

ADMINISTRATIVE PANEL DECISION

MMDSmart LTD v. MMDSmart LTD

Case No. D2025-0990

1. The Parties

The Complainant is MMDSmart LTD, Israel, represented by Elbert Nazaretsky Rakov & Co. Law Office, Israel.

The Respondent is MMDSmart LTD, Israel.

2. The Domain Name and Registrar

The disputed domain name <mmdsmarter.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 March 11, 2025. On March 12, 2025, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 14, 2025, 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 person) and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 2025, 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 March 18, 2025.

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 March 21, 2025. In accordance with the Rules, paragraph 5, the due date for Response was April 10, 2025. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on April 11, 2025.

The Center appointed Jonathan Agmon as the sole panelist in this matter on April 28, 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 engaged in the field of business communications. Founded in 2008, and headquartered in Israel, the Complainant has since become a leading supplier of communications products, supplying in more than 100 countries around the world. The Complainant has offices in Hong Kong, China, Ukraine, and Bulgaria.

The Complainant claims to have unregistered and/or common law rights to the MMDSMART trademark. The Complainant claims to have used the MMDSMART mark extensively in commerce for 17 years, and that all its products and/or services are marked under the MMDSMART mark.

The Complainant owns and operates its primary domain name <mmdsmart.com>, registered on October 2, 2007.

The disputed domain name was registered on November 14, 2023. The disputed domain name resolves to a website which displays the Complainant's trademark, with some sections of the website imitating the Complainant's website such as the "People" section which publishes names and photos of the Complainant's senior managers. It is primarily used as a website to criticize the Complainant, containing articles which portray the Complainant in a negative light.

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:

- The Complainant has been using its MMDSMART service mark in the ordinary course of trade for 17 years, including on all its electronic and paper materials, on its advertising and delivery, and on its official letterhead. The Complainant has been actively involved in the community in its efforts to further promote its brand. The Complainant's customers and the general public have come to recognize the Complainant as an established and successful business. The Complainant's MMDSMART mark is well recognized and appreciated by the professional communication market worldwide. The Respondent has made unauthorised use of the Complainant's mark by registering the disputed domain name. The disputed domain name also almost entirely repeats the Complainant's own domain name, <mmdsmart.com>. The disputed domain name is misrepresented to originate from the Complainant and is used to inflict damage on the Complainant's business and reputation. The Complainant's MMDSMART mark does not comprise ordinary words and is inherently distinctive and specific. It is a distinctive identifier of the Complainant's products and services. Although the MMDSMART mark is unregistered, the Complainant has obtained unregistered trademark rights to the MMDSMART mark, and has satisfied the criteria under the Policy for protection.
- The Respondent has no rights or legitimate interest in respect of the disputed domain name. The Respondent has never sought permission to use the MMDSMART trademark from the Complainant. The Complainant has never granted the Respondent any permission to use its trademark for any purpose. The Respondent is not making any legitimate non-commercial or fair use of the disputed domain name and is attempting to misleadingly divert consumers or to tarnish the Complainant's trademark/service mark. The Complainant believes that the Respondent's main purposes is to tarnish the Complainant's name and

business reputation. Even if the Respondent's goal was to criticize the Complainant, his right to criticize does not extend to registering and using a domain name that is identical or confusingly similar to the Complainant's trademark. This is especially so if the disputed domain name consists solely of the trademark on its own, as that may be understood by Internet users as impersonating the Complainant. The Respondent's selection of the Complainant's MMDSMART trademark for its criticism site does not allow it to make use of the MMDSMART trademark in a manner that would lead an ordinary Internet user to believe that the Respondent was the Complainant, or that the Respondent has the Complainant's permission to distribute its message. The Complainant believes that the Respondent was undeniably intending to misleadingly divert consumers as the Respondent registered the disputed domain name, which is almost identical to the Complainant's mark, and does not incorporate any terms to indicate that it is not associated with the Complainant, or that it resolves to a criticism website. The Complainant believes that this indicates that the disputed domain name was registered and is being used by the Respondent to disrupt the business of the Complainant.

- The disputed domain name was registered and is being used in bad faith. The Respondent registered the disputed domain name with false information, furnishing the Complainant's own details instead. The Respondent also uses the Complainant's own personnel information in the "People" section of the Respondent's website. The Respondent's website is also being used to rant about the Respondent's grievances with the Complainant, with rant articles posted on its various sections. The Respondent also confesses through one of the articles posted that the owner of the Respondent's website is also the owner of the domain name, <mmd-smart.com>, which was the subject of a previous UDRP decision: *MMDSmart LTD v. Anar Jafarov, Personal use*, WIPO Case No. [D2024-3898](#). The Complainant claims that the Respondent had put the disputed domain name into operation as direct continuation of the domain name in the previous case and as its complete replacement. The Complainant believes that it is evident that the sole purpose of the disputed domain name is to interfere with the Complainant's business.

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 Panel finds the Complainant has established unregistered trademark or service mark rights for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.3.

The Complainant's MMDSMART mark is not a dictionary word and is inherently distinctive as a whole. The Complainant has used its MMDSMART mark in connection with its services for many years. The Complainant has furnished evidence of public mark recognition.

The entirety of the mark is reproduced 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.

Although the addition of other terms, here, "er", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name 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.

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. Paragraph 4(c)(iii) states that a respondent may show rights or legitimate interests in a domain name if the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As an initial matter, the Panel notes that the disputed domain name <mmdsmarter.com> is a play-on-words in relation to the Complainant's trademark. In the Panel's opinion, in a comparison of MMDSmart vs MMDsmarter, the term "smarter" likely intended to evoke the idea of being a better-informed version of MMDSmart (e.g., a site exposing or analyzing it). This is a known rhetorical or marketing technique, often used for contrast or critique. At the same time, it is possible that the term "smarter" could be used by the Complainant as a marketing tool.

The Complainant cited *Joseph Dello Russo M.D. v. Michelle Guillaumin*, WIPO Case No. [D2006-1627](#) ("JDR Case") for the proposition that the right to criticize does not extend to registering a domain name that is identical or confusingly similar to the owner's registered trademark or conveys an association with the mark. The JDR Case presents an additional view that a "respondent has legitimate interest in using the trademark as part of the domain name of a criticism site if the use is fair and non-commercial." In the JDR Case, two domain names were at issue, the first, identical to the name of the complainant and the second was not due to the addition of the term "sucks". The result was that the first domain name was found not to enjoy the fair use defense and the second was. The Panel considers the present case differs from the JDR Case in light of the fact that the composition of the disputed domain name is not identical to the Complainant's trademark but arguably is also not one that would immediately convey the message of being a criticism site.

The Panel considers it useful to refer to *Everytown for Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#), where the panel considered a range of circumstances following a more holistic approach and focused on the totality of factors, particularly when the composition of the disputed domain name is not determinative in itself.

Panels have found that for the use of a domain name to be considered a legitimate fair use where the domain name is used to host a criticism site, the criticism must be genuine and noncommercial and the domain name must not be identical to the Complainant's mark. [WIPO Overview 3.0](#), section 2.6.1 and 2.6.2. In this case, both conditions are satisfied. Moving on from the initial lack of clarity engendered by the composition of the disputed domain name, the Respondent's website home page states up front that it is a website to: "inform all those interested in the company M.M.D. Smart. Here you can familiarize yourself with all the information in advance of the collaboration, as well as share your own stories and information." Additional pages are provided making various allegations against the Complainant and its management. The Respondent's website does not appear to offer any goods or services. And while it clearly targets the Complainant, the website provides criticism which, under the particular circumstances of this case, is considered by the Panel a legitimate fair use of a domain name.

Although the "People" section of the website connected to the disputed domain name publishes names of the Complainant's managers stating: "The people behind MMD Smart's success are not ordinary people. Our team of owners and managers are not only visionaries and decision-makers, but also those who are not afraid to challenge established norms.", which raises questions as to the wording selected, it does not seem sufficient in itself to lead to a conclusion that the Respondent's purpose with the disputed domain name was to falsely associate itself with the Complainant or that its aim in registering and using the disputed domain name constitutes a typical cybersquatting case.

The Panel considers the circumstances of the case to be finely balanced but concludes that the overall purpose of the disputed domain name and its website is one of criticizing the Complainant versus being a pretext for cybersquatting nor for commercial gain or other such purposes inhering to the Respondent's benefit.

The Panel is mindful of the potential for there being a claim to a “pattern” of conduct here on the part of the Respondent but it appears that following the prior case this is an attempt to revive the criticism which was not permitted in the prior case given that the domain name was identical to the mark at issue, and there is no evidence of further attempts to create additional domain names merely for purposes of frustrating the Complainant.

The Panel finds the second element of the Policy has not been established.

C. Registered and Used in Bad Faith

With the Complainant failing to establish the second element, the Panel does not need to consider the third element.

For the sake of completeness, the Panel notes that the Complainant has referred to *MMDSmart LTD v. Anar Jafarov, Personal use*, WIPO Case No. [D2024-3898](#), where the disputed domain name was identical to the Complainant’s trademark. The Panel there concluded that “the general right to legitimate criticism does not necessarily extend to registering or using a domain name identical to a trademark (i.e., <trademark.tld> (including typos)” because of the “impermissible risk of user confusion through impersonation”, which is not the case here.¹

7. Decision

For the foregoing reasons, the Complainant is denied.

/Jonathan Agmon/

Jonathan Agmon

Sole Panelist

Date: May 13, 2025

¹The Panel has also reviewed *MMDSmart LTD v. Kateryna Milenska*, WIPO Case No. Case No. D2024-0685, where the disputed domain name was also identical to the Complainant’s trademark, but the conclusion there is not inconsistent with the findings here.