# Decision for dispute CAC-UDRP-100532

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| Case number | CAC-UDRP-100532 |
| Time of filing | 2012-11-21 15:21:18 |
| Domain names | MOUNTGAYRUM.MOBI |

## Case administrator

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| Name | Lada Válková (Case admin) |

## Complainant

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| Organization | Mount Gay Distilleries Limited |

## Complainant representative

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| Organization | Nameshield (Laurent Becker) |

## Respondent

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| Organization | Mobile Solution Engineers |

OTHER LEGAL PROCEEDINGS

The panel is not aware of any other pending proceedings.

IDENTIFICATION OF RIGHTS

The Complainant is proprietor of several trademarks containing the word elements "MOUNT GAY" as well as the valid word mark CTM 000156034 MOUNT GAY for several classes, inter alia 32 and 33.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

- The Respondent is introduced as “Mount Gay Distilleries Ltd. of Barbados” with the customers and attempts to create a risk of confusion with the Internet users and to divert them to his online shop.
See Oki Data Americas Inc v ASD Inc, WIPO Case No. D2001-0903., the Respondent can't register the domain name incorporating the Complainant's mark which would suggest to a visitor to the website that it is a genuine online shop or licenced.

- Given the distinctiveness of the Complainant's mark it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's marks and uses it for the purpose of misleading and diverting Internet traffic.
See Ferrari S.p.A v. American Entertainment Group. Inc, WIPO Case No.D2004-0673.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT is of the opinion its marks and the domain name in question are confusingly similar, no legitimate interests or rights of the Respondent are known and that the domain name registration was done in bad faith as can be derived by the related webpage under the disputed domain name showing information about the Complainant and its products.

No response was filed from Respondent. However, the technical contact of the domain name communicated to the CAC that he had registered the site in view of an ongoing IT project with Complainant which might have not been continued.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel finds that the disputed domain name “mountgayrum.mobi “ is confusingly similar to the Complainant’s “Mount Gay” trademark since the element “rum” is not distinctive for rum as an alcoholic beverage. The Complainant contends that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name, and is not commonly known under the disputed domain names.
In lack of any response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.
The Complainant also proved that the Respondent, inter alia, is using the disputed domain on a website advertising goods covered by Complainant´s trademarks and is therefore intentionally attempting to attract, for commercial gain, Internet users to his website by creating a likelihood of confusion with Complainant´s trademark.

The Panel accordingly finds that the disputed domain name was registered and is used in bad faith in accordance with paragraph 4 (a) (iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **MOUNTGAYRUM.MOBI**: Transferred

## PANELLISTS

| Name | **Dietrich Beier** |
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DATE OF PANEL DECISION 2012-12-21

Publish the Decision