

ADMINISTRATIVE PANEL DECISION

Master Enterprises (Pvt.) Limited v. Support Team, IT Services
Case No. D2024-0850

1. The Parties

Complainant is Master Enterprises (Pvt.) Limited, Pakistan, represented by Bharucha & Co., Pakistan.

Respondent is Support Team, IT Services, United States of America.

2. The Domain Name and Registrar

The disputed domain name <molyfoam.com> (“Domain Name”) is registered with eNom, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 27, 2024. On February 27, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On February 27, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Registrant Name Private, registered with ENOM, INC.) and contact information in the Complaint. The Center sent an email communication to Complainant on February 29, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on March 4, 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 Respondent of the Complaint, and the proceedings commenced on March 6, 2024. In accordance with the Rules, paragraph 5, the due date for Response was March 26, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on April 2, 2024.

The Center appointed Marina Perraki as the sole panelist in this matter on April 25, 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

Complainant is active in the business of mattresses, bedding, furniture and associated accessories. Complainant operates its business through physical stores and also online through its various third party sites and its own website at "www.moltyfoam.com.pk", while per Complainant enjoying reputation in Pakistan. It owns trademark registrations for MOLTYFOAM, including the Pakistani trademark registration No. 91475, MOLTYFOAM (word), filed on August 26, 1986 and registered on May 28, 1989 for goods in international class 17.

The Domain Name was registered on April 24, 2000 and leads to a website where the Domain Name is being offered for sale initially at 150,000 USD and now at 120,000 USD and containing a link to Complainant's website under "Looking for Master Molty Foam click here". Complainant made a bona fide attempt to buy the Domain Name through a broker well above a fair market price with no success.

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 Domain Name.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy lists the three elements which Complainant must satisfy with respect to the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of 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. 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 trademark 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 Domain Name. Accordingly, the Domain Name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The generic Top-Level Domain (“gTLD”) “.com” is disregarded, as gTLDs typically do not form part of the comparison on the grounds that they are required for technical reasons (*Rexel Developpements SAS v. Zhan Yequn*, WIPO Case No. [D2017-0275](#); *Hay & Robertson International Licensing AG v. C. J. Lovik*, WIPO Case No. [D2002-0122](#)).

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 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 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 Domain Name such as those enumerated in the Policy or otherwise.

No other evidence on any preparation to activate a website under the Domain Name or otherwise use it has been produced.

Respondent therefore did not demonstrate any prior to the notice of the dispute use of the Domain Name or a trademark corresponding to the Domain Name in connection with a bona fide offering of goods or services.

Furthermore, Respondent has not claimed or demonstrated that he is known as MOLTYFOAM.

On the contrary, the Domain Name leads to an inactive website, where it is merely being offered for sale for an amount that exceeds out-of-pocket expenses and there is no reasonable explanation as to the registration and holding of the Domain Name that could lead the Panel to a conclusion different to Respondent targeting Complainant through the Domain Name. The Panel also notes the composition of the Domain Name which reproduces Complainant’s mark in its entirety.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Name.

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.

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 found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the 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 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.

Having reviewed the available record, the Panel notes the composition of the Domain Name, reproducing Complainant's mark in its entirety, along with the fact that it has been passively held and registered since 2000, while it is currently being sold for an amount that exceeds out-of-pocket expenses, and finds that in the circumstances of this case the passive holding of the Domain Name 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 Domain Name <moltyfoam.com> be transferred to the Complainant.

/Marina Perraki/

Marina Perraki

Sole Panelist

Date: May 9, 2024