

## **ADMINISTRATIVE PANEL DECISION**

Midjourney, Inc. v. Thien Nguyen, THE Midjourney AI, Jernemy Nguyen,  
The Midjourney AI, John Nick, Nguyen Chi Thien, Nguyen Duong,  
MidJourney AI  
Case No. D2023-4000

### **1. The Parties**

The Complainant is Midjourney, Inc., United States of America (“United States”), represented by DLA Piper US LLP, United States.

The Respondent are Thien Nguyen, THE Midjourney AI, Viet Nam, Jernemy Nguyen, The Midjourney AI, Viet Nam, John Nick, United States, Nguyen Chi Thien, Viet Nam, and Nguyen Duong, MidJourney AI, United States.

### **2. The Domain Names and Registrars**

The disputed domain name <ai-midjourney.net> is registered with Wix.com Ltd.; the disputed domain names <midjourneys.bio> and <midjourneys.world> are registered with Name.com, Inc.; the disputed domain names <midjourneys.info> and <aimidjourney.org> are registered with Tucows Inc.; and the disputed domain name <midjourney-ai.co> is registered with Key-Systems GmbH (collectively the “disputed domain names” and the “Registrars”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2023. On September 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On September 26, 27, and 28, and December 4, 2023, the Registrars transmitted by email to the Center their verification responses disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Thien Nguyen d/b/a The Midjourney AI) and contact information in the Complaint.

The Center sent an email communication to the Complainant on December 5, 2023, with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrars, requesting the Complainant to either file separate complaint(s) for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same

entity.<sup>1</sup> On December 5, 2023, the Center received an email from the administrative contact of the disputed domain name <aimidjourney.org>. The Complainant filed an amended Complaint on January 1, 2024.

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 January 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 25, 2024. The Respondent did not submit any formal response. Accordingly, the Center notified the commencement of panel appointment process on January 26, 2024.

The Center appointed Jeremy Speres as the sole panelist in this matter on January 29, 2024. 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 independent research laboratory that uses artificial intelligence (“AI”) software that allows consumers to generate images from text prompts. The Complainant launched its AI software publicly in July 2022. As of the filing of the Complaint, the Complainant’s Discord server had nearly 14 million members, with typically over a million members online at any given time. The Complainant’s offering is made available via its domain name at <midjourney.com>. The Complainant owns European Union Trade Mark Registration No. 018850366 MIDJOURNEY in classes 9, 16, 25, 35, 38, 41, 42, and 45, having a registration date of September 7, 2023.

The disputed domain names were registered, and have been used, as set out in the table below. Historical usage information was sourced from the evidence presented by the Complainant, alternatively, from the Panel’s independent searches of the Internet Archive where stated<sup>2</sup>.

Disputed Domain Name	Registration Date	Historical Usage	Current Usage
<ai-midjourney.net>	July 7, 2023	Website offering an art generating AI, featuring a replica of the Complainant’s boat logo and text copied from the Complainant’s website.	Resolves to registrar parking page stating that the disputed domain name is not connected to a website.
<midjourneys.bio>	July 1, 2023	Browser warning for harmful programs.	Does not resolve.

<sup>1</sup> The Registrar Wix.com Ltd informed the Center on December 12, 2023 that it has provided wrong registrant contact details. Accordingly, the Center sent an email to the Parties on December 12, 2023 notifying the correct registrant contact details.

<sup>2</sup> Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision. [WIPO Overview 3.0](#), section 4.8.

<midjourneys.world>	July 20, 2023	Browser warning for harmful programs (per the Complainant's evidence). Also, website headed "The Midjourney V5, Turn All Your Imagination Into Image!", featuring a replica of the Complainant's boat logo (per the Internet Archive).	Does not resolve.
<midjourney-ai.co>	June 28, 2023	Browser warning for harmful programs.	Does not resolve.
<aimidjourney.org>	June 29, 2023	Browser warning for harmful programs.	Parking page stating "SORRY! If you are the owner of this website, please contact your hosting provider..."
<midjourneys.info>	July 7, 2023	Website stating "Link to a fraud website".	Website stating "Link to a fraud website".

## 5. Parties' Contentions

### A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain names. Notably, the Complainant contends that all of the disputed domain names are linked to a Facebook page that impersonates the Complainant and were registered and have been used in order to deceive users into believing that they are associated with the Complainant with a view to the Respondents' commercial gain, including through distribution of malware.

### B. Respondents

The Respondents did not reply to the Complainant's contentions. The email communication received by the Center from the administrative contact for the disputed domain name <aimidjourney.org> was written in Vietnamese, consisting of two terms, and which, when machine-translated by the Panel, resulted in a vulgarity unnecessary for consideration.

## 6. Discussion and Findings

### A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the disputed domain names are under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2.

As regards common control, the Panel notes that the following factors, taken together, indicate common control of the disputed domain names. The disputed domain names were all registered within a week or two of one another. The registrant names are all very similar, apart from "John Nick" for <aimidjourney.org>. The telephone number for that registrant, however, is identical to the registrant for <midjourneys.info>. The majority of the disputed domain names are registered in the name of a registrant based in Viet Nam. All of the disputed domain names have been used by a single Facebook page impersonating the Complainant.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party, especially seeing as none of the disputed domain name registrants have incurred the costs of responding.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

## **B. 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 trade mark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of a trade mark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1. The entirety of the mark is reproduced within the disputed domain names. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel finds the first element of the Policy has been established.

## **C. 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.

Although 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 difficult 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 (although the burden of proof always remains on the complainant). 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 available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity, here, claimed impersonation and distribution of malware, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. For the reasons discussed in relation to bad faith below, it is likely that the disputed domain names were registered in order to distribute malware.

The Panel finds the second element of the Policy has been established.

#### **D. 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.

The following factors clearly indicate that the disputed domain names were registered and used in bad faith for the Respondent's commercial gain, within the meaning of paragraph 4(b)(iv) of the Policy:

- Although only in public operation since 2022, the Complainant has enjoyed considerable exposure and recognition in the highly topical AI industry, and the Panel considers that the Complainant's evidence is sufficient for a finding that its mark was well known at the time of registration of the disputed domain names. UDRP panels have consistently found that the registration of a domain name that is confusingly similar to a well-known trade mark (as in this case) can by itself create a presumption of bad faith. [WIPO Overview 3.0](#) at sections 3.1.4 and 3.2.1. Moreover, the Complainant's trademark application was filed in March 2023, which precedes the registration of the disputed domain names, reinforcing the notion that the Respondent was aware of the Complainant and more likely than not sought to register the disputed domain names in anticipation of the Complainant's trademark rights. [WIPO Overview 3.0](#), section 3.8.2.
- A Facebook page that clearly impersonates the Complainant (using, amongst others, the Complainant's boat logo) has referred to most of the disputed domain names as its own.
- Per the table above, two of the disputed domain names have resolved to websites that clearly impersonate the Complainant, incorporating the Complainant's logo and, in one case, text scraped from the Complainant's website. Given that all of the disputed domain names have been shown to be under common control, this clearly indicates that the same registrant was aware of the Complainant and intended to target it with all of the disputed domain names, which all incorporate the Complainant's well-known trade mark.
- Three of the disputed domain names incorporate the term "AI", which is descriptive of the Complainant's business.
- The evidence in the record shows that a number of the disputed domain names have likely been used to distribute malware, which is a clear indicator of bad faith. [WIPO Overview 3.0](#), section 3.4. The Panel has also independently established that all of the disputed domain names have been flagged by at least one security vendor each (some as many as 14) as malicious<sup>3</sup>. See *The Commissioners for HM Revenue and Customs v. WhoisGuard Protected, WhoisGuard, Inc. / Hoshyar Marshall*, WIPO Case No. [D2021-0344](#).

Although the disputed domain names do not currently resolve to an active website, any non-use of a disputed domain name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been

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<sup>3</sup> In exercise of the Panel's general powers in paragraphs 10 and 12 of the UDRP Rules. Id.

considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3. The Panel finds that all of these factors are in the Complainant's favour and that in the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

The Panel finds that the Complainant has established the third element 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 names, <ai-midjourney.net>, <aimidjourney.org>, <midjourney-ai.co>, <midjourneys.bio>, <midjourneys.info>, and <midjourneys.world>, be transferred to the Complainant.

*/Jeremy Speres/*

**Jeremy Speres**

Sole Panelist

Date: February 12, 2024