

Decision for dispute CAC-UDRP-105318

Case number	CAC-UDRP-105318
Time of filing	2023-03-29 09:03:19
Domain names	new-perfectmoment.com

Case administrator

Name	Olga Dvořáková (Case admin)
------	-----------------------------

Complainant

Organization	PERFECT MOMENT (UK) LIMITED
--------------	-----------------------------

Complainant representative

Organization	Convey srl
--------------	------------

Respondent

Name	Yu jia
------	--------

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant proved to be the owner of the following trademarks:

- European Union TM n. 0822326 – PERFECT MOMENT - 25,28;
- International TM n. 822326 – PERFECT MOMENT - 25,28;
- International TM n. 822326A – PERFECT MOMENT - 25,28;
- Swiss TM n. P-516624 - PERFECT MOMENT - Cl. 25, 28;
- Australian TM n. 1155248 - PERFECT MOMENT – Cl. 25, 28;
- UK TM n. UK00810822326 - PERFECT MOMENT – Cl. 25, 28;

FACTUAL BACKGROUND

The Complainant is the company PERFECT MOMENT (UK) LIMITED and currently offers high performance lifestyle clothing with a focus on ski wear.

PARTIES CONTENTIONS

COMPLAINANT:

As regards the First element of the Policy, the Complainant claims that the disputed domain name is confusingly similar to its prior trademarks "PERFECT MOMENT". According to the Complainant, the addition of the "-" and the generic term "new" do not exclude the finding of confusing similarity for the purposes of the Policy.

As regards the Second element of the Policy, the Complainant denies that the Respondent has rights or legitimate interests in registering the disputed domain name. According to the Complainant the disputed domain name is not used in connection with a bona fide offering of goods or services nor in a fair and non commercial manner as the disputed domain name is allegedly used to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's Trademark.

As regards the Third element of the Policy, the Complainant supports that the disputed domain name is used in bad faith because the purpose of the registration was to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's Trademark.

RESPONDENT:

The Respondent did not file a response.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 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

1. The disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

The Panel agrees that the disputed domain name is confusingly similar to the PERFECT MOMENT trademarks. According to a consolidated case law if the trademark is entirely comprised in the disputed domain name, the threshold requested by the First element of the Policy is met.

In the Panel's view the addition of the generic term "new" increases rather than excludes the risk of confusion for the public as it could be easily associated to a new communication / marketing campaign of the Complainant. The same applies to the "-" element which has no significant impact in the confusing similarity assessment.

Furthermore, the addition of the ".com" gTLD is generally disregarded for assessing confusing similarity in view of its technical function.

As a consequence, the Panel finds that the disputed domain name is confusingly similar to the Complainant's trademarks, for the purposes of the First Element of the Policy.

2. The Respondent lacks rights or legitimate interests in the disputed domain name.

The Respondent has not submitted a response to the Complaint. Therefore, it has filed no information on possible rights or legitimate interests it might hold on the domain name <new-perfectmomento.com>. On its part, the Complainant has submitted information and arguments which, according to the Panel, are sufficient to conclude that the Respondent has no rights or legitimate interest in the disputed domain name.

According to the information provided by the Complainant, and not contested, the Respondent is not commonly known by the disputed domain name nor he has been authorized to use the Complainant's trademark. Additionally, the information included in the WHOIS does not confer a right or legitimate interest in registering the disputed domain name.

The Panel agrees that the use of the disputed domain name does not amount to a bona fide offering of goods and services nor to a legitimate non-commercial use for the purpose of the Policy. The Complainant proved that the disputed domain name redirected to a website that reproduced the same look and feel of the Complainant's official website, as well as the Complainant's trademark and images of the Complainant's products.

Indeed the disputed domain name is composed by generic terms (i.e. "new", "perfect", "moment"). However the use of the disputed domain name is clearly in violation of the Complainant's trademarks since the webpage reproduces images of the Complainant's products, the figurative stylization of the trademark and some of the images of the Complainant's products. Therefore the Panel agrees that the mere fact that <new-perfectmoment.com> is composed by dictionary words does not confer any right or legitimate interest in the disputed domain name since the use of the domain name infringes the Complainant's rights on the trademark. Moreover the Respondent had the chance to explain why he registered the disputed domain name both before and in the UDRP proceeding but failed to do so.

For these reasons, the Panel takes the view that the Respondent lacks rights or legitimate interests in the disputed domain name for the purposes of the Policy.

3. The disputed domain name has been registered and is being used in bad faith.

The Respondent was clearly aware that the Complainant conducted its business under the PERFECT MOMENT trademark as:

- i) the disputed domain name was registered well after the Complainant's trademark registrations;
- ii) the disputed domain name redirected to a website which was very similar to the Complainant's official website.

Thus the Panel concludes that the disputed domain name was registered in bad faith.

As regards the use in bad faith, the Panel agrees that <new-perfectmoment.com> is used in a way that could create risk of confusion with the Complainant's business. As a matter of fact, the disputed domain name operated a website that promoted, without the Complainant's authorization, the sale of alleged PERFECT MOMENT branded products, using the Complainant's PERFECT MOMENT trade mark.

In support of a finding of bad faith, the Panel considers significant the fact that the Respondent did not reply to the c&d letter sent by the Complainant and did not reply to the arguments raised by the Complainant in this proceeding.

All above considered the Panel finds the evidence submitted as sufficient to prove use and registration in bad faith of the disputed domain name for the purposes of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **new-perfectmoment.com**: Transferred

PANELLISTS

Name	Andrea Mascetti
------	------------------------

DATE OF PANEL DECISION 2023-05-02

Publish the Decision
