

ADMINISTRATIVE PANEL DECISION

Moda Operandi, Inc. v. willie charles
Case No. D2024-5157

1. The Parties

The Complainant is Moda Operandi, Inc., United States of America ("US"), represented by Hand Baldachin & Associates LLP, US.

The Respondent is willie charles, Canada.

2. The Domain Name and Registrar

The disputed domain name <modaoperandi.com> is registered with NameSilo, LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on December 13, 2024. On December 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 16, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 16, 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 amended Complaint on December 16, 2024.

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 December 19, 2024. In accordance with the Rules, paragraph 5, the due date for Response was January 8, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on January 9, 2025.

The Center appointed Clive Duncan Thorne as the sole panelist in this matter on January 15, 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 trades under the mark MODA OPERANDI and has, since 2011, marketed on an on-line retail basis; clothing, including shirts, pants, dresses, skirts, blouses, coats, jackets and sweaters, lingerie, hats and footwear, luggage, including satchels, bags, handbags and wallets, jewelry, watches, belts, sunglasses, eyeglass frames, cosmetics, home furnishings, including towels, sheets, bedding, pillows, tableware, including bowls, plates, glasses, cups, saucers, platters and trays.

At Exhibit 7 to the Complaint the Complainant exhibits a copy of its home page, setting out examples of its products and to which its domain name <modaoperandi.com> resolves. The Complainant states that it has prominently and extensively used, promoted, and advertised its mark MODA OPERANDI for over thirteen years. As a result of its marketing efforts, the mark MODA OPERANDI and the domain name have become well recognized by consumers as designating the Complainant as the source of the goods and services that it sells under that mark. It follows that the mark MODA OPERANDI and the associated domain name have become extremely valuable assets for the Complainant.

The Complainant relies upon five US registered trade marks for the mark MODA OPERNADI. Copies of certificates of registration of the marks are exhibited as Exhibits 2 to 6 to the Complaint. These include;

Registration No. 4,266,390 in class 35 registered on January 1, 2013

Registration No. 4,266,405 in class 45 registered on January 1, 2013

Registration No. 4,293,264 in class 25 registered on February 19, 2013

It should be noted that all of the trade mark registrations relied upon were registered well before the date of registration of the disputed domain name on December 11, 2024.

The Complainant exhibits as Exhibit 8 to the Complaint a printout of the Respondent's site accessible through the disputed domain name. The site appears to be a holding page headed with the disputed domain name and is being used to host an email account that is used to originate spoof emails which are being used for it to send to parties that the Complainant is working with.

An example of this conduct by the Respondent is Exhibit 9 to the Complaint, which is an email exchange seeking to divert a financial payment relating to the Complainant to an account controlled by the Respondent. It consists of an exchange of emails between the Complainant's "Manager-Transportation and Customs" and a third party who emailed the Manager on December 13, 2024 informing him that she had received an email from "[...]"@modaoperandi.com" copied inter alia to "[...]"@modaoperandi.com" asking for financial documents relating to the Complainant. The Respondent uses "modaoperndl.com" in the email, as it appears in the disputed domain name, rather than "modaoperandi.com" as used by the Complainant. The Complainant's Manager responds stating that; "This was not from my official email address. This is a classic phishing tactic. I will notify my IT team."

In the absence of a Response the Panel finds the above evidence as adduced by the Complainant to be true.

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 name.

Notably, the Complainant contends that;

- i. The disputed domain name is confusingly similar to the Complainant's trade marks with the substitution of a single visually similar letter.
- ii. There is no evidence that the Respondent has rights or legitimate interests in the disputed domain name.
- iii. The evidence adduced by the Complainant shows that the Respondent registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[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.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

The Panel takes into account that the only distinction between the Complainant's trade marks MODA OPERANDI and the disputed domain name is the substitution of the capital letter "I" with the visually similar lower case letter "l".

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

B. 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 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 name. 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 name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegitimate activity here, claimed as applicable to this case: phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud, can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

In reaching its Decision in respect of this element of the Policy, the Panel takes into account the evidence of illegitimate activity illustrated by Exhibit 9 to the Complaint set out in Section 4 above.

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

C. 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.

Panels have held that the use of a domain name for illegitimate activity here, claimed as applicable to this case: phishing, unauthorized account access/hacking, impersonation/passing off, or other types of fraud constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent’s registration and use of the disputed domain name constitutes bad faith under the Policy. Section 3.4 refers to the example of a respondent’s use of the domain name to send deceptive emails including for the solicitation of fraudulent invoices.

In reaching a finding of registration and use in bad faith the Panel relies upon the evidence of phishing, passing off and unauthorized account access demonstrated by Exhibit 9 to the Complaint. It is clear, as submitted by the Complainant, that the Respondent registered and is using a confusingly similar domain name primarily to profit from confusion with the Complainant’s trade marks MODA OPERANDI by sending deceptive emails.

The Respondent is using the domain name to confuse recipients of emails sent under the disputed domain name that the sender is associated with the Complainant.

The Panel also agrees with the Complainant’s submission that this is evidence of typosquatting. Typosquatting has been held in earlier decisions, including those cited by the Complainant, that typosquatting is evidence of both registration and use in bad faith.

The Panel finds that the Complainant has established the third element 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 <modaoperandl.com> be transferred to the Complainant.

/Clive Duncan Thorne/

Clive Duncan Thorne

Sole Panelist

Date: January 24, 2025