

## **ADMINISTRATIVE PANEL DECISION**

### **XIAOMI, INC v. Seyed Amir Hosseini Pour**

### **Case No. DIR2024-0008**

#### **1. The Parties**

The Complainant is XIAOMI, INC, China, represented King & Wood Mallesons, China.

The Respondent is Seyed Amir Hosseini Pour, Iran (Islamic Republic of) ("Iran").

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

The disputed domain name <xiaomishop.ir> is registered with IRNIC.

#### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 21, 2024. On May 21, 2024, the Center transmitted by email to IRNIC a request for registrar verification in connection with the disputed domain name(s). Hard copies of the Complaint were received by the Center on May 24, 2024. On May 25, 2024, IRNIC transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the .ir Domain Name Dispute Resolution Policy (the "Policy" or "irDRP"), the Rules for .ir Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for .ir Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 30, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was June 19, 2024. On June 17, 2024, the Respondent sent an informal email to the Complainant, proposing settlement terms, to which the Complainant replied on June 26, 2024, that it did not wish to settle with the Respondent and would like to continue the proceeding. The Center proceeded to the Panel Appointment accordingly.

The Center appointed Anna Carabelli as the sole panelist in this matter on July 3, 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 China based consumer electronics manufacturer.

Established in 2010, the Complainant develops, manufactures, and sells various electronic products under the brand names XIAOMI, MI and REDMI, including phones and lifestyle goods such as smart watches, headphones, wristbands, as well as smart home devices including vacuum cleaners, TVs, humidifiers, air purifiers.

The Complainant distributes its products through physical stores as well as via online stores in many countries around the world, and has a strong Internet presence through its official website at “www.mi.com” and social media accounts.

The Complainant owns several trademark registrations for the trademark XIAOMI, and among others the following International trademark registrations designating Iran where the Respondent is purportedly based:

- International Reg. No. 1177611 in Classes 9, 35, 38 and 42, with Madrid registration since November 28, 2012, designating, among others, Iran;
- International Reg. No. 1313041 in Classes 7, 11 and 18, with Madrid registration since April 14, 2016, designating, among others, Iran.

As per the information provided by the Registrar, the disputed domain name was registered by the Respondent on July 20, 2023 (creation date October 31, 2014), and resolves to an active website seemingly offering XIAOMI trademarked products as well as third party products, and prominently features the Complainant’s MI logo which is identical to the mark that is used at the Complainant’s official website (“www.mi-com”).

#### **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:

- it has established rights in the XIAOMI trademark by virtue of longstanding use worldwide and several registrations in various jurisdictions, including Iran;
- the disputed domain name is confusingly similar to a trademark in which the Complainant has right, since it consists of the Complainant’s XIAOMI mark. The addition of the ordinary English term “shop” does nothing to distinguish the disputed domain name from the Complainant’s XIAOMI mark;
- the Respondent has no rights or legitimate interests in the disputed domain name since: (i) the Complainant has not authorized or somehow given consent to the Respondent to register and use the disputed domain name, (ii) the Respondent is not commonly known by the disputed domain name, and (iii) the Respondent’s use of the disputed domain name is neither a bona fide offering of goods or services nor a legitimate noncommercial or fair use. In this regard the Complainant points out that the disputed domain name directs to a website that prominently displays the Complainant’s MI logo/mark in connection with the sale of allegedly XIAOMI branded products as well as third party products;
- the disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name having in mind the Complainant’s XIAOMI trademark, with the clear intention to trade-

off of the reputation and goodwill of the Complainant's mark, by diverting Internet users seeking the Complainant's website to its own website for commercial gain. In this connection, the Complainant points out that the Respondent is deliberately misleading the consumers into assuming that the Respondent is XIAOMI's official representative or authorized distributor in Iran by making the following self-introduction in the "About Us" section (translated from Persian): "The Xiaomi store in Iran (Xiaomi Shop) has been launched with the aim of directly supplying Xiaomi products to consumers. By purchasing directly and without intermediaries and focusing on being able to deliver products to consumers without intermediaries, we have been able to offer the best prices for products ...".

Based on the above the Complainant requests the disputed domain name be transferred to the Complainant.

## **B. Respondent**

The Respondent did not file a formal response to the Complainant's contentions. On June 17, 2024 the Respondent sent an email communication to the Complainant, proposing settlement terms, to which the Complainant replied that it did not wish to settle with the Respondent.

## **6. Discussion and Findings**

Paragraph 15(a) of the Rules instructs the panel to decide the complaint based on the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Under paragraph 4(a) of the Policy, the complainant must prove each of the following:

- (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 or is being used in bad faith.

Paragraph 4(b) of the Policy sets out four illustrative circumstances, which for the purposes of paragraph 4(a)(iii) of the Policy, shall be evidence of registration and use of a domain name in bad faith.

Paragraph 4(c) of the Policy sets out three illustrative circumstances any one of which, if proved by the respondent, shall be evidence of the respondent's rights to or legitimate interests in a disputed domain name for the purpose of paragraph 4(a)(ii) of the Policy above.

### **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. <sup>1</sup>

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 entirety of the Complainant's registered trademark XIAOMI is reproduced and 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.

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<sup>1</sup> In light of the substantive and procedural similarities between the irDRP and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel has cited authorities decided under the UDRP and the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where appropriate.

Although the addition of other terms, here “shop”, 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 other additional element is “.ir”, the country code top level domain (ccTLD) suffix for Iran.

A gTLD suffix or a ccTLD suffix generally has no capacity to distinguish a domain name from a trademark and as such is disregarded as insignificant for purposes of determining the similarity between the domain name and the trademark, because the TLDs are functionally necessary to operate the domain name. See *Missoni S.p.A. v. Colin Zhao*, WIPO Case No. [DCC2010-0004](#); *Vodafone Group PLC v. Wikipiedra S.L. / Jonathan Palma Ruz*, WIPO Case No. [DCC2010-0006](#); [WIPO Overview 3.0](#), section 1.11.1.

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.

As per the uncontested evidence submitted with the Complaint, the Respondent has used the disputed domain name to deliberately cause consumer confusion through operating a website which prominently displays the Complainant’s MI logo and offers products identical or related to those protected by the Complainant’s mark. There is not any disclaimer on the Respondent’s website disclosing the (lack of) relationship between the Parties and the self-introduction in the “About us” section indeed suggests an implied affiliation with the Complainant. The above cannot constitute fair use. [WIPO Overview 3.0](#), section 2.5.1.

The Panel finds the second element of the Policy has been established.

## **C. Registered or 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, in the Panel’s view it is difficult to believe that the Respondent did not have in mind the Complainant’s XIAOMI trademark when registering the disputed domain name. The fact that the Respondent has used the disputed domain name following registration, to resolve to a website which

prominently features the Complainant's MI logo, and allegedly offers XIAOMI branded products, establishes both the Respondent's actual knowledge of the Complainant's rights and the Respondent's intention to take unfair advantage of those rights. Indeed, the Respondent has used the disputed domain name to capitalize on the goodwill of the Complainant's XIAOMI trademark, and has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website.

The above conduct constitutes bad faith registration and use of the disputed domain name 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 <xiaomishop.ir> be transferred to the Complainant.

*/Anna Carabelli /*

**Anna Carabelli**

Sole Panelist

Date: July 17, 2024