

ADMINISTRATIVE PANEL DECISION

MVH I, Inc. v. Firdos Aashiq Awan
Case No. DAE2023-0011

1. The Parties

The Complainant is MVH I, Inc., United States of America, represented by Brand Enforcement Team 101 Domain, United States of America.

The Respondent is Firdos Aashiq Awan, Pakistan.

2. The Domain Names and Registrar

The disputed domain names <myle-dubai.ae>, <myledubaiuae.ae>, <mylevapors.ae> and <mylevaporsdubai.ae> are registered with AE Domain Administration (.aeDA)

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 1, 2023. On December 11, 2023, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the disputed domain names. On December 12, 2023, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact.

The Center verified that the Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on January 2, 2024. In accordance with the Rules, paragraph 5(a), the due date for Response was January 22, 2024. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on January 29, 2024.

The Center appointed Luca Barbero as the sole panelist in this matter on February 9, 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

The Complainant manufactures and distributes electronic cigarettes and vaping products on a global scale and has been since 2016.

The Complainant distributes its MYLÉ e-cigarettes and vaping products to customers in over 20 countries and 5 different regions, including the Middle East.

The Complainant is the owner of several trademark registrations for MYLÉ, including the following, as per trademark registration certificates submitted in annex 3 to the Complaint:

- United States trademark registration No. 5652774 for MYLÉ (word mark), filed on November 22, 2017, and registered on January 15, 2019 in international class 34;
- International trademark registration 1462089 for MYLÉ (word mark), registered on March 04, 2019, in international class 34.

The Complainant is also the owner of multiple domain names including <mylevapor.ae>, registered on February 25, 2019, and <myle-duabi.com> registered on April 5, 2022, and used by the Complainant to provide an online marketplace for customers, wholesalers, and distributors to purchase their catalog of e-cigarette products and accessories under the trademark MYLÉ.

The disputed domain names <myledubaiuae.ae>, <mylevapors.ae> and <mylevaporsdubai.ae> redirect to undeveloped websites. According to the screenshots submitted in Annex 8 to the Complaint – which have not been contested by the Respondent <mylevapors.ae> and <mylevaporsdubai.ae> previously resolved to active websites featuring the Complainant's trademark and product images and offering for sale MYLÉ products. The disputed domain name <myle-dubai.ae> previously redirected to an undeveloped website, whilst it currently resolves to the website "www.mvu.ae", where MYLÉ products are offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant contends that disputed domain names are confusingly similar to the trademark MYLÉ in which the Complainant has rights as they all reproduce its trademark in its entirety with the mere addition of the descriptive terms "vapors", the geographical indicators "dubai" and "uae" and the country code Top-Level Domain (ccTLD) ".ae".

With reference to rights or legitimate interests in respect of the disputed domain names, the Complainant states that the Respondent is in no way associated, licensed or affiliated with the Complainant.

Moreover, the Complainant contends that the Respondent is not commonly known by the disputed domain names as it has no registered rights and is simply trading on the goodwill of the Complainant whilst disrupting deliberately the Complainant's business and tarnishing the Complainant's notorious electronic cigarette and vaping company.

The Complainant further submits that the Respondent has not provided any evidence of bona fide use of, or demonstrable preparations to use the disputed domain names in connection with any legitimate offering of goods or services.

In addition, the Complainant submits that the Respondent has shown a repeated intention to infringe upon the Complainant's registered trademark as this is the second case brought by the Complainant against the Respondent, the first being *MVHI, Inc. v. Firdos Aashiq Awan*, WIPO Case No. [DAE2022-0004](#), where the Panel ordered the transfer of the domain names <mili.ae> and <mylevaporsuae.ae> to the Complainant.

With reference to the circumstances evidencing bad faith, the Complainant indicates that the Respondent fraudulently uses the disputed domain names to confuse customers who associate it with the MYLÉ brand into buying unauthorized MYLÉ products owned by the Complainant, by using the disputed domain names to sell without authorization electronic cigarette products. The Complainant submits that such conduct clearly shows the Respondent had knowledge of the Complainant, its products and brand when registering the disputed domain names.

The Complainant states that the Respondent has already been found at fault for registering and using the Complainant's trademark in domain names prior to this Complaint and underlines that this repeated pattern of behavior has led the Complainant to believe the disputed domain names were registered for fraudulent purposes and used in bad faith.

The Complainant further contends that the Respondent's registration of the disputed domain names also prevents the Complainant from reflecting its MYLÉ trademarks in the corresponding domain names.

The Complainant also notes that the Respondent has not used nor prepared to use them in any legitimate purpose and is only using the disputed domain names primarily for the purpose of disrupting the Complainant's business.

B. Respondent

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

6. Discussion and Findings

Paragraph 6(a) of the Policy directs that the Complainant must prove each of the following:

- (i) that the disputed domain names registered by the Respondent are identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (ii) that the Respondent has no rights or legitimate interests in respect of the disputed domain names; and
- (iii) that the disputed domain names have been registered or are being used in bad faith.

Given the similarities between the .aeDA Policy and the Uniform Domain Name Resolution Policy ("UDRP"), the Panel finds it appropriate to refer to UDRP jurisprudence, including reference to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)").

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 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. Indeed, the Complainant has provided evidence of ownership of valid trademark registration for MYLÉ in many countries.

The entirety of the mark MYLÉ is reproduced within the disputed domain names, with the mere omission of the accent in the last letter "e" of the trademark. Accordingly, the disputed domain names are confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of the descriptive term "vapors" and the geographical terms "dubai" and "uae" may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain names and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The ccTLD “.ae” is also disregarded being a standard registration requirement. [WIPO Overview 3.0](#), section 1.11.1.

Therefore, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 6(c) of the Policy provides a list of circumstances in which the 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 is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain names. 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 names such as those enumerated in the Policy or otherwise.

The Panel notes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainant. The Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant’s trademarks.

Moreover, there is no element from which the Panel could infer the Respondent’s rights and legitimate interests over the disputed domain names, or that the Respondent might be commonly known by the disputed domain names.

As mentioned above, the disputed domain names <mylevapors.ae> and <mylevaporsdubai.ae> previously resolved to websites promoting and offering the Complainant’s products for sale and currently redirect to undeveloped websites like <myledubaiuae.ae>, whilst the disputed domain name <myle-dubai.ae> currently redirects to the website “www.mvu.ae”, where the Complainant’s products are being advertised and offered for sale.

In view of the above-described use of the disputed domain names <mylevapors.ae>, <mylevaporsdubai.ae> and <myle-dubai.ae>, the Panel finds that the Respondent, prior to receiving notice of the dispute, has not made use of, or preparations to use, the disputed domain names in connection with a bona fide offering of goods or services or a legitimate non-commercial or fair use without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant’s trademark.

On the contrary, the disputed domain names <mylevapors.ae> and <mylevaporsdubai.ae> resolved, and <myle-dubai.ae> currently resolves, to websites suggesting that they are operated by an entity affiliated with the Complainant or by a Complainant’s authorized reseller, which is not the case here. Indeed, the Respondent has reproduced the Complainant’s trademark along with copyrighted images of the Complainant’s products. Moreover, the Respondent included a disclaimer only at the bottom of its websites, thus not being clearly visible to users navigating the websites.

The Respondent’s use of the disputed domain names does not meet the cumulative requirements set forth in the leading case *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) for a distributor or

reseller be making a bona fide offering of goods and thus have a legitimate interest in a domain name. As stated in section [WIPO Overview 3.0](#), section 2.8.1 “(i) the respondent must actually be offering the goods or services at issue; (ii) the respondent must use the site to sell only the trademarked goods or services; (iii) the site must accurately and prominently disclose the registrant’s relationship with the trademark holder; and (iv) the respondent must not try to “corner the market” in domain names that reflect the trademark”. These requirements are not cumulatively fulfilled in the present case since, as mentioned above, the disputed domain names have been used in connection with websites suggesting that are official sites of the Complainant or of one of its affiliated entities, by reproducing the Complainant’s trademark without providing a clearly visible and prominent disclaimer of association (or lack thereof) with the Complainant and by coming the market with multiple domain name registrations reproducing the Complainant’s trademark.

The Panel also notes that all the disputed domain names, incorporating the Complainant’s trademarks in combination with descriptive or geographical terms, are inherently misleading. Even where a domain name consists of a trademark plus an additional term, UDRP panels have largely held that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. [WIPO Overview 3.0](#), section 2.5.1.

Therefore, the Panel finds the second element of the Policy has been established.

C. Registered or Used in Bad Faith

The Panel notes that, for the purposes of paragraph 6(a)(iii) of the Policy, paragraph 6(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, in light of the prior registration and use of the Complainant’s trademark MYLÉ in connection with the advertising and sale of the Complainant’s products, also online via the Complainant’s website “mylevape.com”, the Respondent was or could have been aware of the Complainant’s trademarks.

The circumstance that at least three of the disputed domain names, <mylevapors.ae>, <mylevaporsdubai.ae> and <myle-dubai.ae>, have been pointed to a website featuring the Complainant’s trademark and product images and offering purported MYLÉ products for sale indeed demonstrates that the Respondent was clearly aware of the Complainant when registering the disputed domain names.

The Panel also finds that, in view of the use of the disputed domain names <mylevapors.ae>, <mylevaporsdubai.ae> and <myle-dubai.ae> to divert users to the websites described above, giving the false impression that they were operated by the Complainant or one of its affiliated entities or authorized resellers, the Respondent intentionally attempted to attract Internet users to the corresponding websites, for commercial gain, by creating a likelihood of confusion with the Complainant’s trademark as to the source, sponsorship, affiliation or endorsement of its websites and the products offered therein, according to paragraph 6(b)(iv) of the Policy. See [WIPO Overview 3.0](#), section 3.1.4.

At the time of the drafting of this Decision, the disputed domain names <myledubaiuae.ae>, <mylevapors.ae> and <mylevaporsdubai.ae> are pointed to undeveloped websites. Panels have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. Having reviewed the available record, the Panel finds the non-use of the disputed domain names does not prevent a finding of bad faith in the circumstances of this proceeding. Although panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant’s mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, and (iii) the respondent’s concealing its identity or use of false contact details (noted to be in breach of its registration agreement). [WIPO Overview 3.0](#), section 3.3.

Having reviewed the available record, the Panel notes the distinctiveness and reputation of the Complainant's trademark, the composition of the disputed domain names and the Respondent's failure to submit a Response and finds that in the circumstances of this case, the passive holding of the disputed domain names does not prevent a finding of bad faith under the Policy.

The Panel deems also paragraph 6(b)(ii) applicable in the present case, since the Respondent registered the disputed domain names in order to prevent the Complainant from using the mark and has clearly engaged in a pattern of such conduct as it has registered the four disputed domain names and two additional domain names incorporating the Complainant's registered trademarks which were subject to a previous proceeding, *MVHI, Inc. v. Firdos Aashiq Awan*, WIPO Case No. [DAE2022-0004](#). As stated in section 3.1.2, "UDRP panels have held that establishing a pattern of bad faith conduct requires more than one, but as few as two instances of abusive domain name registration. This may include a scenario where a respondent, on separate occasions, has registered trademark-abusive domain names, even where directed at the same brand owner".

Therefore, the Panel finds that the Complainant has established the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the domain names <myle-dubai.ae>, <myledubaiuae.ae>, <mylevapors.ae> and <mylevaporsdubai.ae> be transferred to the Complainant.

/Luca Barbero/

Luca Barbero

Panelist

Date: February 25, 2024