

ADMINISTRATIVE PANEL DECISION

Vilmorin-Mikado S.A.S v. Claudia Rains
Case No. D2024-1628

1. The Parties

The Complainant is Vilmorin-Mikado S.A.S, France, represented by Ebrand France, France.

The Respondent is Claudia Rains, Nigeria.

2. The Domain Name and Registrar

The disputed domain name <vilmorinmikado.com> (“Disputed Domain Name”) is registered with GMO Internet, Inc. d/b/a Discount-Domain.com and Onamae.com (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 18, 2024. On April 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On April 19, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 April 26, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 16, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 20, 2024.

The Center appointed Gabriela Kennedy as the sole panellist in this matter on May 27, 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 a Franco-Japanese seed producer that specialises in developing, producing, and selling vegetable seeds for professionals since 1743. The Complainant employs over 1,000 people and distributes its products in over 100 countries.

The Complainant's group owns several trademark registrations for the VILMORIN and MIKADO marks (collectively, the "Complainant's Trademarks") in various jurisdictions, including, inter alia, International Trademark Registration No. 402685 for " **VILMORIN** " registered on November 23, 1973 in Classes 1 to 42, designating, inter alia, Austria, Croatia, Italy, Romania, Spain, and Germany; and International Trademark Registration No. 1454628 for "  " registered on October 18, 2018 in Class 31, designating, inter alia, Australia, the European Union Intellectual Property Office, India and Zimbabwe.

The Complainant's Trademarks are fully incorporated in the domain name <vilmorinmikado.com> (the "Complainant's Domain Name"), which resolves to the Complainant's website.

The Disputed Domain Name was registered on February 23, 2024. At the time of the Complaint and decision, the Disputed Domain Name resolved to an inactive website. Based on the Whois record, the Respondent appears to be an individual named Claudia Rains residing in Nigeria.

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 the following:

(a) The Disputed Domain Name is confusingly similar to the Complainant's Trademarks as it incorporates the Complainant's Trademarks almost in their entirety, save for the additional letter "l" from the string "mikado";

(b) The Respondent has no rights or legitimate interests in the Disputed Domain Name. There is no evidence of the Respondent's use of, or demonstrable preparations to use, the Disputed Domain Name in connection with a bona fide offering of goods and services. The Respondent has not obtained any authorisation from the Complainant to use the Complainant's Trademarks as part of a domain name or otherwise; and

(c) The Respondent is typo-squatting the Complainant's Trademark and Domain Name with an intention to infringe the Complainant's intellectual property rights. The Respondent has configured MX servers on the Disputed Domain Name to permit the use of the Disputed Domain Name in the form of email addresses. The Complainant suggested the Respondent could use the Disputed Domain Name for spear-phishing tactics, although no such evidence was furnished. The Respondent did not respond to the Complainant's email dated March 4, 2024, and reminder on March 12, 2024, demanding the authorisation code for the Disputed Domain Name.

B. Respondent

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

6. Discussion and Findings

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 the Complainant's Trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the Complainant's Trademarks are recognisable within the Disputed Domain Name. The Disputed Domain Name incorporates the Complainant's Trademarks in their entirety, save for the additional "l" from the string "mikado". The intentional misspelling of the Complainant's Trademarks does not alter this finding. [WIPO Overview 3.0](#), section 1.9. Accordingly, the Disputed Domain Name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7. Furthermore, it is well established that the generic Top-Level Domain ("gTLD"), ".com" in this case, may be disregarded for the purpose of assessing confusing similarity under the first element. See section 1.11.1 of the [WIPO Overview 3.0](#).

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.

The Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

The Respondent would likely not have adopted the Complainant's Trademarks if not for the purpose of creating an impression that the Disputed Domain Name is associated with, or originates from, the Complainant. In this regard, the Panel notes the Disputed Domain Name is identical to the Complainant's Domain Name <vilmorinmikado.com>, save for the additional letter.

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.

There is no evidence to show that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name. There is also no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name, is in connection with a bona fide offering of goods or services or can be regarded as legitimate noncommercial or fair use.

The Panel finds that 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 it is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith use, given that it has incorporated two different trademarks of the Complainant's Trademarks almost in their entirety. As discussed above, the Respondent lacks any rights or legitimate interests in the Disputed Domain Name (see *Washington Mutual, Inc. v. Ashley Khong*, WIPO Case No. [D2005-0740](#)). Further, the Respondent failed to respond to the Complainant's contentions and has provided no evidence of its actual or contemplated good faith use of the Disputed Domain Name.

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 Disputed Domain Name does not prevent a finding of bad faith in the circumstances of this proceeding. Although panellists 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 distinctiveness or reputation of the Complainant's Trademarks, the composition of the Disputed Domain Name, and the Respondent's failure to file a Response, and finds that in the circumstances of this case the passive holding of the Disputed 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 Disputed Domain Name <vilmorinmilkado.com> be transferred to the Complainant.

/Gabriela Kennedy/
Gabriela Kennedy
Sole Panellist
Date: June 7, 2024