

ADMINISTRATIVE PANEL DECISION

NTT DOCOMO, INC. v. Old Mill Sites, Portfolio Admin
Case No. D2024-2655

1. The Parties

The Complainant is NTT DOCOMO, INC., Japan, represented by Amino & Associates, Japan.

The Respondent is Old Mill Sites, Portfolio Admin, United States of America.

2. The Domain Name and Registrar

The disputed domain name <docomocup.com> is registered with Rebel Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 28, 2024. On July 1, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 2, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 3, 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 July 5, 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 July 10, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 30, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 31, 2024.

The Center appointed Adam Taylor as the sole panelist in this matter on August 9, 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

Since 1992, the Complainant has operated a mobile communications business in Japan under the mark DOCOMO. In 2022 the Complainant was party to approximately 87.5 million mobile phone service contracts, with a market share of some 43%.

The Complainant owns a number of registered trade marks for DOCOMO including European Union trade mark No. 006135818, registered on June 19, 2008, in classes 9, 38 and 42.

The Complainant operates a website at “www.docomo.ne.jp”.

The Complainant owned and/or controlled the disputed domain name between March 13, 2001, and March 13, 2011. During that time, the Complainant used the disputed domain name for a website promoting a competition to create computer games.

The Respondent registered the disputed domain name on May 29, 2011.

Thereafter the disputed domain name was used for a parking page website with mobile phone-related pay-per-click (“PPC”) links and a “for sale” notice.

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.

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 Complainant has 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 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, “cup”) may bear on assessment of the second and third elements,

the Panel finds the addition of such term 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.

As to paragraph 4(c)(i) of the Policy, the disputed domain name has been used for a parking page with PPC links related to the Complainant’s industry. Use of a domain name to host PPC links that compete with or capitalise on the reputation and goodwill of the complainant’s mark or otherwise mislead Internet users does not represent a bona fide offering. [WIPO Overview 3.0](#), section 2.9. See further under section 6C below.

Nor is there any evidence that paragraphs 4(c)(ii) or (iii) of the Policy are relevant in the circumstances of this case.

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 Panel’s view, by using the disputed domain name that includes the Complainant’s distinctive trade mark and is uniquely associated with a service previously offered by the Complainant, in connection with a parking page with PPC links relating to the Complainant’s industry, the Respondent has intentionally created a likelihood of confusion with the Complainant’s trade mark in accordance with paragraph 4(b)(iv) of the Policy.

Furthermore, the Respondents could not disclaim responsibility for “automatically” generated PPC links on its website and neither the fact that (if applicable) such links are generated by a third party such as a registrar, nor the fact that the respondent itself may not have directly profited, would by itself prevent a finding of bad faith. [WIPO Overview 3.0](#), section 3.5.

The Panel also notes that the Respondent has not appeared in this proceeding to contest the Complainant's assertions regarding bad faith.

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 <docomocup.com> be transferred to the Complainant.

/Adam Taylor/

Adam Taylor

Sole Panelist

Date: August 21, 2024