

Decision for dispute CAC-UDRP-105293

Case number	CAC-UDRP-105293
Time of filing	2023-03-24 08:47:28
Domain names	monclerargentina.com, monclerathens.com, moncleraustria.com, monclerbelgium.com, monclerchile.com, monclercolombia.com, monclerdenmark.com, monclerdeutschland.com, monclergreece-outlet.com, monclerhrvatskas.com, moncler-israel.com, moncleritalia.com, monclermalaysia.com, moncler-mexico.com, monclernederland.com, monclernorgesalg.com, moncleromania.com, moncleroutletireland.com, moncleroutletschweizs.com, monclerphilippines.com, monclerpolska.com, monclerportugals.com, monclersaleusa.com, monclersingapore.com, monclerslovenskos.com, monclersouthafrica.com, monclersrbija.com, monclersuomis.com, monclerturkey.com, moncleruae.com, monclerukonline.com, monclersveriges.com, monclerhungarys.com, monclernz.com, monclerslovensko.com, monclerdanmark.com, moncleroutletschweiz.com, moncler-schweiz.com, monclerromanias.com, monclerromania.com, moncler-hungary.com, moncleraustralia.com, monclercanadaoutlet.com, monclercz.com, monclerfranceonline.com, moncler-greece.com, monclergreeceoutlet.com, monclerhrvatska.com, monclerhungary.com, monclernorge.com, moncleroutletonlinesito.com, monclerportugal.com, monclersaleuk.com, monclerstore.top, monclersuomi.com, monclersverige.com, moncler-hk.com, monclers-jp.top, monclertruekey.top, xn--monclerespaa-khb.com, moncler-jackets-sale.com, monclerofficial.com, monclersofficial.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)
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Complainant

Organization	Moncler S.p.A.
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Complainant representative

Organization	Convey srl
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Respondents

Organization	Web Commerce Communications Limited
Organization	wang
Name	wu hai yan
Name	shang hai chu qi xin xi ke ji you xian gong si
Name	Dreher Marko
Name	li duo

Name **feng guo hao**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of numerous trademarks, including but not limited to the following:

- International Trademark Registration No. 383336 for "MONCLER", registered on October 26, 1971;
 - EUIPO Trademark Registration No. 003554656 for "MONCLER", registered on February 11, 2005;
 - EUIPO Trademark Registration No. 005796594 for "MONCLER" registered on January 28, 2008;
 - EUIPO Trademark Registration No. 010165256 for "MONCLER" registered on April 10, 2012;
 - International Trademark Registration No. 6907251 for "MONCLER" registered on April 10, 2012; and
 - International Trademark Registration No. 1467902 for "MONCLER", registered on December 17, 2018.
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FACTUAL BACKGROUND

The Complainant is a company based in Milan, Italy which manufactures luxury sport equipment and outerwear. It was established 1952 in Monestier-de-Clermont, France, with a focus on clothing for mountain sports. In 1968, the Complainant became the official supplier to the French downhill ski team. In the early 2000s, the Complainant began to expand globally within the luxury goods segment. On 16 of December 2013, the Moncler Group was floated on Italian Stock Exchange of Milan. The Complainant is currently the official formalwear partner of Italian football club Inter Milan.

The disputed domain names were registered on various dates during the years 2022 and 2023, and according to the Complainant resolved to active websites which offer for sale and advertise for sale products which also bear the MONCLER mark.

On March 2, 2023, the Complainant sent a cease-and-desist letter to the Registrars of all the disputed domain names but did not receive any reply.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (within the meaning of paragraph 4(a)(ii) of the Policy).

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are 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.

Preliminary Issues: Multiple Respondents

Complainant has requested the consolidation of 63 disputed domain names in a single Complaint.

UDRP Rule 3(c) provides that “The complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.” The Panel has the general power to consolidate multiple domain name disputes. See UDRP Rule 10(e).

A significant number of decisions has been issued in relation to consolidation of multiple domain names. From these Panels have come to develop the test of common control to determine if two or more disputed domain names are registered by the same domain-name holder. The Overview of WIPO Panel Views on Selected UDRP Questions summarized that “where a complaint is filed against multiple respondents, panels look at whether (i) the domain names or corresponding websites are subject to common control, and (ii) the consolidation would be fair and equitable to all parties. Procedural efficiency would also underpin panel consideration of such a consolidation scenario”. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 4.11.2. When determining if multiple disputed domain names are subject to common control the Panel must also ensure that the Parties are treated with equality, and that the proceeding takes place with due expedition and efficiency. See UDRP Rules 10 (b) and (c). The Panel should review the evidence in its totality in assessing if to consolidate multiple disputed domain names in a single Complaint.

The Panel notes the following evidence in relation to the disputed domain names when it considered the consolidation of the disputed domain names:

- 45 of the disputed domain names resolve to active websites with similar structure, graphics, layout, texts, with the Complainant’s trademark appearing on the upper left corner and having the same footers. These also offer identical products for sale, which appear to be replicas of Complainant’s products.
- Of the 45 disputed domain names that resolve to similar active website, most were registered as groups within certain small period of time, for example, 39 were registered within two days during in July 2022.
- 13 resolves to inactive websites or somewhat different websites but do share a common registered owner with the above disputed domain names and similar registration date.
- All of the above domain names with the exception of <monclerespaña.com> which shares a similar website, share same registrar: ALIBABA.COM SINGAPORE E-COMMERCE PRIVATE LIMITED.

The Respondents have been given an opportunity to object to consolidation through the submission of pleadings to the Complaint (if indeed there is more than one respondent for these disputed domain names), but have chosen not to try to rebut the consolidation (see WIPO Overview 3.0, sections 4.11.1 and 4.11.2; Virgin Enterprises Limited v. LINYANXIAO aka lin yanxiao, WIPO Case No. D2016-2302).

Taking the evidence in its entirety and considering the arguments made by the Complainant, and having regard to UDRP Rule 10, the Panel finds that the consolidation of the following domain names:

<monclerargentina.com>; <monclerathens.com>; <moncleraustria.com>; <monclerbelgium.com>; <monclerchile.com>; <monclercolombia.com>; <monclerdenmark.com>; <monclerdeutschland.com>; <monclerespaña.com>; <monclergreeceoutlet.com>; <monclerhrvatskas.com>; <moncler-israel.com>; <moncleritalia.com>; <monclermalaysia.com>; <monclermexico.com>; <monclernederland.com>; <monclernorgesalg.com>; <moncleromania.com>; <moncleroutletireland.com>; <moncleroutletschweizs.com>; <monclerphilippines.com>; <monclerpolska.com>; <monclerportugals.com>; <monclersaleusa.com>; <monclersingapore.com>; <monclerslovenskos.com>; <monclersouthafrica.com>; <monclersrbija.com>; <monclersuomis.com>; <monclerturkey.com>; <moncleruae.com>; <monclerukonline.com>; <monclersveriges.com>; <monclerhungarys.com>; <monclernz.com>; <monclerslovensko.com>; <monclerdanmark.com>; <moncleroutletschweiz.com>; <moncler-schweiz.com>; <monclerromanias.com>; <monclerromania.com>; <moncler-hungary.com>; <moncleraustralia.com>; <monclercanadaoutlet.com>; <monclercz.com>; <monclerfranceonline.com>; <moncler-greece.com>; <monclergreeceoutlet.com>; <monclerhrvatska.com>; <monclerhungary.com>; <moncler-jackets-sale.com>; <monclernorge.com>; <moncleroutletonlinesito.com>; <monclerportugal.com>; <monclersaleuk.com>; <monclerstore.top>; <monclersuomi.com>; and <monclersverige.com> is fair to the Parties and that all these disputed domain names are in common control of one entity; hence, the Panel grants the consolidation for the disputed domain names (and will refer to these Respondents as the “Respondent”).

The Panel finds that the following domain names should be excluded from consolidation and the Complaint be rejected in relation to these disputed domain names, without prejudice to the Complainant's right to bring separate UDRP proceedings in relation to these:

1. <moncler-hk.com> resolves to a website showing advertisements in the Chinese language. The website under this disputed domain name is different to those discussed above, which share common features. This <moncler-hk.com> was registered a year before the bulk of the other disputed domain names and is registered to a different owner having different registration details.
2. <moncler-jackets-sale.com> resolves to an inactive website. This <moncler-jackets-sale.com> was registered three years before the bulk of the other disputed domain names and is registered to a different owner having different registration details.
3. <monclerofficial.com> and <monclersofficial.com> both resolve to inactive websites. Both <monclerofficial.com> and <monclersofficial.com> registrations are dated different to those of the bulk of the other disputed domain names and are registered to a different owner having different registration details.
4. <monclers-jp.top> does not resolve to a website, showing a server error. This <monclers-jp.top> was registered on a date different from those in the bulk of the other disputed domain names and is registered to a different owner having different registration details.
5. <monclertruekey.top> resolves to a website showing different content, and is not similar in design, graphics, layout, or text to the bulk of the disputed domain names listed above. The <monclertruekey.top> domain name was registered about a year before the bulk of the other disputed domain names and is registered to a different owner having different registration details.

PRINCIPAL REASONS FOR THE DECISION

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns trademark registrations of the MONCLER mark.

The disputed domain names contain the Complainant's MONCLER mark in its entirety. The differences between the disputed domain name and the Complainant's MONCLER trademark include (i) the addition of the generic terms "outlets" and "sales"; (ii) the additional prefix "m"; (iii) geographical indicators; and (iv) the gTLD ".com"

The addition of the prefix "m" does not prevent a finding of confusing similarity. It is established that a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element (See WIPO Overview 3.0, section 1.9).

The addition of generic terms 'sales' and 'outlet' does not avoid confusing similarity with the Complainant's trademark due to their direct association with the Complainant and its operation of the retail and marketing of clothing.

It is established that where a trademark is recognizable within the disputed domain name, the addition of a descriptive or geographical term would not prevent a finding of confusing similarity under the first element. (See WIPO Overview 3.0, section 1.8).

It is further established that the gTLD is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. (See WIPO Overview 3.0, section 1.11).

The addition of a gTLD to a disputed domain name does not avoid confusing similarity as the use of a TLD is technically required to operate a domain name (see *Accor v. Noldc Inc.*, WIPO Case No. D2005-0016; *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.*, WIPO Case No. D2006-0451; *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003; *L'Oréal v Tina Smith*, WIPO Case No. 2013-0820; *Titoni AG v Runxin Wang*, WIPO Case No. D2008-0820; and *Alstom v. Itete Peru S.A.*, WIPO Case No. D2009-0877).

Therefore, the Panel finds that the disputed domain names are confusingly similar to the MONCLER mark and the element under paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Paragraph 4(a)(ii) of the Policy requires the complainant to show that the respondent has no rights or interests in respect of the domain name. Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the

domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant submitted evidence that it did not authorize or license the Respondent to use the MONCLER mark (see OSRAM GmbH. v. Mohammed Rafi/Domain Admin, Privacy Protection Service INC d/b/a PrivacyProtect.org, WIPO Case No. D2015-1149; Sanofi-Aventis v. Abigail Wallace, WIPO Case No. D2009-0735). The Complainant also submitted evidence that its registrations and use of the trademarks predate the registration of the disputed domain names by many years.

In addition, the evidence submitted by the Complainant shows that the Respondent is not commonly known by the disputed domain names.

The Respondent did not submit a response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which is sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel considers that the Respondent has not demonstrated bona fide use of the disputed domain names. The Panel did not find any evidence that paragraphs 4(c)(ii) or (iii) of the Policy apply in the circumstances of this case.

The Panel is therefore of the view that the Respondent has no rights or legitimate interests in respect of the disputed domain names and accordingly, paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The complainant must show that the respondent registered and is using the disputed domain name in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant has submitted evidence that the Respondent registered the disputed domain names long after the Complainant registered its MONCLER trademark. Given that the Complainant's trademark has been registered since 1971, and given its notoriety, it is highly unlikely that the Respondent was not aware of the Complainant and its marks prior to the registration of the disputed domain names. The disputed domain names incorporate the Complainant's mark in its entirety with the additional descriptive suffixes and geographical indicators which, given the circumstances of this case, the Panel finds is an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website. Previous UDRP panels have ruled that in such circumstances "a likelihood of confusion is presumed, and such confusion will inevitably result in the diversion of Internet traffic from the Complainant's site to the Respondent's site", see *Edmunds.com, Inc v. Triple E Holdings Limited*, WIPO Case No. D2006-1095.

The Complainant also submitted evidence that a majority of the disputed domain names resolve to active websites which prominently display the Complainant's marks. The websites appear to pass off as the Complainant as they reproduce images of the Complainant's products which are offered for sale at prices which are much lower than the goods' market value.

Under these circumstances, the Panel's view is that the Respondent has registered the disputed domain names with the intent to profit from the reputation of the Complainant's well-known mark to attempt to attract, for commercial gain, Internet users to its website, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation or endorsement of the websites. In *Aktiebolaget Electrolux v. Jose Manuel*, [WIPO Case No. D2010-2031](#), the panel stated that, "...by registering and using the disputed domain name incorporating the Complainant's widely-known and widely-registered trademark ELECTROLUX, the effect is to mislead Internet users and consumers into thinking that the Respondent is, in some way or another, connected to, sponsored by or affiliated with the Complainant and its business; or that the Respondent's activities are approved or endorsed by the Complainant".

The Complainant further submitted evidence that the minority of the websites resolve to inactive websites. Panelists have found that the non-use of a domain name would not prevent a finding of bad faith under the doctrine of passive holding. While panelists will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details (noted to be in breach of its registration agreement), and (iv) the implausibility of any good faith use to which the domain name may be put. (See WIPO Overview 3.0, Section 3.3). Having regard to the above factors in the particular circumstances of the present case whereby the Complainant's MONCLER mark is distinctive and enjoys a significant reputation; that the Respondent has failed to submit a Response and the fact that the Respondent has used a privacy service to hide its contact information or appears to have provided false personal information, it is implausible to put any good faith use to the disputed domain names.

Based on the circumstances of the particular case, the Panel is of the opinion that it is unlikely that the Respondent registered the disputed domain names without sight and knowledge of the Complainant's marks and it is implausible that there is any good faith use to which the disputed domain names may be put to. It is clear to the Panel that the Respondent specifically targeted the Complainant and its marks and registered and is using the disputed domain names to divert Internet traffic and benefit commercially from unsuspecting Internet users seeking out the Complainant.

Based on the evidence presented to the Panel, including the confusing similarity between the disputed domain names and the

Complainant's MONCLER mark, the fact that the Respondent used the Complainant's mark on the websites to offer goods similar to those of the Complainant's, and the fact that no Response was submitted by the Respondent, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Partially Accepted/Partially Rejected

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

1. **monclerargentina.com**: Transferred
2. **monclerathens.com**: Transferred
3. **moncleraustria.com**: Transferred
4. **monclerbelgium.com**: Transferred
5. **monclerchile.com**: Transferred
6. **monclercolombia.com**: Transferred
7. **monclerdenmark.com**: Transferred
8. **monclerdeutschland.com**: Transferred
9. **monclergreece-outlet.com**: Transferred
10. **monclerhrvatskas.com**: Transferred
11. **monclerisrael.com**: Transferred
12. **moncleritalia.com**: Transferred
13. **monclermalaysia.com**: Transferred
14. **moncler-mexico.com**: Transferred
15. **monclernederland.com**: Transferred
16. **monclernorgesalg.com**: Transferred
17. **moncleromania.com**: Transferred
18. **moncleroutletireland.com**: Transferred
19. **moncleroutletschweizs.com**: Transferred
20. **monclerphilippines.com**: Transferred
21. **monclerpolska.com**: Transferred
22. **monclerportugals.com**: Transferred
23. **monclersaleusa.com**: Transferred
24. **monclersingapore.com**: Transferred
25. **monclerslovenskos.com**: Transferred
26. **monclersouthafrica.com**: Transferred
27. **monclersrbija.com**: Transferred
28. **monclersuomis.com**: Transferred
29. **monclerturkey.com**: Transferred
30. **moncleruae.com**: Transferred
31. **monclerukonline.com**: Transferred
32. **monclersveriges.com**: Transferred
33. **monclerhungarys.com**: Transferred
34. **monclernz.com**: Transferred
35. **monclerslovensko.com**: Transferred
36. **monclerdanmark.com**: Transferred
37. **moncleroutletschweiz.com**: Transferred
38. **moncler-schweiz.com**: Transferred
39. **monclerromanias.com**: Transferred
40. **monclerromania.com**: Transferred
41. **moncler-hungary.com**: Transferred
42. **moncleraustralia.com**: Transferred
43. **monclercanadaoutlet.com**: Transferred
44. **monclercz.com**: Transferred

45. monclerfranceonline.com: Transferred
 46. moncler-greece.com: Transferred
 47. monclergreeceoutlet.com: Transferred
 48. monclerhrvatska.com: Transferred
 49. monclerhungary.com: Transferred
 50. monclernorge.com: Transferred
 51. moncleroutletonlinesito.com: Transferred
 52. monclerportugal.com: Transferred
 53. monclersaleuk.com: Transferred
 54. monclerstore.top: Transferred
 55. monclersuomi.com: Transferred
 56. monclersverige.com: Transferred
 57. moncler-hk.com: Remaining with the Respondent
 58. monclers-jp.top: Remaining with the Respondent
 59. monclertruekey.top: Remaining with the Respondent
 60. xn--monclerspaa-khb.com: Transferred
 61. moncler-jackets-sale.com: Remaining with the Respondent
 62. monclerofficial.com: Remaining with the Respondent
 63. monclersofficial.com: Remaining with the Respondent
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PANELLISTS

Name Jonathan Agmon

DATE OF PANEL DECISION 2023-05-04

Publish the Decision
