

ADMINISTRATIVE PANEL DECISION

MAC Industries Inc. d/b/a MAC Container Line v. Privacy service provided by Withheld for Privacy ehf / Macline Shipping
Case No. D2022-1339

1. The Parties

Complainant is MAC Industries Inc. d/b/a MAC Container Line, United States of America (“United States”), represented by Wolf, Greenfield & Sacks, P.C., United States.

Respondent is Privacy service provided by Withheld for Privacy ehf, Iceland / Macline Shipping, United States.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 13, 2022. On April 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. The Center sent an email communication to Complainant on April 18, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on April 21, 2022.

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 Respondent of the Complaint, and the proceedings commenced on April 28, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 18, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent’s default on May 20, 2022.

The Center appointed Phillip V. Marano as the sole panelist in this matter on June 2, 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

Complainant is MAC Industries, Inc., d/b/a MAC Container Line, a California-based shipping company founded in 2009. Complainant owns pending trademark applications for standard character and design versions of the MAC CONTAINER LINE trademark in the United States (Appl. Ser. Nos. 97/232373 and 97/232456), filed January 21, 2022.

Respondent registered the disputed domain name on December 16, 2021. At the time this Complaint was filed, the disputed domain name resolved to a website featuring Complainant's own design logo.

5. Parties' Contentions

A. Complainant

Complainant asserts ownership of the MAC CONTAINER LINE trademark and has adduced evidence of pending trademark applications in the United States. The disputed domain name is confusingly similar to Complainant's MAC CONTAINER LINE trademark, according to Complainant, because it contains the identical terms "mac" and "line" plus the term "shipping", which is cognitively similar to the term "container".

Complainant further asserts that Respondent lacks any rights or legitimate interests in the disputed domain name based on: the lack of any license or authorization from Complainant to Respondent; the lack of any trademark rights owned by Respondent; the lack of any evidence Respondent has been commonly known by the MAC trademark or the disputed domain name; and the lack of any evidence Respondent has made a *bona fide* offering of services or any legitimate noncommercial or fair use of the disputed domain name.

Complainant asserts that Respondent has registered and used the disputed domain name in bad faith based on: Respondent's use of a fraudulent physical address in registration data for the disputed domain name; Respondent's misappropriation of Complainant's MAC CONTAINER LINE standard character and design trademark on Respondent's website; Respondent's misappropriation of fraudulent customer reviews on Respondent's website, scraped from unrelated third party websites; Respondent's registration of the disputed domain name absent any legitimate connection to the MAC CONTAINER LINE trademark; and both the disputed domain name and the design of Respondent's website clearly suggest the intent to disrupt Complainant's business.

B. Respondent

Respondent did not reply to Complainant's contentions.

6. Discussion and Findings

To succeed in its Complaint, Complainant must establish in accordance with paragraph 4(a) of the Policy:

- i. the disputed domain name is identical or confusingly similar to a trademark in which Complainant has rights;
- ii. 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.

Although Respondent did not reply to Complainant's contentions, the burden remains with Complainant to establish by a balance of probabilities, or a preponderance of the evidence, all three elements of paragraph 4(a) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.3 ("A respondent's default would not by itself mean that the complainant is deemed to have prevailed; a respondent's default is not necessarily an admission that the complainant's claims are true [...] UDRP panels have been prepared to draw certain inferences in light of the particular facts and circumstances of the case, e.g. where a particular conclusion is *prima facie* obvious, where an explanation by the respondent is called for but is not forthcoming, or where no other plausible conclusion is apparent."); see also *The Vanguard Group, Inc. v. Lorna Kang*, WIPO Case No. [D2002-1064](#) ("The Respondent's default does not automatically result in a decision in favor of the complainant. The Complainant must still prove each of the three elements required by Policy paragraph 4(a)").

A. Identical or Confusingly Similar

Ownership of a nationally or regionally registered trademark serves as *prima facie* evidence that Complainant has trademark rights for the purposes of standing to file this Complaint. [WIPO Overview 3.0](#), section 1.2.1. Complainant submitted evidence that the MAC CONTAINER LINE trademark was applied for in the United States, with a filing date of January 21, 2022. Pending trademark applications alone do not establish trademark rights within the meaning of paragraph 4(a)(i) of the Policy, because they have not yet been approved or matured into registrations. [WIPO Overview 3.0](#), section 1.1.4

To establish unregistered or common law trademark rights for purposes of the Policy, Complainant must show that its mark has become a distinctive identifier which consumers associate with Complainant's goods and/or services. Specific evidence demonstrating such acquired distinctiveness is required, rather than mere conclusory assertions of common law trademark ownership. Such evidence includes: (i) the duration and nature of use of the mark; (ii) the amount of sales under the mark; (iii) the nature and extent of advertising using the mark; (iv) the degree of actual consumer, public and media recognition; and (v) consumer surveys. In addition, the fact that a respondent has clearly targeted a complainant and their trademark can also support a finding of acquired distinctiveness and common law trademark rights for purposes of the Policy. [WIPO Overview 3.0](#), Section 1.3. See e.g. *Roper Industries, Inc. v. VistaPrint Technologies Ltd.*, WIPO Case No. [D2014-1828](#) (Accepting unregistered trademarks for the purpose of the Policy where *inter alia* "[t]he disputed domain name is a close typo-variant of the Complainant's trademark", was "used as the return email address in fraudulent correspondence sent to Complainant, seeking to dupe the Complainant into sending money to a stated bank account", and "Respondent failed to respond to the Complainant" cease and desist correspondence or the complaint).

Here, Complainant has offered as evidence a sworn declaration signed by Complainant's President asserting that Complainant: (i) has used the MAC CONTAINER LINE trademark continuously since 2009; (ii) has millions of dollars in annual sales; and (iii) has invested significant time and resources in the advertising and promotion of its MAC CONTAINER LINE trademark. In addition, the Panel takes notice that the top two search engine results for "Mac Container Line" are for Complainant's website and Complainant's page on LinkedIn. The Panel places significant weight on the evidence submitted by Complainant that Respondent has targeted Complainant and Complainant's MAC CONTAINER LINE trademark. Specifically, the website used by Respondent misappropriates Complainant's identical MAC CONTAINER LINE design trademark. In addition, the Panel notes that the website at the disputed domain name purports to advertise certain services as if Complainant was the source of origin, for example, stating "Mac Line Shipping Solution Your one stop shop for all your shipping container needs", reproducing a logo identical to Complainant's MAC CONTAINER LINE design mark (used on Complainant's website). Thus, the Panel finds that Complainant's rights in the MAC CONTAINER LINE trademark have been sufficiently established for the first element of the Policy.

The only remaining question under the first element of the Policy is whether the disputed domain name is identical or confusingly similar to Complainant's MAC CONTAINER LINE trademark. In this Complaint, the disputed domain name is confusingly similar to Complainant's MAC CONTAINER LINE trademark because, disregarding the ".com" generic Top-Level Domain ("gTLD"), the identical dominant "MAC" element and

“LINE” element of the MAC CONTAINER LINE trademark are both recognizable in the disputed domain. [WIPO Overview 3.0](#), section 1.7. (“This test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the domain name ... [I]n cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar...”). In regards to gTLDs, such as “.com” in the disputed domain name, they are generally viewed as a standard registration requirement and are disregarded under the first element. [WIPO Overview 3.0](#), section 1.11.

The substitution of the term “container” for the cognitively related term “shipping” does not prevent a finding of confusing similarity between Complainant’s MAC CONTAINER LINE trademark and the disputed domain name. [WIPO Overview](#), section 1.8 (Additional terms “whether descriptive, geographic, pejorative, meaningless, or otherwise” do not prevent a finding of confusing similarity under the first element”); see also *AT&T Corp. v. WorldclassMedia.com*, WIPO Case No. [D2000-0553](#) (“Each of the domain names in dispute comprises a portion identical to [the ATT trademark] in which the Complainant has rights, together with a portion comprising a geographic qualifier, which is insufficient to prevent the composite domain name from being confusingly similar to Complainant’s [ATT trademark]”) *OSRAM GmbH v. Cong Ty Co Phan Dau Tu Xay Dung Va Cong Nghe Viet Nam*, WIPO Case No. [D2017-1583](#) (“[T]he addition of the letters ‘hbg’ to the trademark OSRAM does not prevent a finding of confusing similarity between the Disputed Domain Name and the said trademark.”).

In view of Complainant’s rights for the MAC CONTAINER LINE trademark and Respondent’s incorporation of dominant MAC element and LINE element of that trademark in the disputed domain name, the Panel concludes that Complainant has established the first element of the Policy.

B. Rights or Legitimate Interests

Complainant must make out a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, shifting the burden of production on this element to Respondent to come forward with evidence demonstrating such rights or legitimate interests. Where, as in this Complaint, Respondent fails to come forward with any relevant evidence, Complainant is deemed to have satisfied the second element of the Policy. [WIPO Overview](#), section 2.1.

Respondent is identified by Whois data as “Macline Shipping” and was identified on Respondent’s website as “Mac Line Shipping Solutions Experts.” Those facts alone are not sufficient to give rise to rights or legitimate interests. The record is devoid of any other information that could be used to corroborate that Respondent is commonly known by the disputed domain name or Complainant’s MAC CONTAINER LINE trademark. To the contrary, neither Complainant or the Panel could identify any trademark rights owned by Respondent, or so much as verify the contact information provided on Respondent’s website. Indeed, at the time of this decision, the disputed domain name no longer resolved to Respondent’s website and instead resolved to an error message that reads, “SORRY! If you are the owner of this website, please contact your hosting provider: [...]@maclineshipping.com.”

Furthermore, UDRP panels have categorically held that use of a domain name for illegal activity – including the impersonation of the complainant and other types of fraud – can never confer rights or legitimate interests on a respondent. Circumstantial evidence can support a credible claim made by Complainant asserting Respondent is engaged in such illegal activity, including that Respondent has masked its identity to avoid being contactable, or that Respondent’s website has been suspended by its hosting provider. [WIPO Overview 3.0](#), section 2.13. See *e.g. Graybar Services Inc. v. Graybar Elec, Grayberinc Lawrence*, WIPO Case No. [D2009-1017](#) (“Respondent has used the domain name to pretend that it is the Complainant and in particular to create false emails pretending that they are genuine emails coming from the Complainant and one of its senior executives”). See also *The Commissioners for HM Revenue and Customs v. Name Redacted*, WIPO Case No. [D2017-0501](#) (“In addition, the disputed domain names ... have had their web hosting suspended as a result of fraudulent activities. This is evidence of bad faith registration and use of the disputed domain names”). In this Complaint, Respondent’s website misappropriates Complainant’s

identical MAC CONTAINER LINE design mark, and it is clear that Respondent has used false registration data for the disputed domain name. Under these circumstances, the Panel concurs with Complainant that Respondent has attempted to impersonate Complainant with an intent to disrupt Complainant's business. To this end, the second and third elements of the Policy may be assessed together where clear indicia of bad faith suggests that there cannot be any Respondent rights or legitimate interests. [WIPO Overview 3.0](#), section 2.15.

In view of the absence of any evidence supporting any rights or legitimate interests in the disputed domain name, Respondent's use of false registration data, and Respondent's use of its website to impersonate Complainant, the Panel concludes that Complainant has established the second element of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy proscribes the following non-exhaustive circumstances as evidence of bad faith registration and use of the disputed domain name:

- i. Circumstances indicating that Respondent has registered or Respondent has acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to Complainant who is the owner of the trademark to a competitor of that Complainant, for valuable consideration in excess of Respondent's documented out of pocket costs directly related to the disputed domain name; or
- ii. Respondent has registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or
- iii. Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or
- iv. By using the disputed domain name, Respondent has intentionally attempted to attract, for commercial gain, Internet users to Respondent's website or other online location, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation, or endorsement of Respondent's website or location or of a product or service on Respondent's website or location.

In this Complaint, Complainant has proffered evidence that Respondent misappropriated its MAC CONTAINER LINE standard character and design trademarks on Respondent's website, and used false registration data for the disputed domain name, specifically targeting Complainant in furtherance of an illegal impersonation scheme. UDRP panels have categorically held that registration and use of a domain name for illegal activity—including impersonation and other types of fraud—is manifestly considered evidence of bad faith within paragraph 4(b)(iv) of the Policy. Use of the disputed domain name by Respondent to pretend that it is Complainant or that it is associated with Complainant “brings the case within the provisions of paragraph 4(b)(iii) of the Policy, for it shows Respondent registered the domain name primarily for the purpose of disrupting the business of a competitor, namely Complainant.” *The Boots Company, PLC v. The programmer adviser*, WIPO Case No. [D2009-1383](#). See e.g. *WSI Holdings Ltd. v. WSI House*, WIPO Case No. [D2004-1089](#) (“Respondent appears to be engaged in “phishing” for mistaken potential employees of the Complainant ... Respondent (1) has adopted a confusingly similar domain name, (2) it has used the trade dress of the Complainant's website, and (3) it has sought to attract users to its site by creating confusion between its site and the Complainant's. It has clearly engaged in activity which fulfils the bad faith requirements of Paragraph 4(b)(iv) of the Policy.”)

Also in this Complaint, neither Complainant or the Panel was able to verify the physical address or contact information provided on Respondent's website or in the Whois information for the disputed domain name. In addition, service attempted by the Center to the “postmaster” and “info” email addresses at “[...]@maclineshipping.com” returned a “Delivery has failed” error message. Prior panel determinations agree, the use of false registration data in connection with a disputed domain name further supports a finding

of bad faith registration and use. See *e.g. Action Instruments, Inc. v. Technology Associates*, WIPO Case No. [D2003-0024](#) (“Providing false contact information violates paragraph 2 of the Policy, which requires a registrant to represent that the statements it ‘made in [its] Registration Agreement are complete and accurate.’ Maintaining that false contact information in the WHOIS records (which can easily be updated at any time) after registration constitutes bad faith use of the domain name because it prevents a putative complainant from identifying the registrant and investigating the legitimacy of the registration.”); *Royal Bank of Scotland Group v. Stealth Commerce*, WIPO Case No. [D2002-0155](#); *Home Director, Inc. v. HomeDirector*, WIPO Case No. [D2000-0111](#) (April 11, 2000).

Finally, Respondent’s website “www.macshippingline.com” was deactivated presumably by Respondent absent any attempt by Respondent to explain or justify its use of the disputed domain name. The Panel takes this as corroborating evidence of Respondent’s bad faith.

In view of Respondent’s attempted website impersonation of Complainant, Respondent’s use of fraudulent information to register the disputed domain name, and the deactivation of Respondent’s website, the Panel concludes 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 <maclineshipping.com> be transferred to Complainant.

/Phillip V. Marano/
Phillip V. Marano
Sole Panelist
Date: June 16, 2022