

ADMINISTRATIVE PANEL DECISION

Maxi Miliaan B.V. v. Mjdceh Bjdeui
Case No. D2022-3823

1. The Parties

The Complainant is Maxi Miliaan B.V., Netherlands, represented by Bignon Lebray, France.

The Respondent is Mjdceh Bjdeui, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 12, 2022. On October 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 14, 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 (Whois Agent Registrant, Domain Protection Services, Inc.). The Center sent an email communication to the Complainant on October 19, 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 October 24, 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 October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Daniel Peña as the sole panelist in this matter on November 29, 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 following trademarks registrations:

European Union trademark MAXI-COSI, No. 002401560 filed on October 5, 2001, registered on March 24, 2003 and duly renewed on October 5, 2021, in class 12.

European Union trademark GRAPHIC, No. 002403491, filed on October 8, 2001, registered on April 24, 2003 and duly renewed on October 8, 2021, in classes 12, 18, and 20.

International trademark GRAPHIC No. 838787 registered on October 29, 2004, claiming priority of the Benelux trademark registration No. 756078 of October 26, 2004, and duly renewed on October 29, 2014, in classes 12 and 18.

The disputed domain name was registered on May 17, 2022. At the time of the filing of the Complaint, the disputed domain name was resolving to a website looking like the Complainant's genuine website, displaying the Complainant's products and logo.

5. Parties' Contentions

A. Complainant

The disputed domain name wholly incorporate the Complainant's trademarks MAXI COSI, with the additional prefix "fr" being the common country identifier for France, the country that appears to be targeted by the website corresponding to the disputed domain name since it is written in French.

The disputed domain name is identical or at least confusingly similar to the Complainant's trademark.

The disputed domain name is registered in the name of a privacy service for protecting personal data.

The Complainant did not authorize, license, or otherwise permit any third party to use the disputed domain names or use its trademarks in any way.

The Respondent has not been commonly known by the disputed domain name and has not since acquired any trademark or service mark rights in this respect, contrary to the Complainant. Thus, the Respondent has not acquired any legitimacy in registering the disputed domain name.

The disputed domain name directs to a site web looking like the Complainant's genuine website, displaying the Complainant's products and logo without authorization.

The disputed domain name is being used fraudulently in order to collect users' personal information and credit card numbers. Such illegal activity does not constitute a use of the disputed domain name in connection with a *bona fide* offering of goods or services.

The choice of the disputed domain name cannot be a coincidence as it has no particular meaning.

The Complainant asserts that the Respondent has registered and used the disputed domain name in bad faith prior to notice of the Complaint.

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all of the elements listed in paragraph 4(a) of the Policy have been satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 is being used in bad faith. Considering these requirements, the Panel rules as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has provided evidence of its rights in the MAXI COSI trademarks on the basis of its multiple trademark registrations in several countries. A trademark registration provides a clear indication that the rights in the trademark belong to the Complainant (see WIPO Overview of WIPO Panel Views on Selected UDRP page 4 Questions, Third Edition (“[WIPO Overview 3.0](#)”), section 1.2.1). It has also been established by prior UDRP panels that incorporating a trademark in its entirety into a domain name can be sufficient to establish that the domain name is confusingly similar to a trademark. Such finding is confirmed, for example, within section 1.7 of [WIPO Overview 3.0](#). The Respondent’s incorporation of the Complainant’s mark in full in the disputed domain name is sufficient to establish that the disputed domain name is confusingly similar to the Complainant’s marks.

Mere fact of the addition as a prefix of the geographic acronym “fr”, which corresponds to France, to the Complainant’s trademark MAXI COSI do not prevent a finding of confusing similarity.

Furthermore, the addition of the generic Top-Level Domain “.com” does not prevent a finding of confusing similarity either.

The Panel is satisfied that the disputed domain name is identical or confusingly similar to the Complainant’s mark and the Complainant has satisfied the requirement of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant bears the burden of proof in establishing this requirement. In view of the difficulties inherent in proving a negative and because the relevant information is mainly in the possession of the Respondent, it is enough for the Complainant to establish a *prima facie* case which, if not rebutted by sufficient evidence from the Respondent, will lead to this ground being set forth. Refraining from submitting any Response, the Respondent has brought to the Panel’s attention no circumstances from which the Panel could infer that the Respondent has rights to or legitimate interests in the disputed domain name.

The Panel will now examine the Complainant’s arguments regarding the absence of rights or legitimate interests of the Respondent in connection with the disputed domain name. The Complainant claims that the Respondent has no connection or affiliation with the Complainant and has not received any license or consent, express or implied, to use the Complainant’s MAXI COSI trademarks in a domain name or in any other manner.

The Panel also finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademarks (see [WIPO Overview 3.0](#), section 2.5.1). The Respondent did not submit a

Response or attempt to demonstrate any rights or legitimate interests in the disputed domain name, and the Panel draws adverse inferences from this failure, where appropriate, in accordance with the Rules, paragraph 14(b).

The Panel finds the Complainant has established that Respondent has no rights or legitimate interests in respect of the disputed domain name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy stipulates that any of the following circumstances, *inter alia*, shall be considered as evidence of the registration and use of a domain name in bad faith: (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or (iv) circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on its website or location.

With regard to the bad faith at the time of registration, the Panel notes that the expression "maxi cosi" is not a common or descriptive term, but a renowned trademark in and to which the Complainant has demonstrated has rights. The disputed domain name reproduces, without any authorization, the Complainant's registered trademarks, and this is the only distinctive component of the disputed domain name. Moreover, the disputed domain name is inherently misleading as it reproduces the Complainant's MAXI COSI trademark together with geographic acronym "fr", which corresponds to France that appears to be targeted by the website corresponding to the disputed domain name since it is written in French.

In addition, owing to the substantial presence established worldwide, it is at the least very unlikely that the Respondent was not aware of the existence of the Complainant's trademarks when registering a domain name that entirely reproduces the Complainant's trademark together with the geographic acronym of France. Therefore, it is more likely than not that the Respondent, when registering the disputed domain name, had knowledge of the Complainant's earlier rights to the MAXI COSI trademark. The bad faith registration and use of the disputed domain name is also affirmed by the fact that the Respondent has not denied, or even responded to, the assertions of bad faith made by the Complainant in this proceeding.

The Panel is satisfied that by directing the disputed domain names to a commercial website allegedly offering the Complainant's goods, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of its website or of the products on its website (see section 3.1.3 of the [WIPO Overview 3.0](#)). Under paragraph 4(b)(iv) of the Policy, this circumstance shall be evidence of the registration and use of a domain name in bad faith. Furthermore, the Complainant points out that the Respondent is hiding its identity behind a Whois service. It is well-established that this, too, can be further *prima facie* evidence of bad faith in certain circumstances.

Accordingly, the Panel finds, based on the evidence presented, that the Respondent registered and is using the disputed domain name in bad faith. Therefore, the Complainant has satisfied paragraph 4(a)(iii) 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 <frmaxicosi.com> be transferred to the Complainant.

/Daniel Peña/

Daniel Peña

Sole Panelist

Date: December 13, 2022