

ADMINISTRATIVE PANEL DECISION

Miele & Cie. KG v. Krisjanis Ramans

Case No. D2022-4503

1. The Parties

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

The Respondent is Krisjanis Ramans, United Kingdom.

2. The Domain Name and Registrar

The disputed domain name <mieleshops.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 November 25, 2022. On November 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same day, 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 (Privacy service provided by Withheld for Privacy ehf) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 28, 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 November 28, 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 November 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 21, 2022.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on December 22, 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 has submitted evidence that it is the owner of the following trademark registrations:

MIELE, European Union Trademark (“EUTM”) registration number 28084 for goods and services in class 7, 11, 20, 21 and 37 with filing date April 1, 1996, and registration date December 18, 1998.

MIELE, International Trademark Registration (fig) number 908427 for goods and services in class 7, 11, 20, 21 and 37 and registration date October 19, 2006. The registration covers many jurisdictions.

The disputed domain name <mieleshops.com> was registered by the Respondent on October 21, 2021, and resolves to a website that is an almost identical copy of the Complainant’s official website.

5. Parties’ Contentions

A. Complainant

The Complainant’s EUTM registration had been registered for approximately 25 years at the time of registration of the disputed domain name <mieleshops.com>. 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. 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 an example, proving the Complainant’s reputation, an excerpt of the decision of the UK IPO dated August 23, 2017 (trademark application no 3128392, case ref. no. O-399-17, pages 1, 29-32). The UK IPO confirmed a reputation of the MIELE trademark for high-end, superior quality domestic appliances. In *Miele & Cie. KG v. Privacy Service provided by Withheld for Privacy ehf / Rihards Doncenko*, WIPO Case No. [D2022-3349](#) (<mieleoutlet.com>), the panel stated that “The Complainant has sufficiently demonstrated that the MIELE Trade Mark is a well-known trade mark”.

The Complainant’s MIELE trademarks are registered for baking and steam cooking apparatus, kitchen hobs, cooker hoods, coffee machines, refrigerators, freezers and wine units, dishwashers, washing machines, tumble dryers and rotary ironers, vacuum cleaners, cleaning products and related accessories, repair services and spare part services. The disputed domain name is highly similar to the Complainant’s trademarks. The disputed domain name contains the Complainant’s trademark MIELE and merely incorporates a descriptive element “shop” that is understood as a shop through which products are marketed.

The Respondent is running a fake online-shop by using the 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 trademarks. In addition, the contact e-mail address indicated in the legal imprint of the website to which the disputed domain name resolves is [...]@mieleshops.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 the disputed domain name create the wrong impression that the Respondent is affiliated or linked to the Complainant. Furthermore, the Respondent is using a fake company name in the imprint of the website, “ENS Handel & Vertriebservice GmbH”, providing a fake company register number HRB 62858. A search on the German company register for the alleged number HRB 62858 does not produce a result. The public will believe that the disputed domain name has been authorized by the Complainant and that the goods offered under the disputed domain name originate from the Complainant.

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 MIELE trademark.

The Respondent is not making a legitimate noncommercial 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 Respondent has intentionally attempted to attract for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademark as to the source of the Respondent's website 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 to profit from the Complainant's renowned trademark by attracting Internet users. The confusion created by the disputed domain name makes potential customers to choose other goods and services than the Complainant's, disrupting the Complainant's business

B. Respondent

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

6. Discussion and Findings

According to paragraph 4(a) of the Policy, the Complainant must prove each of the following:

- (i) that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) that the Respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) that the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

According to the submitted evidence, the Complainant is the owner of the registered trademark MIELE. The disputed domain name incorporates the MIELE trademark in its entirety with the addition of the term "shops". The Complainant's MIELE trademark is readily recognizable in the disputed domain name and the addition of the term "shops" in the disputed domain name does not prevent a finding of confusing similarity.

Having the above in mind, the Panel concludes that the disputed domain name is confusingly similar to the Complainant's trademarks MIELE and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) that the Respondent uses or has made preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (ii) that the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark rights; or

- (iii) that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

The Complainant's trademark registrations for MIELE predate the Respondent's registration of the disputed domain name <mieleshops.com>. The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the trademarks in the disputed domain name.

The evidence indicates that the Respondent has attempted to create an impression of a website created by, belonging to, or endorsed by the Complainant. The Respondent's website, to which the disputed domain name resolves, contains not only direct references to the Complainant and the MIELE trademarks but it also reproduces the Complainant's trademarks and official product images. According to the Complainant, the Respondent is using a fake company name and fake company number in the imprint of the website in order to lure Internet users. Based on the submitted evidence in the case, it is clear that the Respondent's website, to which the disputed domain name resolves, is an almost identical copy of the Complainant's official website. Given the above, the Respondent is not making a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case. The Respondent has not submitted any Response or any evidence in this case to demonstrate that the Respondent is the owner of any trademark rights similar to the disputed domain name or that the Respondent is or has been commonly known by the disputed domain name.

By not submitting a response, the Respondent has failed to invoke any circumstances which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

The Complainant has submitted evidence demonstrating that the Respondent is creating a false impression that the disputed domain name and website are provided by or endorsed by the Complainant. On the website, to which the disputed domain name resolves, the Respondent is not only reproducing the Complainant's MIELE trademarks but also images and photographs from the Complainant's official website.

Thus, the Respondent has copied the look and feel of the Complainant's official website. The Respondent is using the disputed domain name for the e-mail address [...]@mieleshops.com. In addition to the above, it has been argued by the Complainant, that the Respondent is using a fake company name and fake company number in the imprint of the website.

By using the disputed domain name <mieleshops.com>, which is confusingly similar to the Complainant's MIELE trademarks, for a website where the Complainant's trademarks and marketing material are reproduced, there is an increased risk of confusion as Internet users may more easily be confused or misled into believing that the disputed domain name and website belong to or are in some way associated with or endorsed by the Complainant. Considering that the Respondent is reproducing the Complainant's trademarks and marketing material without permission on the website to which the disputed domain name resolves, the Panel finds, in the absence of contrary evidence, that the Respondent knew or should have known of the Complainant's trademarks when the Respondent registered and used the disputed domain name.

Thus, the evidence in the case before the Panel indicates that the disputed domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's MIELE trademark as to the source, sponsorship, affiliation, or endorsement of the websites or of a product or service on the website.

There is no evidence in the case that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name <mieleshops.com> has been registered and is being used in bad faith.

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 <mieleshops.com> shall be transferred to the Complainant.

/Johan Sjöbeck/

Johan Sjöbeck

Sole Panelist

Date: January 5, 2023