

## **ADMINISTRATIVE PANEL DECISION**

Miele & Cie. KG v. Privacy Service provided by Withheld for Privacy ehf /  
Rihards Doncenko  
Case No. D2022-3349

### **1. The Parties**

The Complainant is Miele & Cie. KG, Germany, represented by Vossius & Partner, Germany.

The Respondent is Privacy Service provided by Withheld for Privacy ehf, Iceland / Rihards Doncenko, Latvia.

### **2. The Domain Name and Registrar**

The disputed domain name <mieleoutlet.com> is registered with NameCheap, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 8, 2022. On September 9, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 9, 2022, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on September 12, 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 amendment to the Complaint on September 13, 2022.

The Center verified that the Complaint together with the amendment to the 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 September 13, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 3, 2022. The Respondent did not submit any response. The Center received an email communication from a third party on September 14, 2022. Accordingly, the Center notified the Respondent’s default on October 4, 2022.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on October 21, 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 several MIELE trade marks with protection throughout the world, e.g.:

- European Union (“EU”) word mark MIELE filed on April 1, 1996 and registered on December 18, 1998, for goods and services in Classes 7, 11, 20, 21 and 37;
- the International Registration of the device mark



registration number 908427, registered on October 19, 2006, designated for Albania, Armenia, Australia, Bosnia and Herzegovina, Bulgaria, Bahrain, Belarus, Switzerland, China, Curacao, Algeria, Egypt, Croatia, Islamic Republic of Iran, Iceland, Japan, Kenya, Republic of Korea, Kazakhstan, Morocco, Monaco, Republic of Moldova, Montenegro, North Macedonia, Mongolia, Namibia, Norway, Oman, Romania, Serbia, Russian Federation, Singapore, San Marino, Sint Maarten (Dutch part), Syrian Arab Republic, Tajikistan, Turkmenistan, Türkiye, Ukraine, United States of America, Uzbekistan, Viet Nam, for goods and services in Classes 7, 11, 20 and 37;

The registrations are held by the Complainant, have been duly renewed and are still valid. The registrations will jointly be referred to in singular as the “Trade Mark”.

The disputed domain name was registered on August 8, 2022 by the Respondent, and resolves to a website on which goods are offered that are identical to those for which the Complainant’s Trade Mark has been registered for, e.g. vacuum cleaners, coffee machines, fridges.

#### 5. Parties’ Contentions

##### A. Complainant

The Complainant states, in summary and in so far as relevant, the following.

The Complainant contends that the disputed domain name is highly similar to the Trade Mark. It contains the Complainant’s trade mark MIELE and merely incorporates a descriptive element “outlet” (that will be simply understood as an agency through which (discount) products are marketed).

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

There is no evidence of the Respondent’s use of the disputed domain name with a *bona fide* offering of goods or services. The Respondent has not been commonly known by the disputed domain name and the Respondent has not been allowed by the Complainant to make any use of its Trade Mark. The Complainant’s EU Trade Mark 28084 had been registered for approximately 25 years at the time of registration of the disputed domain. Since the Complainant’s company foundation in 1899, the Complainant has been a well-known German manufacturer of high-end domestic appliances and commercial equipment and the relevant public worldwide has linked the brand Miele to the Complainant’s company since then. The Complainant has repeatedly been voted “most trusted brand” by Readers Digest readers and has been awarded first place for best customer service several times by the German *Kundenmonitor* (customer

monitor) - distinctions that reflect a high level of customer confidence. As a further proof of the Complainant's reputation, an excerpt of the decision of the United Kingdom Intellectual Property Office (UK IPO) dated August 23, 2017 has been submitted, in which the UK IPO confirmed a reputation of the Trade Mark MIELE for high-end, superior quality domestic appliances.

The Respondent is not making a legitimate non-commercial or fair use of the disputed domain name. The Respondent has a clear intent for commercial gain and to mislead consumers as to the origin of the goods at issue. The nature of the disputed domain name carries a risk of implied affiliation or association.

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

The Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent's web site, by creating a likelihood of confusion with the Complainant's Trade Mark as to the source of the Respondent's web site and the products offered on the Respondent's website. The Respondent is using the disputed domain name in connection with a website claiming to offer goods and services competitive with those offered by the Complainant, and fraudulently impersonates the Complainant. This usage clearly indicates that the Respondent intentionally uses the disputed domain name aiming to profit from the Complainant's renowned Trade Mark by attracting Internet users. The confusion created by the disputed domain name makes potential customers choose other goods and services instead than the Complainant's causing a disruption to the Complainant's business.

The Respondent is running a fake online-shop by using a disputed domain name which is highly similar to the Complainant's core brand and logo and by offering identical goods as those covered by the Complainant's Trade Mark. In addition, the contact e-mail address indicated in the legal imprint of the website "www.mieleoutlet.com" is "[...]"@mieleoutlet.com" which further enhances the impression that the Respondent's website and disputed domain name is related to the Complainant's company. The Respondent's website and disputed domain name create the wrong impression that the Respondent is affiliated or linked to the Complainant's company.

The Respondent is also using a fake company name on the website, "Kaercher Depot", providing a fake company register number.

The Complainant requests that the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not reply to the Complainant's contentions. The Center received an email from a third party claiming that it was victim of the abusive use of its company address.

## **6. Discussion and Findings**

Dealing, first, with the Respondent's failure to file a response to the Complaint, paragraph 14(b) of the Rules provides that if a party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under these Rules, the Panel shall be entitled to draw such inferences from this omission, as it considers appropriate.

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following three elements in order to succeed in its Complaint:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and are being used in bad faith.

### **A. Identical or Confusingly Similar**

The Panel confirms that the Complainant has satisfied the threshold requirement of having trade mark rights regarding the MIELE Trade Mark.

Although not identical, the disputed domain name fully incorporates the Trade Mark MIELE to which it is textually, visually, and phonetically similar. The addition of the term “outlet” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s Trade Mark.

The applicable Top Level Domain (“TLD”) in a domain name (e.g., “.com”, “.club”, “.nyc”) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. ([WIPO Overview 3.0](#), section 1.11.1)

The Panel therefore finds that the disputed domain name is confusingly similar to the Trade Mark. The requirements of paragraph 4(a)(i) of the Policy are fulfilled.

### **B. Rights or Legitimate Interests**

Paragraph 4(a)(ii) of the Policy requires the Complainant to show that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Once the Complainant establishes a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the Respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see [WIPO Overview 3.0](#), section 2.1).

In this particular case, the Complainant alleges that the Respondent lacks rights to or legitimate interests in the disputed domain name for the reasons set out in section 5.A above. The Panel finds that the Complainant has fulfilled the obligation to establish *prima facie* evidence that the Respondent has no rights to or legitimate interests in the disputed domain name. Because of its failure to submit a response, the Respondent has not refuted the arguments of the Complainant and/or shown rights to or legitimate interests in the disputed domain name.

The Complainant has satisfied the second requirement that the Respondent has no rights or legitimate interests in the disputed domain name, under paragraph 4(a)(ii) of the Policy.

### **C. Registered and Used in Bad Faith**

The Complainant’s Trade Mark was registered well before the registration of the disputed domain name. The Complainant has sufficiently demonstrated that the MIELE Trade Mark is a well-known trade mark. Based on the information and the evidence provided by the Complainant, the Panel finds that at the time of registration of the disputed domain name, the Respondent was or should have been aware of the Complainant’s Trade Mark.

As such, the Respondent either knew or should have known of the Complainant’s Trade Mark when registering the disputed domain name.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that “mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trade mark by an unaffiliated entity can by itself create a presumption of bad faith”.

The disputed domain name replicates the Trade Mark in its entirety, with the addition of the descriptive term “outlet”, which can easily be understood as an agency through which (discount) products are marketed. On top of that, the website to which the disputed domain name diverts offers the same products, as those

offered by the Complainant and which are also marked with the Trade Mark MIELE. Thus Internet users are likely to believe that the disputed domain name is related to or endorsed by the Complainant and that it will direct them to an official website of the Complainant.

This, in view of the Panel not only demonstrates that the Respondent was aware of the Complainant's Trade Mark at the time of registration of the disputed domain name, but also of the Respondent's obvious intent to target the Complainant's Trade Mark through diverting Internet users, for commercial gain, to its websites (or websites under its control) without any authorization or rights to do so.

Furthermore the use of a third party company name on the website, "Kaercher Depot", and providing a fake company register number also contributes to the bad faith finding.

The Respondent has kept silent in the face of the Complainant's allegations of bad faith.

Taking into account the aforementioned circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests in the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name is registered and is being used in bad faith.

The Panel concludes that the requirement of registration and use of the disputed domain name in bad faith under paragraph 4(a)(iii) of the Policy has been fulfilled.

## **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 <mieleoutlet.com> be transferred to the Complainant.

*/Richard C.K. van Oerle/*

**Richard C.K. van Oerle**

Sole Panelist

Date: October 27, 2022.