

## ADMINISTRATIVE PANEL DECISION

Wayne Kramer v. WangRongHua (王荣华)

Case No. D2022-0118

### 1. The Parties

The Complainant is Wayne Kramer, United States of America (“United States”), represented by Blaise & Nitschke, P.C., United States.

The Respondent is WangRongHua (王荣华), China, self-represented.

### 2. The Domain Name and Registrar

The disputed domain name <mc5.com> is registered with eName Technology Co., Ltd. (the “Registrar”).

### 3. Procedural History

The Complaint in English was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 13, 2022. On January 13, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 14, 2022, the Registrar transmitted by email to the Center its verification responses disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 14, 2022 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 amendment to the Complaint in English on January 24, 2022.

On January 14, 2022, the Center sent an email in English and Chinese to the Parties regarding the language of the proceeding. The Complainant requested that English be the language of the proceeding on January 17, 2022. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the 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 in English and Chinese of the Complaint, and the proceedings commenced on January 25, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 14, 2022. The Respondent sent an email

communication in English and Chinese to the Center on January 25, 2022. On February 15, 2022, the Center informed the Parties that it would proceed with panel appointment.

The Center appointed Sok Ling MOI as the sole panelist in this matter on February 18, 2022. 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 individual by the name of Wayne Kramer. He owns the trade mark MC5 in respect of “entertainment services in the nature of live musical performances” under United States Trade Mark Registration No. 6,422,749 registered on July 20, 2021, claiming a first use in commerce on April 1, 1967.

According to the Whols information submitted by the Complainant, the disputed domain name was registered on June 7, 2003. According to the evidence submitted by the Respondent, the disputed domain name appears to have been purchased by the Respondent on February 4, 2019. As at the date of the Complaint and decision, the disputed domain name directs to a landing page in Chinese with some information in English offering the disputed domain name for sale. The Respondent’s email address associates with a name “[...]: 08123.com”. The website at the disputed domain name also promotes the “www.08123.com” website, where Internet users may purchase short domain names composed of letters and/or numbers.

#### **5. Parties’ Contentions**

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

The Complainant contends that the disputed domain name is identical to its MC5 trade mark, the Respondent has no rights or legitimate interests in respect of the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

The Complainant requests for the transfer of the disputed domain name.

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

The Respondent sent an email in English and Chinese to the Center on January 25, 2022, claiming that he purchased the disputed domain name from the “www.ename.com” official website in 2019. According to the evidence submitted by the Respondent, the purchase was completed on February 4, 2019 for the price of CNY 19,341.

Apart from this email, the Respondent did not file a formal Response to the Complaint.

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

##### **6.1 Language of the Proceeding**

Pursuant to paragraph 11(a) of the Rules, unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding.

Paragraphs 10(b) and (c) of the Rules require the Panel to ensure that the proceeding takes place with due

expedition and that the Parties are treated equitably and given a fair opportunity to present their respective cases.

The language of the Registration Agreement for the disputed domain name is Chinese. From the evidence on record, no agreement appears to have been entered into between the Complainant and the Respondent regarding the language issue. The Complainant filed its Complaint in English and has requested that English be the language of the proceeding.

The Panel finds persuasive evidence in the present proceeding to suggest that the Respondent has knowledge of English. In particular, the Panel notes that:

- (a) the disputed domain name is registered in Latin characters, rather than Chinese script;
- (b) the Respondent sent an email in both the English and Chinese languages to the Center on January 25, 2022; and
- (c) according to the evidence submitted by the Complainant, the contents of the website to which the disputed domain name resolves have some texts in English.

Additionally, the Panel notes that:

- (a) the Center has notified the Respondent of the proceeding in both Chinese and English;
- (b) the Respondent has been given the opportunity to present his case in this proceeding and to respond to the issue of the language of the proceeding but has failed to do so; and
- (c) the Center has informed the Respondent that it would accept a Response in either English or Chinese, and the Respondent sent an email communication in both English and Chinese.

Considering the above circumstances, the Panel finds that the choice of English as the language of the present proceeding is fair to all Parties and is not prejudicial to any of the Parties in their ability to articulate the arguments for this case. The Panel has taken into consideration the fact that to require the Complaint and all supporting documents to be translated into Chinese would, in the circumstances of this case, cause an unnecessary cost burden to the Complainant and would unnecessarily delay the proceeding.

In view of all the above, the Panel determines under paragraph 11(a) of the Rules that it shall accept the Complaint and all supporting materials as filed in English, that English shall be the language of the proceeding, and that the decision will be rendered in English. The Panel also accepts the Respondent's email communication sent in both English and Chinese.

## **6.2 Substantive Findings**

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following three elements to obtain an order for the disputed domain name to be cancelled or transferred:

- (i) the disputed domain name is identical or confusingly similar to a trade mark 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.

On the basis of the arguments and evidence introduced by the Complainant, the Panel concludes as follows:

## A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the MC5 mark by virtue of its use and registration of the same as a trade mark.

The disputed domain name effectively incorporates the Complainant's MC5 trade mark. The addition of the generic Top-Level Domain ("gTLD") ".com" is generally disregarded for the purpose of the confusing similarity assessment.

Consequently, the Panel finds that the disputed domain name is identical to the Complainant's MC5 trade mark.

Accordingly, the Complainant has satisfied the requirements of the first element under paragraph 4(a) of the Policy.

## B. Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, a complainant bears the burden of establishing that the respondent lacks rights or legitimate interests in the domain name. However, once the complainant makes out a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to establish its rights or legitimate interests in the domain name by demonstrating any of the following, without limitation, under paragraph 4(c) of the Policy:

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

(See *Taylor Wimpey PLC, Taylor Wimpey Holdings Limited v. honghao Internet foshan co, ltd*, WIPO Case No. [D2013-0974](#).)

The Complainant asserts that the Respondent has never used the disputed domain name in connection with any *bona fide* offering of goods and/or services. Instead, the Respondent offers for sale the disputed domain name. The Respondent appears to be an individual by the name of "WangRongHua (王荣华)". There is also no evidence suggesting that the Respondent is commonly known by the disputed domain name or that the Respondent has any rights in the term "mc5".

According to the evidence submitted by the Complainant, the disputed domain name is being offered for sale for \$23,333 (presumably in USD). Presumably, this far exceeds the Respondent's out-of-pocket costs for acquiring the disputed domain name, which according to the evidence submitted by the Respondent, was CNY 19,341 (approximately USD 3,000).

As such, the Panel is satisfied that the Complainant has made out a *prima facie* case showing that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of production thus shifts to the Respondent to come forward with evidence of his rights or legitimate interests in the disputed domain name. The Respondent simply replied that he purchased the disputed domain name through the legal channel, *i.e.*, the Registrar's website.

Considering the Panel's findings under the third element, it is not necessary for the Panel to decide whether the Respondent has any rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Given the nature of the trade mark in which the Complainant claims rights, which consists of two letters and one number, it could be difficult for a complainant to show bad faith registration of a domain name composed of such a mark.

The Respondent provides evidence that he purchased the disputed domain name on February 4, 2019, for the price of CNY 19,341 (approximately USD 3,000). The Complainant owns the trade mark MC5 in respect of “entertainment services in the nature of live musical performances” registered on July 20, 2021 in the United States, claiming a first use in commence on April 1, 1967. Apart from the above trade mark information, there is little information in the Complaint about the Complainant or his use of the MC5 trade mark prior to the Respondent’s acquisition of the disputed domain name.

The disputed domain name directs to a landing page offering it for sale. The website at the disputed domain name also promotes the Respondent’s website at “www.08123.com”, where Internet users may purchase short domain names composed of letters and/or numbers. Therefore, the Respondent seems to be in the business of domain name investment and sale of short domain names, which could be a legitimate business. Accordingly, it would appear that the Respondent acquired the disputed domain name due to its value as a short domain name rather than due to its significance as a trade mark owned/used by the Complainant.

Considering the above, the Panel finds that the Complainant has not satisfied the burden of proving the third element of the Policy.

### **7. Decision**

For the foregoing reasons, the Complaint is denied.

*/Sok Ling MOI/*

**Sok Ling MOI**

Sole Panelist

Date: April 26, 2022