

ADMINISTRATIVE PANEL DECISION

Im Production v. Zhou Guocai
Case No. D2023-1396

1. The Parties

The Complainant is Im Production, France, represented by Nameshield, France.

The Respondent is Zhou Guocai, China.

2. The Domain Name and Registrar

The disputed domain name <modemarant.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on March 31, 2023. On March 31, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 3, 2023, 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 (Redacted for privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 4, 2023, 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 in English on April 4, 2023.

On April 4, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 4, 2023, the Complainant submitted its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 12, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 2, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 3, 2023.

The Center appointed Deanna Wong Wai Man as the sole panelist in this matter on May 12, 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 is a company headquartered in France, operating in the fashion industry. The Complainant is specializing in the manufacture and marketing of ready-to-wear, shoes, handbags, and jewelry. The Complainant markets these products under the brands “MARANT” and “ISABEL MARANT”, and offers them for sale around the world, including via its official website.

The Complainant provides evidence that it owns an international portfolio of trademark registrations for both MARANT and ISABEL MARANT. Examples of such registrations include European Union Trade Mark registration n°001035534 for the word mark ISABEL MARANT, registered since May 3, 2000; and International trademark registration n° 1627354 for the word mark MARANT, registered since June 21, 2021, and designating *inter alia* China and Brazil. The relevant registered trademarks adduced by the Complainant were successfully registered prior to the date of registration of the disputed domain name, which is November 14, 2022. The Complainant also provides evidence that it has a significant online presence and owns a portfolio of official domain names, including <isabelmarant.com>, which was registered on April 20, 2002.

The Complainant submits evidence that the disputed domain name directs to an active website which uses the Complainant’s MARANT and ISABEL MARANT marks and offers for sale what are presumed to be the Complainant’s products.

5. Parties’ Contentions

A. Complainant

The Complainant essentially contends that the disputed domain name is confusingly similar to its trademarks for MARANT, that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name was registered, and is being used in bad faith.

The Complainant claims that its trademarks are intensively used and well-regarded in the fashion industry. The Complainant provides printouts of its official website and of its marketing and related materials. Moreover, the Complainant provides evidence that the disputed domain name is linked to an active website, which presents itself as a website operated by the Complainant, where the Respondent purports to offer for sale products that seem to be the Complainant’s products. In this context, the Complainant essentially claims that the Respondent is unlawfully using the Complainant’s trademarks in the disputed domain name, and argues that the Respondent attempts to mislead consumers into believing that the Respondent is licensed by, or otherwise affiliated with the Complainant. The Complainant also contends that the Respondent is using the disputed domain name for disrupting the Complainant’s business by directly competing with the Complainant. The Complainant essentially contends that the registration and use of the disputed domain name in such circumstances constitutes registration and use in bad faith.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

6.1. Preliminary issue: Language of the Proceeding

Pursuant to paragraph 11(a) of the Rules, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

According to the Registrar's verification response, the language of the Registration Agreement for the disputed domain name is Chinese. Nevertheless, the Complainant filed its Complaint and its amended Complaint in English, and requests that English be the language of the proceeding. The Panel notes that the Respondent did not comment on the language of the proceeding and did not submit any arguments on the merits of this proceeding.

In considering this request, the Panel has carefully reviewed all elements of this case, and deems the following elements particularly relevant: the Complainant's request that the language of the proceeding be English; the lack of comment on the language of the proceeding and the lack of response on the merits of this proceeding by the Respondent (the Panel notes that the Respondent was invited by the Center in Chinese and in English and in a timely manner to present his/her comments and response in either Chinese or English, but chose not to do so); the fact that the disputed domain name is written in Latin letters and not in Chinese characters; and, finally, the fact that Chinese as the language of the proceeding could lead to unwarranted delays and additional costs for the Complainant. In view of all these elements, the Panel grants the Complainant's request, and decides that the language of this proceeding shall be English.

6.2. Discussion and Findings on the Merits

The Policy requires the Complainant to prove three elements:

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

Based on the evidence and arguments submitted, the Panel's findings are as follows:

A. Identical or Confusingly Similar

The Panel finds that the Complainant has provided sufficient evidence that it has valid rights in its marks for MARANT, based on its use and registration of the same as trademarks in several jurisdictions, as stated above.

Further, as to confusing similarity of the disputed domain name with the Complainant's MARANT marks, the Panel finds that the disputed domain name consists of the combination of two elements, namely the Complainant's MARANT trademark preceded by the term "mode". According to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7, "in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing" (see also *Wal-Mart Stores, Inc. v. Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#)). The Panel concludes that, in this case, the disputed domain name contains the entirety of the Complainant's trademark for MARANT, which remains easily recognizable, and the disputed domain name is therefore confusingly similar to the Complainant's MARANT marks. The Panel also considers that the generic Top-Level Domain ("gTLD"), which is ".com" in this case, is viewed as a standard registration requirement, and may as such be disregarded by the Panel (see [WIPO Overview 3.0](#), section 1.11.1).

Accordingly, based on the above elements, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks. The Panel decides that the Complainant has satisfied the requirements of the first element under the Policy.

B. Rights or Legitimate Interests

On the basis of the evidence and arguments submitted, the Panel accepts that the Complainant makes out a *prima facie* case that the Respondent is not, and has never been, an authorized reseller, service provider, licensee, or distributor of the Complainant, is not a good faith provider of goods or services under the disputed domain name and is not making legitimate noncommercial or fair use of the disputed domain name. The Panel also notes that the Respondent is not commonly known by the disputed domain name. As such, the Panel finds that the burden of production regarding this element shifts to the Respondent (see [WIPO Overview 3.0](#), section 2.1). However, no evidence or arguments have been submitted by the Respondent in reply.

Further, upon review of the facts and the evidence submitted in this proceeding, the Panel notes that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as an official website operated by the Complainant and offering what are presumed to be the Complainant's products for sale. The Panel accepts that the Respondent is attempting to mislead consumers into believing that the Respondent is licensed by, or otherwise affiliated with the Complainant and/or its MARANT and ISABEL MARANT marks. The Panel also finds that the Respondent's use of the disputed domain name cannot be "fair" in circumstances where the disputed domain name falsely suggests affiliation with the trademark owner (see in this regard earlier UDRP cases such as *Eli Lilly and Company and Novartis Tiergesundheit AG v. Manny Ghumman / Mr. NYOB / Jesse Padilla*, WIPO Case No. [D2016-1698](#), and the [WIPO Overview 3.0](#), section 2.5). It is clear to the Panel from the foregoing elements that the Respondent is not acting as a good faith provider of goods or services under the disputed domain name (see *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#)) and that there are also no other apparent factual elements or circumstances indicating or conferring any rights or legitimate interests in the disputed domain name on the Respondent. Finally, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant, as it effectively impersonates the Complainant, see [WIPO Overview 3.0](#), section 2.5.1.

On the basis of the foregoing elements, the Panel considers that none of the circumstances of rights or legitimate interests envisaged by paragraph 4(c) of the Policy apply, and that the Complainant has satisfied the requirements of the second element under the Policy.

C. Registered and Used in Bad Faith

Given the intensive online use of the Complainant's prior registered trademarks, the Panel finds that the subsequent registration of the disputed domain name clearly and consciously targeted the Complainant's prior registered trademarks for MARANT. The Panel deducts from these efforts to consciously target the Complainant's prior registered trademarks that the Respondent knew, or at least should have known, of the existence of the Complainant's trademarks at the time of registering the disputed domain name. This finding is also confirmed by the Respondent's actual misleading use made of the Complainant's MARANT and ISABEL MARANT trademarks on the website linked to the disputed domain name. The Panel also considers the disputed domain name to be so closely linked and so obviously connected to the Complainant and its trademarks that the Respondent's registration of this disputed domain name points toward the Respondent's bad faith. In the Panel's view, the foregoing elements clearly indicate bad faith on the part of the Respondent, and the Panel therefore finds that it has been demonstrated that the Respondent registered the disputed domain name in bad faith.

As to use of the disputed domain name in bad faith, the Complainant provides evidence that the disputed domain name directs to an active website which shows a clear intent on the part of the Respondent to misleadingly pass it off as the Complainant's website and offering for sale products purportedly originating from the Complainant. The Panel concludes from these facts that the Respondent is both using the disputed

domain name for disrupting the Complainant's business by directly competing with the Complainant and also intentionally attracting Internet users for commercial gain to the website associated with the disputed domain name, by creating consumer confusion between the website associated with the disputed domain name and the Complainant's trademarks. Such acts constitute direct evidence of the Respondent's bad faith under paragraphs 4(b)(iii) and (iv) of the Policy. The preceding elements lead the Panel to conclude that the Respondent is using the disputed domain name in bad faith. The Panel therefore finds that it has been sufficiently demonstrated that the Respondent has used, and is using the disputed domain name in bad faith.

Finally, the Respondent has failed to provide any response or evidence to establish its good faith or absence of bad faith. The Panel therefore finds that the Complainant has satisfied the requirements of the third element under 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 <modemarant.com> be transferred to the Complainant.

/Deanna Wong Wai Man/

Deanna Wong Wai Man

Sole Panelist

Date: May 26, 2023