

## **ADMINISTRATIVE PANEL DECISION**

Mirova v. DAVID BOUR, MIROVA  
Case No. D2022-3262

### **1. The Parties**

The Complainant is Mirova, France, represented by Inlex IP Expertise, France.

The Respondent is DAVID BOUR, MIROVA, France.

### **2. The Domain Name and Registrar**

The disputed domain name <mirova-investments.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 September 1, 2022. On September 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 2, 2022, 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 (Privacy Service Provided by Withheld for Privacy ehf, Iceland) and contact information in the Complaint. The Center sent an email communication to the Complainant on September 5, 2022, 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 amended Complaint on September 7, 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 the Respondent of the Complaint, and the proceedings commenced on September 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was October 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 6, 2022.

The Center appointed Fabrice Bircker as the sole panelist in this matter on October 20, 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 a French company active in the field of sustainable financial and investment solutions.

It runs its business under the name MIROVA, which is notably protected through the following trademark:

MIROVA, European Union Trade Mark No. 10787307, filed on April 4, 2012, registered on September 10, 2012, duly renewed since then, and designating products and services of classes 16, 35, and 36.

The Complainant has also an online presence, in particular through the <mirova.com> domain name which is registered since October 14, 2009, and which resolves to its official website.

The disputed domain name <mirova-investments.com> was registered on August 24, 2022.

At the time of filing of the Complaint and of drafting this decision, it does not direct to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant requests the transfer in its benefit of the disputed domain name.

Its main arguments can be summarized as follows:

##### Identical or Confusingly Similar

The Complainant contends that the disputed domain name is confusingly similar to its MIROVA trademark because it incorporates said trademark in its entirety and the latter remains recognizable within it.

##### Rights or Legitimate Interests

The Complainant claims that the Respondent has no rights nor legitimate interests in the disputed domain name as it has no trademark rights in "mirova", nor in "mirova-investments".

The Complainant also argues that there is no business or legal relationship between it and the Respondent, which is not authorized to use its MIROVA trademark in any way.

Besides, the Complainant also puts forward that the Respondent is not making a legitimate noncommercial or fair use of the disputed domain name because it is not using it in connection with an active website.

##### Registered and Used in Bad Faith

The Complainant contends that the Respondent registered the domain name in bad faith because the MIROVA prior trademark is well-known and because the Respondent filled-in the Whois database with the name and the address of the Complainant.

It adds that the use of a privacy service by the Respondent constitutes further evidence of its bad faith. Then the Complainant contends that the absence of use of the disputed domain name does not prevent a finding of bad faith use under the doctrine of passive holding.

At last, the Complainant puts forward that MX records are configured with the disputed domain, which represents a risk that it is used for phishing activities.

## **B. Respondent**

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

## **6. Discussion and Findings**

Paragraph 4(a) of the Policy provides that for obtaining the transfer or the cancellation of the disputed domain name, the Complainant must establish each of the following three elements:

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

Besides, paragraph 15(a) of the Rules provides that “[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable”.

Paragraphs 10(b) and 10(d) of the Rules also provide that “[i]n all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case” and that “[t]he Panel shall determine the admissibility, relevance, materiality and weight of the evidence”.

Besides, the Respondent's failure to reply to the Complainant's contentions does not automatically result in a decision in favor of the Complainant, although the Panel is entitled to draw appropriate inferences therefrom, in accordance with paragraph 14(b) of the Rules (see section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”)).

Taking the foregoing provisions into consideration the Panel finds as follows.

### **A. Identical or Confusingly Similar**

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must first establish rights in a trademark or service mark and secondly establish that the disputed domain name is identical or confusingly similar to its trademark.

It results from the documents supporting the Complaint, and in particular from Annex 3, that the Complainant is the owner of trademark registrations for MIROVA, such as the European Union Trade Mark registration detailed in section 4 above.

Turning to whether the disputed domain name is identical or confusingly similar to the Complainant's trademark, as indicated in [WIPO Overview 3.0](#), section 1.7, “[w]hile each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trade mark [...], the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

This test is satisfied here, as the disputed domain name identically reproduces the MIROVA trademark, with the mere addition of the element “investments”, which does not prevent the Complainant's trademark to remain recognizable. Indeed, there is a consensus view among UDRP panels that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the Policy (see [WIPO Overview 3.0](#), section 1.8;

*Kabbage, Inc. v. Name Redacted*, WIPO Case No. [D2020-0140](#)). Besides, the generic Top-Level Domain (“gTLD”) “.com” may be ignored for the purpose of assessing the confusing similarity, because it plays a technical function.

Consequently, the first element under the Policy set for by paragraph 4(a)(i) is fulfilled.

## **B. Rights or Legitimate Interests**

Under the Policy, a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests in the disputed domain name. Once such a *prima facie* case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy (see [WIPO Overview 3.0](#), section 2.1).

In the present case, the Complainant contends that it has not given its consent for the Respondent to use its MIROVA trademark in a domain name registration or in any other manner.

Besides, there is nothing in the record of the case likely to indicate that the Respondent may be legitimately commonly known by the disputed domain name.

On the contrary, the Respondent has registered the disputed domain name using the organization name and the postal address of the Complainant, which is obviously fraudulent.

Furthermore, the disputed domain name is not used (it resolves to an inactive website) and nothing in the case file suggests that the Respondent has made preparations to use it for legitimate purposes.

In view of all the above, the Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The burden of production now shifts to the Respondent to show that it does have some rights or legitimate interests.

The Respondent, which has not replied to the Complainant’s contentions, has not come forward with any explanation that demonstrates any rights or legitimate interests in the disputed domain name.

Accordingly, the Panel concludes that the Respondent has no rights or legitimate interests in the disputed domain name, and therefore that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

## **C. Registered and Used in Bad Faith**

Paragraph 4(a)(iii) of the Policy provides that the Complainant must establish that the Respondent registered and is using the disputed domain name in bad faith.

### Registration in Bad Faith

In the present case, the Panel notes that:

- the MIROVA trademark predates the registration of the disputed domain name by ten years,
- the MIROVA trademark is intrinsically distinctive,
- other UDRP panels have considered the MIROVA trademark as being well-known (e.g. *MIROVA v. Withheld for Privacy Purposes*, *Privacy service provided by Withheld for Privacy ehf. / Gaulard Didier*,

*MIROVA*, WIPO Case No. [D2021-1481](#) or *MIROVA v. Privacy service provided by Withheld for Privacy ehf /Gaulard Didier, MIROVA*, WIPO Case No. [D2021-1480](#)),

- the term “investments” in the disputed domain name directly refers to the activities of the Complainant,
- and, above all, when registering the disputed domain name, the Respondent has provided the Registrar with the organization name and the postal address of the Complainant in the “registrant” section of the registration of the disputed domain name.

In these circumstances, the Panel has no doubt that the Respondent was actually aware of the Complainant’s rights when it registered the disputed domain name.

#### Use in Bad Faith

The fact that the disputed domain name does not resolve to an active website does not prevent a finding of bad faith use because the present situation clearly falls within the doctrine of passive holding.

Indeed, i) the Complainant’s trademark is intrinsically distinctive, ii) the Respondent has failed to submit a response or to provide any evidence of actual or contemplated good-faith use, iii) the disputed domain name exactly reproduces the Complainant’s prior distinctive trademark along with the term “investments” (which refers to the Complainant’s activities), and iv) the Respondent has registered the disputed domain through a privacy service and in using the Complainant’s own identity and postal address.

In such a context, any good faith use of said disputed domain name by the Respondent seems implausible (See [WIPO Overview 3.0](#), section 3.3).

The Panel is all the more convinced of this that the Respondent has set up MX Records for the disputed domain name, which enables it to use said disputed domain name to send emails.

This situation, coupled with the use of the Complainant’s identity and postal address when registering the disputed domain name, makes it extremely likely that said disputed domain name may be used for fraudulent activities, such as phishing schemes fraudulently impersonating the Complainant, all the more that the latter operates in the field of finance where the risk and consequences of fraud are high.

In conclusion, for all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith, within the meaning of paragraph 4(a)(iii) 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 <mirova-investments.com> be transferred to the Complainant.

*/Fabrice Bircker/*

**Fabrice Bircker**

Sole Panelist

Date: November 3, 2022