

ADMINISTRATIVE PANEL DECISION

Midcontinent Independent System Operator, Inc. v. MrKim
Case No. D2024-3190

1. The Parties

The Complainant is Midcontinent Independent System Operator, Inc., United States of America (“United States”), represented by Quarles & Brady LLP, United States.

The Respondent is MrKim, China.

2. The Domain Name and Registrar

The disputed domain name <misomarkerts.com> is registered with Mat Bao Corporation (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 2, 2024. On August 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 8, 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 (Domain Admin) and contact information in the Complaint. The Center sent an email communication to the Complainant on August 9, 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 August 14, 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 August 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was September 8, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 9, 2024.

The Center appointed Matthew Kennedy as the sole panelist in this matter on September 13, 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 an energy company that manages the delivery of electricity to 15 states of the United States and a province of Canada. The initials of its corporate name spell "MISO". The Complainant holds multiple trademark registrations, including the following United States trademark registrations:

- number 4129745 for MISO, registered on April 17, 2012, with a claim of first use in commerce on June 7, 2011; and
- number 4616653 for MISO and device (the "MISO logo"), registered on October 7, 2014, with a claim of first use in commerce on January 20, 2014.

The above trademark registrations are current. The Complainant has also registered the domain name <misoenergy.org> that it uses in connection with its website where it provides information about itself and its services. The website offers data in real-time in "markets displays" and "operations displays". The website prominently displays the MISO logo in blue and green.

The Respondent is an individual ostensibly based in China. His contact street address is manifestly incomplete or false.

The disputed domain name was registered on May 20, 2024. According to evidence presented by the Complainant, the disputed domain name originally resolved to a website in English and Korean displaying a title that incorporated the Complainant's MISO logo in blue and green alongside the word "Market". The site offered for sale various categories of products, including household goods. By June 21, 2024, the disputed domain name no longer resolved to any active website. At the time of this Decision, it remains passively held.

The Registrar confirmed that the language of the Registration Agreement is English.

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 MISO mark. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has no affiliation with, or connection to, the Respondent. The Respondent is not authorized to use the Complainant's trademarks. The disputed domain name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following elements:

- (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 respect of 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. See 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 MISO trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the MISO mark is reproduced within the disputed domain name as its initial element. The disputed domain name also contains the element "markerts" (a misspelling of the word "markets"), but the MISO mark remains clearly recognizable within the disputed domain name. The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") extension (".com") but, as a standard requirement of domain name registration, that extension may be disregarded in the assessment of confusing similarity for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the MISO mark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7, 1.8, and 1.11.1.

Therefore, 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. See [WIPO Overview 3.0](#), section 2.1.

In the present case, the Respondent was using the disputed domain name, which wholly reproduces the Complainant's MISO mark, to resolve to an online store, which displayed the Complainant's MISO logo in the same colors as those in which the Complainant uses that logo on its own website. This gave the impression that the Respondent was affiliated with, or endorsed by, the Complainant. However, the Complainant submits that it has no affiliation with, or connection to, the Respondent and that the Respondent is not authorized to use its trademarks. The disputed domain name is now passively held. The Panel does not consider either use to constitute a use in connection with a bona fide offering of goods and services, nor a legitimate noncommercial or fair use of the disputed domain name.

Further, the Registrar has verified that the Respondent's name is "MrKim". His contact email user name includes "Andrew Kim", which does not resemble the disputed domain name. Nothing on the record indicates that the Respondent has been commonly known by the disputed domain name.

The Panel has taken note that “miso” is a traditional Japanese seasoning. However, nothing on the record shows that the Respondent’s former website had any connection to that meaning.

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.

Based on the record, 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. Moreover, 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. See [WIPO Overview 3.0](#), section 3.3.

The disputed domain name was registered on May 20, 2024, years after the registration of the Complainant’s MISO mark. The disputed domain name reproduces the MISO mark as its initial element and combines it with a misspelt version of the word “markets”, which refers to a type of data that the Complainant provides. The disputed domain name originally resolved to a website that displayed the Complainant’s MISO logo in its title, in the same colors as those in which the Complainant uses that logo on its own website. In view of these circumstances, the Panel has reason to find that the Respondent registered the disputed domain name with the Complainant and its MISO mark in mind.

As regards use, the disputed domain name is now passively held. However, it originally resolved to a website that displayed without authorization the Complainant’s MISO logo in the same colors as those in which the Complainant uses that logo on its own website, giving the false impression that it was affiliated with, or endorsed by, the Complainant. The website offered products for sale. Further, the Respondent’s name and address in the Registrar’s Whois database are manifestly incomplete or false, indicating that the Respondent is seeking to avoid detection of its whereabouts. In view of these circumstances, the Panel finds that the passive holding of the disputed domain name does not prevent a finding of bad faith under the Policy.

Therefore, 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 <misomarkerts.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: September 25, 2024