

ADMINISTRATIVE PANEL DECISION

M and M Direct Limited v. Julien Mainville
Case No. D2024-3924

1. The Parties

The Complainant is M and M Direct Limited, United Kingdom (“UK”), represented by Konexo, Eversheds Sutherland (International) LLP, UK.

The Respondent is Julien Mainville, France.

2. The Domain Name and Registrar

The disputed domain name <mandmsdirect.shop> is registered with Hostinger Operations, UAB (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 25, 2024. On September 26, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 27, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 27, 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 October 1, 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 October 2, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 22, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 23, 2024.

The Center appointed Rebecca Slater as the sole panelist in this matter on October 30, 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 a UK headquartered company. It was created in 1987 and originally traded under the name "M AND M SPORTS". The Complainant is one of Europe's leading online retailers of discounted clothing, footwear and accessories. The Complainant changed its name to "M AND M DIRECT" in 2006.

The Complainant has a portfolio of registrations for the M AND M DIRECT word mark, including European Trade Mark, Registration No. 006679559 (registered January 22, 2009); UK Trade Mark Registration No. 0906679559 (registered January 22, 2009); and United States Trade Mark Registration No. 6,208,836 (registered December 1, 2020) (the "Trade Mark").

The Complainant also holds a registration for a series of three semi-figurative M and M marks (UK Trade Mark Registration No. 00003895710, registered June 30, 2023).

The Complainant is also the registrant of several domain names incorporating the Trade Mark, including the <mandmdirect.com> domain name and local domain names (e.g. <mandmdirect.fr> for France).

The Respondent is an individual named Julien Mainville, apparently located in France. The Respondent did not submit a formal response, and consequently little information is known about the Respondent.

The Respondent registered the disputed domain name on July 18, 2024.

The disputed domain name does not currently resolve to an active website. At the time of the Complaint, the disputed domain name resolved to a website that was accessible on mobile devices and which copied content from the Complainant's website at <mandmdirect.com> ("Complainant's Website").

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 the Trade Mark. The disputed domain name comprises the Trade Mark in its entirety. The addition of the letter "s" after the second "m" (in the middle of the disputed domain name) does not prevent a finding of confusing similarity. Additionally, the disputed domain name contains the new generic top-level domain (gTLD) "shop", which is descriptive of the retail services provided by the Complainant.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent is not commonly known by the disputed domain name. The Respondent is not connected to the Complainant in any way and has not been authorized by the Complainant to use the Trade Mark as a domain name or to sell goods. The dispute domain name redirects to a fraudulent website, the content of which has been copied from the Complainant's Website.

- The disputed domain name was registered and is being used in bad faith by the Respondent. The Trade Mark is well known, having been in use for over 18 years. The disputed domain name was used to operate a fraudulent website, containing content copied from the Complainant's Website and featuring the Complainant's logo mark. The Respondent is intentionally attempting to take advantage of the Trade Mark to create confusion and generate profit. The Respondent would not have fulfilled any orders placed through the website at the disputed domain name (if orders had been placed).

B. Respondent

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

6. Discussion and Findings

To succeed, the Complainant must demonstrate that all the elements enumerated in paragraph 4(a) of the Policy have been satisfied, namely:

- the disputed domain name is identical or confusingly similar to a trade mark or service 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.

The onus of providing these elements is on the Complainant.

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 Trade Mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. The addition of the letter "s" after the second "m" (in the middle of the disputed domain name) does not prevent a finding of confusing similarity between the disputed domain name and the Trade Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 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 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.

The Complainant has not authorized the Respondent to use the Trade Mark and there is no evidence that the Respondent has ever been known by the disputed domain name.

Panels have held that the use of a domain name for illegitimate activity (here, claimed impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain names constitutes bad faith under the Policy.

Under paragraph 4(b)(iv) of the Policy, there is evidence of registration and use of the disputed domain name in bad faith where a respondent has used the disputed domain name to intentionally attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's trade marks as to the source, sponsorship, affiliation or endorsement of the website.

The Panel finds it unlikely that the disputed domain name was registered without knowledge of the Complainant and the Trade Mark, given the Complainant's longstanding reputation. The Respondent's objective in registering and using the disputed domain name appears to be to attract Internet users for potential gain. This finding is reinforced by the Respondent's use of the website at the disputed domain name to host a website with the look and feel of the Complainant's Website (including featuring the Complainant's logo mark and content copied from the Complainant's Website) to offer items for sale.

Panels have held that the use of a domain name for illegitimate activity (here, claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

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 <mandmsdirect.shop> be transferred to the Complainant.

/Rebecca Slater/

Rebecca Slater

Sole Panelist

Date: November 4, 2024