

ADMINISTRATIVE PANEL DECISION

Meri Meri, Inc. v. chunmei xu

Case No. D2023-3427

1. The Parties

The Complainant is Meri Meri, Inc., United States of America (“United States”), represented by Hinckley, Allen & Snyder, LLP, United States.

The Respondent is chunmei xu, China.

2. The Domain Name and Registrar

The disputed domain name <merimeristore.shop> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 10, 2023. On August 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 11, 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 (Super Privacy Service Ltd c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 15, 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 August 15, 2023.

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 of the Complaint, and the proceedings commenced on August 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 12, 2023.

The Center appointed Peter Burgstaller as the sole panelist in this matter on September 15, 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 provides party supplies such as tableware or seasonal decorations heirloom-quality children's gifts and costumes; it has received and has applied for the registrations of the trademarks containing the term MERI MERI, including:

- United States trademark Registration (word) No. 5,468,337, registered May 15, 2018, in Int. class 16 (Annex E to the Complaint).

The Complainant sells its products in shops and via online store under the domain name <merimeri.com> (Annexes C and G to the Complaint).

The disputed domain name was registered on June 29, 2022 (Annex A to the Complaint). The disputed domain name resolves to a website featuring products similar to the Complainant's products and using the Complainant's company name and registered trademark MERI MERI (Annex H to the Complaint).

At least one customer placed an order on the website under the disputed domain name believing that it is the Complainant's website and online store (Annex I to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant was founded in 1985 and has become a well-known provider of luxury party supplies for all of life's celebrations, such as party tableware, seasonal decorations, and heirloom-quality children's gifts and costumes. It sells its products in 69 countries and over 5,000 shops and online stores. The Complainant has offices in Reno, Nevada United States and in Cheltenham, United Kingdom.

In 2022, the Complainant had a global revenue of USD 35,000,000 and spent approximately USD 2,000,000 on marketing and advertising.

As a result of the Complainant's widespread and continuous use of the MERI MERI marks, the Complainant has been the subject of considerable press worldwide, including by Glamour Magazine and The Guardian.

Because of the continuous and exclusive use of the MERI MERI marks, the Complainant has established a strong and loyal customer base and has substantial goodwill in connection with its marks.

The disputed domain name is confusingly similar to a trademark in which the Complainant has senior rights: The disputed domain name incorporates the Complainant's MERI MERI mark in its entirety. Additionally, the disputed domain name is confusingly similar to the Complainant's domain name <merimeri.com> since it consists of the Complainant's MERI MERI mark followed by "store" and the generic Top-Level Domain ("gTLD") ".shop", both highly descriptive terms that describe the means through which the Complainant offers its goods.

Furthermore, the disputed domain name directs to a website that mimics the look and feel of the Complainant's website by, *inter alia*, copying the Complainant's stylized MERI MERI mark in its entirety at the front and center of its homepage, adopting a near-identical layout and structure.

Finally, the disputed domain name has resulted in actual confusion among the Complainant's customers, as at least one customer placed an order for the Complainant's products through the website found at the disputed domain name, believing that website to be the Complainant's website.

The Respondent has no rights or legitimate interests in respect of the disputed domain name:

The Respondent is not commonly known under the disputed domain name or as "Meri Meri". Further, the Complainant has not licensed or otherwise authorized the Respondent to use the MERI MERI marks in any form and is not using the disputed domain name fair or in a legitimate noncommercial way or for a *bona fide* offering of goods – the opposite is the case: The disputed domain name directs to a website that mimics the overall look and feel of the Complainant's website, located at "www.merimeri.com", in an apparent attempt to confuse consumers into believing the disputed domain name and the website hosted are associated with the Complainant.

Finally, the disputed domain name was registered and is being used in bad faith: The Respondent knowingly registered the disputed domain name to capitalize on consumer recognition of, and goodwill toward, the MERI MERI marks, since the registration of the disputed domain name was made almost three decades after the Complainant began using the MERI MERI mark in commerce, and long after the MERI MERI mark had become widely known.

Furthermore, the Respondent's unauthorized use of the MERI MERI marks in the disputed domain name to attract Internet users and redirect them to a website that intentionally mimics the look and feel of the Complainant's homepage, and misuses the Complainant's mark in an attempt to confuse consumers, constitutes bad faith use of the disputed domain name. Hence, it is likely that an Internet user searching for the Complainant's MERI MERI marks will be misled into thinking that the disputed domain name is the Complainant's website, or perhaps sponsored, authorized, or operated by the Complainant.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests in 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

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. This test typically involves a side-by-side comparison of the disputed domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.

The Complainant submitted evidence, which incontestably and conclusively establishes rights in the mark MERI MERI.

In the present case, the disputed domain name is confusingly similar to the MERI MERI mark in which the Complainant has rights since the Complainant's MERI MERI mark is clearly recognizable in the disputed domain name. It has long been established under UDRP decisions that where the relevant trademark is recognizable within the disputed domain name, the mere addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) will not prevent a finding of confusing similarity under the first element of the Policy (see section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

This is the case at present. The addition of the term "store" as suffix in the disputed domain name does not prevent a finding of confusing similarity.

Finally, it has also long been held that gTLDs are generally disregarded when evaluating the confusing similarity under the first element.

Hence, the Complainant has satisfied paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

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 (see section 2.1 of the [WIPO Overview 3.0](#)). Here, the Complainant has put forward a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

The Panel also notes that the disputed domain name resolves to a website with products very similar to those of the Complainant and prominently featuring the Complainant's distinctive MERI MERI (stylized) mark, without accurately and prominently disclosing the Respondent's relationship with the Complainant. Such use does not constitute a *bona fide* offering of goods or services (see section 2.8 of the [WIPO Overview 3.0](#)).

Furthermore, the nature of the disputed domain name, comprising the Complainant's mark in its entirety together with the suffix "store", cannot be considered fair use as it effectively suggests an affiliation with the Complainant that does not exist (see section 2.5.1 of the [WIPO Overview 3.0](#)).

Noting the above and in the absence of any Response or allegations from the Respondent, the Panel finds that the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

As stated in many decisions rendered under the Policy (e.g., *Robert Ellenbogen v. Mike Pearson*, WIPO Case No. [D2000-0001](#)) both conditions, registration and use in bad faith, must be demonstrated; consequently, the Complainant must show that:

- the disputed domain name was registered by the Respondent in bad faith, and
- the disputed domain name is being used by the Respondent in bad faith.

(i) The Complainant has established rights in the mark MERI MERI, before the registration of the disputed domain name. Further, the Complainant has a strong Internet presence under its domain name <merimeri.com> and the Respondent offers products marked with the Complainant's distinctive MERI MERI (stylized) mark on its website addressed by the disputed domain name.

It is therefore inconceivable for this Panel that the Respondent registered the disputed domain name without knowledge of the Complainant's rights, which leads to the necessary inference of bad faith. This finding is supported by the fact that the disputed domain name incorporates the Complainant's MERI MERI marks entirely, together with the suffix "store" which clearly refers to the Complainant's ecommerce business. All of which in fact indicate that the Respondent must have been aware of the Complainant's business and trademark when registering the disputed domain name.

Therefore, the Panel is convinced that the disputed domain name was registered in bad faith by the Respondent.

(ii) The Complainant has put forward evidence that the disputed domain name resolves to a website which contains products similar to those of the Complainant's and which prominently features the distinctive and stylized MERI MERI mark without accurately and prominently disclosing the Respondent's relationship with the Complainant. In doing so, the Respondent has intentionally attempted to attract Internet users to his website for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of his website according to paragraph 4(b)(iv) of the Policy – this constitutes bad faith registration and use of the disputed domain name.

And indeed: at least one customer placed an order on the website under the disputed domain name believing that it is the Complainant's website and online store.

Taking all these facts and evidence into consideration this Panel finds that the disputed domain name has been registered and is being used in bad faith under paragraph 4(a)(iii) 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 <merimeristore.shop> be transferred to the Complainant.

/Peter Burgstaller/

Peter Burgstaller

Sole Panelist

Date: September 29, 2023