Decision for dispute CAC-UDRP-102663

Case number	CAC-UDRP-102663
Time of filing	2019-09-13 11:50:27
Domain names	meiro.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	MEIRO PTE. LTD

Complainant representative

Name	Mgr. Jan Krabec LL.M.

Respondent

Organization	mustneed.com

Respondent representative

Organization	Wu Xin Wei, Guang Lai Law Firm, China

OTHER LEGAL PROCEEDINGS

To the best of the Panel's knowledge, there are no other legal proceedings, pending or decided, in relation to the disputed domain name.

IDENTIFICATION OF RIGHTS

In support of its Complaint, the Complainant has provided evidence of its registration of the following trade marks:

- Singaporean Trade Mark Registration No. 40201812329R, MEIRO (and design), registered on 25 June 2018;

- European Union Trade Mark Registration No. 017988286, MEIRO, registered on 12 March 2019; and

- European Union Trade Mark Registration No. 017989135, MEIRO (and design), registered on 16 March 2019.

FACTUAL BACKGROUND

The Complainant is an information technology company incorporated in Singapore, providing customer data platforms that allow users to collect and consolidate customer data. For use in connection with its customer data platform solutions, the Complainant is the owner of trade mark rights for MEIRO, as detailed in the section above.

The disputed domain name was registered on 22 June 2002. The disputed domain name resolves to a parking page with various sponsored links to a range of products and services, and includes a banner link at the top of the page stating "This domain name may be for sale. Click here to inquire."

On 14 December 2017, the Complainant's agent wrote to the Respondent in his personal capacity indicating that he would like to purchase the disputed domain name. The Respondent replied on 20 December stating that the price for the disputed domain name was USD 4,800. The Complainant's agent replied the same day offering USD 1,000. This offer was not accepted by the Respondent. On 10 January 2018, the Complainant's agent offered USD 2,000 for the disputed domain name. On 27 February 2018, the Respondent replied stating that it would accept USD 1,500 for a "quick deal", which was subsequently accepted by the Complainant's agent. On 3 April 2018, the Respondent wrote to the Complainant stating that it had made a typographical mistake, and that the intended price for the domain name was USD 4,500. On 6 April 2018, the Complainant's agent counteroffered USD 3,000 as a final offer. The Parties did not reach an agreement for the sale and purchase of the disputed domain name.

On 26 April 2019, the Complainant's legal representative sent a cease-and-desist letter to the Respondent, providing notice of the Complainant's trade mark rights, and requesting that the Respondent transfer the disputed domain name to the Complainant. On 30 April 2019, the Respondent replied stating, inter alia, that there was no trade mark issue regarding the disputed domain name, and requesting documents and proof in support of the Complainant's allegations that the disputed domain name had infringed any of the Complainant's rights. On 5 June 2019, the Complainant's legal representative replied to the Respondent, reminding the Respondent of the Complainant's rights and making reference to the legal requirements of the UDRP. In the absence of a further reply from the Respondent, on 29 June 2019, the Complainant wrote to the Respondent offering EUR 1,000 for transfer of the disputed domain name, threatening action under the UDRP if the Respondent did not respond.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant asserts rights in the MEIRO trade mark, citing its registrations for the mark as listed above. The Complainant claims to offer its products and services throughout the world, and claims that its business is well renowned and recognized under the trade name "Meiro" protected by its trade marks, and therefore the Complainant asserts that it has fulfilled the requirements of the first element of the UDRP.

The Complainant submits that the disputed domain name is not used for a bona fide offering of goods or services. The Complainant further submits that the Respondent is not commonly known by the disputed domain name, and that the Respondent is the owner of many (possibly hundreds) speculatively registered domain names. The Complainant asserts that the disputed domain name, being identical to the Complainant's trade mark, carries a high risk of implied affiliation between the Complainant and the links published on the website at the disputed domain name.

In relation to bad faith, the Complainant states that it had previously attempted negotiations for the sale and purchase of the disputed domain name. The Complainant asserts that there is still a notice published on the website at the disputed domain name offering it for sale, therefore the Respondent's intent to sell the disputed domain name is clear. The Complainant submits that the Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name for valuable consideration in excess of the Respondent's out of pocket costs directly related to the disputed domain name.

The Complainant requests transfer of the disputed domain name.

RESPONDENT:

The Respondent agrees that the disputed domain name is identical or confusingly similar to the Complainant's trade mark. The Respondent further notes that the registration of the disputed domain name precedes the registration of the Complainant's trade marks by many years, and that the Complainant has therefore not established valid rights in a mark that precedes the Respondent's registration of the disputed domain name. The Respondent therefore submits that the Complainant has failed to establish the first element of the UDRP.

The Respondent explains that it is an organization located in Taiwan focusing on Internet-related business, including web design, web hosting and Internet advertising. The Respondent asserts that the disputed domain name was registered as part of the Respondent's domain name portfolio, which is composed of many generic, descriptive and geographical domain names. The Respondent claims that the disputed domain name is composed of the term "mei ro", meaning "as beautiful" in Chinese Hanyu Pinyin. The Respondent submits that the disputed domain name was registered for the purpose of the Respondent's search engine advertising project, which has been underway for the past 20 years, conferring rights and legitimate interests in the disputed domain name on the Respondent.

The Respondent denies having registered and used the disputed domain name in bad faith, noting that the Complainant's trade mark was registered many years after the disputed domain name was registered. In this regard, the Respondent asserts that it had never heard of the Complainant until the Complainant first contacted the Respondent. The Respondent further notes that it resides in Taiwan, that it has never been to Singapore, and that it could not possibly have known that there would be an entity using the "Meiro" name in Singapore many years after the disputed domain name was registered.

The Respondent requests that the Panel enter a finding of Reverse Domain Name Hijacking ("RDNH"). The Respondent asserts that email communications regarding the possible sale and purchase of the disputed domain name were made with an individual who would go on to become an officer of the Complainant. These communications were made prior to the Complainant's registration of its MEIRO trade mark. The Respondent asserts that the Complainant registered its trade marks for the purpose of filing the present Complaint after it failed to purchase the disputed domain name from the Respondent. The Respondent further asserts that the Complainant must have been aware that the registration of the disputed domain name predated the Complainant's trade marks, and therefore the Complaint could not succeed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade mark 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 not, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has not, to the satisfaction of the Panel, shown the disputed 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

A. Identical or Confusingly Similar

The first element of the Policy requires a complainant first, to establish that it has rights in a mark, and further, that the disputed domain name is identical or confusingly similar to such mark. Contrary to the Respondent's assertions, the filing/priority date, date of registration, and date of claimed first use, are not considered relevant to the first element test. These factors may however bear on a panel's further substantive determination under the second and third elements; see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.1.2. The Panel finds that the Complainant has established rights in the MEIRO trade mark, as reflected in its registrations for the mark listed above. The disputed domain name incorporates the textual elements of the Complainant's trade mark in their entirety and without alteration. The Panel finds that the disputed domain name is identical to the Complainant's trade mark. The Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Complainant case under the second element is based on the notion that the disputed domain name has been registered speculatively, and that due to the identity between the disputed domain name and the Complainant's trade mark, that there is a high risk of implied affiliation between the Complainant's mark and the links published on the website at the disputed domain name.

Conversely, the Respondent argues that the disputed domain name was registered as part of its domain name portfolio comprising a variety of descriptive or geographic domain names, including the disputed domain name which is said to translate to "as beautiful" in Chinese.

As noted in WIPO Overview 3.0, section 2.10.1 "Panels have recognized that merely registering a domain name comprised of a dictionary word or phrase does not by itself automatically confer rights or legitimate interests on the respondent; panels have held that mere arguments that a domain name corresponds to a dictionary term/phrase will not necessarily suffice. In order to find rights or legitimate interests in a domain name based on its dictionary meaning, the domain name should be genuinely used, or at least demonstrably intended for such use, in connection with the relied-upon dictionary meaning and not to trade off third-party trade mark rights."

In the present case, while the disputed domain name may translate to "as beautiful" in Chinese, there is no suggestion that the disputed domain name has been used in such a way that might confer rights or legitimate interests on the Respondent in relation to its descriptive meaning. The sponsored links appearing at the web page to which the disputed domain name resolves do not have any apparent connection to the claimed meaning of the disputed domain name. At the same time, there is nothing to suggest that by using the disputed domain name, the Respondent has sought to create any active association between the disputed domain name and the Complainant's trade mark.

Notwithstanding the above, given that the Complaint has failed under the third element, the Panel has not found it necessary to proceed to a determination under paragraph 4(a)(ii) of the Policy.

C. Registration and Use in Bad Faith

The third element of the Policy requires a complainant to prove registration and use of a disputed domain name in bad faith. Failure to prove one will result in denial of the Complaint.

As noted above, the disputed domain name was registered on 22 June 2002. The registration of the disputed domain name predates any registered trade mark rights of the Complainant by 16 years. It is well established that where a respondent registers a domain name before a complainant's trade mark rights accrue, UDRP panels will not normally find bad faith on the part of the respondent; see WIPO Overview 3.0, section 3.8.1. The Panel finds that there is nothing in the record to suggest that the Respondent could have had the Complainant's trade mark in mind at the time of registering the disputed domain name some 16 years prior to the accrual of the Complainant's rights. The Complainant has not put forward any evidence of commercial activity under the "Meiro" name prior to June 2018, and there is nothing that would otherwise suggest that the Respondent had any awareness of the Complainant in 2002 when the disputed domain name was

registered. Indeed, there is nothing to suggest that the Complainant existed at such a time. The Complainant is simply unable to prove that the disputed domain name was registered in bad faith, and therefore the Complaint fails on the third element.

The Panel finds that the Complainant has failed to meet the requirements of paragraph 4(a)(iii) of the Policy.

D. Reverse Domain Name Hijacking

RDNH is defined in the Rules as "using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name". Reasons for finding RDNH include facts which demonstrate that the complainant knew that it could not succeed as to any of the required three elements, such as clear knowledge of a lack of respondent bad faith, or facts which demonstrate that the complainant clearly ought to have known it could not succeed under any fair interpretation of facts reasonably available prior to filing of the complaint, including unreasonably ignoring UDRP precedent, or filing a complaint after an unsuccessful attempt to acquire the disputed domain name without a plausible legal basis; see WIPO Overview 3.0, section 4.16.

Against the factual background as set out above, the Panel considers that it was immediately apparent that the Complainant could not succeed in proving that the Respondent registered the disputed domain name in bad faith. In fact, in its pre-Complaint correspondence addressed to the Respondent, the Complainant's representative made express reference to the WIPO Overview 3.0. Notwithstanding its awareness of well-established UDRP precedent, the Complainant proceeded to bring the Complaint against the Respondent, without any reasonable prospect of success under a plain reading of the Policy. Having done so following failed negotiations to purchase the disputed domain name further affirms the Panel's conclusion that the Complainant was brought in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **MEIRO.COM**: Remaining with the Respondent

PANELLISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2019-11-20

Publish the Decision