

Decision for dispute CAC-UDRP-105561

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| Case number | CAC-UDRP-105561 |
| Time of filing | 2023-07-12 09:41:10 |
| Domain names | mews.group, mews.solutions |

Case administrator

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

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| Organization | Mews Systems B.V. |
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Complainant representative

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| Organization | Eldison, advokátní kancelář, s.r.o. |
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Respondents

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| Name | Cheng Xian |
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| Name | Cheng Xian |
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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 Names.

IDENTIFICATION OF RIGHTS

Complainant indicates and provides evidence to be the owner of the different trademark registrations with the term MEWS® such as:

- International Registration wordmark MEWS®, Reg. Nr. 1721392, Registration Date: 22 September 2022, for different good and services at Classes 9, 36 & 42. Designated countries: DE, FI, BE, PT, BG, DK, LT, LU, HR, LV, FR, HU, SE, BX, SI, SK, GB, IE, US, EE, MT, EM, GR, IT, ES, AT, CY, CZ, PL, RO, NL;
- Czech wordmark MEWS®, Nr. 581404, Registration Date: 8 February 2023 for different good and services at Class 9, 36 and 42;
- Czech combined mark MEWS®, Nr. 337252, Registration Date: 19 March 2014 for different good and services at Class 9, 38 and 41;
- International Registration Figurative Mark MEWS®, Nr. 1341330, Registration Date: 8 November 2016, for different good and services at Classes 9, 38 & 41. Designated countries: JP, LV, LU, GE, BX, LT, HR, RO, TR, HU, FR, BG, BE, DE, FI, DK, IE, AT, CZ, CY, US, MX, SE, KR, IL, SG, SI, AU, SK, IS, IT, MT, PT, PL, CH, EM, RU, GR, ES, NL, EE, CN.

FACTUAL BACKGROUND

The Complainant offers a property management system designed to simplify and automate all operations for modern hoteliers and their guests.

The Complainant is the owner of several trademarks, including the term "MEWS®" at least since 2014.

The disputed domain names <mews.group> & <mews.solutions> (hereinafter, the "Disputed Domain Names") were registered on 3 June 2023 and 4 February 2023 respectively, by Cheng Xian based in China and the websites connected with the Disputed Domain Names resolve either to an inactive site <mews.group> or to a website showing infringing content <mews.solutions>.

According to Complainant's non-contested allegations, the Respondent has no rights or legitimate interest in respect of the Disputed Domain Names, and he is not related in any way to the Complainant's business.

The Registrar of the Disputed Domain Names confirmed that the Respondent is the current Registrant, and that English is the language of the registration agreement.

PARTIES CONTENTIONS

Complainant:

First element: Confusingly similar to the protected mark

The Complainant states that the Disputed Domain Names are identical to its trademark "MEWS®".

Second element: Rights or legitimate interest

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the Disputed Domain Names. In this sense, the Complainant indicates that the Respondent tarnishes its trademark "MEWS®".

Third element: The Disputed Domain Names have been registered and are being used in bad faith

The Complainant states that the Disputed Domain Names were registered and are used in bad faith. Furthermore, the Complainant indicates that the Respondent uses the Disputed Domain Names for phishing purposes. In this line of argument, the Complainant described the following illegal conduct by the Respondent:

1. The Respondent scamed people into investing in Mews Systems B.V. and have already managed to convince someone to send money as an investment;
2. The Respondent tried to recruit people through messages via a Messaging Service Provider;
3. The Respondent elaborated a forged certificate signed by Complainant's CEO to appear legitimate.

The Complainant also indicates that there is similarity between the website associated with the Disputed Domain Names and the website associated with the right holder's domain name. In this regard, the Complainant indicates that the Respondent uses its trademark on the websites linked to the Disputed Domain Names as well as a copyright sentence „Mews Systems Copyright" in the footer to confuse visitors that it's genuine.

RESPONDENT

Respondent did not reply to the Complaint.

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 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.

PRINCIPAL REASONS FOR THE DECISION

In accordance with Article 15 of the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Uniform Domain Name Dispute Resolution Policy (the Policy), these Rules and any rules and principles of law that it deems applicable.

Article 4(a) of the Policy sets out the three elements which must be proved by the Complainant to be successful in the present administrative proceeding:

- (i) the Disputed Domain Names are identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) Respondent does not have no rights or legitimate interests in respect of the Disputed Domain Names; and
- (iii) the Disputed Domain Names have been registered and is being used in bad faith.

Below, the Panel present the review of the three elements based on the statements and documents submitted by the Parties.

1. THE DISPUTED DOMAIN NAMES ARE CONFUSINGLY SIMILAR TO THE TRADEMARK MEWS® OF THE COMPLAINANT.

In accordance with the evidence provided, Complainant owns different trademarks with the term MEWS® with ownership at least since 2014.

In the present case, the Disputed Domain Names are only composed of the trademark MEWS®. Furthermore, the addition of the Top Level Domain Names “.group” and “.solutions” at the Disputed Domain Names are considered as standard registration requirements and, therefore, they should be disregarded under the first element confusing similarity test (see paragraph 1.11 WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition – hereinafter, the “WIPO Jurisprudential Overview 3.0”).

Therefore, the Panel concludes that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy and the Disputed Domain Names are identical to Complainant’s mark.

2. RESPONDENT’S LACK OF RIGHTS OR LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAMES

The second element of the Policy requires that the Complainant establishes that the Respondent has no rights or legitimate interests in the Disputed Domain Names. The generally adopted approach by UDRP panels, when considering the second element, is that if a complainant makes out a prima facie case, the burden of proof shifts to the respondent to rebut it (see WIPO Jurisprudential Overview 3.0., paragraph 2.1).

The Complainant has indicated that the Respondent does not have any rights or legitimate interest in the Disputed Domain Names. As a main argument regarding this second element, the Complainant indicated “Diversion of consumers/trademark tarnishment”. Even though the Complainant did not elaborate in detail the argumentation related to this specific second element, the Panel is able to infer some facts based on the main arguments and evidence presented by the Complainant.

Regarding the Disputed Domain Name <mews.solutions>, the Complainant provided a screenshot of the website where it can be confirmed the use of the wordmark MEWS® as well as the use of the copyright assertion “Mews Systems Copyright”. The website also shows a login option. Furthermore, the Complainant also provided as evidence with a screenshot of message from a Messaging Service Provider where a person – probably linked to Respondent – invites another person (probably a Complainant’s client) to use a link connected with the Disputed Domain Name <mews.solutions>, and it includes an invitation code. The invitation relates to the creation an account under the argument that this is the platform’s agents’ website.

As to the second Disputed Domain Name <mews.group>, the Complainant did not provide with a screenshot connected with the website but it rather mentioned that the website was identical to the one related to <mews.solutions>. In this vein, the Complainant mentioned that the website was takedown by the Registrar as phishing and abuse and for this purpose, the Complainant provided with the Registrar’s email dated July 4th, 2023 by which the Registrar confirmed the takedown of the website.

Absent of evidence of the use, the Panel, using the general powers of a Panel articulated inter alia in paragraphs 10 and 12 of the Rules, visited on 18 August 2023 the website linked to the Disputed Domain Name <mews.group> in order to confirm the current use of this Disputed Domain Name and it was able to confirm that the Disputed Domain Name is currently not in use. In addition, the Panel reviewed the historical resource to check how the Disputed Domain Name was used in the past and nothing was shown.

As to the general powers of the Panel, please refer to the following accepted UDRP Doctrine:

Noting in particular the general powers of a panel articulated inter alia in paragraphs 10 and 12 of the UDRP Rules, it has been accepted that a panel may undertake limited factual research into matters of public record if it would consider such information useful to assessing the case merits and reaching a decision.

This may include visiting the website linked to the disputed domain name in order to obtain more information about the respondent or its use of the domain name, consulting historical resources such as the Internet Archive (www.archive.org) in order to obtain an indication of how a domain name may have been used in the relevant past, reviewing dictionaries or encyclopaedias (e.g., Wikipedia), or accessing trademark registration databases.

See paragraph 4.2, WIPO Jurisprudential Overview 3.0.

Since the Disputed Domain Name <mews.group> is currently passively held and since there is no evidence in the file that before any notice of the dispute, the Respondent was using, or made demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or services, or was making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the Complainant's mark. Moreover, noting the construction of the Disputed Domain Name, which consists of the Complainant's identical trademark, one can infer that the nature of this Disputed Domain Name is such to carry a high risk of implied affiliation to the Complainant, contrary to the fact, which cannot constitute fair use.

See paragraph 2.5.1, WIPO Jurisprudential Overview 3.0.

The fact that Respondent did not reply to the Complaint gives an additional indication that Respondent lacks rights or legitimate interest since Respondent did not provide with evidence of the types specified in paragraph 4 (c) of the Policy, or of any circumstances, giving rise to rights or legitimate interests in the Disputed Domain Names.

Considering the facts at hand, the Panel concludes that neither the Respondent nor the evidence establishes that the Respondent has any right or legitimate interest to the Disputed Domain Names. The Complainant has therefore also satisfied the requirement under paragraph 4(a)(ii) of the Policy.

3. THE DISPUTED DOMAIN NAMES HAVE BEEN REGISTERED AND ARE BEING USED IN BAD.

Paragraph 4(a)(iii) of the Policy indicates that Complainant must assert that the Respondent registered and is using the Disputed Domain Names in bad faith. In this sense, Paragraph 4(b) of the Policy sets out four circumstances which if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that the Respondent has registered or acquired the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to the domain name; or

(ii) The Respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that Respondent has engaged in a pattern of such conduct; or

(iii) The Respondent has registered the disputed domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

As a main argument for this third element, the Complainant mentioned the following at the complaint:

1. Phishing
2. Substantial similarity between website associated with disputed domain name and website associated with right holder's domain name(s)

Similar to the second element, the Complainant did not elaborate in detail the two arguments for this third element listed in the Complaint and it rather mentioned different general points describing it's right. In this instance, the Panel takes the opportunity to remind the Complainant about its obligation to support its claims by arguments and available evidence. Here it is important to consider what previous Panel have indicated regarding bad faith:

General evidentiary framework: complaints alleging the types of conduct described in UDRP paragraph 4(b) should be supported by arguments and available evidence such as dated screenshots of the website to which the disputed domain name resolves or correspondence between the parties. Even in cases of respondent default, panels have held that wholly unsupported conclusory allegations may not be sufficient to support a complainant's case.

Past Panels have been prepared in appropriate cases to draw inferences concerning a respondent's (bad faith) intent from the relevant facts and circumstances.

Given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant's trademark would also satisfy the complainant's burden.

See paragraph 3.1, WIPO Jurisprudential Overview 3.0.

Based on the evidence presented and on the general lines described by the Complainant, the Panel can draw the following inferences about the two main arguments for this third element indicated by the Complainant:

The Complainant described several aspects showing illegal activity by Respondent; e.g. scam scheme including the use of messages, fabrication of an apparent forged certificate signed by Complainant's CEO, use of a website with a log in access where the Complainant's trademark and copyrights are used.

In terms of evidence, the Complainant was able to provide a screenshot of the website linked to <mews.solutions> where it can be confirmed the use of the wordmark MEWS® as well as the copyright assertion "Mews Systems Copyright". The website also shows a login option. Furthermore, the Complainant also provided as evidence with a screenshot of message from a Messaging Service Provider where a person – probably linked to Respondent – invites another person (probably a Complainant's client) to use a link connected with the Disputed Domain Name <mews.solutions>, and it includes an invitation code. The invitation relates to the creation an account under the argument that this is the platforms agents' website.

As to the second Disputed Domain Name <mews.group>, the Complainant did not provide with a screenshot connected with the website but it rather mentioned that the website was identical to the one related to <mews.solutions>. However, the Complainant was able to provide with an e-mail address by the Registrar confirming the takedown of the infringing website. The Panel was able to confirm that this Disputed Domain Name is not currently in use.

Regarding the forged certificate, the Complainant provided with different screenshots of messages from a Messaging platform exchanged between a potential Complainant's client and a person apparently acting on behalf of Respondent from a phone number where the use of a logo with MEWS can be seen. At one of the screenshots, it can be seen an e-mail sent by Complainant's customer support confirming that "these URLs" are not related to the Complainant's organization, however, the Disputed Domain Names are not mentioned at the e-mail. In the same messaging conversation, the person apparently acting on behalf of Respondent replied to the potential Complainant's client that the "Mews Reservation Department" is not directly managed by the Complainant. Furthermore, this person also indicated that they operate independently and provided with a potential forged certificate on behalf of Complainant and signed by its CEO. Unfortunately, the Complainant did not provide with any other evidence to help the Panel to connect the forged certificate with the Disputed Domain Names.

Despite of the above and based on the remaining evidence, the Panel is able to draw the inference that the Disputed Domain Name <mews.solutions> has been used for a scam scheme since the Disputed Domain Name host a website with the wordmark MEWS® as well as the copyright assertion "Mews Systems Copyright". The website also shows a login option. Furthermore, the Complainant also provided as evidence with a screenshot of message from a Messaging Service Provider where a person – potentially linked to Respondent – invites another person (potentially a Complainant's client) to use a link connected with the Disputed Domain Name <mews.solutions>, and it includes an invitation code. Absent of Respondent's reply, the Panel is ready to infer that the Disputed Domain Names is used in bad faith.

As to the second Disputed Domain Name <mews.group>, the Panel was able to confirm that this is currently passive held. Past 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 and for this purpose, the following factors should be taken into account: (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 paragraph 3.3. of WIPO Overview.

The Panel can draw inference about bad faith by Respondent due to the current passive holding in terms of the following elements:

1. The Complainant has provided with evidence about its trademark registration in different countries as well as the use of its trademark at the website mews.com where it is indicating that their Property Management System is powering over 3,000 of the world's best hospitality brands;
2. Respondent did not reply to the Complaint;
3. At the complaint, the Complaint also mentioned one line of argument about the use of a privacy protection service by Respondent to hide his identity;

4. The fact that the Registrar decided to take down the website based on the arguments presented by the Complainant;
and
5. The fact that both domain names are owned by the same Respondent which makes the Panel believe that the Disputed Domain Name <mews.group> was also used for the scam scheme above describe.

Regarding the use of Privacy Protection Service and its connection with bad faith inference, Past Panels have indicated the following:

In terms of underlying respondent identity, panels treat privacy and proxy services as practical equivalents for purposes of the UDRP, and the fact that such services may be employed to prevent the complainant and panel from knowing the identity of the actual underlying registrant of a domain name does not prevent panel assessment of the UDRP elements.

Where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith; a respondent filing a response may refute such inference.

See paragraph 3.6, WIPO Jurisprudential Overview 3.0.

In light of the above-mentioned findings, the Panel finds that the evidence submitted by the Complainant supports the argument that by using the Disputed Domain Names, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product.

Therefore, the Panel concludes that Respondent registered and is using the Disputed Domain Names in bad faith and thus has satisfied the requirement under 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. **mews.group**: Transferred
2. **mews.solutions**: Transferred

PANELLISTS

| | |
|------|------------------------------|
| Name | Victor Garcia Padilla |
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DATE OF PANEL DECISION **2023-08-21**

Publish the Decision
