

ADMINISTRATIVE PANEL DECISION

Sierra Healthstyles LLC v. Liza Pylaeva
Case No. D2022-3090

1. The Parties

The Complainant is Sierra Healthstyles LLC, United States of America (“United States”), represented by DLA Piper LLP (US), United States.

The Respondent is Liza Pylaeva, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <miravalspamonarchbeach.com> is registered with DropCatch.com LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on August 22, 2022. On August 22, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On August 23, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 of the Complaint, and the proceedings commenced on August 24, 2022. In accordance with the Rules, paragraph 5, the due date for Response was September 13, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2022.

The Center appointed Marilena Comanescu as the sole panelist in this matter on September 29, 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 United States based hotel management company which, through its affiliates, licensees, franchisees and authorized hotel owners, provides services for Miraval-branded properties, hotels and resorts.

The first Miraval-branded resort opened in 1995 in Arizona, and currently it operates in three locations in the United States. According to Annex D to the Complaint, in April 2016, a Miraval-branded spa authorized by the Complainant opened in the Monarch Beach Resort, California.

According to evidence provided in Annex E to the Complaint, the Complainant is advertising extensively its Miraval-branded properties and it has consistently received top rankings, awards and accolades in its industry for its Miraval-branded properties.

The Complainant holds trademark registrations for MIRAVAL in various countries and territories through the world such as the following:

- the United States Trademark Registration No. 2152729, filed on June 7, 1995 and registered on April 21, 1998, covering services in class 42; and

- the European Union Trademark Registration No. 017912411, filed on June 5, 2018 and registered on October 13, 2018, covering services in classes 35, 36, 43 and 44.

The Complainant also holds trademark registrations for MIRAVAL LIFE IN BALANCE in various jurisdictions, for example, the United States Trademark Registration No. 3175045, filed on October 7, 2004 and registered on November 21, 2006, covering goods and services in classes 25, 41 and 44.

The Complainant's main website is available at "www.miravalresorts.com".

The disputed domain name <miravalspamonarchbeach.com> was registered on September 25, 2021, and, according to the evidence provided as Annex J to the Complaint, at the time of filing the Complaint it was used in relation to a website that depicted the Complainant's trademarks MIRAVAL and MIRAVAL LIFE IN BALANCE and copied the look and feel of the Complainant's official website, falsely purporting to be the Complainant's official MIRAVAL-branded spa located in Monarch Beach Resort. Also, the website under the disputed domain name contained a link for "Book Now" services.

Before commencing this proceeding, on August 9, 2022, the Complainant sent a cease and desist letter to the Respondent. No response was received.

5. Parties' Contentions

A. Complainant

The Complainant contends that the disputed domain name is confusingly similar to its well-known trademark MIRAVAL as it contains such mark together with the geographical indication "monarch beach" indicating the location of the former Miraval-branded spa and the descriptive term "spa"; the Respondent has no rights or legitimate interests in the disputed domain name; and the Respondent registered and is using the disputed domain name in bad faith. The Complainant requests the transfer of the disputed domain name to it.

B. Respondent

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

6. Discussion and Findings

In view of the absence of a Response, the discussion and findings will be based upon the contentions in the Complaint and any reasonable position that can be attributable to the Respondent. Under paragraph 4(a) of the Policy, a complainant can only succeed in an administrative proceeding under the Policy if the following circumstances are met:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

A. Identical or Confusingly Similar

The Panel finds that the Complainant holds rights in the MIRAVAL trademark.

The disputed domain name incorporates the trademark MIRAVAL with the additional terms "spa" and "monarch beach". However, such additions do not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable within the disputed domain name.

Numerous UDRP panels have considered that the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to the trademark in a domain name would not prevent a finding of confusing similarity. See section 1.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

Further, it is well established in decisions under the UDRP that the generic Top-Level Domain ("gTLD") (e.g., ".com", ".site", ".info", ".shop") is typically disregarded for the purposes of consideration of confusing similarity between a trademark and a domain name. See section 1.11 of the [WIPO Overview 3.0](#).

Given the above, the Panel finds that the disputed domain name is confusingly similar to the trademark MIRAVAL, pursuant to the Policy, paragraph 4(a)(i).

B. Rights or Legitimate Interests

The Complainant asserts that the Respondent does not hold any trademark rights, license, or authorization whatsoever to use the mark MIRAVAL, that the Respondent is not commonly known by the disputed domain name and that the Respondent has not used the disputed domain name in connection with a legitimate noncommercial or fair use or a *bona fide* offering of goods or services.

Under the Policy, "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". See section 2.1 of the [WIPO Overview 3.0](#).

Although properly notified with regard to the present procedure, the Respondent failed to provide a Response to invoke any circumstances, which could demonstrate any rights or legitimate interests in the disputed domain name.

Further, there is no evidence before the Panel to suggest that the Respondent has made a *bona fide* use of the disputed domain name, or has been commonly known by the disputed domain name, or is making any legitimate noncommercial or fair use of the disputed domain name.

In fact, at the time of filing the Complaint the disputed domain name resolved to a website that purported to be an official website for the Complainant's Miraval-branded spa, depicting the Complainant's trademarks and providing a section where visitors may make reservations. The website did not contain any statement or clarification as to the website's affiliation or lack thereof to the Complainant.

In this regard, panels have categorically held that the use of a domain name for illegal activity (such as the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests in a respondent. See section 2.13 of the [WIPO Overview 3.0](#).

For these reasons, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, pursuant to the Policy, paragraph 4(a)(ii).

C. Registered and Used in Bad Faith

The Complainant holds trademark rights for MIRAVAL since at least 1995 and has acquired recognition in its industry.

The disputed domain name <miravalspamonarchbeach.com> was registered in 2021 and incorporates the Complainant's mark together with the terms "spa" and "monarch beach", which are descriptive for the Complainant's business and indicate a former Miraval-branded spa location.

The website at the disputed domain name also featured the Complainant's trademarks MIRAVAL and MIRAVAL LIFE IN BALANCE, and purportedly provided commercial services in connection with the Complainant's trademarks.

For the above, the Panel finds that the disputed domain name was registered in bad faith, with knowledge of the Complainant, its business, and particularly targeting its MIRAVAL trademark.

The Respondent has used without permission the Complainant's distinctive trademarks in order to get traffic on her web portal and to obtain commercial gain from the false impression created for the Internet users with regard to a potential connection with the Complainant. This impression is created particularly by the incorporation of the Complainant's trademark in the disputed domain name together with the descriptive terms, the content on the website provided thereunder, which included the Complainant's trademarks, identical services, and the lack of any disclaimer on this website.

Paragraph 4(b)(iv) of the Policy provides that the use of a domain name to intentionally attempt "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" is evidence of registration and use in bad faith.

Given that the disputed domain name incorporates the Complainant's trademark and the website operated under the disputed domain name has displayed the Complainant's trademarks, has copied the look and feel of the Complainant's website and has not contained any disclaimer, indeed in this Panel's view, the Respondent has intended, for her commercial gain, to attract Internet users to access the website corresponding to the disputed domain name and such Internet users may be confused and believe that the

website has been held, controlled by, or somehow affiliated or related to the Complainant,. This activity may also disrupt the Complainant's business and tarnish its trademarks.

The Respondent did not respond to the Complainant's cease and desist letter and failed to participate in the present proceeding in order to provide arguments in its favor. Having reviewed the other circumstances of this case, the Panel finds that such facts constitute further evidence of bad faith.

For all the above reasons, the Panel finds that the Respondent registered and is using the disputed domain name in bad faith, pursuant to the Policy, paragraph 4(a)(iii).

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 <miravalspamonarchbeach.com> be transferred to the Complainant.

/Marilena Comanescu/

Marilena Comanescu

Sole Panelist

Date: October 13, 2022