Decision for dispute CAC-UDRP-107182

Case number	CAC-UDRP-107182
Time of filing	2024-12-13 16:41:00
Domain names	xiaomisaldos.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	Xiaomi Inc.

Complainant representative

Organization	CSC Digital Brand Services Group AB

Respondent

Name	Jhon Bogoevich

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or concluded legal proceedings pertaining to the domain name <xiaomisaldos.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant, Xiaomi, asserts its rights to the following registered trade marks:

- EU trade mark registration no. 017972921, registered on 18 April 2019, for the figurative mark XIAOMI, in classes 18, 21, 25, and 37 of the Nice Classification;
- EU trade mark registration no. 018107686, registered on 25 January 2020, for the word mark XIAOMI, in classes 8 and 24 of the Nice Classification;
- International trade mark registration no. 1313041, registered on 14 April 2016, for the figurative mark XIAOMI, in classes 7, 11, and 18 of the Nice Classification; and
- International trade mark registration no. 1173649, registered on 28 November 2012, for the figurative mark MI, in classes 9, 35, 38, and 42 of the Nice Classification.

These marks shall be collectively referred to as 'the Complainant's trade marks'. The term 'trade mark XIAOMI' will denote the collective trade mark XIAOMI, while the individual trade mark shall be referred to as 'the trade mark MI'.

The disputed domain name was registered on 10 October 2024 and presently resolves to a landing page bearing the message: 'Sorry, this store is currently unavailable' (referred to as 'the Respondent's website').

FACTUAL BACKGROUND

A. Complainant's Factual Allegations

Founded in 2010 in China, the Complainant is recognised as a leading consumer electronics and smart manufacturing enterprise, swiftly ascending to prominence within the sector. It has evolved into one of the foremost providers of innovative technology globally, boasting a substantial market share alongside a user base exceeding 594 million individuals. For the first quarter of 2023, the Complainant reported significant revenues, underscoring its robust market position and esteemed global brand reputation.

B. Respondent's Factual Allegations

The Respondent has failed to submit a Response in this UDRP administrative proceeding, thereby rendering the Complainant's allegations uncontested.

PARTIES CONTENTIONS

A. Complainant's Submissions

A.1 Preliminary Matter: Language of the UDRP Administrative Proceeding

In relation to the language of this UDRP administrative proceeding, the Panel notes the following:

• The Complaint is drafted in English, with the Complainant requesting that English be adopted as the language of this UDRP administrative proceeding;

• The registrar's verification response indicates that the language of the registration agreement for the disputed domain name is Portuguese; and

• The Complainant presents several grounds for conducting this UDRP administrative proceeding in English, summarised as follows: (i) the Complainant is unable to communicate effectively in Portuguese, rendering English the most suitable medium for participation; any requirement for translation would impose an undue burden and result in significant delays; (ii) the abusive nature of the disputed domain name poses ongoing risks to the Complainant and unsuspecting consumers seeking genuine XIAOMI products; (iii) the Respondent's website contains numerous phrases in English, thereby reinforcing the relevance of English as the working language; (iv) the term 'xiaomi', which constitutes the dominant portion of the disputed domain name, bears no specific meaning in Portuguese; and (v) pursuant to Rule 11(a) of the UDRP Rules, the Panel retains the authority to determine the language of proceedings, ensuring fairness and efficient resolution of domain name disputes. Requiring the Complainant to bear the burden and costs of translation would be manifestly unjust, particularly given the disruption caused to the Complainant's business by the Respondent's actions.

A.2 Substantive Grounds

The Complainant's substantive grounds may be summarised as follows:

A.2.1 The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The disputed domain name <xiaomisaldos.com> is confusingly similar to the Complainant's trade mark XIAOMI. The addition of the generic term 'saldos' (meaning 'sale' in Portuguese) heightens the likelihood of consumer confusion. Precedents from past UDRP panels indicate that the presence of descriptive terms does not negate the overall confusing similarity, particularly when such terms are closely related to the Complainant's business. The generic Top-Level Domain ('the TLD') suffix (<.com>) is typically disregarded in assessing identity or confusing similarity under paragraph 4(a) of the UDRP Policy.

Furthermore, the Respondent's website displays the Complainant's XIAOMI trade mark and the MI logo, along with offers to sell XIAOMI products without authorisation, thereby misleading Internet users into believing they are engaging with an authorised reseller. The Respondent's replication of contact details from the Complainant's authorised reseller exacerbates the confusion regarding the similarity between the disputed domain name and the Complainant's trade marks.

A.2.2 The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent possesses no rights or legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, and the Complainant has neither licensed nor authorised the Respondent to register or use the Complainant's trade marks in any context, including domain names. Moreover, the appearance of the Respondent's website closely mimics that of the Complainant's authorised resellers in Portugal (at <xiaomistore.pt> and <xiaomi.pt>), indicating a clear intention to deceive Internet users. Precedents from past UDRP panels consistently support the view that misleading representations or attempts to masquerade as an authorised entity negate any claims to legitimate use.

A.2.3 The Respondent registered and is using the disputed domain name in bad faith

The Complainant asserts that the Respondent registered and is using the disputed domain name with full knowledge of the Complainant's trade marks. Given that the disputed domain name incorporates the trade mark XIAOMI in its entirety, this deliberate association with the Complainant's established reputation – primarily through the unauthorised sale of XIAOMI products – raises substantial concerns of bad faith. The intentional confusion created for commercial gain is evident, as the Respondent's website appears designed to mislead consumers into believing it is affiliated with the Complainant. The Respondent's conduct falls under paragraph 4(b)(iii) and paragraph 4(b)(iv) of the UDRP Policy, particularly as the Respondent's website is also being used to sell competitors' products. In addition, while the Respondent's website currently directs Internet users to a parked page, past UDRP panels have established that passive holding of a domain name can evidence bad faith, especially when considered alongside prior actions taken by the Respondent.

B. Respondent's Submissions

The Respondent has defaulted in this UDRP administrative proceeding, failing to advance any substantive defence.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the UDRP 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 UDRP 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 UDRP Policy).

PROCEDURAL FACTORS

1. **Preliminary Matter**: **Complainant's Language Request**

The Panel possesses discretion under Rule 11 of the UDRP Rules to ascertain the appropriate language of this UDRP administrative proceeding. The Panel refers to Rule 10, which empowers it to conduct the proceedings in a manner deemed suitable, ensuring equality for both parties and affording each a fair opportunity to present their case.

In this instance, the Panel adopts the Writera test (established in CAC Case no. 104144, Writera Limited v. alexander ershov), whose guiding factors are as follows:

(i) **Language of the disputed domain name string**: the disputed domain name comprises solely a Portuguese noun;

(ii) **Content of the Respondent's website**: currently, the Respondent's website is devoid of content. However, prior records suggest it contained material primarily in Portuguese, with limited references to English;

(iii) **Language of the Parties**: the Complainant is incorporated in China, whereas the Respondent appears to be based in Portugal. Thus, English is deemed a neutral language for the Parties;

(iv) **Respondent's behaviour**: the Respondent has shown no intention to engage in this UDRP administrative proceeding;

(v) **Panel's commitment to due process**: the Panel has duly fulfilled its obligations under Rule 10(c) of the UDRP Rules; and

(vi) **Balance of convenience**: designating English as the language of this UDRP administrative proceeding is unlikely to impose inconvenience on the Respondent, given that prior content on the Respondent's website – where the Respondent identified itself as an authorised reseller – suggests an ability to communicate in English. Conversely, requiring the Complainant to engage in Portuguese would impose challenges and delays, adversely affecting the efficiency of this UDRP administrative proceeding.

In light of the above factors, the Panel hereby grants the Complainant's request, rendering the decision in English.

2.Miscellaneous

The Panel is satisfied that all procedural requirements under the UDRP have been met, with no grounds to delay the decision.

PRINCIPAL REASONS FOR THE DECISION

A. Applicable Legal Framework

Pursuant to Rule 15 of the UDRP Rules, the Panel shall determine the case based on the statements and documents submitted, alongside the UDRP Policy, UDRP Rules, and any pertinent rules and principles of law.

Under paragraph 4(a) of the UDRP Policy, the burden rests upon the Complainant to establish three essential elements for a successful claim:

i. The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights;

ii. The Respondent has no rights or legitimate interests in respect of the disputed domain name; and

iii. The disputed domain name has been registered and is being used in bad faith.

These elements shall be referred to as 'the requirements of the UDRP Policy'. The standard of evidence in UDRP administrative proceedings is the balance of probabilities. The Panel shall assess each requirement in turn.

B. Identical or Confusingly Similar

This criterion requires a direct comparison between the disputed domain name and the Complainant's established rights. The Complainant demonstrates rights through its trade mark registrations for XIAOMI. A straightforward examination reveals that the disputed domain name <xiaomisaldos.com> is confusingly similar to the Complainant's trade mark, with the TLD <.com> being immaterial. The term 'saldos', meaning 'sale' in Portuguese, does not materially affect the recognisability of the Complainant's trade mark. Accordingly, the Complainant satisfies the first requirement of the UDRP Policy.

C. Rights or Legitimate Interests

The Panel notes the Complainant's unequivocal denial of any affiliation with, or authorisation for, the Respondent. There exists no contractual arrangement, nor has the Complainant permitted the Respondent's use of its trade marks in any capacity, including domain names. Furthermore, there is no evidence to suggest that the Respondent has been commonly known by the disputed domain name.

The Complainant asserts that the Respondent does not qualify as an authorised reseller. In this connection, the Panel references paragraph 2.8 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ('the WIPO Jurisprudential Overview 3.0'), which stipulates that resellers may establish a legitimate interest under specific conditions, commonly referred to as the 'Oki Data test' (Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903). This test comprises four cumulative requirements:

1. The Respondent must actually be offering the goods or services at issue;

2. The Respondent must use the website associated with the disputed domain name to sell only the trade marked goods or services;

3. The Respondent's website must accurately and prominently disclose its relationship with the Complainant; and

4. The Respondent must not try to 'corner the market' in domain names that reflect the trade mark.

The Parties are reminded that a failure to satisfy any of these requisites will lead to a finding in favour of the Complainant.

Considering the misrepresentation aspect of the case – where evidence suggests that the Respondent has misrepresented itself as the Complainant's authorised reseller - the Oki Data analysis is provided in obiter, as the circumstances do not necessitate its application. Nevertheless, for the sake of completeness, the Panel concludes that the Respondent would likely fail to meet the Oki Data test for the following reasons.

Firstly, the Complainant alleges that the Respondent has used the disputed domain name to sell competitors' products. This assertion would indicate non-compliance with requirement 2 of the Oki Data test; however, it is pertinent to note that no conclusive evidence has been adduced to substantiate this claim. Moreover, the Respondent's failure to include a disclaimer regarding its relationship with the Complainant constitutes a deficiency under requirement 3.

The unchallenged evidence confirms that no bona fide use has been made of the disputed domain name for any legitimate offering of goods or services, nor for fair use that is non-commercial in nature.

In light of the above, the Panel finds that the Complainant has satisfied the second requirement of the UDRP Policy.

D. Registered and Used in Bad Faith

The Panel determines that the Respondent registered and has used the disputed domain name with full knowledge of the

Complainant's rights, intending to target the Complainant.

The following factors inform the Respondent's intent:

(i) **Global reputation**: the Complainant possesses significant global recognition, which should have been apparent to the Respondent at the time of registration of the disputed domain name;

(ii) **Similarity to the Complainant's trade mark**: the clear similarity between the disputed domain name and the Complainant's trade mark further indicates the Respondent's intention to cause confusion;

(iii) **Respondent's default**: the Respondent's failure to engage in this UDRP administrative proceeding raises questions regarding the Respondent's intentions and reinforces the presumption of bad faith;

(iv) **Misleading Internet users**: the Respondent's attempts to mislead Internet users, including misrepresenting itself as an authorised reseller, further bolster this presumption; and

(v) **Absence of good faith use**: there is no conceivable good faith use of the disputed domain name aligning with reasonable expectations of its registration.

In light of this analysis, the Panel concludes that the Complainant has satisfied the third and final requirement of the UDRP Policy.

E. Decision

For the above reasons, in accordance with paragraph 4(a) of the UDRP Policy and Rule 15 of the UDRP Rules, the Panel orders that the disputed domain name <xiaomisaldos.com> be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **xiaomisaldos.com**: Transferred

PANELLISTS

Name	**Gustavo Moser**

DATE OF PANEL DECISION 2025-01-17

Publish the Decision