Decision for dispute CAC-UDRP-106756

Case number	**CAC-UDRP-106756**
Time of filing	**2024-07-29 13:27:07**
Domain names	**infoxiaomi.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	**Oscar Rojas**

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

Xiaomi Inc. (“Xiaomi” or “Complainant”) is the owner of various registrations for the trademark “XIAOMI” on a worldwide basis, including Colombia (through its international registrations), the USA and Chile. The most relevant trademark registrations to this matter are:

- XIAOMI (WIPO Reg. No. 117761) registered on November 28, 2012;
- XIAOMI (WIPO Reg. No. 1313041) registered on April 14, 2016;
- XIAOMI (US Reg. No. 4527605) registered on May 13, 2014;
- MI (WIPO Reg. No. 1516163) registered on October 17, 2019.

FACTUAL BACKGROUND

Complainant was founded in April 2010 and listed on the Main Board of the Hong Kong Stock Exchange on July 9, 2018 (1810.HK).

Xiaomi is a consumer electronics and smart manufacturing company with smartphones and smart hardware connected by an Internet of Things platform at its core. In these 13 years, Complainant has grown to become one of the leading providers of innovative technology worldwide.

Complainant's range of products includes phones, smart home devices including vacuums or kitchen appliances, and lifestyle goods such as smart watches or electric scooters. Complainant's strength is reflected in #3 global market share ranking in smartphones. Indeed, Complainant's global user base exceeds 594 million, with an estimated 618 million IoT connected devices. In the first quarter of Fiscal Year 2023, Complainant achieved a revenue of RMB 59.5 billion and an adjusted net profit of RMB 3.2 billion.

Respondent registered the disputed domain name on July 12, 2023. The pertinent Whois information identifies the Respondent as "Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf", whilst the Registrar Verification identifies them as "Oscar Rojas, Tekmovil". Respondent is using the disputed domain name to resolve to a website displaying Complainant's official MI logo as well as images of Complainant's XIAOMI branded products.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.
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).

The disputed domain name can be considered as capturing, in its entirety, Complainant's XIAOMI trademark and simply adding the generic term "info" to the beginning of said trademark. The mere addition of this generic term to Complainant's trademark does not negate the confusing similarity between the disputed domain name and the Complainant's trademark under Policy 4(a)(i), and the disputed domain name must be considered confusingly similar to Complainant's trademark.

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).

Respondent is not sponsored by or affiliated with Complainant in any way. Furthermore, Complainant has not licensed, authorized, or permitted Respondent to use Complainant's trademarks in any manner, including in domain names. "In the absence of any license or permission from the Complainant to use its trademark, no actual or contemplated bona fide or legitimate use of the disputed domain name could reasonably be claimed." See Sportswear Company S.P.A. v. Tang Hong, D2014-1875 (WIPO December 10, 2014).

In the instant case, the pertinent Whois information identifies the Respondent as "Redacted for Privacy, Privacy service provided by Withheld for Privacy ehf", whilst the Registrar Verification identifies them as "Oscar Rojas, Tekmovil", neither of which resembles the disputed domain name in any manner. Thus, where no evidence, including the Whois record for the disputed domain name, suggests that Respondent is commonly known by the disputed domain name, then Respondent cannot be regarded as having acquired rights to or legitimate interests in the disputed domain name within the meaning of 4(c)(ii). See Moncler S.p.A. v. Bestinfo, D2004-1049 (WIPO, February 8, 2005) (in which the panel noted "that the Respondent's name is "Bestinfo" and that it can therefore not be "commonly known by the Domain Name" [moncler.com]").

Furthermore, at the time of filing the complaint, Respondent was using a privacy WHOIS service, which past panels have also found to equate to a lack of legitimate interest. See Jackson National Life Insurance Company v. Private WhoIs wwwjacksonnationallife.com N4892, D2011-1855 (WIPO December 23, 2011) ("The Panel concludes that the Respondent possesses no entitlement to use the name or the words in the Complainant's marks and infers […] from the "Private Whois" registration that it is not known by such name. There is no evidence of the Respondent ever being commonly known by the name or words now included in the disputed domain name.").

Respondent is not making a bona fide offering of goods or services or legitimate, noncommercial fair use of the disputed domain name. Rather, Respondent is using the disputed domain name to resolve to a website displaying Complainant's official MI logo as well as images of Complainant's XIAOMI branded products. Respondent's inclusion of the Complainant's logo is a direct effort to take advantage of the fame and goodwill that Complainant has built in its brand, and Respondent is not only using the confusingly similar disputed domain name, but is also imitating Complainant by displaying the Complainant's logo and images of its products. This imitation is referred to as "passing off," and "Respondent, in [also] using [a] confusingly similar domain name to mislead Complainant's customers, is not making a bona fide offering of goods and services pursuant to Policy ¶4(c)(i) or a legitimate noncommercial or fair use of the domain name pursuant to Policy ¶4(c)(iii)." See Houghton Mifflin Co. v. Weatherman, Inc., D2001-0211 (WIPO April 25, 2001) (no bona fide offering where website's use of Complainant's logo…suggested that website was the official Curious George website).

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).

By registering a domain name that comprises Complainant's XIAOMI trademark in its entirety, with the mere addition of the generic term "info", Respondent has created a domain name that is confusingly similar to Complainant's trademark, as well as its <xiaomi.com> domain name. As such, Respondent has demonstrated a knowledge of and familiarity with Complainant's brand and business. Moreover, the fact that Respondent is using the disputed domain name to offer XIAOMI products for sale reflects their awareness of the XIAOMI brand and trademarks. In light of the facts set forth within this Complaint, it is "not possible to conceive of a plausible situation in which the Respondent would have been unaware of" the Complainant's brands at the time the disputed domain name was registered. See Telstra Corp. Ltd. v. Nuclear Marshmallows, D2000-0003 (WIPO February 18, 2000). The XIAOMI trademark is so closely linked and associated with Complainant that Respondent's use of this mark, or any minor variation of it, strongly implies bad faith – where a domain name is "so obviously connected with such a well-known name and products, […] its very use by someone with no connection with the products suggests opportunistic bad faith." See Parfums Christian Dior v. Javier Garcia Quintas, D2000-0226 (WIPO May 17, 2000). Further, where the disputed domain name incorporates Complainant's XIAOMI trademark, and especially considering the Respondent's use of the disputed domain name's website, "it defies common sense to believe that Respondent coincidentally selected the precise domain without any knowledge of Complainant and its trademarks." See Asian World of Martial Arts Inc. v. Texas International Property Associates, D2007-1415 (WIPO Dec. 10, 2007).

As aforementioned, the disputed domain name is connected with an unauthorized commercial website offering XIAOMI products. The Complainant's logo is prominently displayed on the website, as well as on its favicons, contributing to create a confusing similarity with the Complainant. Consequently, the Respondent is using the disputed domain name to intentionally attempt to attract Internet users to a website for commercial gain, by creating a likelihood of confusion with Complainant's mark as to the source, sponsorship, affiliation or endorsement of its website. Respondent has clearly created a likelihood of confusion with Complainant and is attempting to profit from such confusion by offering Complainant's products for sale. As such, Respondent is attempting to cause consumer confusion in a nefarious attempt to profit from such confusion. The impression given by the disputed domain name and its website would cause consumers to believe the Respondent is somehow associated with Complainant when, in fact, it is not. Respondent's actions create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of the disputed domain name, and the Respondent is thus using the fame of the Complainant's trademarks to improperly increase traffic to the website listed at the disputed domain name for Respondent's own commercial gain. It is well established that such conduct constitutes bad faith. See World Wrestling Fed'n Entm't, Inc. v. Ringside Collectibles, D2000-1306 (WIPO January 24, 2001) (concluding that the respondent registered and used the <wwfauction.com> domain name in bad faith because the name resolved to a commercial website that the complainant's customers were likely to confuse with the source of the complainant's products, especially because of the respondent's prominent use of the complainant's logo on the site).

Respondent's use of the disputed domain name constitutes a disruption of Complainant's business and qualifies as bad faith registration and use under Policy 4(b)(iii) because Respondent's domain name is confusingly similar to Complainant's XIAOMI trademark and the disputed domain name's website is being used to offer Complainant's goods (although Complainant is actually unable to ascertain the authenticity of the goods on offer) without Complainant's authorization or approval. Past panels have confirmed that using a confusingly similar domain to mislead consumers and then offering a complainant's goods or services is evidence of bad faith registration and use. See Philipp Plein v. Domain Admin, Whois Privacy Corp., D2016-1519 (WIPO September 12, 2016) (Respondent acted in bad faith by registering the disputed domain name to disrupt the Complainant's relationship with their customers or potential customers and/or to attempt to attract Internet users for commercial gain. Respondent purported to sell Philipp Plein products, without Complainant's authorization, from the website to which the disputed domain name resolves).

Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity, which past Panels have held serves as further evidence of bad faith registration and use. See Dr. Ing. H.C. F. Porsche AG v. Domains by Proxy, Inc., D2003-0230 (WIPO May 16, 2003). See also WIPO Jurisprudential Overview 3.0 at 3.6 ("Panels have also viewed a respondent's use of a privacy or proxy service which is known to block or intentionally delay disclosure of the identity of the actual underlying registrant as an indication of bad faith.").

Finally, on balance of the facts set forth above, it is more likely than not that the Respondent knew of and targeted Complainant's trademark, and Respondent should be found to have registered and used the disputed domain name in bad faith. See Tudor Games,

Inc. v. Domain Hostmaster, Customer ID No. 09382953107339 dba Whois Privacy Services Pty Ltd / Domain Administrator, Vertical Axis Inc., D2014-1754 (WIPO January 12, 2014) ("the Panel makes its finding regarding bad faith registration by asking whether it is more likely than not from the record of the evidence in the proceeding that Respondent had the ELECTRIC FOOTBALL trademark in mind when registering the Domain Name.").

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

Respondent's use of the disputed domain name constitutes a disruption of Complainant's business and qualifies as bad faith registration and use because Respondent's domain name is confusingly similar to Complainant's trademark and the disputed domain name's website is being used to offer Complainant's goods (although Complainant is actually unable to ascertain the authenticity of the goods on offer) without Complainant's authorization or approval.

Furthermore, Respondent, at the time of initial filing of the Complaint, had employed a privacy service to hide its identity.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **infoxiaomi.com**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2024-08-30

Publish the Decision