

ADMINISTRATIVE PANEL DECISION

The Bank of New York Mellon v. wang bing bing and Mello Trust, Mello
Case No. D2022-3836

1. The Parties

The Complainant is The Bank of New York Mellon, United States of America (“United States”), represented by Reed Smith LLP, United States.

The Respondents are wang bing bing, China, and Mello Trust, Mello, Philippines.

2. The Domain Names and Registrars

The disputed domain names <indiamellonfund.com>, <indiamellontrust.com>, <mellonfundindia.com>, and <mellontrustindia.com> are registered with Alibaba.com Singapore E-Commerce Private Limited. The disputed domain name <mellonfund.com> is registered with Xiamen 35.Com Technology Co., Ltd.

Alibaba.com Singapore E-Commerce Private Limited and Xiamen 35.Com Technology Co., Ltd. are collectively and individually referred to below as the “Registrar”.

3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on October 13, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On October 14, 2022, the Registrar transmitted by email to the Center their verification response disclosing registrants and contact information for the disputed domain names which differed from the named Respondents and contact information in the Complaint. The Center sent an email communication to the Complainant on October 17, 2022, providing the registrants and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on October 19, 2022.

On October 17, 2022, the Center transmitted an email communication to the Parties in English and Chinese regarding the language of the proceeding. On October 19, 2022, the Complainant submitted its request that English be the language of the proceeding. The Respondents did not comment on the language of the proceeding.

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 Respondents in English and Chinese of the Complaint, and the proceedings commenced on October 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 17, 2022. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on November 18, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on November 28, 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 a wholly-owned subsidiary of The Bank of New York Mellon Corporation, a custodian bank and asset servicing company formed in 2007 by the merger of The Bank of New York and Mellon Financial Corporation. It operates a variety of investment funds (including funds with Mellon in their name), it offers trust and depositary services, and it operates in various jurisdictions, including India. The Complainant holds multiple trademark registrations in multiple jurisdictions, including United States trademark registration number 1,111,471 for MELLON, registered on January 16, 1979, with a claim of first use in commerce of 1869, specifying banking services in class 36. That trademark registration remains current. The Complainant also holds trademark registrations in multiple jurisdictions for a figurative mark (the “arrowhead logo”), including United States trademark registration number 3,574,867, registered on February 17, 2009, specifying services in classes 35 and 36, that it uses in connection with banking, financial, and other services. The Complainant has also registered multiple domain names incorporating “Mellon” including <mellon.com> and <mellon.fund>.

The Respondents are identified in the Registrar’s Whois database as an individual resident in China and an entity in the Philippines.

The disputed domain names were registered on the following dates with in the following registrant names:

Disputed domain name	Date of registration	Registrant name
<mellonfund.com>	June 29, 2022	wang bing bing
<mellontrustindia.com>	August 5, 2022	Mello Trust, Mello
<mellonfundindia.com>	August 9, 2022	Mello Trust, Mello
<indiamellontrust.com>	August 10, 2022	Mello Trust, Mello
<indiamellonfund.com>	August 10, 2022	Mello Trust, Mello

The disputed domain names <indiamellontrust.com> and <mellonfundindia.com> formerly resolved to a login webpage for a Mellon Trust mobile payment application. The webpage prominently displayed the Complainant’s arrowhead logo above the title “Mellon Trust” with fields for customers to input their mobile telephone number, identifying number, password, and payment password. The disputed domain name <mellonfund.com> resolved to a near-identical webpage for a Mellon Fund mobile application, which showed that the customer’s mobile telephone number operated as an account number. A video uploaded to YouTube on July 22, 2022 to promote the Mellon Trust App and the Mellon Fund App provided a link to register for the apps at an online location associated with the disputed domain name <mellontrustindia.com>. Archived screenshots provided by the Complainant show that the disputed domain name <indiamellonfund.com> formerly resolved to a different webpage also for the Mellon Trust App that was titled “Mellon Trust” without the arrowhead logo.

In July and August 2022, the Complainant sent take-down notices regarding all five disputed domain names to the Registrar and it received confirmation in August 2022 that four of them had been disabled (the

exception being <indiamellonfund.com>). At the time of this decision, none of the disputed domain names resolves to any active webpage; rather, they are all passively held.

5. Parties' Contentions

A. Complainant

The disputed domain names are confusingly similar to the Complainant's MELLON marks.

The Respondents have no rights or legitimate interests in respect of the disputed domain names. The Respondents have no legal relationship with the Complainant. The Respondents appear to have registered the disputed domain names as part of an elaborate phishing scheme designed to victimize the Complainant and its customers by impersonating the Complainant and deceiving consumers into disclosing sensitive personal information under false pretenses. The Complainant has never licensed nor otherwise permitted the Respondents to use its marks.

The disputed domain names were registered and are being used in bad faith. Mere registration of a domain name that is confusingly similar to a famous trademark by an unaffiliated entity can, by itself, create a presumption of bad faith. The Respondents knew of the Complainant's rights in its trademarks prior to the registration of the disputed domain names. The Respondents are using the disputed domain names to impersonate and create a false association with the Complainant and carry out a phishing scheme. Third party videos uploaded to YouTube claim that the Mellon Trust app and associated websites are a scam.

B. Respondents

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

6. Discussion and Findings

6.1 Preliminary Issues

A. Consolidation: Multiple Domain Name Registrants

The amended Complaint initiates disputes in relation to two nominally different domain name registrants regarding five disputed domain names. The Complainant alleges that the disputed domain names are all controlled by a single person or entity. Its main arguments are that four of the five disputed domain names were registered within five days of each other with the same Registrar, all of the disputed domain names have the same IP address, all are comprised of various combinations of the terms "mellon", "fund", "trust", and "india" and all previously resolved to a website with identical content.

The Complainant requests consolidation of the disputes against the two nominally different domain name registrants pursuant to paragraph 10(e) of the Rules. The disputed domain name registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder. However, the Panel does not consider that paragraph 3(c) of the Rules was intended to enable a single person or entity to put a complainant to the unnecessary time, expense, and effort of initiating multiple proceedings against technically different domain name registrants, particularly when each registration raises the same issues. In addressing the Complainant's request, the Panel will consider: (i) whether the disputed domain names or associated websites are subject to common control; and, if so, (ii) whether the consolidation would be fair and equitable to all Parties. See *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#) and WIPO Overview of WIPO Panel Views on Selected UDRP

Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

As regards common control, the Panel notes that four of the disputed domain names share the same registrant name. Although the disputed domain name <mellonfund.com> has a nominally different registrant, was registered a little earlier than the others, and is the only one for which the Registration Agreement is in Chinese, this disputed domain name shares an IP address with at least three of the others and it formerly resolved to a webpage with content nearly identical to the webpage associated with two of the others. In these circumstances, the Panel is persuaded that all five disputed domain names are under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes regarding all five disputed domain names would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes against wang bing bing and Mello Trust, Mello (collectively and individually referred to below as “the Respondent”) and all five disputed domain names.

B. Language of the Proceeding

Paragraph 11(a) of the Rules provides that “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”. The Registrar confirmed that the Registration Agreement for the disputed domain name <mellonfund.com> is in Chinese and the Registration Agreements for the other disputed domain names are in English.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the disputed domain names are composed of English words and they previously resolved to a website entirely in English; the Registration Agreements for four of the disputed domain names are in English; the Complainant does not speak Chinese and translation of the Complaint will cause an unnecessary burden and delay.

Paragraph 10(b) and (c) of the Rules require the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. [D2006-0593](#); *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. Ltd.*, WIPO Case No. [D2008-0293](#).

The Panel observes that in this proceeding, the Complaint and amended Complaint were filed in English and the Registration Agreements for all but one disputed domain name are also in English. Although the Registration Agreement for one disputed domain name is in Chinese, this disputed domain name resolved to a webpage in English, from which it is reasonable to infer that this registrant is familiar with English. The Panel has also found that the registrants are under common control. Further, despite the Center having sent an email regarding the language of the proceeding and the document of Notification of Complaint and Commencement of Administrative Proceeding in both English and Chinese, the Respondent has not commented on the language of the proceeding or expressed any interest in responding to the Complainant's contentions. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint into Chinese would create an undue burden and delay, whereas accepting all documents as filed will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English.

6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that the Complainant must prove each of the following elements with respect to each disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (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.

A. Identical or Confusingly Similar

Based on the evidence presented, the Panel finds that the Complainant has rights in the MELLON mark.

The disputed domain names all incorporate the MELLON mark. They also incorporate another word or words, variously “india”, “fund”, or “trust”, or some combination of these. The addition of these geographical and dictionary terms does not avoid a finding of confusing similarity because the MELLON mark remains clearly recognizable within each disputed domain name. See [WIPO Overview 3.0](#), section 1.8.

The only other element in the disputed domain names is a generic Top-Level Domain (“gTLD”) extension (“.com”). As a standard requirement of domain name registration, this element is generally disregarded in the comparison between a trademark and a domain name for the purposes of the Policy. See [WIPO Overview 3.0](#), section 1.11.

Therefore, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights. The Complainant has satisfied the first element of paragraph 4(a) of the Policy.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the Panel, shall demonstrate that the Respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

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

As regards the first and third circumstances set out above, the disputed domain names <indiamellontrust.com>, <mellonfundindia.com>, and <mellonfund.com> formerly resolved to a login webpage for a Mellon Trust App or a Mellon Fund App. The webpages prominently displayed the Complainant’s arrowhead logo and MELLON mark, combined with the word “Trust” or “Fund”, each of which describes a type of service or product offered by the Complainant. According to the evidence, the disputed domain name <indiamellonfund.com> resolved to another webpage for the Mellon Trust App that also prominently displayed the Complainant’s MELLON mark and the disputed domain name <mellontrustindia.com> was associated with an online location where Internet users could register for the Mellon Trust App. The mobile applications purportedly provided financial services and gave the impression

that they were operated or endorsed by, or affiliated with, the Complainant. However, the Complainant submits that the Respondent has no legal relationship with it and that it has never licensed or otherwise permitted the Respondent to use its marks. The disputed domain names no longer resolve to any active webpages. In view of these circumstances, the Panel considers that the Complainant has presented a *prima facie* case that the Respondent is not using the disputed domain names in connection with a *bona fide* offering of goods or services nor a legitimate noncommercial or fair use.

As regards the second circumstance set out above, the Respondent's names are listed in the Registrar's Whois database as "wang bing bing" and "Mello Trust, Mello", neither of which is "Mellon", let alone any of the disputed domain names. There is no evidence indicating that the Respondent has been commonly known by the disputed domain names.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain names. The Respondent did not rebut that case because it did not respond to the Complainant's contentions.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides that certain circumstances, if found by the panel to be present, shall be evidence of the registration and use of a domain name in bad faith. These circumstances are not exhaustive. The fourth circumstance is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] website or location or of a product or service on [the respondent's] website or location.

As regards registration, the disputed domain names were registered in 2022, years after the registration of the Complainant's MELLON trademark. The disputed domain names incorporate that mark exactly, even though it is not a dictionary word, and they evidence a pattern of targeting that mark. All the disputed domain names combine that mark with the word "trust" or "fund" which describes a service or a product offered by the Complainant; this combination demonstrates an awareness of the nature of the Complainant's business. The Respondent displayed the Complainant's arrowhead logo above the MELLON mark on the webpages associated with three of the disputed domain names. There can be little doubt that that the Respondent had the Complainant's MELLON mark in mind when it registered the disputed domain names.

As regards use, four disputed domain names resolved to webpages giving the false impression that they were operated or endorsed by, or affiliated with, the Complainant, and purported to offer financial products. One other disputed domain name was associated with an online location providing a link to register for a mobile application offered on websites associated with other disputed domain names. In view of the findings in Section 6.2B above, the Panel finds that by using the disputed domain names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's websites or other online locations, by creating a likelihood of confusion with the Complainant's MELLON mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's websites or locations or of a product or service on the Respondent's websites or locations, within the terms of paragraph 4(b)(iv) of the Policy. The current lack of active use of the disputed domain names does not change the Panel's findings of the Respondent's bad faith.

Therefore, the Panel finds that the disputed domain names have been registered and are being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) 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 names <indiamellonfund.com>, <indiamellontrust.com>, <mellonfund.com>, <mellonfundindia.com>, and <mellontrustindia.com> be transferred to the Complainant.

/Matthew Kennedy/

Matthew Kennedy

Sole Panelist

Date: December 12, 2022