed domain name; and
3. The disputed domain name has been registered and is being used in bad faith.

The Panel finds that Complainant has met its burden in all three elements of the Policy and will deal with each of these elements in more detail below.

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. See *Janus Int'l Holding Co. v. Rademacher*, WIPO Case No. [D2002-0201](#).

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms, here, “venture”, may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8. See also *Oki Data Ams., Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which Respondent may demonstrate rights or legitimate interests in a disputed domain name:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making 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.”

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. [WIPO Overview 3.0](#), section 2.1.

The consensus of prior UDRP panel decisions under the Policy is that a complainant may establish this element by making out a *prima facie* case, not rebutted by the respondent, that the respondent has no rights or legitimate interests in a domain name. [WIPO Overview 3.0](#), section 2.1. See also, *Malayan Banking Berhad v. Beauty, Success & Truth International*, WIPO Case No. [D2008-1393](#).

First, Complainant asserts that Respondent is not sponsored by or affiliated with Complainant in any way, nor has Complainant given Respondent permission or license to use Complainant’s trademarks in any manner, including in domain names. Prior UDRP panels have held “in the absence of any license or permission from Complainant to use its trademark, no actual or contemplated *bona fide* or legitimate use of the Disputed Domain Name could reasonably be claimed”. *Sportswear Company S.P.A. v. Tang Hong*, WIPO Case No. [D2014-1875](#).

Second, Complainant contends Respondent is not commonly known by the disputed domain name, which evinces a lack of rights or legitimate interests under Policy paragraph 4(c)(ii). Complainant has shown in the Registrar’s registrant data submitted to the Center that Respondent, as registrant of the disputed domain name, identified as “Danel Mark” is not commonly known by the disputed domain name because it clearly bears no resemblance to it, nor to the MOELIS Mark or Complainant’s <moelis.com> domain name.

Prior UDRP panels have held where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be

regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of Policy paragraph 4(c)(ii). See *Moncler S.p.A. v. Bestinfo*, WIPO Case No. [D2004-1049](#).

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. See *Valero Energy Corporation and Valero Marketing and Supply Company v. Valero Energy*, WIPO Case No. [D2017-0075](#).

Complainant's evidence submitted clearly suggests the false pretense that the disputed domain name creates, that you will find Complainant, the trademark owner, at the other end of the disputed domain name. The Panel's review of Respondent's copycat website confirms that is Respondent's intent, to make consumers believe that Respondent is Complainant with identical images, videos, text, and graphics only adding the descriptive term "venture" which would suggest venture capital, a component of Complainant's investment advisory business, or at least would imply Respondent is somehow affiliated with Complainant. Further, from the Panel's own independent investigation of Respondent's copycat website, the Panel finds that Respondent is not using the disputed domain name in connection with a *bona fide* offering of goods or services, and that the disputed domain name resolves to a copycat website featuring Complainant's mark used to promote and sell financial advisory and investment management services in competition with Complainant as well as engage in an illegal phishing scheme. The Panel finds Respondent is passing itself off to misappropriate the goodwill developed in Complainant's rights in the MOELIS Mark by operating a website with the intent to mislead Internet users into thinking Respondent is Complainant or at a minimum there is an affiliation between Complainant and Respondent. The use of the disputed domain name in connection with a website which copies Complainant's MOELIS Mark and other official content elements from the Official MOELIS Website while inserting Respondent's own email address, a What's App link, online chat agent and phone number to further impersonate Complainant and further Respondent's illegitimate phishing scheme, cannot be regarded as a legitimate noncommercial or fair use of the disputed domain name. See, e.g., *Accor v. Eren Atesmen*, WIPO Case No. [D2009-0701](#); *Chrome Hearts LLC v. Tony Lou*, WIPO Case No. [D2009-0964](#).

Having reviewed the record, the Panel finds Complainant has established a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted Complainant's *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

For the reasons discussed in detail regarding Respondent's website under the previous element of the Policy, the Panel finds that Respondent registered and used the disputed domain name in bad faith. In the present case, the Panel notes that this finding is supported by the following circumstances.

First, the Panel agrees with Complainant's supported allegation that Respondent's disputed domain name has been used to host a website passing itself off as Complainant's website which at best, engages in fraudulent financial advisory or investment management services transactions with consumers, and at worst is used to steal consumers' personal or company information through a fraudulent phishing scheme. Respondent's copycat website, by commingling "official" content copied from Complainant's Official MOELIS Website with Respondent's substituted contact data and solicitation tools, Respondent is impersonating Complainant to divert Internet traffic from Complainant to Respondent for Respondent's commercial gain.

Such activities fall squarely within the explicit example of bad faith registration and use found in the Policy at paragraph 4(b)(iv). See, *American Airlines, Inc. v. Andrew Morrill, flybrix llc*, Case No. [D2023-0635](#).

Second, Respondent's use of the disputed domain name to pretend that it is Complainant or to falsely associated itself with Complainant and sell competing products from its imposter website "brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows the Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely the Complainant." See *Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#).

Third, given the above, that Respondent incorporated Complainant's famous MOELIS Mark into the disputed domain name and configured an imposter website accessed through the disputed domain name targeting Complainant the Panel also finds it inconceivable that Respondent did not have actual knowledge of this trademark at the time of registration of the disputed domain name. Respondent must have known of Complainant and its business activities when Respondent registered and began using the disputed domain name in bad faith to take advantage of Complainant and its MOELIS Mark. See *Pfizer, Inc. v. Suger*, WIPO Case No. [D2002-0187](#).

Finally, UDRP panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <moelisventure.com>, be transferred to Complainant.

/Scott R. Austin/

Scott R. Austin

Sole Panelist

Date: October 10, 2023