

## **ADMINISTRATIVE PANEL DECISION**

MVH I, Inc. v. Firdos Aashiq Awan

Case No. DAE2022-0004

### **1. The Parties**

Complainant is MVH I, Inc., United States of America (“United States”), represented by 101domain.com, United States.

Respondent is Firdos Aashiq Awan, Pakistan.

### **2. The Domain Names and Registrar**

The disputed domain names <mili.ae> (the “first Domain Name”) and <mylevaporsuae.ae> (the “second Domain Name”) are registered with AE Domain Administration (.aeDA). Collectively referred to as “the Domain Names”.

### **3. Procedural History**

The Complaint was filed against the domain name <mili.ae> with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On October 13, 2022, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the domain name <mili.ae>. On October 17, 2022, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details. On November 17, 2022, Complainant filed an amended Complaint against the domain names <mili.ae> and <mylevaporsuae.ae>. On November 19, 2022, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the domain name <mylevaporsuae.ae>. On November 24, 2022, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified Respondent of the Complaint, and the proceedings commenced on November 29, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was December 19, 2022. Respondent did not submit any

Response. Accordingly, the Center notified Respondent's default on December 20, 2022.

The Center appointed Marina Perraki as the sole panelist in this matter on January 3, 2023. 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**

Complainant manufactures and distributes electronic cigarettes and vaping products on a global scale. It has been operating in the electronic cigarette industry since 2016 using the mark MYLÉ and maintains its primary website at "mylevape.com" operating an online marketplace for "MYLÉ" e-cigarette products and accessories.

Complainant is the owner of the United States trademark registration No. 5,652,774 MYLÉ, filed on November 22, 2017 and registered on January 15, 2019 for goods in international class 34 and the International trademark registration No. 1462089 MYLÉ registered on March 4, 2019 for goods in international class 34. Complainant also owns domain names for MYLÉ such as <mylevapeuae.com>.

Both Domain Names lead to similar websites mimicking the website of Complainant purportedly selling products of Complainant and displaying Complainant's MYLÉ mark, while also using copyrighted work of Complainant's products (the Websites). The Website under the second Domain Name includes a statement at the bottom of the home page, stating that Respondent has no connection to Complainant and is not operating an official website of Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant asserts that it has established all three elements required under paragraph 6(a) of the Policy for the transfer of the Domain Names.

##### **B. Respondent**

Respondent did not reply to Complainant's contentions.

#### **6. Discussion and Findings**

Paragraph 6(a) of the Policy lists the three elements which Complainant must satisfy with respect to the Domain Name:

- (i) the Domain Name is identical or confusingly similar to a trademark in which Complainant has rights; and
- (ii) Respondent has no rights or legitimate interests in respect of the Domain Name; and
- (iii) the Domain Name has been registered or is being used in bad faith.

##### **A. Identical or Confusingly Similar**

Complainant has demonstrated rights through registration and use of the MYLÉ mark.

The Panel finds that the Domain Names are confusingly similar to the MYLÉ trademark of Complainant.

The first Domain Name is phonetically identical to Complainant's mark and leads to a website mimicking that of Complainant and prominently displaying Complainant's mark affirming the confusing similarity. The second Domain Name incorporates the said trademark of Complainant in its entirety. This is sufficient to establish confusing similarity (*Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr.*, WIPO Case No. [D2000-1525](#)). The term "vapors" and the geographical term "uae" which are added in the Domain Name do not alter the above finding (*BHP Billiton Innovation Pty Ltd v. Oloyi*, WIPO Case No. [D2017-0284](#); *Accenture Global Services Limited v. Jean Jacques / Luck Loic*, WIPO Case No. [D2016-1315](#); *Wragge Lawrence Graham & Co LLP v. Registration Private, Domains by Proxy LLC / Ian Piggin*, WIPO Case No. [D2015-0135](#); WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8)<sup>1</sup>.

The country code Top-Level Domain ("ccTLD") ".ae" is also disregarded, as ccTLDs typically do not form part of the comparison on the grounds that they are generally required for technical reasons.

Complainant has established Policy, paragraph 6(a).

## **B. Rights or Legitimate Interests**

Pursuant to paragraph 6(c) of the Policy, Respondent may establish its rights or legitimate interests in the Domain Names, among other circumstances, by showing any of the following elements:

- (i) before any notice to Respondent of the dispute, Respondent's use of, or demonstrable preparations to use, the Domain Names or a name corresponding to the Domain Names in connection with a *bona fide* offering of goods or services; or
- (ii) Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if it has acquired no trademark or service mark rights; or
- (iii) Respondent is making a legitimate noncommercial or fair use of the Domain Names, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Panel concludes that Respondent lacks rights or legitimate interests in respect of the Domain Names.

Respondent has not submitted any response and has not claimed any such rights or legitimate interests with respect to the Domain Names. As per Complaint, Respondent was not authorized to register the Domain Names.

Prior to the notice of the dispute, Respondent did not demonstrate any use of the Domain Names or a trademark corresponding to the Domain Names in connection with a *bona fide* offering of goods or services.

On the contrary, as Complainant demonstrated, the Domain Names resolve to the Websites, which suggest falsely that they are of an affiliated entity or of an authorized partner of Complainant. The Panel finds that this is also the case for the second Domain Name, the Website under which included a statement that it is not an official website of Complainant because a) this statement is not clearly visible to the user navigating the Website, b) the trademark of Complainant is prominently displayed on the Website along with copyrighted material of Complainant, strongly suggesting an affiliation with Complainant and c) the Domain Name incorporates in full Complainant's trademark along with a descriptive and a geographic term, thereby increasing the risk of implied affiliation ([WIPO Overview 3.0](#), section 2.5.1).

Per Complaint, Respondent is not an affiliated entity or an authorized distributor or reseller of Complainant and no agreement, express or otherwise, exists allowing the use of Complainant's trademarks on the

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<sup>1</sup> Although [WIPO Overview 3.0](#) is directed to the Uniform Domain Name Dispute Resolution Policy ("UDRP"), given the similarity between the UDRP and the Policy, it is appropriate to have regard to these principles except to the extent that the Policy diverges from the UDRP.

Website and the use of the Domain Names by Respondent.

A distributor or reseller can be making a *bona fide* offering of goods and thus have a legitimate interest in a domain name only if the following cumulative requirements are met (*Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#); [WIPO Overview 3.0](#), section 2.8.1: (i) respondent must actually be offering the goods at issue; (ii) respondent must use the site to sell only the trademarked goods; (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder; and (iv) respondent must not try to "corner the market" in domain names that reflect the trademark.

These requirements are not cumulatively fulfilled in the present case. The Domain Names falsely suggest that the Websites are official sites of Complainant or of an entity affiliated to or endorsed by Complainant. The Websites extensively reproduce Complainant's trademark, creating the impression of being Websites of Complainant for the United Arab Emirates (or of an entity affiliated with Complainant) without any clearly visible and prominent disclaimer of association (or lack thereof) with Complainant. In addition, the Panel notes that it is unclear whether Respondent is actually and effectively selling the Complainant's products or not.

The Panel finds that these circumstances do not confer upon Respondent any rights or legitimate interests in respect of the Domain Names.

Complainant has established Policy, paragraph 6(a)(ii).

### **C. Registered or is Being Used in Bad Faith**

Paragraph 6(b) of the Policy provides that the following circumstances, "in particular but without limitation", are evidence of the registration and use of the Domain Name in "bad faith":

(i) circumstances indicating that Respondent has registered or has acquired the Domain Names primarily for the purpose of selling, renting, or otherwise transferring the Domain Name registrations to Complainant who is the owner of the trademark or service mark or to a competitor of that Complainant, for valuable consideration in excess of its documented out of pocket costs directly related to the Domain Names; or

(ii) Respondent has registered the Domain Names in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding Domain Names, provided that Respondent has engaged in a pattern of such conduct; or

(iii) Respondent has registered the Domain Names primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the Domain Names, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's Websites or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's Websites or location or of a product or service on Respondent's Website or location.

The Panel concludes that Respondent has registered and used the Domain Names in bad faith. Because the MYLÉ mark had been widely used and registered at the time of the Domain Names registrations by Respondent, the Panel finds it more likely than not that Respondent had Complainant's mark in mind when registering the Domain Names (*Tudor Games, Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc.*, WIPO Case No. [D2014-1754](#); *Parfums Christian Dior v. Javier Garcia Quintas and Christiandior.net*, WIPO Case No. [D2000-0226](#)).

As regards to bad faith use of the Domain Names, Complainant has demonstrated that the Domain Names were used to resolve to the Websites, which gave the false impression that they were operated by Complainant or a company affiliated to Complainant or an authorized dealer of Complainant. The Domain

Names operated therefore by intentionally creating a likelihood of confusion with Complainant's trademark and business as to the source, sponsorship, affiliation or endorsement of the website it resolves to. This can be used in support of bad faith registration and use ([WIPO Overview 3.0](#), section 3.1.4).

Under these circumstances and on this record, the Panel finds that Respondent has registered and is using the Domain Names in bad faith.

Complainant has established Policy, paragraph 6(a)(iii).

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the domain names <mili.ae> and <mylevaporsuae.ae> be transferred to Complainant.

*/Marina Perraki/*

**Marina Perraki**

Panelist

Date: January 17, 2023