

ADMINISTRATIVE PANEL DECISION

The Founders Inc. v. Omar Eddaouri, My Store
Case No. D2024-4926

1. The Parties

The Complainant is The Founders Inc., Republic of Korea ("Korea"), represented by Marq Vision Inc., United States of America ("United States").

The Respondent is Omar Eddaouri, My Store, United Kingdom, self-represented.

2. The Domain Name and Registrar

The disputed domain name <myanua.com> is registered with Tucows Inc. (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on November 28, 2024. On November 28, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 28, 2024, 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 29, 2024, 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 December 2, 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 December 9, 2024. In accordance with the Rules, paragraph 5, the due date for Response was December 29, 2024. The Respondent sent several emails on December 16 and December 28, 2024. The Response was filed with the Center on December 28, 2024.

Supplemental Filings have been received from both Parties between December 31, 2024 to January 7, 2025.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on January 8, 2025. 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 company headquartered in Korea which, amongst other things, produces cosmetics and skin care products under the brand name ANUA. According to the Complaint, its ANUA brand products are available in 130 countries around the world.

The Complainant's ANUA brand has been recognized as an Amazon Top Brand in 2024. It was ranked first in the Amazon US Prime Day category, first in Japan's Megawari's overall sales for the first to 4th quarters in 2024 and first in the Japanese Q0010 toner category. It also won five awards at the Olive Young Awards in Korea in 2024. According to the Complainant's website at "www.thefounders.kr", the Complainant's ANUA brand experienced 300 per cent growth in 2024 over revenues in 2023 and has recorded an average annual growth rate of at least 250 per cent each year since 2017.

The Complaint includes evidence that the Complainant owns the following registered trademarks for ANUA (in both Roman and Korean characters):

(1) International Registration No 1546316, which was registered on July 1, 2020 in respect of beauty care cosmetics and related products in International Class 3. The International Registration designates the European Union, Indonesia, Mongolia, Malaysia, Philippines, Russian Federation, Singapore, the United States, and Viet Nam.

(2) In the United States, the trademark was registered in the Principal Register on August 24, 2021 (Registered Trademark No. 6458219).

The disputed domain name was registered on August 14, 2024.

Before the Complaint was filed, the disputed domain name resolved to a website proclaiming that it is the "ANUA Official Shop" offering "Exclusive Korean Glass Skin Routine". The products being advertised appear to be the Complainant's genuine products. The website states the Respondent's address as in the United Kingdom but provides a telephone contact number with an area code number for Arkansas in the United States.

Following the filing of the Complainant's supplemental filing, the Respondent modified the website to remove the references to "ANUA Official Shop" with references to "MyAnua".

5. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of a disputed domain name, the Complainant must demonstrate each of the following:

- (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.

Paragraph 15(a) of the Rules directs the Panel to decide the 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.

Given the claims in the Response that the Respondent was unaware of the Complainant or its trademark, the Panel considers it appropriate to admit the Complainant's unsolicited supplemental filing. To ensure each party has had a fair opportunity to present its case, the Panel also admits the subsequent supplemental filings.

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

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.

The Complainant has proven ownership of registered trademarks for the figurative version of ANUA.

In undertaking the comparison of the disputed domain name to the Complainant's trademark, it is permissible in the present circumstances to disregard the generic Top Level Domain ("gTLD") component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

It is also usual to disregard the design elements of a trademark under the first element as such elements are generally incapable of representation in a domain name. Where the textual elements have been disclaimed in the registration or cannot fairly be described as an essential or important element of the trademark, however, different considerations may arise. See for example, [WIPO Overview 3.0](#), section 1.10. The figurative elements of the Complainant's trademarks are not so dominating that the verbal element cannot be considered an essential or important part of the trademarks in this case. Accordingly, it is appropriate to apply the usual rule.

Disregarding the ".com" gTLD and the figurative (or non-Roman) elements of the Complainant's trademark, the disputed domain name consists of the Complainant's registered trademark and the term "my". As this requirement under the Policy is essentially a standing requirement, the addition of this term does not preclude a finding of confusing similarity. See e.g. [WIPO Overview 3.0](#), section 1.8. Apart from anything else, the Complainant's trademark remains visually and aurally recognisable within the disputed domain name.

The Respondent argues that the addition of "my" to the Complainant's trademark makes the disputed domain name distinct from the Complainant's trademark and a common and legitimate Internet practice.

This misunderstands the nature of the comparison at this stage of the inquiry which simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties, the date they were acquired and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. See e.g. [WIPO Overview 3.0](#), section 1.7.

Accordingly, the Panel finds that the Complainant has established that the disputed domain name is confusingly similar to the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a bona fide offering of goods or services; or
- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a 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.

The Respondent registered the disputed domain name after the Complainant began using the trademark and also after the Complainant had registered its trademark.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent's name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived. The Respondent does state that his company, Martmodern Ltd, is validly registered but that fact of itself does not provide a basis for derivation of the disputed domain name. From the available record, the Respondent does not appear to hold any trademarks for the disputed domain name.

In the Response, the Respondent denies knowledge of the Complainant's trademark. The Respondent contends he is operating a legitimate e-commerce business specialising in skin care products. As noted above, the Respondent does claim that the “my” element in the disputed domain name sufficiently distinguishes the disputed domain name from the Complainant's trademark. According to the Respondent, his website and branding are unique and tailored to his business model, which provides value to customers without infringing on the Complainant's rights.

The Panel does not agree that the addition of the “my” prefix creates a distinct brand which “no reasonable consumer could be confused into believing ... is affiliated with [the Complainant's] brand.” On the contrary, the disputed domain name creates a risk of (at the very least) implied affiliation to the Complainant and its trademark. [WIPO Overview 3.0](#), sections 2.5 and 2.8.

That risk was only reinforced by the very prominent statements on the Respondent's website that it was the ANUA *Official Shop* (emphasis supplied).

The Respondent says that was an unintentional mistake and he only wished to convey that he was offering genuine products for sale. In addition, he corrected the mistake immediately upon it being drawn to his attention in the Complainant's supplemental filing. In that supplemental filing, the Respondent further states that:

"Clear disclaimers have been added to the website to indicate that the Respondent is an independent reseller and is not affiliated with the Complainant or its trademarks."

The Panel has viewed the Respondent's website in the course of preparing this decision and confirms that the references to ANUA Official Shop have been removed. The Panel has been unable to identify any clear disclaimers of the kind claimed by the Respondent. If there are any such disclaimers, they are not sufficiently prominent to satisfy the so-called *Oki-Data* test. [WIPO Overview 3.0](#) section 2.8.1.

Viewed objectively, the disputed domain name carries a risk of (at least) implied affiliation. In view of that risk of (at least) implied affiliation, therefore, the Panel finds that the Respondent has not rebutted the prima facie case established by the Complainant under this requirement.

Accordingly, the Panel finds the Complainant has established the second requirement under the Policy.

C. Registered and Used in Bad Faith

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Group One Holdings Pte Ltd v. Steven Hafto* WIPO Case No. [D2017-0183](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

The Respondent's claim that he was unaware of the Complainant and the Complainant's trademark is simply not credible in circumstances where the Respondent was and is apparently offering for sale the Complainant's ANUA brand products from the website to which the disputed domain name resolves.

There is nothing impermissible under the Policy in the Respondent's claimed plan to set up an e-commerce website selling skin care products. Adopting a disputed domain name which carries a risk of (at least) implied affiliation, however, is highly likely to misrepresent to consumers that the Respondent is, or is associated with, the Complainant. That risk was only reinforced by the Respondent's previously published claim to be the Official Shop.

The Respondent says the reference to "official" is a misunderstanding and all that was meant "genuine". In a proceeding such as the present, the Panel cannot know whether that is true or false. However, on its face and just as a matter of ordinary meaning, "official" in such a setting conveys a very different meaning to "genuine". Further, there was not (at least so far as it has been drawn to the Panel's) anything which made the nature of the Respondent's business clear to prospective customers. The Panel does not accept that someone of ordinary or reasonable intelligence would not have clearly understood what use of "official" in this context conveyed, or would be understood by prospective consumers to convey.

In these circumstances, the Panel finds the disputed domain name was registered to cause confusion in the minds of Internet users as to the source or affiliation of the Respondent's business as being the Complainant's business or affiliated with it.

The use of the disputed domain name in the manner described constitutes use in bad faith. Although the Respondent has removed the claims to being the Official Shop from the website, there does not appear to be a clear disclosure of the true nature of the Respondent's business and the inherently misleading nature of the disputed domain name continues.

Accordingly, the Complainant has established all three requirements under the Policy.

6. 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 <myanua.com> be transferred to the Complainant.

/Warwick A. Rothnie/

Warwick A. Rothnie

Sole Panelist

Date: January 21, 2025