

ADMINISTRATIVE PANEL DECISION

ESMOD v. Milen Radumilo

Case No. D2023-4654

1. The Parties

Complainant is ESMOD, France, represented by Novagraaf France, France.

Respondent is Milen Radumilo, Romania.

2. The Domain Name and Registrar

The disputed domain name <esmod.club> (hereinafter “Disputed Domain Name”) is registered with Communal Communications Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2023. On November 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On November 14, 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 November 15, 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 November 15, 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 November 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 10, 2023. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on December 12, 2023.

The Center appointed Lawrence K. Nodine as the sole panelist in this matter on December 18, 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

Founded in France in 1841, Complainant ESMOD is a well-known fashion design and business school. Many of its graduates have pursued distinguished careers and it currently has approximately 3,000 students in 13 countries. CEOWORLD Magazine ranked Complainant seventh among the “Best Fashion Schools in the World For 2023”.

Complainant owns several trademark registrations for ESMOD (the “Mark”), including:

- International trademark registration No. 522602, registered on February 5, 1988, designating numerous jurisdictions including Romania, the United States of America, and Australia; and
- French trademark registration No. 1534654, registered since June 5, 1989.

Complainant also owns many domain names, including <esmod.com> registered on June 28, 1996.

The Disputed Domain Name was registered on registered May 28, 2022. It resolves to a parking page with links to websites operated by entities that, like Complainant, offer education services. In addition, Mail Exchange (“MX”) servers have been set, thereby enabling email functionality.

Respondent has been the named Respondent in 257 prior UDRP cases.

On September 4, 2023, Complainant sent a cease-and-desist letter to Respondent through the Registrar’s support email address, but Complainant did not receive a response.

5. Parties’ Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the Disputed Domain Name. Of particular note, Complainant alleges that it reviewed fifty of the prior UDRP decisions naming Respondent as a party, and that in all of these cases, the panel found bad faith and order transfer. Also noteworthy, Complainant contends that Respondent was likely aware of Complainant’s world-wide reputation when it registered the Disputed Domain Name.

B. Respondent

Respondent did not submit any response to the Complaint.

6. Discussion and Findings

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 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 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.

The Panel finds the entirety of the Mark is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical to the Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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.

Having reviewed the available 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.

Respondent uses the Disputed Domain Name to display links to websites that provide education services that compete with Complainant. This is not a *bona fide* use of the Disputed Domain Name. [WIPO Overview 3.0](#), section 2.9.

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

C. Registered and Used in Bad Faith

The Panel finds that Respondent registered the Disputed Domain Name in bad faith. Based on evidence that Complainant has been recognized as a leading fashion school with a worldwide reputation, it is probable that Respondent was aware of Complainant and its rights when it registered the Disputed Domain Name and that it targeted Complainant with the intention of using the Disputed Domain Name in bad faith.

The Panel also finds that Respondent is using the Disputed Domain Name in bad faith. The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel finds that Respondent has “intentionally attempted to attract, for commercial gain, Internet users by creating a likelihood of confusion with the complainant’s mark [...]”, Policy paragraph 4(b)(iv). The Panel also notes that Respondent has engaged in a pattern of bad faith conduct, Policy paragraph 4(b)(ii), as evidenced by the numerous prior UDRP decisions against Respondent. The Panel has identified an astonishing 257 decisions naming Respondent where the panels transferred the subject domain names. See, e.g., *ZipRecruiter, Inc. v. Milen Radumilo*, WIPO Case No. [D2023-3854](#) (“the Panel notes that the Respondent is a serial cybersquatter (i.e., an individual who intentionally registers domain names incorporating third party trademarks) and that this case is part of that pattern of bad faith conduct.”).

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

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 <esmod.club> be transferred to Complainant.

/Lawrence K. Nodine/

Lawrence K. Nodine

Sole Panelist

Date: January 1, 2024