Decision for dispute CAC-UDRP-106425

Case number	CAC-UDRP-106425
Time of filing	2024-04-12 08:42:02
Domain names	mlffy.com

Case administrator

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

Complainant

Organization	Mercis B.V.

Complainant representative

Organization	Coöperatie SNB-REACT U.A.

Respondent

Name	Zerbino Breton

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

Among others, the Complainant is owner of European Union Registered Trademark No. 13876628 in respect of the word mark MIFFY, registered on December 2, 2015 in Classes 3, 5, 8, 9, 11, 12, 14, 15, 16, 18, 20, 21, 24, 25, 26, 27, 28, 29, 30, 31, 32, 35 and 41.

FACTUAL BACKGROUND

The Complainant is a Netherlands entity responsible for managing various rights to the “Miffy” character, created by Dick Bruna in about 1955. The first “Miffy” book swiftly followed the character’s inception and, within a decade, “Miffy” toys emerged, heralding the launch of an array of related products. In subsequent decades, “Miffy” has transcended its origins as a children’s book character to achieve global recognition as a work of art, inspiring a diverse range of lifestyle, fashion, and design products. The Complainant currently contracts with over 300 companies worldwide as licensees to make said products, with at least a thousand different products in the market at any one time over the last decade. Such companies include large international retailers such as H&M and Uniqlo. The licensing activities of the Complainant represent its main source of income.

The Complainant is the owner of a variety of registered trademarks for the word mark MIFFY, and the “Miffy” brand’s equivalent in Dutch (NIJNTJE) has been recognized as possessing a high degree of fame in Mercis B.V. v. Handelsonderneming Karel Donker, WIPO Case No. DNL2020-0041, a case under the Dispute Resolution Regulations for .nl Domain Names (a variation of the UDRP).

According to the corresponding WhoIs record, the disputed domain name was registered on October 15, 2023. The Complainant notes that the associated website currently displays a '403' error but also provides evidence in the form of historic screenshots that show that said website previously featured an online store selling articles of clothing such as sweaters, knitwear and jackets, which could be shipped to the United States of America, France or Spain, among other locations.

PARTIES CONTENTIONS

Complainant:

The Respondent registered a domain name that clearly consists of misspelling, which is confusingly similar to the registered MIFFY trademark. The only difference between the disputed domain name and said mark is the substitution of the letter "l" for the letter "i". The present case is a typical example of the substitution of similar-appearing characters. When writing in capital letters, the said mark and the disputed domain name have the same visual appearance. The misspelling does not prevent a finding of confusing similarity as the Complainant's trademark is clearly recognizable in the disputed domain name.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has no relationship with the Respondent and has not licensed or otherwise authorized the Respondent to use the MIFFY trademark in the disputed domain name. In the absence of such license or authorization, no actual or contemplated bona fide or legitimate use of the disputed domain name can reasonably be claimed. No credible evidence has been produced by the Respondent or is otherwise available that the Respondent is commonly known by the disputed domain name. "Mlffy" is not a word that is easily pronounced in the English language. This makes it all the more likely that this is not the Respondent's personal or business name. The disputed domain name is a textbook example of typosquatting and cannot constitute fair use. The website associated with the disputed domain name presented clothing for sale that could be shipped to various countries. These goods are the same as those for which the Complainant has registered marks which cover said countries. The Respondent has used the disputed domain name for commercial gain to mislead or divert customers. The Respondent's website contained no contact details. This suggests a lack of rights or legitimate interests.

The disputed domain name was registered and is being used in bad faith. The Complainant's various registered marks date back to 1996. The disputed domain name incorporates a misspelling of the Complainant's MIFFY mark and was registered on October 15, 2023. It would be implausible to suggest that the Respondent did not have actual knowledge of the Complainant's mark at that point. Panels have consistently found that the mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely known trademark by an unaffiliated entity can by itself create a presumption of bad faith. It is also bad faith to use the disputed domain name for a website that offers competing goods to those of the Complainant. There is a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondent's choice of domain name. The word "mlffy" cannot easily be pronounced in the English language, which is the language of the website associated with the disputed domain name. It is an unlikely name to have been selected for an online shop seeking to be identified by potential customers other than in a typosquatting context. It is also relevant that the Respondent uses a privacy protection service and that its website did not provide any contact information.

Respondent:

No administratively compliant Response has been filed.

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

The Complainant has demonstrated to the Panel's satisfaction that it has UDRP-relevant rights in its MIFFY trademark by virtue of European Union Registered Trademark No. 13876628. The Second-Level Domain of the disputed domain name is a typographical variant of the said trademark where the letter "l" has been substituted for the letter "i".

Notwithstanding the spelling variation, the Panel considers that the Complainant's mark is fully recognizable in the disputed domain name based upon a straightforward side-by-side comparison. The generic Top-Level Domain in respect of the disputed domain name, namely ".com", is typically disregarded for the purposes of the comparison under the first element analysis of the Policy. In all of these circumstances, the Panel finds that the disputed domain name is confusingly similar to the Complainant's MIFFY trademark.

With regard to the second element of the Policy, the Complainant asserts that it has no relationship with the Respondent and has not licensed or otherwise authorized it to use the MIFFY trademark in the disputed domain name. The Complainant affirms that no credible evidence has been produced by the Respondent, or is otherwise available, indicating that the Respondent is commonly known by the disputed domain name. The Complainant submits that "mlffy" is not a word that is easily pronounced in the English language, being the language of the associated website. Finally, the Complainant contends that the disputed domain name amounts to a typographical variant of the Complainant's mark, which seems to be designed to have a similar appearance thereto when capitalized.

The Panel finds that the Complainant's various contentions, taken together, are sufficient to constitute the requisite prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name (see, for example, section 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0")). In particular, the Panel accepts that the disputed domain name is more probably than not a typosquatted or intentionally registered typographical variant of the Complainant's trademark which is intended to take unfair advantage of Internet users' errors in misperceiving the disputed domain name as the Complainant's mark. In this context, it is significant that the disputed domain name has been used in connection with a website that offered clothing for sale, being a product that competes with the Complainant's licensed products.

The Panel finds on the balance of probabilities that the disputed domain name has been created and is being used for the purposes of typosquatting, and ultimately for confusing the public into believing that it is associated with the Complainant and its licensed products when it is not. This cannot confer rights and legitimate interests upon the Respondent.

The Respondent has not replied to the Complainant's allegations and evidence in this case and has failed to set out any alleged rights or legitimate interests which it might have claimed in the disputed domain name. There are no submissions or evidence on the record which might serve to rebut the Complainant's prima facie case. Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

As indicated above, the disputed domain name appears to the Panel to be an intentionally designed typosquatting variant of the Complainant's mark. The evidence before the Panel shows that the Complainant's mark is of a longstanding nature and is well-known. Said mark is in widespread use worldwide in association with a variety of licensed products. In these circumstances, it is entirely reasonable to infer that the disputed domain name was registered by the Respondent with knowledge of the Complainant and its rights, and (given the typographical variation of said mark) with an intent to target these.

The present record shows that the Complainant's mark is licensed to prominent retailers in connection with the sale of clothing. The disputed domain name has been used for a website that competes with this activity. There is no apparent reason as to why the Respondent would select the disputed domain name apart from the fact that its visual appearance suggests an association with the Complainant's mark. For example, while the Respondent's website is in the English language, the term "mlffy" is virtually unpronounceable in that language, and it seems unlikely to have been chosen for any unrelated and/or potentially good faith reason.

In all of these circumstances, the Panel considers that the Complainant has made out a sufficient case of registration and use in bad faith. The Respondent has not filed a Response in this case and therefore has not addressed the Complainant's assertions of bad faith registration and use to any extent. No explanation has been presented by the Respondent that might have suggested that its actions regarding the disputed domain name were in good faith, and the Panel has been unable to identify any conceivable good faith motivation which the Respondent might have put forward for its registration and use of the disputed domain name.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **mlffy.com**: Transferred

PANELLISTS

Name	**Andrew Lothian**

DATE OF PANEL DECISION 2024-05-06

Publish the Decision