

ADMINISTRATIVE PANEL DECISION

MVH I, Inc. v. 黄煜淇
Case No. D2023-1646

1. The Parties

The Complainant is MVH I, Inc., United States of America (“United States”), represented by 101domain.com, United States.

The Respondent is 黄煜淇, China.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on April 14, 2023. On April 17, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 18, 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 21, 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 24, 2023.

On April 21, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 22, 2023, 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 in English and Chinese of the Complaint, and the proceedings commenced on April 28, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 19, 2023.

The Center appointed Andrew Sim as the sole panelist in this matter on June 6, 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 manufacturer and retailer of electronic cigarettes and vaping products. It has been operating in the electronic cigarette industry since 2016.

The Complainant is the owner of the following registered MYLÉmarks: United States trademark registration No. 5652774 in international class 34, filed on November 22, 2017 and registered on January 15, 2019; and International Trademark registration No. 1462089 in the same class, registered on March 4, 2019 (collectively, the “Mark”). The Complainant also owns the domain name <mylevape.com> and uses it to host its primary website.

The disputed domain name was registered on May 31, 2022, which originally resolves to a website retailing the Complainant’s products and the products of the Complainant’s competitors. It was due to expire on May 31, 2023 but was renewed for 1 year on May 5, 2023 upon the steps taken and payment of fees made by the Complainant. Upon the Complainant sending Cease and Desist letters to the Respondent as well as submitting content abuse complaints requesting the removal of content to the registrar of record and the hosting provider in December 2022, the hosting provider confirmed the domain name’s suspension on January 12, 2023. Thus, the disputed domain name now resolves to a suspended inactive website.

5. Parties’ Contentions

A. Complainant

The Complainant contends that (i) the disputed domain name is identical or confusingly similar to the Mark in which the Complainant has rights; (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; (iii) the disputed domain name was registered and is being used in bad faith.

Firstly, the Complainant submits that it has consistently and consecutively used the Mark since its first use in July 2016, and has built an entire brand around the mark with several product lines distinctively marked with this brand name. The Complainant’s primary domain name, <mylevape.com>, provides an online marketplace for customers, wholesalers and distributors to purchase its catalog of e-cigarette products and accessories. In this regard, the disputed domain name uses the entirety of the Mark, and the Respondent has used images of the Complainant’s actual vaping products displaying the Mark. The disputed domain name would be confusingly similar to the Mark as it directs consumers to an unaffiliated website of the Complainant, which attempts to sell nearly identical products under a class of goods protected by the Mark.

Secondly, the Complainant submits that the Respondent has no rights or legitimate interests in the disputed domain name as the Complainant has not licensed nor allowed the Respondent to use the Mark. The Complainant also believed that the Respondent has no registered trademarks using the term “myle” nor any other legitimate connection to the term. Further, the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name, which was primarily registered for the purpose of disrupting the Complainant’s business and displayed the products of the Complainant and the Complainant’s competitors as available for purchase.

Thirdly, the Complainant contends that the disputed domain name was registered and is being used in bad faith for the purpose of disrupting and competing with the Complainant’s business. By selling electronic cigarette products on the disputed domain name, which comprised of the Mark and incorporated a shortened term for the word “cigarette”, the Respondent is misleading current and prospective customers that navigate to the disputed domain name into believing that the products displayed thereon were associated with the

Complainant's Mark. As the Respondent has also promoted vaping products by the Complainant's competitors, the Complainant considers the Respondent as a competitor in the vaping and electronic cigarette industry.

B. Respondent

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

6. Discussion and Findings

6.1 Procedural Matter - Language of the Proceeding

The Rules, in paragraph 11(a), provide that unless otherwise agreed by the parties or specified otherwise in the registration agreement between the respondent and the registrar in relation to the disputed domain name, the language of the 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 information received from the Registrar, the language of the Registration Agreement is Chinese.

The Complainant submits that the language of the proceeding should be English. The Complainant mainly contends that the Complainant is a company based in the United States and is not able to communicate in Chinese. The Complainant would incur additional translation costs for Chinese proceedings and it would be an undue burden for it to proceed in the Chinese language. The Complainant also notes that the disputed domain name is registered in Latin characters and before its suspension, the domain name displayed content entirely in English and adopted USD as the currency preference throughout the site.

In exercising its discretion to use a language other than that of the Registration Agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both Parties, taking into account all relevant circumstances of the case, including matters such as the Parties' ability to understand and use the proposed language, time and costs.

The Panel accepts the Complainant's submissions regarding the language of the proceeding. The Complainant may be unduly disadvantaged by having to conduct the proceeding in Chinese. The Panel further notes that the Center has notified the Respondent in both Chinese and English of the language of the proceeding and the commencement of the proceeding. The Respondent chose not to comment on the language of the proceeding or respond to the Complaint in either English or Chinese. Having considered all the circumstances of this case, the Panel determines that English be the language of the proceeding.

6.2 Substantive Matter – Three Elements

Under the Policy, the Complainant must prove that:

- (i) The disputed domain name is identical or confusingly similar to a trademark or service mark in which it 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.

A. Identical or Confusingly Similar

The Complainant has established that it has registered trademark rights in the Mark.

The test for confusing similarity involves a reasoned but relatively straightforward comparison between the Mark and the disputed domain name.

The disputed domain name incorporates the Mark in its entirety and incorporates a shortened term “ciga” for the term “cigarette”, being a description of the goods related to the Mark.

Thus, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant has confirmed that it is not associated with the Respondent in any way, nor has it licensed nor allowed the Respondent to use the Mark. The Respondent is also not known to be associated with the Mark. Moreover, there is no evidence showing that the Respondent has been commonly known by or resemble the Mark or the disputed domain name in any manner.

In addition, the Respondent has not used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use. As submitted by the Complainant, before its suspension, the disputed domain name resolved to a webpage, which displayed the electronic cigarette and vaping products of the Complainant and the Complainant’s competitors as available for purchase. The consensus view of UDRP panels – as expressed in section 2.8 of [WIPO Overview 3.0](#) – is that to establish a *bona fide* offering of goods or services in such circumstances, a respondent must comply with certain conditions (the “Okidata requirements”).

In this case, the Panel considers that the Respondent has failed to comply with the Okidata requirements to accurately and prominently disclose the Respondent’s relationship with the trademark holder. On the contrary, taking into account the nature of the disputed domain name, the Panel considers that the Respondent has effectively set out to impersonate the Complainant. The Panel also notes that the Respondent is not using the site to sell only the trademarked goods, but had also displayed competing products. Accordingly, the Panel considers that the Respondent’s use of the disputed domain name cannot be said to be *bona fide* under the Policy.

For the above reasons, the Panel accepts that, on a balance of probabilities, these allegations were soundly based and the Complainant has established a *prima facie* case. The burden of production to demonstrate its rights or legitimate interests in respect of the disputed domain name shifts to the Respondent, and the Respondent failed to submit a response. The Panel concludes that the Respondent has not rebutted the Complainant’s *prima facie* case to answer to these allegations.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name in accordance with paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The disputed domain name was registered after the Complainant registered the Mark. As submitted by the Complainant and also noted by the Panel in section 6.2A above, the disputed domain name comprises of the Complainant’s Mark and incorporates a shortened term “ciga” for “cigarette”, which is a description of the goods related to the Mark. This suggests that the Respondent was likely aware of the Complainant’s business and trademarks before or when the Respondent registered the disputed domain name, or knew or should have known that the disputed domain name was identical to the Mark.

The Panel therefore finds that the Respondent’s likely awareness of the Complainant’s trademark rights at the time of registration suggests bad faith. See, e.g., *Accor, So Luxury HMC v. Youness Itsmail*, WIPO Case No. [D2015-0287](#).

In addition, the Respondent’s sale of the Complainant’s products and those of the Complainant’s competitors on the disputed domain name reinforces the Panel’s conclusion that the disputed domain name was registered and is being used in bad faith by the Respondent. By promoting similar products manufactured by the Complainant and its competitors, the Respondent has intentionally attempted to attract Internet users to

its website for commercial gain by creating a likelihood of confusion with the Complainant's Mark. See, e.g., *Philip Morris Products S.A. v. Privacy Service provided by Withheld for Privacy ehf / Xinke Liu*, WIPO Case No. [D2022-0680](#).

For the above reasons, the Panel considers that the Complainant has established the third element of paragraph 4(a) 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 <myleciga.com> be transferred to the Complainant.

/Andrew Sim/

Andrew Sim

Sole Panelist

Date: June 26, 2023