

## ADMINISTRATIVE PANEL DECISION

Mr. Christmas, LLC v. Cameron Duffy, Imogen Dale, Phoebe Spencer, Max Shepherd, Joshua James, Jayden Bruce  
Case No. D2024-2461

### 1. The Parties

The Complainant is Mr. Christmas, LLC, United States of America (the “United States”), represented by Venable, LLP, United States.

The Respondents are Cameron Duffy, Italy, Imogen Dale, Germany, Phoebe Spencer, Italy, Max Shepherd, Germany, Joshua James, Italy, Jayden Bruce, Italy.

### 2. The Disputed Domain Names and Registrar

The disputed domain names <mrchristmas-australia.com>, <mrchristmasaustria.com>, <mrchristmas-canada.com>, <mrchristmas-danmark.com>, <mrchristmas-deutschland.com>, <mrchristmasgreece.com>, <mrchristmas-italy.com>, <mrchristmas-japan.com>, <mrchristmas-norway.com>, <mrchristmas-portugal.com>, <mrchristmas-sverige.com>, <mrchristmasturkey.com> and <mrchristmas-uk.com> are registered with Alibaba.com Singapore E-Commerce Private Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 17, 2024. On June 18, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On June 19, 2024, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (REGISTRANT UNKNOWN) and contact information in the Complaint.

The Center sent an email communication to the Complainant on June 25, 2024 with the registrant and contact information of nominally multiple underlying registrants revealed by the Registrar, requesting the Complainant to either file separate complaints for the disputed domain names associated with different underlying registrants or alternatively, demonstrate that the underlying registrants are in fact the same entity and/or that all domain names are under common control. The Complainant filed an amendment to the Complaint on June 26, 2024.

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 June 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 18, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 19, 2024.

The Center appointed Marilena Comanescu as the sole panelist in this matter on July 24, 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 is a multi-generational family owned business involved in the manufacture of mechanical and musical holiday decorations.

The Complainant owns worldwide trademark registrations for MR.CHRISTMAS, such as the following:

- the European Union trademark registration number 005825799 for MR.CHRISTMAS (word), filed on March 29, 2007, and registered on March 28, 2008, covering goods in International classes 9, 11, 14, 15, 16, 20, and 28; and
- the United States trademark registration number 0804025 for MR. CHRISTMAS (word), filed on July 2, 1965, and registered on February 15, 1966, covering goods in International class 28.

The Complainant conducts business on the Internet where it has a strong presence, operating, inter alia, the website at the domain name <mrchristmas.com> featuring a wide variety of holiday décor for consumers to purchase.

According to its submissions, the Complainant has tens of thousands of followers on social media platforms such as Facebook, Instagram, or YouTube.

The disputed domain names were registered as follows:

- on December 5, 2023, were registered <mrchristmasaustria.com>, <mrchristmasgreece.com>, and <mrchristmasturkey.com>;
- on December 6, 2023, were registered <mrchristmas-australia.com>, <mrchristmas-canada.com>, <mrchristmas-danmark.com>, <mrchristmas-norway.com>, <mrchristmas-sverige.com>, and <mrchristmas-uk.com>;
- on December 7, 2023, were registered <mrchristmas-deutschland.com>, <mrchristmas-italy.com>, <mrchristmas-japan.com>, and <mrchristmas-portugal.com>.

According to Annex 8 to the Complaint, at the time of filing the Complaint, all the disputed domain names were used in relation to “clone websites” virtually identical to the Complainant’s authentic website with the minor variation of some websites appearing in a different language.

## 5. 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 names.

Notably, the Complainant contends that it is an industry leader in the innovative mechanical and musical holiday decorations; for over 90 years it has invested substantial resources into establishing its brand and therefore its MR. CHRISTMAS trademark is well-known around the world; the disputed domain names are clearly similar in appearance, sound, connotation and commercial impression to its MR. CHRISTMAS trademark; the disputed domain names incorporate the Complainant's mark entirely with the addition of a generic geographic indicator; the Respondent has no rights or legitimate interests in the disputed domain names; the Respondent registered and is using the disputed domain names in bad faith in an attempt to pass itself off as the Complainant; the disputed domain names offer for sale counterfeit decorations of the Complainant; it may be inferred the Respondent has registered the disputed domain names to purposefully disrupt the business of the Complainant and its website and to create confusion with the Complainant's MR. CHRISTMAS trademark; it is a serious concern for the Complainant that Respondent may be merely trying to collect consumers' personal identifying information, including payment information.

Based on a number of similarities, including the identical name of one Respondent, date of registration and Registrar, the Complainant believes the disputed domain names are associated with a previous UDRP matter involving twelve domain names incorporating MR. CHRISTMAS trademark and decided in its favour. See *Mr. Christmas, LLC v. Morgan Willis, Imogen Dale, Morgan Armstrong, Brooke Turner, Yasmin Price*, WIPO Case No. [D2024-1030](#).

### B. Respondent

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

## 6. Discussion and Findings

Under the Policy, the Complainant is required to prove on the balance of probabilities that:

- (i) the disputed domain names are 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 names; and
- (iii) the disputed domain names have been registered and are being used in bad faith.

### A. Consolidation: Multiple Respondents

The amended Complaint was filed in relation to nominally different domain name registrants. The Complainant alleges that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainant requests the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain names registrants did not comment on the Complainant's request.

Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainant's request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable

to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([“WIPO Overview 3.0”](#)), section 4.11.2.

As regards common control, the Panel notes that the disputed domain names (i) were used in the same manner, resolving to very similar commercial clone websites using the Complainant’s marks, publishing the Complainant’s trademark MR. CHRISTMAS, official images and offering for sale purported MR. CHRISTMAS products at discounted prices; (ii) are registered in the same generic Top-Level Domain (gTLD), namely “.com”; (iii) have numerous registrant information similarities such as names, email or postal addresses, state/province and/or country, a pattern of irregularities; (iv) were created in a similar manner, incorporating the Complainant’s trademark, MR. CHRISTMAS, followed by additional geographical terms, country names; (v) were registered within three days of each other, between December 5, 2023 and December 7, 2023; (vi) have been registered with the same Registrar; and, (vii) the Respondents have not objected to the consolidation claims made by the Complainant.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.

Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as “the Respondent”) in a single proceeding.

## **B. 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 trademarks and the disputed domain names. See section 1.7 of the [WIPO Overview 3.0](#).

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 mark MR. CHRISTMAS is easily recognizable within the disputed domain names. Accordingly, each of the disputed domain names is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

While the addition of other terms - such as the geographical terms related to countries “australia”, “austria”, “canada”, “danmark”, “deutschland”, “greece”, “italy”, “japan”, “norway”, “portugal”, “sverige” (“Sweden” in Swedish), “turkey”, or “uk” - 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 Panel finds the first element of the Policy has been established.

## **C. 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.

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 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.

According to the evidence provided in the Complaint, the Respondent has used the disputed domain names in connection with websites copying the look-and-feel of the Complainant's website, displaying its trademark, and promoting and purportedly offering for sale, more likely than not counterfeit goods of the Complainant. Panels have held that the use of a domain name for illegal activity (such as impersonation/passing off, sale of counterfeit goods, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Further, the composition of the disputed domain names which combine the Complainant's trademark with geographical terms suggests an affiliation with the trademark owner. 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.

The Panel finds the second element of the Policy has been established.

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

The Panel notes that 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 disputed domain names were registered in bad faith, with knowledge of the Complainant and its trademark particularly because of their number, short timeframe of registration, which postdates the registration of the Complainant's mark with more than half of century, and their composition. Furthermore, the use of the disputed domain names enforces such finding.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

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 names incorporate the Complainant's trademark with a geographical descriptor, and the websites operated under the disputed domain names provide a copycat version of the Complainant's website albeit in a different language, in some cases, and display the Complainant's trademark, indeed in this Panel's view, the Respondent has intended to attract unsuspecting Internet users accessing the websites corresponding to the disputed domain names who may be confused and believe that the websites are held, controlled by, or somehow affiliated with or related to the Complainant, for the Respondent's commercial gain. This activity may also disrupt the Complainant's business and tarnish its trademark.

Further, panels have held that the use of a domain name for illegal activity (here, claimed impersonation/passing off) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4.

Paragraph 4(b)(ii) of the Policy provides another circumstance of bad faith registration and use when the respondent registered the disputed domain name in order to prevent the owner of the trademark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct. The Panel finds that registering for 13 disputed domain names incorporating the Complainant's trademark, and potentially another 12 in the case *Mr. Christmas, LLC v. Morgan Willis, Imogen Dale, Morgan Armstrong, Brooke Turner, Yasmin Price* supra, definitely constitutes a pattern of abusive conduct and registration of the disputed domain names in bad faith.

The Panel finds the third element of the Policy has been established.

## 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 names, <mrchristmas-australia.com>, <mrchristmasaustria.com>, <mrchristmas-canada.com>, <mrchristmas-danmark.com>, <mrchristmas-deutschland.com>, <mrchristmasgreece.com>, <mrchristmas-italy.com>, <mrchristmas-japan.com>, <mrchristmas-norway.com>, <mrchristmas-portugal.com>, <mrchristmas-sverige.com>, <mrchristmasturkey.com> and <mrchristmas-uk.com>, be transferred to the Complainant.

/Marilena Comanescu/

**Marilena Comanescu**

Sole Panelist

Date: August 7, 2024