

ADMINISTRATIVE PANEL DECISION

Moelis & Company v. Lei Jiang
Case No. D2024-1990

1. The Parties

The Complainant is Moelis & Company, United States of America (“United States”), represented by Soteria LLC, United States.

The Respondent is Lei Jiang, China.

2. The Domain Name and Registrar

The disputed domain name <moelist.com> is registered with Automattic Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2024. On May 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 2024, 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 (Private Whois, Knock Knock WHOIS Not There, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 15, 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 the same day.

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 May 16, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 5, 2024. The Response was filed with the Center on June 1, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on June 11, 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

According to the Complainant, and as stated on the Complainant's website, the Complainant is a global investment bank that provides financial advisory services to corporations, governments, and financial sponsors. The Complainant states that it is known mainly as "Moelis" but does not provide independent verification of such assertion.

The Complainant is the owner of United States Registered Trademark Number 4904062 for the word mark MOELIS & COMPANY, registered on February 23, 2016, in Classes 35 and 36. Said mark claims a first use and use in commerce of July 15, 2007, in respect of Class 35, and of March 17, 2009, in respect of Class 36. The Complainant is also the registrant of the domain name <moelis.com>, which it uses for its primary website. Said domain name was registered on April 27, 2000, although the Panel has no information as to whether the Complainant is the original registrant thereof.

According to the Registrar verification, the disputed domain name was registered on September 9, 2023. However, the Whois record for the disputed domain name shows a registration date of June 21, 2013. The website configured for the disputed domain name states: "No Sponsors / www.moelist.com currently does not have any sponsors for you" and is otherwise blank. The Respondent is a private individual with an address in China. The Respondent maintains that it is the original registrant of the disputed domain name dating back to 2013. The Respondent also notes that it registered the domain name <list.moe> in 2014 and demonstrates that this domain name is under its control by pointing it to the Whois record of the disputed domain name. According to the registry website for the ".moe" Top-Level Domain, "The word "moe" (in Japanese: "萌え"; pronounced as "moh-ay") is a slang word rooted deep in the Japanese Otaku culture. It has often been used to mean a particular type of "adorable" or "cute" towards fictional characters, people, animals, etc." Said registry website goes on to assert: "Moe" is a very versatile word used to express a deep feeling or passion for something you love. Moe can be used as a noun, a verb, and even an adjective."¹

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 confusingly similar to its registered trademark MOELIS & COMPANY as it adds an extra letter "t" to the first word thereof, adding that the disputed domain name is misleading and provides false impressions of the Complainant's brand name.

¹ The Panel visited the website associated with the disputed domain name, the hyperlink provided by the Respondent to the website associated with the domain name <list.moe> and the website provided by the registry for the Top-Level Domain ".moe" in order to assist it in reaching the present decision. On the topic of a panel conducting such independent research of publicly available sources, see section 4.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"). The Panel decided not to put its findings to the Parties as this would unduly delay the proceeding and, while the outcome of the research was useful to understand the Respondent's contentions, it was not directly determinative of the outcome of the Decision.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, asserting that the Respondent is neither affiliated with the Complainant nor authorized to use its trademark, and that the Respondent has neither used the disputed domain name nor provided any proof of preparations for a bona fide offering of goods or services relating to the disputed domain name, nor has the Respondent been commonly known by the disputed domain name. The Complainant submits that the only arguable basis for a claim that the disputed domain name reflects a legitimate interest would be if the Respondent could garner records of any prior rights relating to the Complainant's trademark.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant claims that the first word of its mark is a unique, non-dictionary term and that this, combined with the fact that the disputed domain name is almost identical to the Complainant's own domain name <moelis.com>, strongly suggests that the Respondent was aware of the Complainant's brand at the point of registration of the disputed domain name. The Complainant adds that it is impossible to conceive that the Respondent could have selected the disputed domain name with no knowledge of the Complainant, which should be considered evidence of bad faith registration. The Complainant contends that where a domain name is connected with a well-known name and products, its very use by someone with no connection to such name suggests opportunistic bad faith. The Complainant adds that the disputed domain name indicates typosquatting on the Complainant's mark, such that the disputed domain name may be used to capitalize inappropriately on the goodwill of the Complainant's said mark, adding that such typosquatting in itself indicates bad faith, and noting that the mere registration of a domain name that is identical or confusingly similar to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith.

B. Respondent

The Respondent claims that the disputed domain name is composed of two words: a word from Japanese, "moe", and the English word "list", which means a "lovely list" as a whole, asserting that such meaning and composition has nothing to do with the Complainant.

The Respondent contends that the disputed domain name does not conflict with any trademark and that a search for a word trademark with the keyword "moelist" did not yield any results on the official website of the United States Patent and Trademark Office.

The Respondent denies having been aware of the Complainant or its mark when it registered the disputed domain name 11 years ago and asserts that, as a Chinese citizen, the Respondent would not have been aware of a foreign company such as the Complainant at that time.

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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The mark in which the Complainant has rights is MOELIS & COMPANY. The first word of this mark is repeated in the second level of the disputed domain name together with the letter "t". The Complainant's argument on this topic is focused upon the fact that it is known mainly as "Moelis". However, no evidence was produced of that fact beyond the Complainant's use of the domain name <moelis.com>. While this

particular domain name was registered in 2000, there is no evidence that the Complainant was the original registrant, and no history of use was provided. Furthermore, there is no evidence before the Panel along the lines set out in the [WIPO Overview 3.0](#), section 1.3, indicating that the Complainant might be able to claim unregistered trademark rights in the term “moelis” on its own.

Accordingly, the question for the Panel is whether “moelist” is confusingly similar to MOELIS & COMPANY, noting that it is evidently not identical (and bearing in mind that the Top-Level Domain, here, “.com” is usually disregarded in the comparison process. [WIPO Overview 3.0](#), section 1.11). The element MOELIS is the most distinctive part of the Complainant’s trademark. Against that background, noting the addition of a single letter, that element is recognizable in the disputed domain name.

The point is moot given the result here, and in the case circumstances the Panel does not strictly speaking require to reach a conclusion on this element in light of its decision on the third element of the Policy, as discussed below.

B. Rights or Legitimate Interests

The requirements of paragraph 4(a) of the Policy are conjunctive. A consequence of this is that failure on the part of a complainant to demonstrate one element of the Policy will result in failure of the complaint in its entirety. Accordingly, in light of the Panel’s findings in connection with the third element under the Policy, no good purpose would be served by addressing the issue of the Respondent’s rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The evidence in the case file as presented does not indicate that the Respondent’s aim in registering the disputed domain name was to profit from or exploit the Complainant’s trademark.

The first question is at what date the issue of registration in bad faith should be assessed. This is normally the date of registration of the domain name concerned, or the date of its subsequent acquisition by the respondent, if there is evidence that it has been acquired subsequently. Here, there is a discrepancy between the Registrar-provided date of registration of the disputed domain name (September 9, 2023) and the registration date on the Whois record of June 21, 2013. The Respondent, for its part, maintains that it registered the disputed domain name on its original registration date.

The Panel has no reason to disbelieve the Respondent when it says that it is the original registrant of the disputed domain name, dating from 2013. In particular, the Respondent is able to provide some support for this assertion by demonstrating that the domain name <list.moe> is under its control², asserting that when the “.moe” Top-Level Domain became available in 2014, it supplemented the already registered disputed domain name with the <list.moe> domain name, and noting that these are similarly composed. Accordingly, in the absence of historic Whois records which either of the Parties might have produced, given the apparent longstanding nature of the disputed domain name, the Panel will proceed on the basis that the Respondent registered the disputed domain name in 2013. Notably, the Registrar does not state that the registration date which it provided refers to the point at which the disputed domain name was first registered in the name of the Respondent, and accordingly, the discrepancy in the Registrar-provided information may potentially be explicable as the date on which the disputed domain name was transferred to it from the previous registrar of record.

² As noted above, the Respondent stated in the Response that it had pointed this particular domain name to a website showing the Whois record of the disputed domain name, and the Panel verified that the website associated with <list.moe> did indeed point to such Whois record. While this does not conclusively determine that the Respondent registered the domain name concerned, the Panel finds that it is strongly suggestive of the fact that it is under its control.

The registration date of the Complainant's United States registered trademark is February 23, 2016, namely between two and three years after the registration date of the disputed domain name. Subject to scenarios relating to domain names registered in anticipation of trademark rights, where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. [WIPO Overview 3.0](#), section 3.8.1.

Section 3.8.1 of the [WIPO Overview 3.0](#) also adds that merely because a domain name is initially created by a registrant other than the respondent before a complainant's trademark rights accrue does not however mean that a UDRP respondent cannot be found to have registered the domain name in bad faith. Irrespective of the original creation date, if a respondent acquires a domain name after the complainant's trademark rights accrue, the panel will look to the circumstances at the date the UDRP respondent itself acquired the domain name.

Accordingly, for the sake of completeness, the Panel will consider the situation of the Respondent having acquired the disputed domain name at the Registrar-provided registration date. In those circumstances, the third element analysis turns on the issue of whether the Respondent had or is likely to have had knowledge of the Complainant and/or its trademark when it registered the disputed domain name and whether, in such knowledge, it more probably than not registered the disputed domain name in order to target the Complainant's rights unfairly. In the present case, there is insufficient evidence on the record before the Panel demonstrating that the Respondent might have had any such knowledge or intent to profit from or exploit the Complainant's rights at the material time.

The Complainant argues that it is impossible to conceive of circumstances whereby the disputed domain name might have been registered without knowledge of its mark but produces nothing to show that the Respondent, a person based in China, would likely have heard of the Complainant, an investment bank based in the United States. Indeed, the only evidence that the Complainant produces as to the strength or reach of its mark is a small snippet from the homepage of its website at <moelis.com>. This makes the claim that the Complainant is a global independent investment bank but in itself does not amount to independent evidence of anything. The fact that the Complainant is using the domain name <moelis.com> is also inconclusive. The Panel has established that that domain name was registered in 2000 but there is no evidence before the Panel that the Complainant was using it, for example for its corporate website, from that or any other date. Even if it had been, there is no evidence as to the prominence of the associated website by 2013, 2023, or for that matter any other date whereby it might be argued that it would have come to the Respondent's notice.

Although the Complaint fails for want of evidence of the status and renown of the Complainant's mark at the material date, the Panel turns briefly to examine the Respondent's claims regarding the disputed domain name. Notably, the Respondent asserts that it is a portmanteau of a Japanese and an English word meaning "lovely list", using the Japanese word "moe" for the "lovely" element. Were it not for the Respondent's additional registration of the domain name <list.moe> in 2014, the Panel would have found this reasoning difficult to believe on the basis of the present limited record. The Respondent produces no evidence that this phrase has or is likely to have any meaning for any particular target audience, especially bearing in mind the fact that its constituent parts have their origin in two different languages. Based upon the registry explanation for the ".moe" domain name, it is possible that this word may have meaning to certain English speakers despite its Japanese-language origins but the Panel does not find this to be conclusive. Of greater significance is the fact that the Panel does not know and is not told by the Respondent exactly what the "lovely list" is to which the Respondent refers, and of what items it would consist.

Importantly, there is no evidence that the Respondent has ever developed a website (whether consisting of a list of items or otherwise) under either the disputed domain name or <list.moe> in accordance with the alleged meaning notwithstanding the fact that it claims to have held the latter for a decade and the former for longer than that. Nevertheless, despite the Panel's misgivings regarding the Respondent's explanation for the registration of the disputed domain name, the Panel considers that it would be a step too far to find on that basis alone, and in the face of the Panel's concerns regarding the lack of evidence supporting the

Complainant's submissions about its allegedly well-known mark, that the Respondent must have been intent upon targeting the Complainant's rights in the MOELIS & COMPANY mark via the registration of the disputed domain name.

On the assumption that the Complainant is able to substantiate the alleged international fame of its mark, notably reaching to China, at the material date (whether 2013 or 2023) despite having failed to do so in the Complaint, the Panel considers that should new material evidence come to light in future that is reasonably unavailable to the Complainant at the time of the present proceeding demonstrating that the disputed domain name is targeting or has targeted such mark, it may be possible for the Complainant to refile the Complaint, subject to the typical considerations on refiling. [WIPO Overview 3.0](#), section 4.18.

The Panel finds the third element of the Policy has not been established.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: June 25, 2024