

ADMINISTRATIVE PANEL DECISION

MVH I, Inc. v. Mohammad Bhutto

Case No. D2022-0800

1. The Parties

The Complainant is MVH I, Inc., United States of America (“USA”), represented by 101domain.com, USA.

The Respondent is Mohammad Bhutto, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <mylevapeuae.com> (“the Domain Name”) is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 8, 2022. On March 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same day, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on March 14, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on March 16, 2022.

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 the Respondent of the Complaint, and the proceedings commenced on March 17, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 6, 2022. The Center received email communications from the hosting provider on March 15 and 17, 2022.

The Center appointed Dawn Osborne as the sole panelist in this matter on April 26, 2022. 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 Complainant is the owner of the mark MYLE with an acute accent on the letter “e” registered, *inter alia*, in the USA under registration no. 5652774 for electronic cigarettes (“e-cigarette(s)”), registered on January 15, 2019. It owns the domain name <mylevape.com> and operates web sites at “myle.ae” and “mylevapor.ae” for the United Arab Emirates.

The Domain Name was registered on January 13, 2021 and is being used for a site purporting to sell e-cigarette products which appears to be an authorised site of the Complainant. The e-cigarette products being sold on the site include products of the Complainant’s competitors.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions can be summarised as follows:

The Complainant is the owner of the mark MYLE with an acute accent on the letter “e” registered, *inter alia*, in the USA as trade mark no. 5652774 for e-cigarettes since 2019. It owns the domain name <mylevape.com> and operates web sites at “myle.ae” and “mylevapor.ae” for the United Arab Emirates.

The Domain Name is confusingly similar to the Complainant’s trade mark adding only the descriptive term “vape”, the geographical abbreviation “uae” meaning United Arab Emirates, and the generic Top-Level Domain (“gTLD”) “.com” none of which prevents such confusing similarity.

The Respondent does not have any rights or legitimate interests in the Domain Name, is not commonly known by it, and is not authorised by the Complainant.

The Domain Name has been used for a web site using the Complainant’s mark in its masthead appearing to be an official web site of the Complainant purporting to sell the Complainant’s products, but also selling competing products. There is a disclaimer saying that the site is not associated with the Complainant, but this appears in small text in capital letters at the bottom of the web site pages. This is not a *bona fide* offering of goods or services or a noncommercial or legitimate fair use. It is registration and use in bad faith misleading Internet users for commercial gain and disrupting the Complainant’s business. The fact that the Respondent’s site purports to sell the Complainant’s products shows the Respondent is aware of the Complainant and its rights, business, and services.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

The Domain Name consists of the Complainant’s MYLE mark (which is registered, *inter alia*, in USA for e-cigarettes since 2019) without its acute accent on the “e”, the term “vape”, the term “uae” (indicating the United Arab Emirates), and the gTLD “.com”.

The MYLE mark is wholly incorporated and clearly recognisable within the Domain Name. Moreover, previous UDRP panels have found confusing similarity when a respondent removes the acute accent from and/or adds a term to a complainant’s mark. The “.com” gTLD is a necessary part of a domain name and, as such, does not prevent a finding of confusing similarity between the Domain Name and the Complainant’s

mark.

Accordingly, the Panel holds that the Domain Name is confusingly similar to the Complainant's registered mark.

As such the Panel holds that Paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The Complainant has not authorised the use of its mark. There is no evidence other than the bare content on the web site itself to demonstrate that the Respondent is commonly known by the Domain Name which bears no relation to the Respondent's contact details given in the Whois database. The use of the Domain Name is commercial and so is not legitimate noncommercial fair use.

The web site attached to the Domain Name uses the Complainant's MYLE mark complete with its acute accent on the letter "e" in its masthead to offer e-cigarette goods, including competing products. The disclaimer in small text at the bottom of the web site is not sufficient to make it clear that there is no commercial connection between the site attached to the Domain Name and the Complainant and the web site appears authorised when it is not. The Panel finds this use is confusing and does not amount to the *bona fide* offering of goods and services.

The Respondent has not replied to the Complainant's contentions to explain why its use of the Domain Name to sell e-cigarettes products including products which compete with those of the Complainant should be considered legitimate.

The Complainant has put forward a *prima facie* case that the Respondent lacks rights to or legitimate interests in the Domain Name, which has not been rebutted by the Respondent.

As such the Panel finds that the Respondent does not have rights or a legitimate interest in the Domain Name and that the Complainant has satisfied the second limb of the Policy.

C. Registered and Used in Bad Faith

The reference to and images of the Complainant's products shows that the Respondent has actual knowledge of the Complainant and its business, products, and rights.

In the opinion of the Panel, the use made of the Domain Name in relation to the Respondent's site is confusing and disruptive in that visitors to the site might reasonably believe it is connected to or approved by the Complainant as it offers e-cigarette products under the Complainant's mark used in its masthead giving the impression that the site attached to the Domain Name is authorised by the Complainant when it is not and, in fact, offers some competing products. The small disclaimer at the bottom of the site is not sufficient to disabuse consumers that the site is not an authorised site of the Complainant. The Domain Name also seems on its face to be a regional variation of the Complainant's domain name <myvape.com>.

Accordingly, the Panel holds that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to his web site by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of the web site or competing products on it; moreover, such use is likely to disrupt the business of the Complainant.

As such, the Panel finds that the Complainant has made out its case that the Domain Name was registered and used in bad faith and has satisfied the third limb of the Policy, under paragraphs 4(b)(iv) and 4(b)(iii).

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 Domain Name <mylevapeuae.com> be transferred to the Complainant.

/Dawn Osborne/

Dawn Osborne

Sole Panelist

Date: May 10, 2022