

## **ADMINISTRATIVE PANEL DECISION**

Mistral International BV v. qin yuan  
Case No. D2022-4240

### **1. The Parties**

The Complainant is Mistral International BV, Netherlands, represented by Inaday Merken BV, Netherlands.

The Respondent is qin yuan, China.

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

The disputed domain name <mistral-store.com> is registered with Name.com, Inc. (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 8, 2022. On November 8, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 8, 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 November 11, 2022. In accordance with the Rules, paragraph 5, the due date for Response was December 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 2, 2022.

The Center appointed Tuukka Airaksinen as the sole panelist in this matter on December 7, 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 the owner of the trademark MISTRAL, which has been used since 1976 for watersports activities and clothing. The Complainant's trademark has been registered in several jurisdictions, such as in the European Union under No. 009911678 as of November 11, 2011.

The disputed domain name was registered on August 26, 2022.

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

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

The disputed domain name contains the Complainant's trademark in its entirety and is therefore confusingly similar to the Complainant's trademark. The additional term "store" is descriptive and does not prevent the finding of confusing similarity.

The Complainant has not licensed or authorized the Respondent to use the disputed domain name. The Respondent is trying to impersonate the Complainant by reproducing images and logos from the Complainant's official website. The Respondent is offering products under the Complainant's trademark to consumers, who will likely believe that the products come from the Complainant. The use of the disputed domain name does not amount to a *bona fide* offering of goods or services.

The Respondent has never been commonly known by the disputed domain name. The sole intent of the disputed domain name is to mislead consumers into believing that there is a connection between the Complainant and the Respondent.

The disputed domain name is clearly registered to benefit from the Complainant's trademark and to attract Internet users to the Respondent's website for commercial gain. The Respondent knew or should have known of the Complainant's trademark when registering the disputed domain name. The website linked to the disputed domain name includes copies of the Complainant's word and figurative trademarks, reproduces images from the Complainant's official website, and purports to sell discounted products of the Complainant.

##### **B. Respondent**

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

#### **6. Discussion and Findings**

In order to obtain the transfer of a domain name, a complainant must prove the three elements of paragraph 4(a) of the Policy, regardless of whether the respondent files a response to the complaint or not. The first element is that the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights. The second element a complainant must prove is that the respondent has no rights or legitimate interests in respect of the domain name. The third element a complainant must establish is that the domain name has been registered and is being used in bad faith.

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

Paragraph 4(a)(i) of the Policy requires that the Complainant establish that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights. Consequently, the Complainant must prove that the disputed domain name is identical or confusingly similar to the MISTRAL trademark.

According to section 1.11 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), “[t]he applicable Top Level Domain (‘TLD’) in a domain name (e.g., ‘.com’, ‘.club’, ‘.nyc’) is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test”.

Furthermore, “where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements”. See section 1.8 of the [WIPO Overview 3.0](#).

The disputed domain name is confusingly similar to the Complainant’s trademark as it includes the Complainant’s trademark entirely combined with the term “store”. This does not prevent confusing similarity between the Complainant’s trademark and the disputed domain name.

This means that the disputed domain name is confusingly similar with the Complainant’s trademark and hence the first element of the Policy has been fulfilled.

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

Paragraph 4(a)(ii) of the Policy requires that the Complainant establish that the Respondent has no rights or legitimate interests to the disputed domain name.

It is widely accepted among UDRP panels that once a complainant has made a *prima facie* showing indicating the absence of the respondent’s rights or legitimate interests in a disputed domain name the burden of production shifts to the respondent to come forward with evidence of such rights or legitimate interests. If the respondent fails to do so, the complainant is deemed to have satisfied the second element of the Policy. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#), and section 2.1 of the [WIPO Overview 3.0](#).

The Complainant has credibly submitted that the Respondent is neither affiliated with the Complainant in any way nor has it been authorized by the Complainant to use and register the disputed domain name, that the Respondent has no rights or legitimate interests in the disputed domain name, and that the Respondent has not made and is not making a legitimate noncommercial or fair use of the disputed domain name and is not commonly known by the disputed domain name in accordance with paragraph 4(c)(ii) of the Policy.

Moreover, the Panel finds that the nature of the disputed domain name carries a risk of implied affiliation with the Complainant’s trademark. See section 2.5.1 of the [WIPO Overview 3.0](#).

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that has not been rebutted by the Respondent. Considering the Panel’s findings below, the Panel finds that there are no other circumstances that provide the Respondent with any rights or legitimate interests in the disputed domain name. Therefore, the Panel finds that the second element of the Policy is fulfilled.

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

Paragraph 4(a)(iii) of the Policy requires that the Complainant establish that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy provides that the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

“(i) circumstances indicating that [the respondent has] registered or has acquired the domain name primarily for the purpose of selling, renting or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of [the respondent’s] documented out-of-pocket costs directly related to the domain name; or

(ii) [the respondent has] registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that [the respondent has] engaged in a pattern of such conduct; or

(iii) [the respondent has] registered the domain name primarily for the purpose of disrupting the business or competitor; or

(iv) by using the domain name, [the respondent has] intentionally attempted 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."

Considering that the Complainant has used its trademark since 1976 and that the Respondent's website reproduces the Complainant's logo and images from the Complainant's website, the Respondent must have been aware of the Complainant and its trademark when registering the disputed domain name. See section 3.1.4 of the [WIPO Overview 3.0](#).

The Panel also agrees with the Complainant that its trademark is widely known by consumers active in watersports. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. This is particularly so with domain names incorporating the mark plus a descriptive term, as with the term "store" in this case. See section 3.1.4 of the [WIPO Overview 3.0](#).

The disputed domain name resolves to a website purporting to sell the Complainant's goods. The Respondent has therefore intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark.

Therefore, the Panel finds that the third element of the Policy is fulfilled.

## 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 <mistral-store.com> be transferred to the Complainant.

*/Tuukka Airaksinen/*

**Tuukka Airaksinen**

Sole Panelist

Date: December 21, 2022