

## **ADMINISTRATIVE PANEL DECISION**

Midjourney, Inc. v. Neil Elleuch  
Case No. D2023-5335

### **1. The Parties**

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

The Respondent is Neil Elleuch, France.

### **2. The Domain Name and Registrar**

The disputed domain name <midjourney-app.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 22, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. Also on December 26, 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 (PrivacyGuardian.org llc) and contact information in the Complaint.

The Center sent an email communication to the Complainant on January 4, 2024, 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 on January 10, 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 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 1, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on February 6, 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 supplies artificial intelligence (“AI”) software under the mark MIDJOURNEY.

The Complainant started trading in early 2022, and quickly gained a significant user base and extensive media coverage, including in connection with the design of the cover of The Economist in June 2022, and coverage on the popular Stephen Colbert television show. There are currently over 13 million members of the Complainant’s Discord server, with typically over one million online at any time.

On September 19, 2022, the Complainant applied under serial no. 97597218 for a U.S. trade mark for MIDJOURNEY in classes 41, 42 and 45.

The Complainant is also currently the owner of European Union trade mark registration No. 18850366 for MIDJOURNEY in classes 9, 16, 25, 35, 38, 41, 42, 45, filed on March 17, 2023, and registered on September 7, 2023.

The Complainant operates a website at “www.midjourney.com”.

The disputed domain name was registered on February 10, 2023.

On March 27, 2023, the Complainant submitted a takedown notice to the Apple App Store regarding an app called “Midjourney AI - Art Generator” that listed the Respondent as developer. On April 12, 2023, the Respondent emailed the Complainant stating that “I understand your concern...”, that he had added a disclaimer on the app listing to the effect that the app was not affiliated with the Complainant and that “Midjourney” would be removed from the app title on the next update. In a later email communication that day, the Respondent confirmed that “the AI Art Generator Illusion app” had been successfully published and that there were no longer any references to “Midjourney” on the listing.

However, as of October 6, 2023, the disputed domain name resolved to a website branded “Midjourney” including a sailboat logo very similar to that of the Complainant. The home page bore the title “Download Midjourney App” followed by text stating that “Midjourney AI is an AI ART Generator app...” plus app download buttons, one of which led to the App Store listing of the “AI Art Generator – Illusion AI” app, with the same app title, logo and description as the above-mentioned app listing, but the developer name had changed from the Respondent to “Codelio”. Currently, the disputed domain name is inactive.

#### **5. Parties’ Contentions**

##### **A. Complainant**

The Complainant contends that it has satisfied each of the elements required under the Policy for transfer of the disputed domain name.

##### **B. Respondent**

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

## 6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights;
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 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 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 Panel notes that the Complainant is the owner of a valid trade mark registration for the MIDJOURNEY mark. Therefore, the Complainant has also 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 Panel finds the Complainant has also established unregistered trade mark or service mark rights for the purposes of the Policy based on its use in commerce as outlined in section 4 above. [WIPO Overview 3.0](#), section 1.3.

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

Although the addition of other terms (here, a hyphen and the term "app") may bear on assessment of the second and third elements, the Panel finds the addition of such terms 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.

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.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognised 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 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.

The composition of the disputed domain name, comprising the Complainant's mark in its entirety, combined with the term "app", which is directly associated with the Complainant's activities, carries a risk of implied affiliation in the circumstances of this case, and thus, cannot confer rights or legitimate interests to the Respondent. [WIPO Overview 3.0](#), section 2.5.1.

Furthermore, panels have held that the use of a domain name for illegal activity (here, impersonation) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1. See further under section 6C below.

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

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1. Panels have held that the use of a domain name for illegal activity (here, impersonation) constitutes bad faith. [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.

As mentioned in section 4 above, the Respondent has used the disputed domain name for a website that set out to impersonate the Complainant including by use of the Complainant's distinctive mark and a close copy of its logo. Furthermore, following receipt of a notice from the Complainant, the Respondent removed the name "Midjourney" from the title of an app on the Apple App Store without demur, yet he continued to use the disputed domain name, which is dominated by the Complainant's mark, plus the associated website, to drive traffic to that same app listing, having removed his name as app developer.

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 name <midjourney-app.com> be transferred to the Complainant.

*/Adam Taylor/*

**Adam Taylor**

Sole Panelist

Date: February 20, 2024