

Decision for dispute CAC-UDRP-105451

Case number	CAC-UDRP-105451
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Time of filing	2023-05-17 11:49:18
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Domain names	ghetemou.com, moucizmecrnagora.com, moueskimobootsoutlet.com, moufrance.com, mougreece.com, mouitalia.com, mouslovenija.com, mouturkey.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Mou Limited
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Complainant representative

Organization	SILKA AB
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Respondent

Organization	Web Commerce Communications Limited :Client Care
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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 is the registered owner of several trademarks for the name MOU, among which the following:

1. European Union Trademark Registration number 008164204 (figurative mark), registered on December 11, 2009, in international classes 3, 18 and 25.
2. International Trademark Registration number 1001663 (figurative mark), registered on April 8, 2009, in international classes 3 and 5. The trademark designates, inter alia, Russia China, Israel and Viet Nam.
3. International Trademark Registration number 1005206, registered on April 28, 2009, in international class 18. The trademark designates, inter alia, Russia and China.
4. Turkish Trademark Registration number 2010 69019 MOU (word mark), registered on March 4, 2013, in international classes 18 and 25.
5. Turkish Trademark Registration number 2011 57434 MOU (word mark), registered on October 17, 2012, in international classes 18 and 25.
6. United States Trademark Registration number 3663689 MOU (word mark), registered on August 4, 2009, in international class 25.

7. United Kingdom Trademark Registration number UK00002432785, registered on June 15, 2007, in international classes 3, 24 and 25.

The Complainant is also the owner of domain names containing the denomination “MOU” among others the domain name mou-online.com, which hosts a website that displays information about the Complainant and its products (registered prior to the registration date of the Disputed Domain Names on January 26, 2006).

FACTUAL BACKGROUND

The Complainant is a London based company created by Shelley Tichborne in the United Kingdom in 2002. The Complainant provides footwear and accessories such as bags, wallets, hats and gloves, for men, women and children. The Complainant’s products are sold globally via their website “www.mou-online.com” and are also available for sale via selected boutiques and high-profile department stores across the world. In addition, it makes wholesale sales in 35 countries, including Asiatic countries.

To Complainant’s MOU brand refers to both the name of the company and the trademark on which this Complaint is based. “MOU” products are well-regarded in the fashion industry and used also by many celebrities.

No information is known about the Respondent, named Web Commerce Communications Limited, a company with its official seat at Kuala Lumpur, Malaysia.

According to the Whois data, the disputed domain names were registered on the following dates:

ghetemou.com	20-10-2022
moucizmecrnagora.com	20-10-2022
moueskimobootsoutlet.com	28-11-2022
moufrance.com	28-11-2022
mougreece.com	28-11-2022
mouitalia.com	28-11-2022
mouslovenija.com	20-10-2022
mouturkey.com	28-11-2022

The disputed domain names <moueskimobootsoutlet.com>, <mouitalia.com>, <mouslovenija.com> and <mouturkey.com> are currently inactive.

The disputed domain names <ghetemou.com>, <moucizmecrnagora.com>, <moufrance.com> and <mougreece.com> resolve to websites in which the Respondent display the Complainant’s MOU mark on top and allegedly offer MOU-branded goods for sale, without disclosing its lack of relationship with the Complainant.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant requests that all the disputed domain names be transferred to the Complainant based on the following grounds:

Identical or confusingly similar

The Complainant has not only registered rights in the mark MOU by virtue of the above-mentioned trademark registrations, but also unregistered rights by virtue of the well-known status of the mark MOU in the fashion industry.

According to the Complainant, the disputed domain names are confusingly similar to the mark MOU, because it contains “MOU” as the principal distinctive element and the addition of the country names and generic terms, as well as the generic Top-Level Domain (“gTLD”) “.com” do not eliminate the confusing similarity between the Complainant’s trademark and the disputed domain names.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the any of the disputed domain

names or a name corresponding to the disputed domain names, nor that the Respondent has ever offered any goods or services under any of the disputed domain names, nor has making any businesses with the Complainant. Moreover, the Complainant states that the Respondent has not been licensed or authorized in other way to use the Complainant's trademarks nor to apply for or use any domain name incorporating such trademarks.

Finally, according to the Complainant, the Respondent does not appear to be making a legitimate noncommercial or fair use of the disputed domain names.

Furthermore, despite that the generic and country names incorporated in the disputed domain names have a clear and known meaning, the disputed domain names in its entire form do not have any meaning in English or Malaysian language.

Registered and used in bad faith

Given that the MOU mark is recognised as a well-known trademark in the fashion industry and the Complainant's rights in the mark predate the registration of the disputed domain names, the Complainant considers that the Respondent must have been aware of the rights the Complainant has in the MOU trademark, at the time of their registrations. Furthermore, the Respondent could have easily performed a quick search before registering the disputed domain names which would give him the information that the trademark MOU is owned by the Complainant and that the Complainant has been using its trademark for numerous of years.

For the disputed domain names <moueskimobootsoutlet.com>, <mouitalia.com>, <mouslovenija.com> and <mouturkey.com>, which does not resolve to any active website, passive holding of a domain name which has no other legitimate use and clearly references the Complainant's trademark constitutes use in bad faith.

For the disputed domain names <ghetemou.com>, <moucizmecrnagora.com>, <moufrance.com> and <mougreece.com>, which relate to a website offering products bearing the Complainant's mark for sale without any indication of their relationship to the Complainant, the Respondent presumably aims to capitalize on the reputation of the Complainant's trademark by diverting Internet users seeking MOU branded products to the Respondent's websites for his own illicit gain.

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).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have 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

Paragraph 15 of the Rules states that the Panel decides a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel draws such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidence provided in support of them.

1.

The Panel finds that the Complainant is a registered owner of several regionally and internationally registered trademarks containing the work of graphical representation of the word "MOU".

Furthermore, use and registration of the MOU mark by the Complainant precedes the Respondent's registration of the disputed domain names for numerous years.

Given all those circumstances and the fact that the disputed domain names fully incorporate the key term of the Complainant's registered trademarks "MOU" and only differ in generic terms or country names, the Panel finds the Complainant's trademarks and the disputed domain names confusingly similar.

As far as the additional verbal element ".com" is concerned, the Panel shares the Complainant's argument in the sense that this particle has rather technical function and does not outweigh the overall similar impression of the Complainant's trademarks and the disputed domain names leave.

Accordingly, the Panel considers that the disputed domain names and the Complainant's previously registered trademarks are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2.

According to the Complainant's contentions and evidence submitted within this proceeding, which were not disputed, the Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant nor is currently known and has never been known under the name "MOU" or any combination of this name.

Furthermore, the disputed domain names have never been legally associated with any Complainant's business activity, nor relate to any non-commercial legitimate use of the Respondent, but rather appear to be registered with the intention of attracting Internet users.

Consequently, and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3.

As to the bad faith registration and use of the disputed trademarks, first the Panel considers unconceivable that the Respondent would not have been aware of the Complainant's trademark rights at the time of the registration of the disputed domain names, particularly given that:

- the Complainant has a widespread reputation in the MOU marks with regard to its products
- MOU is a well-known trademark in the fashion industry
- the Complainant has rights in the MOU marks since 2007 in the United Kingdom and 2009 internationally
- the disputed domain names incorporate generic terms related to the Complainant's activities such as "boots" or "outlet"
- the Complainant's marks "MOU" are currently used by the Respondent on the websites to which some of the active disputed domain names resolve.

Therefore, the Panel finds that the actual knowledge of a Complainant's rights in the trademarks "MOU" can be considered proven through a totality of circumstances described above.

Second, the Complainant points out that Respondent uses the disputed domain names <ghetemou.com>, <moucizmecrnagora.com>, <moufrance.com> and <mougreece.com> for its commercial gain, by reproducing entirely, the Complainant's trademark MOU and adding only the generic terms "ghete" and "cizme" which refer to goods that the Complainant sells in Romanian and Montenegrin languages, or country names which immediately creates an impression of affiliation with the Complainant.

Furthermore, the disputed domain names resolve to websites depicting the Complainant's mark in conjunction with what appears to be an online shopping page with similar type of goods the Complainant sells and with the overall similar graphical representation to official MOU website (including placement of the Complainant's logo at the top of each website)

Therefore, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website, the Panel considers that the Respondent intends to divert customers / partner of the Complainant to its website for commercial gain.

Third, the Complainant states that the non-use of the disputed domain names <moueskimobootsoutlet.com>, <mouitalia.com>, <mouslovenija.com> and <mouturkey.com> would not prevent a finding of bad faith under the doctrine of passive holding considering the totality of the circumstances in the present case.

Given that the Complainant's MOU marks are entirely incorporated in the inactive disputed domain names, and all the circumstances of this case analysed above, the Panel concludes that inactive use of some of the disputed domain name represent also a bad faith conduct of the Respondent.

Based on all the circumstances described by the Complainant and supported by relevant documents, the Panels concludes that in the absence of sufficient evidence to the contrary and rebuttal from Respondent, the Respondent's activity is indicative of registration and use of the disputed domain names in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied 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. **ghetemou.com**: Transferred
2. **moucizmecrnagora.com**: Transferred
3. **moueskimobootsoutlet.com**: Transferred
4. **moufrance.com**: Transferred
5. **mougreece.com**: Transferred
6. **mouitalia.com**: Transferred
7. **mouslovenija.com**: Transferred
8. **mouturkey.com**: Transferred

PANELLISTS

Name	Hana Císlerová
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DATE OF PANEL DECISION 2023-06-28

Publish the Decision
