

## **ADMINISTRATIVE PANEL DECISION**

**GORAN-TEE Grosshandel GmbH&Co.KG v. Dinesh Deheragoda,  
MAPLE LEAF GIDA LTD**

**Case No. D2023-1001**

### **1. The Parties**

The Complainant is GORAN-TEE Grosshandel GmbH&Co.KG, Germany, represented by June Intellectual Property Services Inc., Türkiye.

The Respondents are Dinesh Deheragoda (“the First Respondent”), Sri Lanka, represented by Tigges Rechtsanwälte, Germany, and MAPLE LEAF GIDA LTD (“the Second Respondent”), Türkiye, self-represented.

### **2. The Domain Names and Registrars**

The first disputed domain name, <mevlanaceylontea.com>, is registered with GoDaddy.com, LLC. The second disputed domain name, <mevlanatea.com>, is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (collectively the “Registrars”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2023. On March 7, 2023, the Center transmitted by email to the Registrars a request for registrar verification in connection with the disputed domain names. On March 8, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondents (Unavailable and DomainsByProxy.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registrars, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on April 17, 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 the Respondent of the Complaint, and the proceedings commenced on April 19, 2023. In accordance with the Rules, paragraph 5,

the initial due date for Response was May 9, 2023. The Response by the Second Respondent was filed with the Center on May 8, 2023. Upon the request of the First Respondent, the due date to file its Response was extended to May 19, 2023. The Response by the First Respondent was filed with the Center on May 19, 2023.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on May 31, 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

The Complainant and the First Respondent (or rather his company, Mevlana Ceylon Tea (Pvt) Ltd) produce and distribute tea. The Second Respondent also distributes tea.

The Complainant promotes its products from the websites to which the domain names <mevlanacay.com>, <mevlanacay.com.tr> and <mevlanacay.de> resolve. The first two websites are in Turkish and the content appears to be the same or almost the same. These websites provide the same address for the Complainant in Türkiye. The third website is in German, but otherwise appears to be substantially the same. This website provides an address for the Complainant in Germany. The Complainant has a fourth website at the domain name <goran-tee.de> which is in Turkish and has somewhat different content to the other websites but still promotes the Complainant's "Goran-Tee – Mevlana Çay", "Goran-Tee – Mevlana Poset Çay" and "Goran-Tee Mevlana Yeşil Poset Çay". ("Çay" is Turkish for "tea" in English.)

The Complainant registered the domain name <mevlanacay.com> in February 2012. According to the Whois record, the Complainant appears to have registered the domain name <mevlanacay.com.tr> on September 24, 2020. The information in the Complaint does not indicate when the two ".de" domain names were registered, although the Whois records indicate that <goran-tee.de> was last updated in January 2017 and <mevlanacay.de> was last updated in January 2018.

The Complainant is also the owner of European Union Trademark ("EUTM") No. 003083599, which has been registered on August 10, 2004, in respect of "Tea, in particular high-quality oriental tea mixtures" in International Class 30 for the following figurative mark:



(the black borders have been truncated.)

The front of the packaging of the Complainant's 1000g product shown on all four of its websites looks essentially the same as this trademark, including the language.

The second disputed domain name was registered on November 30, 2016. The first disputed domain name was registered on January 24, 2020.

Both disputed domain names resolve to websites which very closely resemble each other. Both websites present options for the Turkish, English, and German languages. Both websites promote the sale of “Mevlana Pure Ceylon Tea”. The packaging of the 1000g product shown on both websites is:



The packaging for the tea bag product is similar, but in English.

The most notable difference between the websites is that the “Contact” page for the first disputed domain name provides contact details for the First Respondent while the “Contact” page for the second disputed domain name provides contact details for a Mr. Hamid Yusufov.

Both these gentlemen were the founding directors and shareholders of Mevlana Ceylon Tea (Pvt) Ltd which, from the corporate records provided by the Second Respondent, was incorporated in Sri Lanka in February 2017.

Mevlana Ceylon Tea (Pvt) Ltd promotes its products with the Ceylon Tea Symbol of Quality which is a certification or endorsement scheme operated by the Sri Lanka Tea Board.

In March 2022, Mr. Yusufov transferred his shares in Mevlana Ceylon Tea (Pvt) Ltd to other parties and now operates through the Second Respondent. In its Response, it is stated that the Second Respondent distributes tea throughout the Commonwealth of Independent States (“CIS states”). As noted above, however, the Second Respondent’s website does not appear so limited.

The Mevlana Ceylon Tea (Pvt) Ltd is the owner of registered trademarks:

- (a) in International Classes 30, 31 and 35, in Switzerland, which was filed on July 14, 2020, and entered on the Register on September 9, 2020, Registration No. 751804; and
- (b) in International Classes 31 and 35 in Germany, Registration No. 302020014842, which was filed on July 10, 2020, and registered on August 13, 2020 for:



According to the First Respondent's Response, another company, Black Tea Exports (Pvt) Ltd, is part of the same corporate group as Mevlana Ceylon Tea (Pvt) Ltd and owns registered trademarks for versions of the figurative mark with a representation of the "whirling dervish" (as seen on the packaging above) underneath in Switzerland (in black and white), New Zealand (in colour and with the words "Ceylon Tea Luxurious Blend" in a red band underneath the dervish) and Norway (with the words "Luxus – Mischung" under the dervish). These trademarks are also registered in International Class 30 with the Swiss trademark being registered on October 5, 2020, Registration No. 752938; the New Zealand trademark which was filed on and is registered with effect from May 23, 2022, and the Norwegian trademark being registered on April 11, 2023.

According to the Complaint, the Complainant claims to have built up a substantial reputation in what it calls its "MEVLANA TEA-Mevlana Çay" trademarks. This is disputed by the Respondents. Apart from claiming it has been using its trademarks since before 2003, the Complaint does not include evidence of sales revenues or advertising and promotional expenditures. It provides a link to its websites but does not include details about the volume of traffic to its websites.

Annex 6 to the Complaint is offered as an advertisement the Complainant has placed around the world. As the First Respondent points out, however, this is a brochure promoting the products of Mevlana Ceylon Tea (Pvt) Ltd and using the second disputed domain name. This brochure features photographs and contact details for both the First Respondent and Mr. Yusufov.

The Panel finds the Complaint, therefore, falls well short of establishing the Complainant's reputation in MEVLANA TEA as an unregistered trademark. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.3.

## **5. Discussion and Findings**

Paragraph 4(a) of the Policy provides that in order to divest the Respondents of the disputed domain names, the Complainant must demonstrate each of the following:

- (i) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) the Respondents have no rights or legitimate interests in respect of the disputed domain names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

Paragraph 15(a) of the Rules directs the Panel to decide the Complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable.

### **A. Consolidation**

The Complainant has requested consolidation of its complaints as the disputed domain names have been registered in the names of a number of different entities. The Respondents appear to object to consolidation.

Paragraph 3(c) of the Rules expressly permits a complaint to relate to more than one domain name where all the domain names are registered by the same domain name holder. Notwithstanding this express provision, panels have frequently held that the Panel's powers under paragraph 10(e) of the Rules may permit consolidation of multiple domain name disputes, subject to satisfaction of the other requirements of Policy and Rules. In particular, paragraph 10(b) of the Rules requires the Panel to ensure that all parties are treated equally and each is given a fair opportunity to present his, her or its case.

In accordance with those requirements, panels have typically allow joinder against multiple respondents who have registered different domain names where, amongst other things, the domain names in question, or the websites to which they resolve, appear to be under common control and consolidation would be fair and equitable to all parties. The onus of establishing that these requirements have been met falls on the party seeking consolidation. See [WIPO Overview 3.0](#), section 4.11.

In the present case, accepting that Mr. Yusufov is no longer a shareholder in Mevlana Ceylon Tea (Pvt) Ltd, the evidence shows a close commercial relationship between the two Respondents. First, as already noted, the websites to which the disputed domain names resolve resemble each other very closely and promote the same products under the same trademarks and get-up. Secondly, so far as can be gleaned from the Second Respondent's Response, the Second Respondent appears to have distributed and to be currently distributing Mevlana Ceylon Tea (Pvt) Ltd's products. Thirdly, the brochure in Annex 6 to the Complaint features both the First Respondent and Mr. Yusufov, uses the second disputed domain name – the Second Respondent's domain name – prominently and repeatedly and even provides an email address for the First Respondent using the second disputed domain name. In these circumstances, it appears to the Panel to be fair and equitable to all parties, and an efficient use of resources, to consolidate all of the disputed domain names in the one Complaint.

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

In the present case, it is appropriate to deal with the second requirement under the Policy next.

The second requirement the Complainant must prove is that the Respondents have no rights or legitimate interests in their disputed domain names.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The brochure included in Annex 6 to the Complaint does claim that "Mevlana Ceylon Tea" boasts of 30 years of brand excellence in Europe. That claim is not supported by contemporaneous evidence showing what trademark was being used or by which entity bearing in mind that the second disputed domain name was registered in November 2016, and Mevlana Ceylon Tea (Pvt) Ltd was incorporated in 2017. In these circumstances, therefore, the Panel is not prepared to accept that claim.

Subject to that claim, it is not in dispute between the parties that:

- (a) the Respondents registered the disputed domain names after the Complainant had registered its trademark; or
- (b) the Respondents are not affiliated with or licensed by the Complainant.

The first disputed domain name was registered after the incorporation of Mevlana Ceylon Tea (Pvt) Ltd under that name. (The second disputed domain name was registered shortly before that incorporation but it is not clear whether Mevlana Ceylon Tea (Pvt) Ltd actually used it.) There is no evidence before the Panel, however, how the First Respondent and Mr. Yusufov settled on that particular name.

Bearing in mind that neither the Complainant nor the Respondents have suggested that "mevlana" is a dictionary word, a geographical name or otherwise has a commonly accepted generic meaning in relation to tea, therefore, the Panel is not prepared to accept that the First Respondent and Mr. Yusufov adopted the company name in good faith in the absence of such evidence and an understanding of how the name was derived.

The disputed domain names are being used for commercial purposes to promote Mevlana Ceylon Tea (Pvt) Ltd's products, not the Complainant's products.

However, the First Respondent's company, Mevlana Ceylon Tea (Pvt) Ltd, and its related company have a number of registered trademarks featuring the word "Mevlana". In particular, Mevlana Ceylon Tea (Pvt) Ltd has a registered trademark for MEVLANA Pure Ceylon Tea in relation to tea in Switzerland. Accordingly, the First Respondent's company appears to have a legal right to sell its tea in at least Switzerland under that trademark. Given the registrations in New Zealand and Norway (by the related company), it would also appear to have the legal right to sell its tea in at least those countries by reference to those trademarks.

In *GORAN-TEE Grosshandel GmbH&Co.KG v. Prasad Jayarathna*, WIPO Case No. [DCH2021-0025](#), the Complainant successfully obtained the transfer of the domain name <mevlanacay.ch>. The respondent in that proceeding was apparently importing into Switzerland products sourced from the Second Respondent. The learned panel found those products were counterfeit products and infringed the Complainant's rights in Swiss Registered Trademark No. 673056 and also constituted unfair competition under the Swiss Unfair Competition Act.

Curiously, the Complainant does not rely on that registered trademark in this proceeding or the International Registration on which it is based. It was registered on May 13, 2015. The trademark itself is a grayscale image of the Complainant's packaging, the front face of which is a grayscale version of the EUTM No. 003083599 shown above.

That decision does not assist the Complainant in this case. First, as the Respondents point out, the respondent in that case did not submit a response. The Respondents, however, have not disclosed whether they or either of them has any relationship with the respondent in that case.

Secondly, as noted above, the First Respondent's company, Mevlana Ceylon Tea (Pvt) Ltd, has secured registration of Swiss Trademark No. No. 751804 and the related company, Black Tea Exports (Pvt) Ltd, has secured registration of Swiss Trademark No. 752938 (which includes both the words "MEVLANA Pure Ceylon Tea" and the image of the whirling dervish).

Thirdly, the first disputed domain name is a derivation of the verbal elements of both trademarks registered in Switzerland.

Given the First Respondent's position as a shareholder and director of Mevlana Ceylon Tea (Pvt) Ltd, therefore, the Panel considers the First Respondent has demonstrated rights to use the first disputed domain name in connection with the sale of tea in at least those countries.

The Panel acknowledges that the website to which the first disputed domain name resolves does not appear to be limited to promoting Mevlana Ceylon Tea (Pvt) Ltd's products in those countries.

However, as the Complainant has demonstrated rights in a registered trademark in the European Union and (through the unopposed decision in *GORAN-TEE Grosshandel GmbH&Co.KG v. Prasad Jayarathna, supra.*) in Switzerland only, the Panel would not be prepared to infer that Mevlana Ceylon Tea (Pvt) Ltd's rights are limited only to Switzerland, New Zealand and Norway. And given the registered rights in at least Switzerland, New Zealand, and Norway, the use of the first disputed domain name in connection with the sale and promotion of Mevlana Ceylon Tea (Pvt) Ltd's products in the European Union (if there is such use) or other jurisdictions is more appropriately dealt with through the laws of trademark infringement and unfair competition or passing off. Similarly, if there is a dispute between the parties over who has the rights to use the various trademarks in Switzerland, that is more appropriately dealt with in the courts and tribunals having jurisdiction in Switzerland in such matters.

Correspondingly, the Panel considers the Second Respondent's role as a distributor or licensee of Mevlana Ceylon Tea (Pvt) Ltd's products also gives it rights to the second disputed domain name.

In these circumstances, the Complainant is unable to establish that either Respondent does not have rights or legitimate interests in their respective disputed domain names.

Accordingly, as the Complainant has not established the second requirement under the Policy, the Complaint must fail.

### **C. Other requirements and Reverse Domain Name Hijacking**

As the Complaint must fail, no good purpose would be served by considering the other requirements under the Policy.

The fact that a Complaint has failed is insufficient in itself for a finding of reverse domain name hijacking under paragraph 15(e) of the Rules which provides:

“If after considering the submissions the Panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain name holder, the Panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.”

Paragraph 1 of the Rules defines “Reverse Domain Name Hijacking” to be “using the Policy in bad faith to attempt to deprive a registered domain name holder of a domain name”.

The Panel considers such a finding is appropriate in this case.

The Panel notes that the Complainant was represented by legal counsel.

It appears very likely to the Panel that the Complainant knew about the trademark registrations owned by companies associated with and controlled by the First Respondent. If it did not, the Panel considers it should certainly have investigated and known before filing the Complaint.

For example, a simple search of MEVLANA in class 30 on the TMview search facility provided by EUIPO shows that a number of trademark applications by Mevlana Ceylon Tea (Pvt) Ltd or its associated company have been successfully opposed or blocked, most likely by the Complainant.

It could be argued that the existence of the trademark registrations by the companies owned and controlled by the First Respondent for tea in International Class 30 means that the Complainant should have realized it could not succeed. Most importantly, however, the failure to disclose the existence of the trademark registrations owned by the First Respondent’s companies at the very least was highly misleading and, if not corrected by the First Respondent, could very well have resulted in orders that the disputed domain names be transferred or cancelled.

Accordingly, the Panel finds that the Complainant was brought in bad faith and constitutes an abuse of the administrative proceeding.

### **6. Decision**

For the foregoing reasons, the Complaint is denied.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: June 16, 2023