

ADMINISTRATIVE PANEL DECISION

McDonald's Corporation v. Sergei Antonov

Case No. D2023-2956

1. The Parties

The Complainant is McDonald's Corporation, United States of America ("United States"), represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is Sergei Antonov, Ukraine.

2. The Domain Name and Registrar

The disputed domain name <mcdmcdmcd.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 July 11, 2023. On July 11, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 11, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 19, 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 July 19, 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 the Respondent of the Complaint, and the proceedings commenced on August 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was September 4, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on September 5, 2023.

The Center appointed Reyes Campello Estebarez as the sole panelist in this matter on September 11, 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. Further Procedural Considerations

Under paragraph 10 of the Rules, the Panel is required to ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case, and that the administrative proceeding takes place with due expedition.

Since the Respondent's mailing address is stated to be in Ukraine, which is subject to an international conflict at the date of this Decision, and which may impact case notification, it is appropriate for the Panel to consider, in accordance with its discretion under paragraph 10 of the Rules, whether the proceeding should continue.

Having considered all the circumstances of the case, the Panel is of the view that it should. The Panel notes that the Complaint was delivered to the Respondent's email address provided by the Registrar.

The Panel concludes that the Parties have been given a fair opportunity to present their case, and so that the administrative proceeding takes place with due expedition the Panel will proceed to a Decision accordingly.

5. Factual Background

The Complainant is a food service company with over 38,000 restaurants worldwide serving approximately 69 million customers in over 100 countries each year, and annual revenues of over USD 20 billion. The Complainant was established over 60 years ago, and has been continuously using the name MCDONALD'S as a trademark in relation to its restaurant business since then. The Complainant further operates under the trademark MCD as shorthand to refer to MCDONALD'S.

The Complainant owns numerous registrations for the trademarks MCDONALD'S and MCD around the world, including:

- United States Registration No. 1,037,773, MCD, registered on April 13, 1976;
- European Union Registration No. 008503931, MCD, registered on September 28, 2010;
- Ukraine Registration No. 225268, MCD, registered on April 10, 2017; and
- United States Registration No. 743,572, MCDONALD'S, registered on January 8, 1963.

The aforementioned trademark registrations will collectively be referred to as the "MCDONALD'S marks", and, individually, as the "MCDONALD'S mark", and the "MCD mark", respectively.

Prior decisions under the Policy have recognized the worldwide well-known character of the MCDONALD'S marks.¹

The Complainant further owns several generic and country code top-level domain names ("gTLDs" and "ccTLDs") comprised of its MCDONALD'S marks, including <mcdonalds.com> (registered on July 12, 1994), which resolves to its corporate website, and <mcd.com> (registered on December 13, 1993), which is used, together with other domain names,² for email addresses assigned to its employees, executives and/or franchisees.

¹ See, e.g., *McDonald's Corporation v. Eburg City (Gene Camarata)*, [WIPO Case No. D2023-1237](#); or *McDonald's Corporation v. Lei Wang*, [WIPO Case No. D2012-0624](#).

² According to the Complaint, the Complainant uses: (i) the domain name <mcd.com> for email addresses of its employees and executives in the United States and internationally; (ii) other domain names are used for certain employees or executives in different jurisdictions, e.g., <de.mcd.com> for employees in Germany, and <us.mcd.com> or <us.stores.mcd.com> for employees in the United States; (iii) the domain name <partners.mcd.com> is used for certain franchisee-owned restaurant personnel; and (iv) the domain name <global.mcdonalds.com> is used in connection with certain distribution lists and internal communications.

The disputed domain name was registered on March 21, 2023, and, at the time of drafting this decision, it resolves to a landing page, in German language, that apparently conducts a market survey that requests information about the age of the participant to start the survey. It indicates, "Bekommen Sie ein Geschenkpaket von Unicobox! Unicobox startet einen neuen Umfrage. Unicobox führt eine Marktforschung der Marke Balea durch. Beantworten Sie bitte einige einfache Fragen und bekommen Sie einen wertvollen Preis, den wir für jeden Teilnehmer vorbereitet haben", which can be translated as, "Get a gift package from Unicobox! Unicobox is starting a new survey. Unicobox conducts market research on the Balea brand. Please answer a few simple questions and get a valuable prize that we have prepared for each participant". This site is marked as "not safe".

According to the evidence provided by the Complainant, the disputed domain name was previously linked to a landing page, in German language, that conducted an apparent market survey related to the Complainant's business and the MCDONALD'S mark. This site included the MCDONALD'S mark, and its famous golden arches logo, as well as various questions related to the Complainant's products, such as how often the surveyed consumed the MCDONALD'S products, the emotions brought by these products, their preferred meet, etc. This site indicated in its cover page that the survey was conducted or ordered by the Complainant to check its consumers' satisfaction, and offered a free "MCDONALD'S packet" for the participation in the survey.

6. Parties' Contentions

A. Complainant

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

Notably, the Complainant contends that the disputed domain name is confusingly similar to the MCDONALD'S marks, in particular, to the MCD mark, because it merely consists of a "tripling" of this mark. The MCD mark is recognizable in the disputed domain name.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain name. The Respondent owns no trademark rights over the designations "mcd" or "mcdmcdmcd", and has no license or authorization to use the Complainant's trademarks. The disputed domain name is used for a site including a false and misleading survey related to the MCDONALD'S marks, which has not been endorsed or otherwise supported by the Complainant.

The disputed domain name was registered and is being used in bad faith. The Respondent acted intentionally when registering the disputed domain name, he should have known about the prior rights of the Complainant in the world famous and well-known MCDONALD'S marks. The use of the disputed domain name for a survey, including the Complainant's trademarks and its famous golden arches logo, and falsely claiming to be conducted by or on behalf of the Complainant, corroborates the Respondent's bad faith. The disputed domain name is used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's marks, which constitutes bad faith under paragraph 4(b)(iv) UDRP.

B. Respondent

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

7. Discussion and Findings

The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and

allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

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 Panel finds the entirety of the MCD mark is triplicated within the disputed domain name. Therefore, this trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the MCD mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, 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 the Respondent may demonstrate rights or legitimate interests in a 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.

Having reviewed the record, the Panel finds the Complainant has 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 such as those enumerated in the Policy or otherwise.

The use of the disputed domain name for a website that impersonated the Complainant, included the Complainant's trademarks, and conduct market survey apparently ordered or endorsed by the Complainant without any real authorization, cannot be considered as a *bona fide* or fair use of the disputed domain name.

The Panel finds further remarkable the reaction of the Respondent to the Complaint, his lack of response and the change of the content linked to the disputed domain name. At the time of drafting this decision, it resolves to a different site also apparently conducting a market survey related to a third party's brand that has no connection with the Complainant or its trademarks.

The Panel further notes that the site linked to the disputed domain name is marked as "not safe", and requests sensible information about the surveyed, which, in a balance of probabilities, may indicate that the disputed domain name is used in any type of phishing scam. In this respect, panels have held that the use of a domain name for illegal activity (e.g., phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Therefore, based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

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.

In the present case, the Panel notes that the MCDONALD'S marks are famous worldwide, and, according to the evidence provided by the Complainant, the disputed domain name has been used in connection to these marks, for conducting a market survey related to the Complainant's business without its authorization, which corroborates that the Respondent knew about the Complainant and its trademarks when it registered the disputed domain name targeting these marks in bad faith.

The Respondent has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name, and has not rebutted the Complainant's allegations of bad faith. Its reaction to the Complaint has been changing the content of the site linked to the disputed domain name, which now resolves to another market survey related to a third party's brand (unrelated to the MCD mark or the term "mcdmcdmcd"), which requests personal information about the surveyed and is marked as "not safe".

All these circumstances, lead the Panel to conclude that, in balance of probabilities, the disputed domain name has been registered and used to intentionally attempt to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant and its trademarks, probably in the frame of illegal phishing scam activities or other type of fraud. In this respect, panels have held that the use of a domain name for illegal activity (e.g., phishing, or other types of fraud) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Therefore, having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy, and the third element of the Policy has been established.

8. 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, <mcdmcdmcd.com>, be transferred to the Complainant.

/Reyes Campello Estebarez/

Reyes Campello Estebarez

Sole Panelist

Date: September 21, 2023