Decision for dispute CAC-UDRP-106866

Case number	CAC-UDRP-106866
Time of filing	2024-09-23 09:08:56
Domain names	lost-mary.cc

Case administrator

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

Complainant

Organization	DASHING JOYS LIMITED.
Organization	Imiracle(Shenzhen)Technology Co., Ltd.

Complainant representative

Organization	Shenzhen Chofn Intellectual Property Agency Co., LTD.

Respondent

Name

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 of various trademark registrations for “LOST MARY”, including the following:

- International trademark registration No. 1616521A for LOST MARY, registered on 4 August 2021;
- United States trademark registration No. 6932688 for LOST MARY, registered on 27 December 2022;
- European Union trademark registration No. 018937635 for LOST MARY, registered on 21 January, 2009; and
- United Kingdom trademark registration No. UK00003967951 for LOST MARY, registered on 16 October 2023.

The Complainant owns and operates its domain name, <lost-mary.com>, registered on 28 January 2021.

The disputed domain name was registered on 29 November 2023, and at the time of filing the Complaint, resolved to a website resembling the Complainant’s official website, displaying the Complainant’s trademark.

FACTUAL BACKGROUND

The 2nd Complainant was established in 2017, and was the owner of the Lost Mary brand, created in 2022. Lost Mary is a brand of disposable e-cigarettes (vapes) launched in 2022. The Lost Mary brand has a presence in more than 50 markets around the world, serving more than 10 million users, and over 100,000 retail stores world-wide. The Lost Mary brand of e-cigarettes is one of the top selling brands in the United Kingdom after its launch in April 2022.

The 1st Complainant acquired the 2nd Complainant sometime between 2023 to 2024.

(Both the 1st and 2nd Complainants are hereinafter referred to as the "Complainant".)

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Complainant has provided evidence that it owns registered trademark rights in the LOST MARY mark.

In this case, the disputed domain name consists of the Complainant's LOST MARY trademark in its entirety with no alterations. Thus, the disputed domain name, which in this case incorporates the Complainant's mark in its entirety is identical to the Complainant's mark.

As for the country code Top-Level Domain ("gTLD") ".cc", it is well established that the gTLD is not relevant to the issue of identity or confusing similarity between the Complainant's trademark and the domain name in dispute (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated a prima facie case that the Respondent lacks rights or legitimate interests in respect of the disputed domain name and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it has been the registered owner of the LOST MARY mark long before the date that the disputed domain name was registered and that it has not authorised the Respondent to use the Complainant's trademark. There is no evidence that the Respondent is commonly known by the disputed domain name.

It is noted that the disputed domain name resolves to a webpage resembling the Complainant's own official website and displaying the Complainant's LOST MARY trademark. Further, the Respondent's webpage contains a function where consumers may input the serial number of their LOST MARY product to check its authenticity. This function is also present on the Complainant's official webpage. As the Respondent has no rights to the Complainant's trademark, there is no reason why the Respondent's webpage should resemble the Complainant's webpage and display the Complainant's LOST MARY trademark. Further, there is no reason why the Respondent would be able to authenticate any of the Complainant's products.

The Respondent did not submit a Response and did not provide any explanation for its choice of the disputed domain name nor evidence to show rights or legitimate interests in the disputed domain name which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant's trademark was registered some years before the registration of the disputed domain name. In addition, the disputed domain name resolves to a website that displays the Complainant's trademarks and resembles the Complainant's webpage, along with a purported authentication function. It is the Panel's view that the Respondent was aware of the Complainant and its trademarks and is targeting the Complainant and its customers, possibly for a phishing scheme.

Given the particular circumstances of this case, and the distinctive nature of the Complainant's trademark, the Panel is persuaded on the evidence that the Respondent was aware of the Complainant and its LOST MARY trademark at the time of registering the disputed domain name and specifically targeted the Complainant.

Further, the Panel cannot conceive any plausible good faith use to which the disputed domain name may be put. The Respondent failed to submit a response and provided no evidence to rebut the Complainant's case. The Respondent also did not register his name or other details when registering the disputed domain name. This is also an indication of bad faith.

Accordingly, having regard to the circumstances of this case, the Panel finds that the Complainant has met its burden 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. **lost-mary.cc**: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2024-11-11

Publish the Decision