

ADMINISTRATIVE PANEL DECISION

The Middleby Corporation, Middleby Marshall Inc. v. 石磊 (Lei Shi)
Case No. D2024-2658

1. The Parties

The Complainants are The Middleby Corporation, United States of America (“United States”) and Middleby Marshall Inc., United States, represented by Demys Limited, United Kingdom.

The Respondent is 石磊 (Lei Shi), China.

2. The Domain Name and Registrar

The disputed domain name <careersmiddleby.com> is registered with Chengdu West Dimension Digital Technology Co., Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in English 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 Complainants on July 8, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainants to submit an amendment to the Complaint. The Complainants filed an amended Complaint in English on July 10, 2024.

On July 8, 2024, the Center informed the parties in Chinese and English, that the language of the registration agreement for the disputed domain name is Chinese. On July 10, 2024, the Complainants confirmed the request that English be the language of the proceeding. The Respondent did not submit any comment on the Complainants’ submission.

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 in Chinese and English of the Complaint, and the proceedings commenced on July 15, 2024. In accordance with the Rules, paragraph 5, the due date for Response was August 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 5, 2024.

The Center appointed Tao Sun as the sole panelist in this matter on August 14, 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 Complainants contain two entities. The first Complainant The Middleby Corporation is the parent of the Middleby group and the second Complainant Middleby Marshall Inc. is the first Complainant's operating subsidiary.

The Complainants are the manufacturer of commercial restaurant equipment, residential appliances, and systems for industrial processing, packaging and baking and sell the products worldwide. The first Complainant was established in 1888 and the Complainants now employ over 10,000 employees in more than 150 countries. In 2023 the Complainants achieved net sales of USD 4,036.6 million, with over USD 1,543 million gross profits. Now the Complainants are the largest global manufacturer of commercial cooking equipment and have over 120 brands in their portfolio.

The Complainants own, among others, the following registered trademarks relating to the trademark MIDDLEBY.

- (i) Brazilian registration No. 909269394 MIDDLEBY in class 11, registered by the first Complainant The Middleby Corporation on March 13, 2018; and
- (ii) International registration No. 1600332 MIDDLEBY in classes 35, 40, 42, and 43, registered by the second Complainant Middleby Marshall Inc. on February 5, 2021.

The Complainants operate a website at "www.middleby.com" and use the domain name <middleby.com> for, among others, their corporate email communication with their customers, suppliers and staff.

The disputed domain name was registered on March 6, 2024. According to the evidence submitted by the Complainants, the disputed domain name is resolved to a pay-per-click ("PPC") advertising webpage containing third-party commercial advertising including sales of outdoor pizza oven products.

The Respondent is reportedly a Chinese individual.

The Complainants' agent sent a cease and desist request to the Respondent through the Registrar. The request was transferred to the Respondent by the Registrar on April 30, 2024. It led to an exchange of several emails between the parties. The Respondent offered to sell the disputed domain name to the Complainants for USD 5,199 and explained that "<careersmeddlyby.com> better than <careers-middleby.com>".

5. Parties' Contentions

A. Complainant

The Complainants contend that they have satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainants contend that:

- (i) the disputed domain name incorporates the Complainants' entire MIDDLEBY name and mark with the addition of generic term "careers", and as such is confusingly similar to the Complainants' name and mark.
- (ii) the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee of the Complainants and has not received any permission, consent or acquiescence from either of the Complainants to use their marks in association with the registration of the disputed domain name or, indeed, any domain name, service or product. The Respondent is not commonly known by the disputed domain name and no prior use. The disputed domain name is resolved to a PPC advertising webpage containing third-party commercial advertising, which is neither bona fide offering of goods or services nor legitimate noncommercial or fair use.
- (iii) the Respondent intentionally attempted to attract, for commercial gain, Internet users to the Respondent's websites or other on-line location, by creating a likelihood of confusion with the Complainants' MIDDLEBY name and mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or other on-line location. It also offered for sale of the disputed domain name for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the disputed domain name. As such, the disputed domain name was registered and is being used in bad faith.

B. Respondent

The Respondent did not reply to the Complainants' contentions.

6. Discussion and Findings

6.1 Preliminary Issues: Language of the Proceeding

The language of the Registration Agreement for the disputed domain name is Chinese. Pursuant to the Rules, paragraph 11(a), in the absence of an agreement between the parties, or unless specified otherwise in the registration agreement, the language of the administrative proceeding shall be the language of the registration agreement.

The Complaint was filed in English. The Complainants requested that the language of the proceeding be English for several reasons, including the facts that:

- (i) the disputed domain name is comprised of the Complainants' English-language mark MIDDLEBY and the English word "careers";
- (ii) Prior to this dispute being brought, the Respondent and the Complainants' agent communicated by email, which was conducted exclusively in English, showing that the Respondent is familiar with the English language and will thus not be prejudiced by the Complaint being brought in English; and
- (iii) the Complainants and the Complainants' authorized representative's working language is English.

The Respondent did not make any specific submissions with respect to the language of the proceeding.

In exercising its discretion to use a language other than that of the registration agreement, the Panel has to exercise such discretion judicially in the spirit of fairness and justice to both parties, taking into account all relevant circumstances of the case, including matters such as the parties' ability to understand and use the proposed language, time and costs (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.5.1).

Having considered all the matters in this case, the Panel determines under paragraph 11(a) of the Rules that the language of the proceeding shall be English, considering the factors that:

- (i) disregarding the generic Top-Level Domain (“gTLD”), the disputed domain name is similar to the Complainants’ trademark and consists of Latin letters, and the contents of the website at the disputed domain name are in English, indicating that the Respondent has a certain level of understanding of English;
- (ii) before initiating the dispute, the Complainants’ agent has communicated with the Respondent through email exclusively in English, further showing that the Respondent has a certain level of understanding of English; and
- (iii) The Respondent did not make any comments on the language of the proceeding.

6.2 Preliminary Issues: Consolidation of Multiple Complaints

The Panel noted that the complaint was filed by two Complainants jointly.

Paragraph 10(e) of the Rules grants a panel the power to consolidate multiple domain name disputes. In assessing whether a complaint filed by multiple complainants may be brought against a single respondent, panels look at whether (i) the complainants have a specific common grievance against the respondent, or the respondent has engaged in common conduct that has affected the complainants in a similar fashion, and (ii) it would be equitable and procedurally efficient to permit the consolidation. [WIPO Overview 3.0](#), section 4.11.1.

Having considered all the factors below, the Panel determines under paragraph 10(e) of the Rules that the complainants can be consolidated:

- (i) the two Complainants are the members of the same group, being the parent company and operating subsidiary. They own MIDDLEBY registration in different jurisdictions respectively. As such, the Panel hold that the Complainants have a specific common grievance against the Respondent;
- (ii) The Respondent did not object the consolidation and the Panel did not find the consolidation will jeopardize the legitimate interests of the Respondent; and
- (iii) It will be more convenient and efficient to consolidate than filing the compliant respectively.

Therefore, the Complainants are hereinafter jointly referred to as the “Complainant”.

6.3 Substantive Issues

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 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 Panel finds the mark is recognizable 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 term “careers” 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 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. Furthermore, the Panel finds the composition of the disputed domain name carries a risk of implied affiliation with the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

The disputed domain name is resolved to a PPC advertising webpage containing third-party commercial advertising. The Panel notes that the third-party commercial advertising cover, among others, the sales of outdoor pizza oven, which is clearly in competition with the business of the Complainant. It has been well established that the use of a domain name to host a parked page comprising PPC links does not represent a bona fide offering goods 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.

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.

Panels have consistently found that mere registration of a domain name that is confusingly similar (particularly domain names comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith ([WIPO Overview 3.0](#), section 3.1.4). In this case, considering the reputation of the MIDDLEBY trademark, the facts that the Respondent’s actively offering for sale of the disputed domain name for USD 5,199 and the statement that “careersmeddlyby.com better than careers-middleby.com”, the Panel finds that the Respondent knew of the Complainant and registered the disputed domain name in bad faith.

Moreover, the Respondent has resolved the inherently misleading disputed domain name to a PPC webpage containing the links for sale of among others outdoor pizza oven products. The Panel finds that the Respondent was aware of the Complainant and intentionally attempted to attract, for commercial gain, Internet users to the Respondent’s website, by creating a likelihood of confusion with the Complainants’ mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website.

Furthermore, noting the email exchanges where the Respondent offered the disputed domain name for sale at USD 5,199, the Panel finds that the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant or to a competitor of the Complainant, for valuable consideration likely in excess of the Respondent’s

documented out-of-pocket costs directly related to the disputed domain name, in accordance with the paragraph 4(b)(i) of the Policy.

The Respondent's failure to file any formal response also supports a finding of 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 <careersmiddleby.com> be transferred to the first Complainant.

/Tao Sun/

Tao Sun

Sole Panelist

Date: August 28, 2024