

## **ADMINISTRATIVE PANEL DECISION**

MVH I, Inc. v. Whois Privacy Protection Foundation, Hosting Concepts BV  
d/b/a Registrar.eu  
Case No. D2023-1335

### **1. The Parties**

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

The Respondent is Whois Privacy Protection Foundation, Hosting Concepts BV d/b/a Registrar.eu, Netherlands.

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

The disputed domain name <mylestoredubai.com> is registered with OwnRegistrar, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 28, 2023. On March 29, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 30, 2023, 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 (Information not available on Whois) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 30, 2023, 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 April 5, 2023.

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 April 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was April 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on April 27, 2023.

The Center appointed Pablo A. Palazzi as the sole panelist in this matter on May 9, 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**

The Complainant has since 2016 manufactured and distributed electronic cigarettes and vaping products under the MYLÉ mark. It currently distributes them to customers in over 20 countries and five different regions, including the Middle East.

The Complainant is the owner of United States trademark number 5,652,774 MYLÉ registered on January 15, 2019, and of International trademark number 1462089 MYLÉ registered on March 4, 2019.

The Complainant's main domain name is <mylevape.com>. The Complainant also owns <myledubai.net> and was awarded <mylevapedubai.com> as a result of a previous UDRP proceeding in February 2021 (see *MVHI, Inc. v. Murad Lakhdhir*, WIPO Case No. [D2020-3554](#)). The Complainant also owns a substantial portfolio of several hundred domain names comprising variations of the term "myle", including "myle", "mylevapor" and "mylevape" in both generic Top-Level Domains ("gTLDs") and country code Top-Level Domains ("ccTLDs").

The disputed domain name was registered on June 3, 2022. The disputed domain name resolves to an online store that is using images of the Complainant's actual vaping products, displaying the Complainant's trademark without its authorization, and purportedly offering for sale the Complainant's products.

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

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

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its trademarks.

Furthermore, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Finally, it is argued that the Respondent has registered and is using the disputed domain name in bad faith.

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

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

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

Paragraph 4(a) of the Policy lists three elements, which a complainant must satisfy in order to succeed. The Complainant must satisfy that:

- (i) the 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 such domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

## 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.

Based on the available record, the Panel finds 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 disputed domain name contains the mark of the Complainant (without the accent on the letter "e") with the addition of the term "store" and the geographic term "dubai". The Panel finds the entirety of the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy.

Based on the available record, the Panel finds that 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 the disputed domain name.

While 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 often impossible 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. 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.

The Complainant has claimed that, at the time of filing the Complaint, the disputed domain name resolved to an online store that was using images of the Complainant's actual vaping products, displaying the Complainant's trademark without its authorization, and purportedly offering for sale the Complainant's products.

The Panel finds that the Complainant has therefore 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.

The Panel considers that the record of this case reflects that:

- before any notice to the Respondent of the dispute, the Respondent did not use, nor made 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. Paragraph 4(c)(i) of the Policy, and [WIPO Overview 3.0](#), section 2.2.
- the Respondent (as an individual, business, or other organization) has not been commonly known by the disputed domain name. Paragraph 4(c)(ii) of the Policy, and [WIPO Overview 3.0](#), section 2.3.
- the Respondent is not 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. Paragraph 4(c)(iii) of the Policy, and [WIPO Overview 3.0](#), section 2.4.

- the record contains no other factors demonstrating rights or legitimate interests of the Respondent in the disputed domain name.

Furthermore, the composition of the disputed domain name, comprising the Complainant's trademarks in their entirety and the addition of the term "store" and the geographical term "dubai", together with the content of the website at the disputed domain name carries a risk of Internet user confusion.

Based on the available record, 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.

The Panel considers that the record of this case reflects that the disputed domain name has resolved to an online store images of the Complainant's actual vaping products available on its website, displaying the Complainant's trademark without its authorization, and purportedly offering for sale the Complainant's products. In addition, the website at the disputed domain name has been suspended upon the Complainant's request.

As a result, there is no doubt that the Respondent knew about the existence of the Complainant and its trademarks. In the circumstances, the Panel finds that the Respondent registered the disputed domain name in bad faith.

The Panel concludes that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its 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. Paragraph 4(b)(iv) of the Policy, and [WIPO Overview 3.0](#), section 3.1.4.

Based on the available record, the Panel finds the third element of the Policy has been established.

## **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 <mylestoredubai.com> be transferred to the Complainant.

*/Pablo A. Palazzi/*

**Pablo A. Palazzi**

Sole Panelist

Date: June 5, 2023