Decision for dispute CAC-UDRP-106944

Case number	CAC-UDRP-106944
Time of filing	2024-10-18 09:29:50
Domain names	lostmary5000israel.com, lostmarybm600australia.com, lostmarybm600danmark.com, lostmarybm600magyarorszag.com, lostmarybm600nederland.com, lostmarymo5000norge.com, lostmaryos5000australia.com, lostmaryqm600belgie.com, lostmaryqm600norge.com, lostmaryvape5000nederland.com

Case administrator

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

Complainant

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

Complainant representative

Organization	Shenzhen ChofnIntellectual Property Agency Co, LTD.

Respondents

Name	Edward Howell
Name	Morgan Tomlinson
Name	Harley King
Name	Lucy Duffy
Name	Thomas Farrell
Name	Alex Bray
Name	Robert Howe
Name	Aimee Whittaker
Name	Jade Hammond
Name	Joe Saunders

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant, DASHING JOYS LIMITED, has proven to be the owner of several trademarks corresponding to and/or including the LOST MARY trademark.

This Complainant is, inter alia, the owner of the following trademarks:

- European Union trademark registration n. 018937635 “LOST MARY" word, registered on March 1, 2024;

- United Kingdom trademark registration n. UK00003967951 "LOST MARY" word, registered on January 5, 2024 – effective as of the date October 16, 2023;

- International trademark registration n. 1616521A "LOST MARY" word, registered on August 4, 2021.

FACTUAL BACKGROUND

The Complainants in this administrative proceeding are DASHING JOYS LIMITED, established in 2023, and Imiracle (Shenzhen) Technology Co., established in 2017. Ltd., hereinafter the Complainants.

The Complainants claim that "Lost Mary" is the sister brand of the disposable e-cigarette brand ELF BAR, which is designed and produced by the original ELF BAR team. LOST MARY is used for a variety of disposable vapes. Although only launched in 2022, the Complainants claim that it has become one of the most popular brands on the market. As of today, LOST MARY has a presence in more than 50 markets around the world, serving more than 10 million users and more than 100,000 retail stores worldwide.

The disputed domain names were all registered on August 1, 2024.

All the disputed domain names resolve to websites where purported LOST MARY-branded goods are displayed and offered for sale.

The Complainants have asked for the disputed domain names to be transferred to Imiracle (Shenzhen) Technology Co. However, Imiracle (Shenzhen) Technology Co. does not appear to hold any trademark registration for LOST MARY. In addition, the Complainants have neither explained this choice nor have they documented any relationship between DASHING JOYS LIMITED and Imiracle (Shenzhen) Technology Co.

PARTIES CONTENTIONS

COMPLAINANT:

1. The disputed domain names are confusingly similar to the Complainants’ trademark

The Complainants contend that the disputed domain names are confusingly similar to the Complainants’ LOST MARY trademark.

The LOST MARY trademark is incorporated into each disputed domain name in its entirety, with the addition of country names: Israel, Australia, Danmark, Magyarorszag, Nederland, Norge, Belgie, and a combination of letters and numbers: 5000, bm600, mo5000, os5000, qm600 and vabe5000. These combinations clearly refer to the Complainants' best-selling products, such as Lost Mary OS5000, Lost Mary BM600, and Lost Mary Mo5000. The Complainants thus submit that these terms do not impact on the similarity of the disputed domain names to the LOST MARY trademark.

2. The Respondents do not have any rights or legitimate interest in the disputed domain names

The Complainants contend that the Respondents are not commonly known by the disputed domain names and that the Respondents are not affiliated with or authorized by the Complainants in any way. The Complainants contend that the Respondents have no rights or legitimate interests in respect of the disputed domain names, and are not related to the Complainants’ business in any way. The Complainants do not carry out any activity for, nor does it have any business dealings with, the Respondents. The Complainants further contend that the disputed domain names resolve to websites displaying the Complainants’ trademark ‘LOST MARY’ and purporting to sell LOST MARY-branded goods, and that this is not a bona fide use.

3. The disputed domain names have been registered and are being used in bad faith

The Complainants contend that owing to the active business presence of the Complainants in different markets and on a significant scale worldwide, it is presumable that the Respondents had actual knowledge of the Complainants' distinctive trademarks, and thus registered the disputed domain names in bad faith. The Complainants further contend that, since the websites linked to the disputed domain names have the appearance of being official e-shops of the Complainants, in particular because they contain the Complainants' LOST MARY trademark and they reproduce photographs apparently copied (without permission) from the Complainants' official website, the Respondents must have had actual knowledge of the Complainants and specifically targeted the Complainants' brand and trademark. The Complainants further claim that the Respondents are using the disputed domain names to deliberately imitate the Complainants' LOST MARY brand for their own profit.

4. Regarding the Respondents' identity, the Complainants have requested a consolidation of multiple disputed domain names and the Respondents.

In support of the above request, the Complainants claim, inter alia, that:

a) The Respondents are related, to the extent that a sufficient unity of interest exists such that they may essentially be treated as a single domain name holder for the purposes of Policy paragraph 3(c) of the Rules;

b) All the disputed domain names are active and resolve to online stores/copycat websites that featured the infringing trademark and copyright content related to the Complainants, such as the LOST MARY logo and photos of the Complainants' products;

c) All the disputed domain names were registered the same day through the same Registrar;

d) All the e-mail addresses for the ten Respondents have the same structure, i.e., name followed by two numbers@"cxtmail.com";

e) All the disputed domain name entries list (for the Respondents) the same city and country in their registration information;

f) All the disputed domain names incorporate the Complainants' LOST MARY trademark, and are similar in their construction;

g) Consolidation of proceedings would be fair and equitable to all parties.

RESPONDENTS:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainants have, to the satisfaction of the Panel, shown the disputed domain names are 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 Complainants have, to the satisfaction of the Panel, shown the Respondents to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainants have, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

A. Consolidation: Multiple Respondents
The Amended Complaint was filed in relation to nominally different domain name registrants. The Complainants allege that the domain name registrants are the same entity or mere alter egos of each other, or under common control. The Complainants request the consolidation of the Complaint against the multiple disputed domain name registrants pursuant to paragraph 10(e) of the Rules.

The disputed domain name registrants did not comment on the Complainants' request.
Paragraph 3(c) of the Rules states that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain name holder.

In addressing the Complainants' request, the Panel will consider whether (i) the disputed domain names or corresponding websites are subject to common control; and (ii) the consolidation would be fair and equitable to all Parties. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 4.11.2.

As regards common control, the Panel notes in particular that all the disputed domain names resolved to copycat websites that featured the Complainants' LOST MARY trademark and photos of the Complainants' products, and that many identical items on sale displayed the same images. Owing to the above and the fact that the composition of the disputed domain names is very similar, together with other commonalities relating to the postal addresses and the e-mail addresses, the Panel finds that the disputed domain names identified in the Complaint, on the balance of probability, are registered by the same domain name holder or are at least under common control.

As regards fairness and equity, the Panel sees no reason why consolidation of the disputes would be unfair or inequitable to any Party.
Accordingly, the Panel decides to consolidate the disputes regarding the nominally different disputed domain name registrants (referred to below as "the Respondent") in a single proceeding.

B. Joint Complainants: The Complaint is filed jointly by Imiracle (Shenzhen) Technology Co., Ltd. and DASHING JOYS LIMITED.
The Complainants ask for the disputed domain name to be transferred to Imiracle (Shenzhen) Technology Co. Ltd.
The Complainants did not explain this choice, nor have they documented any relationship between DASHING JOYS LIMITED and Imiracle (Shenzhen) Technology Co. Ltd. In addition, from the documents filed by the Complainants, it appears that the sole holder of the trademark registrations for LOST MARY is DASHING JOYS LIMITED. In these circumstances, and owing to the fact that only one of the Complainants can be listed as the registrant of the disputed domain name, this Panel decides that, if the Complaint is successful, only DASHING JOYS LIMITED would be entitled to have the disputed domain name transferred to them.

In this sense see Dr. Martens International Trading GmbH, "Dr. Maertens" Marketing GmbH v. Posers/Philip Cox WIPO Case No. D2011-1142: "The practice of gTLD domain name registration is generally that only one entity is listed as the registrant of a domain name. Where a complaint is brought under the Policy by multiple complainants, the remedy sought by the complainants is transfer of the disputed domain name(s), and the complaint succeeds, the issue arises as to which of the complainants the panel should order the transfer of the disputed domain name(s). It would seem that, as a matter of principle, a panel should only order transfer of a disputed domain name to a complainant which, in its individual capacity, has an entitlement to the trademark(s) on which the complaint in relation to that domain name was based. Thus, in a case brought by multiple complainants where only one of the complainants has entitlement to the trademark(s) on which the complaint is based, the panel should order transfer of the domain name only to the complainant that has the trademark entitlement. This is the approach that has been adopted in cases under the Policy from the very beginning of the Policy – see, e.g., The Avenue, Inc. and United Retail Incorporated v.Chris Guirguis doing business as Lighthouse Web Design and/or Cannibal, and Sam Guirguis, WIPO Case No. D2000-0013 (where first complainant was the trademark owner and second complainant a licensee of the first complainant, the panel ordered transfer of the disputed domain name to first complainant); and NFL Properties, Inc. et al. v. Rusty Rahe, WIPO Case No. D2000-0128 (where multiple complainants owned various trademarks individually, the panel ordered transfer of disputed domain names to the complainant which owned the trademark to which the domain names were confusingly similar).

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) Confusing similarity
The Panel agrees with the Complainants' assertion that the addition in the disputed domain names of country names and combinations of letters and numbers (which incidentally refer to the Complainants' products), does not prevent the LOST MARY trademark from being recognizable in the disputed domain names.
Pursuant to section 1.8 of the Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") which states: "Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

B) Lack of legitimate rights or interests
It is unlikely that the Respondent registered 10 domain names all containing the LOST MARY trademark in its entirety, and linked them to websites which contain the Complainant's LOST MARY trademark and reproduce photographs copied from the Complainant's official website, without having the Complainants in mind. The Complainants' assertions that the Respondent is not commonly known by the disputed domain names and is not affiliated with nor authorized by the Complainants are sufficient to constitute a prima facie demonstration of absence of rights or legitimate interest in the disputed domain names on the part of the Respondent. The burden of evidence therefore shifts to the Respondent to show, using tangible evidence, that it does have rights or legitimate interests in the disputed domain names. The Respondent has made no attempt to do so.
Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain names.

C) Registered or Used in Bad Faith
The Complainant gives sound bases for its contention that the disputed domain names were registered and have been used in bad faith.
Firstly, owing to the distinctiveness of the Complainants' trademark and reputation in the Complainants' field, it is reasonable to

infer that the Respondent registered the disputed domain names with full knowledge of the Complainants' trademark, and so the Panel finds on the balance of probabilities that the Respondent was aware of the Complainants' trademark when registering the disputed domain names.
Furthermore, the Panel considers that the composition of the disputed domain names, which all contain the Complainants' trademark LOST MARY in its entirety combined with various terms, reflects the purposeful composition of domain names to create a direct, misleading inference of the Complainant', and this fact further supports a finding of bad faith.
Secondly, the Panel accepts the Complainant's unchallenged assertion that the Respondent registered the disputed domain names with the aim of creating a likelihood of confusion with the Complainants' trademark.

Thirdly, it appears that the Respondent is using and has used the disputed domain names to host similar websites displaying the Complainants' trademark LOST MARY and purporting to sell LOST MARY -branded goods. Such use should be regarded as free-riding on the Complainants' reputation accrued in the brand and trademark to date.

Fourthly, the Respondent has not responded to nor denied any of the assertions made by the Complainants in this proceeding.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **lostmary5000israel.com**: Transferred
2. **lostmarybm600australia.com**: Transferred
3. **lostmarybm600danmark.com**: Transferred
4. **lostmarybm600magyarorszag.com**: Transferred
5. **lostmarybm600nederland.com**: Transferred
6. **lostmarymo5000norge.com**: Transferred
7. **lostmaryos5000australia.com**: Transferred
8. **lostmaryqm600belgie.com**: Transferred
9. **lostmaryqm600norge.com**: Transferred
10. **lostmaryvape5000nederland.com**: Transferred

PANELLISTS

Name	**Fabrizio Bedarida**

DATE OF PANEL DECISION 2024-12-06

Publish the Decision