Decision for dispute CAC-UDRP-106623

Case number	CAC-UDRP-106623
Time of filing	2024-06-25 10:59:42
Domain names	mouaustralia.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Mou Limited

Complainant representative

Organization	Convey srl

Respondent

Name	laura drescher

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 submitted evidence that it is the registered owner of the following trademark registrations:

- United States of America Trademark Registration number 3663689 for MOU (word mark), registered on 4 August 2009, in international class 25;
- United Kingdom Trademark Registration number UK00002432785 for MOU (figurative mark), registered on 15 June 2007, in international classes 3, 24 and 25;
- European Union Trademark Registration number 008164204 for MOU (figurative mark), registered on 11 December 2009, in international classes 3, 18 and 25;
- European Union Trademark Registration number 015216138 for MOU (figurative mark), registered on 11 December 2009, in international classes 3, 18 and 25;
- International Trademark Registration number 1005206 for MOU (figurative mark), registered on 28 April 2009, in international class 18, designating, inter alia, China;
- International Trademark Registration number 1471477 for MOU (word mark), registered on 25 April 2019, in international class 35.

FACTUAL BACKGROUND

The Complainant was founded in London in 2002 and is an internationally recognized brand for premium, handcrafted shoes and accessories in luxurious natural fibres. The Complainant's products are sold online and via selected boutiques and department stores worldwide, also being promoted by famous celebrities. The trademark MOU is pronounced “mu” and means soft to the touch in French.

The Complainant owns and operates various websites using domain names such as <mou.com> (registered on 22 May 1998) and <mou-online.com> (registered on 26 January 2006).

The disputed domain name was registered by the Respondent on 28 November 2022. The disputed domain name resolves to a website offering for sale what appear to be counterfeit products bearing the Complainant's MOU trademark.

The Complainant sent cease and desist letters to the Respondent on 3 June 2024 and 10 June 2024, but received no response.

The Registrar confirmed that the Respondent is the current registrant of the disputed domain name, and that the language of the registration agreement is English.

The Respondent has not filed a Response.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

The Complainant made the following contentions:

The disputed domain name is confusingly similar to the Complainant's MOU trademark, as it incorporates the mark in its entirety with the addition of the geographical term "australia" and the generic Top-Level Domain .com.

The Respondent has no rights or legitimate interests in the disputed domain name. The Respondent is not a licensee or authorized agent of the Complainant, is not commonly known by the domain name, and has not used the domain name in connection with a bona fide offering of goods or services.

The disputed domain name was registered and is being used in bad faith. The Respondent had knowledge of the Complainant's trademark at the time of registration. The domain name is being used to sell counterfeit products, intentionally attempting to attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark. The Respondent also provided inaccurate details when registering the disputed domain name and failed to respond to the Complainant's cease and desist letters.

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

This is a proceeding pursuant to Paragraph 4 of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules") and the CAC Supplemental Rules.

Paragraph 15 of the Rules provides that the Panel shall decide the 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 that it deems applicable.

According to Paragraph 4(a) of the Policy, a complainant must prove each of the following: (A) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; (B) the respondent has no rights or legitimate interests in respect of the domain name; (C) the domain name has been registered and is being used in bad faith.

(A) Identical or confusingly similar domain name

The Complainant has demonstrated that it owns several registered trademarks for MOU, which were registered long before the registration of the disputed domain name by the Respondent. These trademark registrations confer on the Complainant sufficient rights to satisfy the requirement of having trademark rights for the purposes of standing to file a UDRP case.

The disputed domain name incorporates the Complainant's MOU trademark in its entirety, with the addition of the geographical term "australia" and the generic Top-Level Domain ".com". It is well established that the addition of a geographical term to a trademark in a domain name does not prevent a finding of confusing similarity. Similarly, the generic Top-Level Domain ".com" is disregarded in the assessment of confusing similarity, as it is a technical requirement of domain name registration.

The Panel, therefore, finds that the disputed domain name is confusingly similar to the trademark in which the Complainant has rights.

(B) Lack of rights or legitimate interests

The Respondent has not filed a Response and has not provided any information that would demonstrate rights or legitimate interests in the disputed domain name.

Therefore, the Complainant has made a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name. In particular, the Respondent is not a licensee or authorized agent of the Complainant, is not commonly known by the disputed domain name, and has not used the disputed domain name in connection with a bona fide offering of goods or services.

The evidence shows that the disputed domain name resolves to a website offering for sale what appear to be counterfeit products bearing the Complainant's MOU trademark. Such use does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name.

The Panel, therefore, finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(C) Registration and use of the disputed domain name in bad faith

The Complainant's MOU trademark has been in use since 2002 and has acquired a reputation in the field of premium footwear and accessories. It is reasonable to infer that the Respondent was aware of the Complainant's rights when registering the disputed domain name.

The disputed domain name is being used to offer for sale products bearing the Complainant's trademark at significantly discounted prices. This suggests that the products are likely counterfeit. The use of a domain name incorporating a well-known trademark to sell counterfeit goods demonstrates bad faith registration and use.

Furthermore, by using the disputed domain name in this manner, the Respondent has intentionally attempted 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 website and the products offered on it. This constitutes evidence of bad faith under paragraph 4(b)(iv) of the Policy.

The Respondent's failure to respond to the Complainant's cease and desist letters provides additional support for a finding of bad faith, as well as the Respondent's provision of inaccurate/false information when registering the disputed domain name (esp. its address which does not seem to exist).

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

In conclusion, the Panel finds that all three elements required by Paragraph 4(a) of the Policy were met and makes the following decision.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **mouaustralia.com**: Transferred

PANELLISTS

Name	**Vojtěch Chloupek**

DATE OF PANEL DECISION 2024-07-28

Publish the Decision