

ADMINISTRATIVE PANEL DECISION

MBIP Nominees Pty Ltd. v. lin jing (林靖)

Case No. D2023-1693

1. The Parties

The Complainant is MBIP Nominees Pty Ltd., Australia, represented by Bespoke, Australia.

The Respondent is lin jing (林靖), China.

2. The Domain Name and Registrar

The disputed domain name <meccaoutletstore.com> is registered with eName Technology Co., Ltd. (the "Registrar").

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the "Center") on April 18, 2023. On April 18, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 19, 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 (Unknown Respondent) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 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 amendment to the Complaint in English on April 21, 2023.

On April 19, 2023, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On April 21, 2023, the Complainant submitted a 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 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 in English and Chinese of the Complaint, and the proceedings commenced on April 25, 2023. In accordance with the

Rules, paragraph 5, the due date for Response was May 15, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 16, 2023.

The Center appointed Rachel Tan as the sole panelist in this matter on June 9, 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 part of the Mecca group of companies. It is a retailer of local and international beauty, skincare and cosmetic services and products since 1997.

The Complainant is the owner of the MECCA and MECCA OUTLET marks in multiple jurisdictions, including Australia Trade Mark Registration No. 1655731 for MECCA registered on October 31, 2014 in classes 3, 35 and 44; New Zealand Trade Mark Registration No. 1037447 for MECCA registered on November 29, 2016 classes 3, 35 and 44; and Australia Trade Mark Registration No. 2072512 for MECCA OUTLET registered on February 28, 2020 in classes 3, 35 and 44.

The Complainant also operates several websites, including "www.mecca.com", "www.mecca.com.au" and "www.meccabeauty.co.nz".

The disputed domain name was registered on April 15, 2022. It resolves to an active website in English which displays the Complainant's registered MECCA mark. It also appears to use similar product images, layouts and functions as those used by the Complainant on its website.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its MECCA and MECCA OUTLET marks. The use of the phrase "mecca outlet store" in the disputed domain name gives a strong and misleading implication that the resolved website is associated with the Complainant. Further, the Complainant claims that the disputed domain name is confusingly similar to its domains in their domain name portfolio that are used for retail outlets and online channels.

The Complainant further alleges that the Respondent has no legitimate interests in the disputed domain name. The Respondent has no known *bona fide* offering of goods and services which relate to the disputed domain name. The manner in which the disputed domain name is being used to conduct business suggests that the Respondent is attempting to leverage the Complainant's business goodwill for its own commercial gain. Further, the Complainant claims that the Respondent could not have been commonly known by the disputed domain name.

The Complainant finally asserts that the resolved website of the disputed domain name uses layouts, functions, products and logos which are either identical, or substantially similar, to those used by the Complainant in legitimate ecommerce operation. The Respondent is attempting to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's marks as to the source, affiliation, and endorsement of the Respondent's website.

B. Respondent

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

6. Discussion and Findings

6.1 Preliminary Issue: Language of the Proceeding

Initially, the Panel must address the language of the proceeding. Paragraph 11(a) of the Rules provides that the language of the administrative proceeding shall be the language of the Registration Agreement unless otherwise agreed by the parties, subject to the authority of the panel to determine otherwise, having regard to the circumstances of the administrative proceeding. The panel may choose to write a decision in either language, or request translation of either party's submissions.

In this case, the Registrar has confirmed to the Center that the language of the Registration Agreement as used by the registrant for the disputed domain name is Chinese. However, the Complainant has requested that English be adopted as the language of the proceeding for the reasons summarized below:

- (a) the Whols details of the disputed domain name are in English;
- (b) a Google search of the name of the Respondent refers to an Instagram page which indicates the Respondent is a comedian performing in English speaking settings. The Respondent appears to be a student at Jinan University which is renowned as one of the universities with the largest number of international students in China; and
- (c) the resolved website of the disputed domain name is available in English indicating the Respondent's familiarity and ability to deal with the English language.

It is established practice to take paragraphs 10(b) and (c) of the Rules into consideration for the purpose of determining the language of the proceeding, in order to ensure fairness to the parties and the maintenance of an inexpensive and expeditious avenue for resolving domain name disputes. Language requirements should not lead to undue burdens being placed on the parties and undue delay to the proceeding.

The Panel having considered the circumstances finds that English shall be the language of this proceeding. The reasons are set out below:

- (a) the Complainant is based in Australia. Requiring the Complainant to submit documents in Chinese would lead to delay and cause the Complainant to incur translation expenses;
- (b) the disputed domain name contains an English terms "outlet" and "store" and resolves to a website in English;
- (c) even if the Respondent does not possess a sufficient command of English to understand the Complaint, there were ample opportunities for the Respondent to raise an objection. The Center notified the Parties in English and Chinese of the Complainant's request for English to be the language of the proceeding, but the Respondent did not protest against this request; and
- (d) the Complaint has been submitted in English. No foreseeable procedural benefit may be served by requiring Chinese to be used. On the other hand, the proceeding may proceed expeditiously in English.

6.2 Substantive Issues

A. Identical or Confusingly Similar

The Panel is satisfied that the Complainant has adduced evidence to demonstrate their established rights in the MECCA and MECCA OUTLET marks.

The Panel notes that the disputed domain name consists of the MECCA and MECCA OUTLET marks in

addition to the English term “store”. In cases where a domain name incorporates the entirety of a trade mark, 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 section 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

Further, it is accepted by previous UDRP panels that the addition to the complainant’s trade mark of other words or terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element of the Policy. Accordingly, the additional English term “store” does not prevent a finding of confusing similarity between the disputed domain name and the Complainant’s MECCA and MECCA OUTLET marks. See section 1.8 of the [WIPO Overview 3.0](#).

It is permissible for the Panel to ignore the generic Top-Level Domain, in this case “.com”. See section 1.11.1 of the [WIPO Overview 3.0](#).

Consequently, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s MECCA and MECCA OUTLET marks. Accordingly, the Complainant has satisfied the first element under paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

In circumstances where the Complainant possesses rights to the MECCA and MECCA OUTLET marks, whereas the Respondent seems to have no trade mark rights, and considering the facts and arguments set out above, the Panel is satisfied that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, and the burden of production shifts to the Respondent. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent has not provided evidence of a legitimate noncommercial or fair use of the disputed domain name or reasons to justify the choice of the term “mecca” or “mecca outlet”. There is no indication to show that the Respondent is commonly known by the disputed domain name or otherwise has rights or legitimate interests in it. In addition, the Complainant has not granted the Respondent a license or authorization to use the Complainant’s MECCA or MECCA OUTLET mark or register the disputed domain name.

The Panel notes that the disputed domain name resolves to a website in English which allegedly offering products and displayed the Complainant’s MECCA mark. The website did not accurately and prominently disclose the lack of a relationship between the Complainant and the Respondent. Therefore, the facts do not support a claim of fair use under the “Oki Data test”. See *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

None of the circumstances in paragraph 4(c) of the Policy are present in this case. For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

Accordingly, the Complainant has satisfied the second element under paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

The Complainant’s MECCA and MECCA OUTLET marks are registered before the registration of the disputed domain name. Through use and advertising, the Complainant’s MECCA and MECCA OUTLET marks are known throughout the world. Search results using the term “mecca” or “mecca outlet” on the Internet direct users to the Complainant and its products, which indicates that exclusive connections between the MECCA or MECCA OUTLET mark and the Complainant have been established. The Panel further notes that the disputed domain name resolves to a website displaying the Complainant’s MECCA mark and allegedly offering similar products for sale. As such, the Respondent clearly knew of the Complainant’s MECCA and MECCA OUTLET marks when registering the disputed domain name, see section 3.2.2 of the [WIPO Overview 3.0](#). The Panel is of the view that the Respondent intentionally created

a likelihood of confusion with the Complainant's MECCA and MECCA OUTLET marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website. This demonstrates bad faith registration and use of the disputed domain name, as provided in paragraph 4(b)(iv) of the Policy.

Taking into account these circumstances, the Panel finds that the Respondent must have known of the Complainant before registering the disputed domain name and, considering the Respondent's lack of rights or legitimate interests, and by registering and using the disputed domain name as discussed above, the Panel is led to conclude that the disputed domain name was registered and is being used in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied the third element under 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, <meccaoutletstore.com> be transferred to the Complainant.

/Rachel Tan/

Rachel Tan

Sole Panelist

Date: June 23, 2023