Decision for dispute CAC-UDRP-106557

Case number	CAC-UDRP-106557
Time of filing	2024-05-27 09:25:17
Domain names	xiaomishopth.com

Case administrator

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

Complainant

Organization	Xiaomi Inc.

Complainant representative

Organization	CSC Digital Brand Services Group AB

Respondent

Name	PAKPUM BHAGPABHAKORN

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 owner, among others, of the following trademarks for XIAOMI:

XIAOMI (WIPO Reg. No. 117761) registered on November 28, 2012;

XIAOMI (WIPO Reg. No. 1313041) registered on April 14, 2016;

XIAOMI (Chilean Reg. No. 1115836) registered on January 24, 2014;

XIAOMI (US Reg. No. 4527605) registered on May 13, 2014;

XIAOMI (Thailand Reg. No. ๓73040) registered on June 13, 2016;

XIAOMI (Thailand Reg. No. 171122155) registered on July 14, 2017;

MI (WIPO Reg. No. 1173649) registered on November 28, 2012.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant states that it is a Chinese consumer electronics and smart manufacturing company with smartphones and smart hardware connected by an Internet of Things platform at its core, operating worldwide since over 13 years.

The Complainant further states that it is the owner of the XIAIMI trademark since 2012.

The disputed domain name was registered on September 9, 2013 and it resolves to an online store passing off the Complainant's official website and reproducing the Complainant's registered trademarks without authorization from the latter.

PARTIES CONTENTIONS

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, 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).

The disputed domain name <xiaomishopth.com> is confusingly similar to its XIAOMI trademark, as it incorporates the trademark in its entirety, with the addition of the terms "shop" (generic) and "TH" (very likely a geographical reference to Thailand, where the Respondent seems to be located according to the whois).

Not only the addition of generic/geographical terms is not, per se, a distinguishing feature, but it may even to the contrary be apt to increase confusion since users could believe that the disputed domain name is used by Complainant or, at least, by a Complainant’s affiliated entity in Thailand as an online shop (see Facebook Inc. v. Naija Host, WIPO Case No. D2015-1057). Accordingly, the Panel finds that Complainant has proven the first element of the Policy.

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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).

According to the WIPO case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., the complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, the respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the respondent fails to do so, the complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

In the case at hand, the Respondent is not affiliated with the Complainant nor authorized by it in any way to use the XIAOMI trademark. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Also considering that the Respondent did not reply to the Complainant's contentions, the Panel finds that Complainant has proven the second element of the Policy.

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The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name. Indeed, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark XIAOMI. Please see for instance WIPO Case No. D2004-0673, Ferrari S.p.A v. American Entertainment Group Inc.

Here, Complainant has specifically argued that bad faith exists pursuant to, inter alia, paragraph 4(b)(iv) of the UDRP because the website associated with the disputed domain name resolves to an unauthorized commercial website offering XIAOMI products, where the Complainant’s logo is displayed on the website, as well as on its favicons, and the Complainant’s distinctive orange and white colour scheme is plastered throughout the content of the website, contributing to create a confusing similarity with the Complainant: the Panel does agree, since several previous panels also have reached similar conclusions. See, e.g., Reebok International Limited v. Web Commerce Communications Limited, Client Care, WIPO Case No. D2022-2738 (finding bad faith where “Respondent’s Website features Complainant’s… Mark prominently throughout the website to sell footwear using photographs that look similar to the photographs that Complainant uses to sell footwear on its website”); and “Dr. Martens” International Trading GmbH and “Dr. Maertens” Marketing GmbH v. Domain Administrator, See PrivacyGuardian.org / Stephan Naumann, WIPO Case No. D2020-0379 (finding bad faith where disputed domain name was used in connection with a website that included complainant’s logo and “offered a variety of footwear bearing the [complainant’s] trademark for online sale at discounted prices without a disclaimer”).

Accordingly, the Panel finds that Complainant has proven the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xiaomishopth.com**: Transferred

PANELLISTS

Name	**Tommaso La Scala**

DATE OF PANEL DECISION 2024-06-26

Publish the Decision