

ADMINISTRATIVE PANEL DECISION

M and M Direct Limited v. Jiang Li

Case No. D2024-0946

1. The Parties

The Complainant is M and M Direct Limited, United Kingdom (“UK”), represented by Konexo, Eversheds Sutherland (International) LLP, UK.

The Respondent is Jiang Li, China.

2. The Domain Name and Registrar

The disputed domain name <mandmdirect.international> is registered with Sav.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 4, 2024. On March 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the same date, 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 (Not known) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 7, 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 March 12, 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 March 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was April 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 10, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on April 19, 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, M and M Direct Limited, is an European online retailer of discount fashion items which has been trading in the UK, under tradenames that include the term “M and M”, since 1987.

Currently, the Complainant claims it is one of the Europe’s leading online retailers of discount fashion items, operating in over 30 countries throught its official website available at <mandmdirect.com>, which has over 21 million visits every year.

The Complainant owns a worldwide trademark portfolio for or including M AND M DIRECT, such as the following:

- the UK trademark registration number 904631693 for M AND M DIRECT (word with device), filed on October 4, 2005, registered on September 28, 2006, covering goods and services in International classes 25, 28, and 35;
- the European Union trademark registration number 006679559 for M AND M DIRECT (word), filed on February 19, 2008, registered on January 22, 2009, covering goods and services in International classes 25, 28, and 35; and
- the Chinese trademark registration number 19215605 for M AND M DIRECT (word), registered on April 14, 2017, and covering services in International class 35.

The disputed domain name was registered on January 3, 2024, and, at the time of filing of the Complaint, it was used to resolve to a website listing pay-per-click (“PPC”) pages with sponsored links.

According to Annex 12 to the amended Complaint, the Respondent has been involved in at least another four UDRP disputes decided against it. See for example *Great-West Life & Annuity Insurance Company d/b/a Empower Retirement v. Whois Privacy, Private by Design, LLC / Jiang Li, Yihuanlu*, WIPO Case No. [DCO2021-0005](#).

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 name.

Notably, the Complainant contends that the disputed domain name is identical to its name, and trademark; the Respondent has no rights or legitimate interests in the disputed domain name; the disputed domain name has been registered in bad faith, around 18 years after the Complainant started to use its M AND M DIRECT mark; the Respondent is using the disputed domain name in bad faith, in order to take advantage of the goodwill and reputation built by the Complainant in its mark; the registration of the disputed domain name by the Respondent prevents the Complainant from reflecting its mark in a corresponding 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:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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. 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 disputed domain name. Accordingly, the disputed domain name is identical 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.

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 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 Respondent used the disputed domain name in connection with PPC pages related to various services and, in this regard, panels have held that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering where such links compete with or capitalize on the reputation and goodwill of the Complainant's mark or otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9.

Furthermore, the composition of the disputed domain name, reproducing the Complainant's mark and name, carries a high risk of implied affiliation. UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

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 disputed domain name was registered in bad faith, with knowledge of the Complainant and its trademark and business particularly because the disputed domain name reproduces exactly the Complainant's trademark and tradename and is very similar to the Complainant's domain name, which predates the registration of the disputed domain name by about 18 years.

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.

At the time of filing the Complaint, the disputed domain name resolved to a page providing PPC links promoting various goods and services.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location" is evidence of registration and use in bad faith.

The Respondent was using without permission the Complainant's trademark and name, reproduced exactly, in order to get traffic on its web portal and to misleadingly divert Internet users to third parties' websites, and thus to potentially obtain commercial gain from the false impression created with regard to a potential affiliation or connection with the Complainant.

According to the amended Complaint, as detailed in Section 4 above, the Respondent appears to be a serial offender, being involved in at least four UDRP disputes. Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. See section 3.1.2 of the [WIPO Overview 3.0](#).

The Respondent has not participated in the present proceeding and provided inaccurate contact information in the WhoIs, which prevented the courier from delivering the Center's written communication. Such facts, together with all the other elements in this case, support, in the eyes of this Panel, a finding of bad faith behavior.

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 <mandmdirect.international> be transferred to the Complainant.

/Marilena Comanescu /

Marilena Comanescu

Sole Panelist

Date: May 2, 2024