

ADMINISTRATIVE PANEL DECISION

Mezco Toyz, LLC v. Tong Fang
Case No. D2023-5347

1. The Parties

The Complainant is Mezco Toyz, LLC, United States of America, represented by Brand Licensing Law PC, United States of America.

Respondent is Tong Fang, United States of America.

2. The Domain Name and Registrar

The disputed domain name <mezco.shop> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 23, 2023. On December 26, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 26, 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 (Registration Private, Domains by Proxy LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 27, 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 amendment to the Complaint on December 30, 2023.

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 Respondent of the Complaint, and the proceedings commenced on January 8, 2024. In accordance with the Rules, paragraph 5, the due date for a response was January 28, 2024. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on January 31, 2024.

The Center appointed Michael A. Albert as the sole panelist in this matter on February 8, 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

Complainant is the owner of the trademark MEZCO registered with United States Patent and Trademark Office under registration number 5593553, registered on October 30, 2018, in class 028 for action figures, fantasy character toys and plush toys. The trademark has been used in commerce since March 30, 2001. Complainant is and has continuously been in the business of producing licensed toys, collectibles, plush toys and action figures. Complainant is also the owner and operator of “www.mezcotoyz.com”, where Complainant sells, markets and solicits licensed toys and collectibles manufactured and sold by Complainant.

The disputed domain name was registered on January 30, 2023, and at the time of filing this Complaint and presently, it points to a third-party website offering for sale similar and competing products to Complainant.

5. Parties' Contentions

A. Complainant

Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In particular, Complainant contends that the use of “mezco” as part of the <mezco.shop> domain name is visually identically similar to Complainant's registered trademark. Respondent is using the registered trademark that Complainant has used for over 22 years. The disputed domain name is also confusingly similar to the <mezcotoyz.com> domain name owned and operated by Complainant. While Complainant's domain name is not identical to the disputed domain name, it is confusingly similar enough to deceive consumers into believing that the disputed domain name is owned and controlled by Complainant. In addition, Complainant cites three instances of actual customer confusion.

Respondent has no rights or legitimate interests in the <mezco.shop> domain name and has only been using it to confuse consumers into believing that the products sold by Respondent are genuine products made or endorsed by Complainant.

Respondent registered the disputed domain name in bad faith. By using Complainant's trademark in the URL, Respondent appears to be associating itself with the goodwill of Complainant's trademark, with the intent to deceive customers into believing goods sold by Respondent are genuine products made or sold by Complainant. Complainant claims that the disputed domain name redirects to the website “fasse.shop.” This shop has a reputation of being a scam website according to the website <malwaretips.com>, which is a reputable cybersecurity website seeking to highlight known scams on the internet. An article published on December 3, 2023 at <malwaretips.com> warns consumers that ordering from the website means they will often either not receive products, or may receive “knock-off or inferior substitutes,” “used, damaged, or tampered goods,” or “completely wrong items,” that customer complaints to that site are ignored.¹ This article indicates that Respondent is operating in bad faith and that its continued association with Complainant's trademark causes confusion and disrupts Complainant's existing business.

B. Respondent

Respondent did not reply to the Complainant's contentions.

¹ <https://malwaretips.com/blogs/fasse-shop/>

6. Discussion and Findings

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.

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 entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

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 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 may be deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds that Complainant has established a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Respondent has not rebutted 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.

The disputed domain name points to a third-party website offering goods competing with those offered under Complainant's trademark. By using the disputed domain name in this manner, Respondent misleads Internet users, in particular, potential Internet users to Complainant's website, into believing that Complainant operates the website found at the disputed domain name. This is clear evidence of an attempt to unfairly capitalize on Complainant's trademark and cannot support any claim to rights or legitimate interests. The Complainant provides un rebutted evidence of consumer reports lured by the disputed domain name into believing that they are dealing with the Complainant. Panels have categorically held that the use of a domain name for illegal activity (here, the sale of alleged counterfeit goods) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.

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.

Respondent has intentionally attempted to attract, for commercial gain, Internet users to the disputed domain name, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the website. In fact, Complainant demonstrated that it received three customer complaints regarding products ordered through the disputed domain name from Respondent as a result of such confusion.

Furthermore, the registration and use of a domain name for such purposes (here, the sale of alleged counterfeit products) constitute bad faith. [WIPO Overview 3.0](#), section 3.4.

Complainant further cites a third-party article characterizing the site to which the disputed domain name resolves as one that perpetrates scams. While that article would, in some jurisdictions, likely be deemed hearsay and thus potentially inadmissible, proceedings under the Policy are not governed by the same rules of evidence as are applicable in a court of law; and in any event, by failing to respond, Respondent has waived any objection to the admissibility of that article for purposes of this proceeding. In any event, Complainant's direct evidence would suffice even if this third-party evidence were inadmissible.

The Panel finds that 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 <mezco.shop> be transferred to Complainant.

/Michael A. Albert/

Michael A. Albert

Sole Panelist

Date: February 15, 2024