

ADMINISTRATIVE PANEL DECISION

MMDSmart LTD v. Anar Jafarov, Personal use
Case No. D2024-3898

1. The Parties

The Complainant is MMDSmart LTD, Israel, represented by Elbert Nazaretsky Rakov & Co Law Office, Israel.

The Respondent is Anar Jafarov, Personal use, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <mmd-smart.com> is registered with Name.com, Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on September 24, 2024. On September 24, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 25, 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 Protection Services Inc.) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same date, 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 September 30, 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 September 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 22, 2024.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on October 28, 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.

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and also that the administrative proceeding takes place with due expedition. As Ukraine is currently involved in international conflict, the Panel has considered whether these conditions have been satisfied. The Panel observes in this respect that, using the contact details supplied by the Registrar, the Center's email notice was timely delivered to the furnished Gmail address. The Panel also takes notice of a recent WIPO proceeding involving very similar facts in which an ostensibly different respondent in Ukraine used another domain name comprised of a slight variation of the Complainant's mark, <mm smart.info>, for a website with nearly identical content to the Respondent's website here. The respondent in that proceeding, who is likely connected to the Respondent here, submitted a response. *MMDSmart LTD v. Kateryna Milenska*, WIPO Case No. [D2024-0685](#) ("Milenska"). In these circumstances, the Panel concludes that the Respondent has had a fair opportunity to present a case and this administrative proceeding can be continue without prejudice to either Party.

4. Factual Background

The Complainant is a private company established under the law of Israel, with headquarters in Israel and offices in Hong Kong, China, Ukraine, and Bulgaria. Founded in 2007, the Complainant offers business communications services such as secure messaging, voice, chat, and call center functions in over 100 countries.

The Complainant evidently does not have a registered trademark but claims MMDSMART as an unregistered service mark (in a version with only the letters "MMDS" capitalized) based on its use in labelling, signage, letterhead, and advertising. The Complainant operates a website at "www.mm smart.com". The Complainant registered this domain name in 2007, when the company was formed. However, the Panel notes that it appears from screenshots archived by the Internet Archive's Wayback Machine that the domain name was parked until 2010. It has been used since then for a website advertising the Complainant's services.

The Complaint attaches samples of advertising and media recognition of the Complainant's MMDSMART-branded services. These date from 2017. Photographs from trade shows depict personnel staffing a display booth with a different, figurative logo, in which the name "mm smart" appears entirely in small letters. Other examples of both logos from 2023 and 2024 are found on the Complainant's website. The Complaint also links or attaches examples of its branding in connection with sponsorship of social and community events in several countries, including Ukraine. (The links in the Complaint are not operative.) The "SM" symbol denoting a claim to an unregistered service mark appears in some places on the current version of the Complainant's website but not on earlier materials.

The Registrar reports that the disputed domain name was created on November 14, 2023, and was registered in the name of a domain privacy service. After receiving notice of the Complaint in this proceeding, the Registrar identified the underlying registrant as the Respondent Amar Jafarov, who entered "Personal use" in the registration field for "Company Name" and listed a postal address in Ukraine, with a Gmail contact email address. The Complainant observes that the postal address given by the registrant appears not to correspond with an actual address in Ukraine but translates roughly as, "in nowhere at Baba Yaga's", Baba Yaga being a character in Slavic folklore. Amar Jafarov did not file a Response, but that is the name of one of the individuals mentioned on the Respondent's website as a former employee unhappy with his treatment by the Complainant, as described further below.

The disputed domain name resolves to a website (the “Respondent’s website”) published in two languages, Russian and English, entitled “Dispute Mediation with MMD Smart”. The tagline reads, “Real stories from the life of the company. Testimonials from employees, former and current customers and failed business partners”. Under the heading, “What’s this site for?” is this explanatory text: “We inform all those interested in the company M.M.D. Smart. Here you can familiarize yourself with all the information in advance of the collaboration, as well as share your own stories and information.”

There is no commercial advertising on the site. The Respondent’s website does not disclose the identities of the website operators. The Respondent’s website has a page labelled “Conflicts”, with sections set aside for “Employee Stories”, “Customer Stories”, and “Our Investigations”, as well as a page “About” the Complainant and a “Contact” page. The website furnishes detailed information about the Complainant and its senior officers. Some of the content is complimentary toward the Complainant and its products, but the overall tone of the Respondent’s website is critical, particularly including allegations of “bullying” by managers and failures in compliance and “due diligence”. The site invites readers to share similar stories of abuse or mismanagement.

The first of the “Employee Stories” (in fact, the only individual employee story that is detailed) concerns Amar Jafarov, likely the Respondent. Mr. Jafarov said he was formerly employed by the Complainant in Ukraine. Evidently, Mr. Jafarov brought a legal claim against the Complainant concerning a pay dispute. When the claim was dismissed, Mr. Jafarov “shared his situation” online on a job site. The Complainant objected, and that post was removed after the public prosecutor found it defamatory. The Respondent’s website (under the heading “Conflicts with Authorities”) also referred to the *Milenska* UDRP proceeding as another instance of the Complainant’s efforts to “close this website”. Combined with the fact that the content of the websites involved in *Milenska* and in the current proceeding is essentially the same, it is safe to conclude that the respondents in both proceedings are either the same person (Mr. Jafarov) or connected.

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 unregistered service mark MMDSMART, which is entitled to common law trademark protection. The Complainant asserts that the Respondent has no permission to use the mark and argues its use for the Respondent’s website cannot be justified as a legitimate fair use for criticism because (a) the main purpose of the site is to tarnish the Complainant’s reputation and (b), as the *Milenska* panel concluded, the Respondent’s legitimate interest in fair criticism does not extend to using an identical or confusingly similar domain name that effectively impersonates the trademark holder, as is the case with the disputed domain names in this proceeding and in *Milenska*. Both of those disputed domain names mimic the Complainant’s mark and the Complainant’s own domain name.

The Complainant contends that the Respondent was clearly aware of the Complainant’s mark, as the content of the Respondent’s website (nearly identical to the content at issue in *Milenska*) is focused on the Complainant and its business. The Complainant argues that the Respondent’s registration and use of the disputed domain name reflects bad faith, as an effort to misleadingly divert Internet users to the Respondent’s website and to disrupt the Complainant’s business.

The Complainant emphasizes that it does not seek to abridge the Respondent’s “freedom to criticize the Complainant”. The Complainant argues, rather, that the Policy prevents the Respondent from “broadcasting its criticism from the Complainant’s soapbox”, taking unfair advantage of the Complainant’s mark in a domain name to reach the Respondent’s intended audience, citing *Joseph Dello Russo M.D. v. Michelle Guillaumin*, WIPO Case No. [D2006-1627](#).

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

The Panel finds, as did the *Milenska* panel, that the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3. The mark is distinctive and not a dictionary term, and there is substantial evidence of trademark use of the word mark and two MMDSMART logos since at least 2010.

The Panel finds the mark is recognizable within the disputed domain name. The addition of a hyphen after the first three letters does not materially change the appearance, sound, or sense of the string that comprises 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](#), sections 1.7 and 1.9.

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 conceivably could have argued for a fair use interest in using the disputed domain name for a legitimate criticism site, as the apparently identical or related respondent did earlier this year with respect to a similar domain name and essentially the same content in the *Milenska* proceeding.

The Panel would not, on this record, accept the Complainant's argument that such a claim should be rejected as the Respondent's website was meant principally to "tarnish" the Complainant's reputation. The necessary factual determination of falsity or defamation is beyond the scope of this limited UDRP proceeding.

However, as in *Milenska* and other Policy proceedings, the Panel here concludes that “the general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)” because of the “impermissible risk of user confusion through impersonation”. [WIPO Overview 3.0](#), section 2.6.2.

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 present case, the Panel notes that the Respondent was clearly aware of the Complainant and its mark, as the Respondent’s website is devoted to discussion of the Complainant and also replicates the website at issue in the prior *Milenska* proceeding, in which it appears likely that the Respondent or an associate participated. The disputed domain name, differing only by a hyphen from the Complainant’s mark (and the Complainant’s domain name), does not squarely fit the example of bad faith given in the Policy, paragraph 4(b) (iv) of attempting to attract Internet users for “commercial gain”. Similarly, paragraph 4(b)(iii) refers to attempts to disrupt the business of a “competitor”. However, panels have interpreted “competitor” in the context of paragraph 4(b)(iii) to include “a person who acts in opposition to another”, which would apply to this evidently critical former employee. [WIPO Overview 3.0](#), section 3.1.3. As detailed above, the Respondent’s website does not appear to be commercial but rather a genuine criticism site. The Panel does not determine whether the criticism is factually well-founded but concludes that the composition of the disputed domain name, being essentially identical to the Complainant’s mark, bears an impermissibly high risk of false association with the Complainant.

The Panel finds that the Respondent, as with the similar domain name involved in the *Milenska* proceeding, sought to misdirect Internet users to the Respondent’s website and disrupt the Complainant’s business by impersonating the Complainant’s mark. This also reflects bad faith for Policy purposes, even if the Respondent’s website was critical not commercial. The Panel concurs with the conclusion of the *Milenska* panel:

“The registration and use of a disputed domain name which misleadingly impersonates another’s trademark does not qualify as good faith under the Policy even in the case of (what appears to be) a genuine criticism site. See e.g., *Palmetto State Armory, L.L.C. v. Privacy service provided by Withheld for Privacy ehf / Joseph Stone*, WIPO Case No. [D2022-1028](#).”

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 <mmd-smart.com> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: November 18, 2024