

ADMINISTRATIVE PANEL DECISION

Mexx International B.V. v. Web Commerce Communications Limited,
Client Care
Case No. D2023-2652

1. The Parties

The Complainant is Mexx International B.V., Netherlands, represented by Novagraaf Nederland B.V., Netherlands.

The Respondent is Web Commerce Communications Limited, Client Care, Malaysia.

2. The Domain Name and Registrar

The disputed domain name <mexxgreece.com> is registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on June 20, 2023. On June 21, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 25, 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 (Privacy protected) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 6, 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 on July 7, 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 July 11, 2023. In accordance with the Rules, paragraph 5, the due date for Response was July 31, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 3, 2023.

The Center appointed Kiyoshi Tsuru as the sole panelist in this matter on August 14, 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 an international fashion brand based in the Netherlands, with international operations which cover, among others, sales in Europe (Greece included).

The Complainant is the owner of several trademark registrations around the world for MEXX, among which are the following:

Trademark	No. Registration	Jurisdiction	Date of Registration
MEXX	415555	Benelux	December 11, 1985
MEXX	004316964	European Union	April 18, 2006

The Complainant owns the domain name <mexx.com>, which resolves to the Complainant's official website, where the MEXX trademark is in use.

The Respondent registered the disputed domain name <mexxgreece.com> on November 4, 2022, and it resolves to a website that operates an online apparel shop.

5. Parties' Contentions

A. Complainant

I. Identical or Confusingly Similar

That the disputed domain name incorporates the Complainant's trademark entirely and that, therefore, the disputed domain name is confusingly similar to the Complainant's trademark.

That the additional element "greece" refers to the country with this name. That Greece should be considered as a geographical indication and is a descriptive/generic term which does not impact the comparison of the conflicting signs.

II. Rights or Legitimate Interests

That the Respondent has no rights or legitimate interests whatsoever in respect of the domain name <mexxgreece.com>, in view of the Complainant's trademarks.

That the Respondent has no relationship with the Complainant and/or the Complainant's trademarks.

That the Respondent falsely creates the impression that the disputed domain name belongs to the Complainant.

That the Respondent is not an official distributor of the Complainant, nor is the said Respondent authorized in any other way by the Complainant to sell its products.

That the Complainant's adoption and extensive use of the trademark MEXX predates the Respondent's registration and use of the disputed domain name.

That the disputed domain name resolves to a fake webshop where the Respondent has placed images of the Complainant's goods that bear identical trademarks to those of the Complainant, but that the Respondent does not actually offer goods, as the webshop is merely used to mislead Internet users.

III. Registered and Used in Bad Faith

That the Respondent should have been aware of the Complainant's trademark rights when it registered the disputed domain name in 2022, since the Complainant has been involved in the fashion retail business for over 35 years and has trademark rights that go back to 1985.

That the disputed domain name is being used to benefit from the possible confusion with the Complainant's MEXX trademark rights, by leading internet users to said disputed domain name. That, therefore, it is assumable that the average internet user is being misled into thinking that the disputed domain name could be affiliated with the Complainant, or, at least, is being used with the Complainant's consent.

That the Respondent's website has been engineered to suggest a direct connection to the Complainant without the Complainant's permission, which shows that said disputed domain name has been adopted with the purpose of improperly trading on the Complainant's goodwill and trademarks.

B. Respondent

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

6. Discussion and Findings

Given the Respondent's failure to submit a formal Response, the Panel may decide this proceeding based on the Complainant's undisputed factual allegations, in accordance with paragraphs 5(f), 14(a), and 15(a) of the Rules, (see *Joseph Phelps Vineyards LLC v. NOLDC, Inc., Alternative Identity, Inc., and Kentech*, WIPO Case No. [D2006-0292](#)).

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical or confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms (here, "greece") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

According to the evidence filed by the Complainant, the website to which the disputed domain name resolves seems to be an online store, through which apparel products with the trademark MEXX are apparently being sold. Therefore, and considering that the disputed domain name entirely incorporates the Complainant’s trademark MEXX, plus the geographical term “greece”, the Panel notes that the composition of the disputed domain name carries a risk of implied affiliation, since Internet users may think that the website to which the disputed domain name resolves is the Complainant’s official website for Greece, or is otherwise affiliated to or sponsored by the Complainant (see section 2.5.1 of the [WIPO Overview 3.0](#), see also *Euro Sko Norge AS v. Whoisguard Inc. / Shier Dede, Shier Dede* WIPO Case No. [D2020-0194](#), *Bechtel Group, Inc. v. Raman Shuk* WIPO Case No. [D2020-1469](#), *Biofarma v. Dawn Mason* WIPO Case No. [D2019-1952](#)).

The facts of this case do not pass the *Okidata* test. The Complainant has asserted that the disputed domain name resolves to a fake webshop where the Respondent has placed images of the Complainant’s goods that bear identical trademarks to those of the Complainant, but that the Respondent does not actually offer goods, as the webshop is merely used to mislead Internet users. The Respondent did not contest this affirmation. Also, said website does not display a disclaimer stating that it is not related to the Complainant (see section 2.8.1 of the [WIPO Overview 3.0](#); see also *Okidata Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); see additionally *Phiip Morris S.A. v. bprapan bpaetaa*, WIPO Case No. [D2020-3372](#), *Phiip Morris S.A. v. Rohan mubbahir Kahn*, WIPO Case No. [D2021-1314](#), and *Prime Hydration, LLC v. Registration Private, Domains By Proxy, LLC / Amman Ahmed* WIPO Case No. [D2022-1918](#): “certain geographic terms (e.g., <trademark-usa.com>, or <trademark.nyc>), or terms with an ‘inherent Internet connotation’ (e.g., <e-trademark.com>, <buy-trademark.com>, or <trademark.online>) are seen as tending to suggest sponsorship or endorsement by the trademark owner”).

Panels have held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

The evidence submitted by the Complainant suggests that the Respondent has attempted to impersonate the Complainant. The website to which the disputed domain name resolves predominantly displays the Complainant’s trademarks, including the logos associated thereto (see *Self-Portrait IP Limited v. Franklin Kelly*, WIPO Case No. [D2019-0283](#); *Seminole Tribe of Florida, d / b / a Seminole Gaming v. Privacy Protect, LLC / Ibro King, Akara Inc*, WIPO Case No. [D2018-1692](#); *Allianz SE v. Paul Umeadi, Softcode Microsystems*, WIPO Case No. [D2019-1407](#); *SVB Financial Group v. WhoisGuard Protected, WhoisGuard, Inc. / Citizen Global Cargo*, WIPO Case No. [D2018-0398](#); and *Haas Food Equipment GmbH c. Usman ABD, Usmandel*, WIPO Case No. [D2015-0285](#)).

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel notes that the Respondent caused the disputed domain name to resolve to a website that apparently offers the same type of products that the Complainant sells (although the Complainant argues that no actual goods are being sold through said website), which suggests that the Respondent knew the Complainant, its trademarks, and its business when registering the disputed domain name, and that the Respondent has targeted the Complainant.

The evidence submitted by the Complainant also show that the Respondent has intentionally used the disputed domain name to attract, for commercial gain, Internet users to the website to which the disputed domain names resolves, by creating the impression among Internet users that said website is related to, associated with, or endorsed by the Complainant, which conduct constitutes bad faith under paragraph 4(b)(iv) of the Policy (see section 3.1.4 of the [WIPO Overview 3.0](#); see also *trivago GmbH v. Whois Agent, Whois Privacy Protection Service, Inc. / Alberto Lopez Fernandez, Alberto Lopez*, WIPO Case No. [D2014-0365](#); and *Jupiter Investment Management Group Limited v. N/A, Robert Johnson*, WIPO Case No. [D2010-0260](#)).

Panels have held that the use of a domain name for illegal activity (*e.g.*, the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) constitutes bad faith (see the Panel's determination on impersonation in the analysis of the second factor of the Policy, *supra*). [WIPO Overview 3.0](#), section 3.4.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <mexxgreece.com>, be transferred to the Complainant.

/Kiyoshi Tsuru/

Kiyoshi Tsuru

Sole Panelist

Date: August 28, 2023