

## Decision for dispute CAC-UDRP-107237

Case number CAC-UDRP-107237

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Domain names xiaomitn.com

### Case administrator

Name Olga Dvořáková (Case admin)

### Complainant

Organization Xiaomi Inc.

### Complainant representative

Organization CSC Digital Brand Services Group AB

### Respondent

Organization N/A

#### 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 owns the trademark XIAOMI through multiple international and national trademark registrations, including, inter alia:

- XIAOMI (U.S. Reg. No. 4527605), registered on May 13, 2014;
- XIAOMI (U.S. Reg. No. 5425563), registered on March 20, 2018;
- XIAOMI (WIPO Reg. No. 1177611), registered on November 28, 2012; and
- XIAOMI (WIPO Reg. No. 1313041), registered on April 14, 2016.

#### FACTUAL BACKGROUND

The Complainant, founded in April 2010, was listed on the Main Board of the Hong Kong Stock Exchange on July 9, 2018 (1810.HK). The Complainant is a consumer electronics and smart manufacturing company, specializing in smartphones and smart hardware connected through an Internet of Things (IoT) platform. Over the past 13 years, the Complainant has grown into a leading global provider of innovative technology.

The Complainant's product lineup includes smartphones, smart home devices, and lifestyle products such as smartwatches and electric scooters. It ranks third globally in smartphone market share, with over 594 million users and 618 million IoT-connected

devices. In Q1 of Fiscal Year 2023, the Complainant reported revenue of RMB 59.5 billion and an adjusted net profit of RMB 3.2 billion.

The Complainant maintains a robust online presence, engaging customers through its website <mi.com>, which it acquired on April 21, 2014. "SimilarWeb" ranks it the 1,038th most visited website globally and 79th in China, with 44.8 million unique visitors in March 2024. The Complainant also has substantial social media followings, including 15 million Facebook followers, 4.4 million Twitter followers, and 4.6 million Instagram followers.

The disputed domain name was registered on July 12, 2021.

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#### PARTIES CONTENTIONS

##### COMPLAINANT:

(i) The Complainant holds rights in the XIAOMI trademark, as set forth in the "Identification of Rights" section above. The disputed domain name is confusingly similar to the Complainant's XIAOMI mark, as it fully incorporates the mark with the mere addition of the geographic term "TN", an abbreviation for Thái Nguyên, a city in Vietnam where the Complainant operates an authorized service center and production facility, along with the generic ".com" top-level domain (gTLD).

(ii) The Respondent has no legitimate interests in the disputed domain name. The Respondent is not commonly known by the disputed domain name, nor has the Complainant authorized or licensed the Respondent to use the XIAOMI mark in any manner. Furthermore, the Respondent is not using the disputed domain name for any bona fide offering of goods or services or for any legitimate noncommercial or fair use. Instead, the Respondent is employing the disputed domain name to impersonate the Complainant and engage in phishing activities.

(iii) The Respondent registered and is using the disputed domain name in bad faith. The use of the disputed domain name is fraudulent, conducted in bad faith, and creates a likelihood of confusion with the Complainant's mark. The website associated with the disputed domain name fails to disclose the Respondent's identity or the lack of affiliation with the Complainant. The Respondent has registered the disputed domain name as part of a phishing scheme and has intentionally attempted to impersonate the Complainant by creating a likelihood of confusion with the Complainant's mark. The Respondent registered the disputed domain name with actual knowledge of the Complainant's trademark rights.

##### RESPONDENT:

No administratively compliant Response has been filed.

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#### 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).

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#### 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).

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#### 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).

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#### PROCEDURAL FACTORS

The Panel notes that the Registration Agreement is written in Vietnamese, thereby making Vietnamese the default language of the proceedings. However, the Complainant has requested that the proceedings be conducted in English. Under UDRP Rule 11(a), the Panel has the discretion to determine the appropriate language of the proceedings, considering the particular circumstances of the case. See Section 4.5, WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition; see also Lovehoney Group Limited v. Yan Zhang, CAC 103917 (CAC August 17, 2021) (finding it appropriate to conduct the proceeding in English under Rule 11, despite the Registration Agreement designating Japanese as the required language).

The Complainant presents the following arguments in support of its request:

- (i) The Complainant is unable to communicate in Vietnamese, and translating the Complaint would impose an unfair burden, cause undue delay, and disadvantage the Complainant in the adjudication of this matter.
- (ii) Such delay would be particularly prejudicial given the obviously abusive nature of the disputed domain name and associated website. The Respondent has registered a confusingly similar domain name and is using the corresponding website for commercial gain, prominently displaying the Complainant's "XIAOMI" trademark, images, products, and services, as found on the Complainant's official website. This poses an ongoing risk to both the Complainant and unsuspecting consumers seeking the Complainant or its products.
- (iii) The disputed domain name consists of Latin characters, making it accessible to English-speaking users.
- (iv) The website associated with the disputed domain name features numerous English words, including "Smart TV - TV Box," "Robot," "Smart TV Xiaomi," "massage," "laptop," "scooter," "camera," and "Xiaomi Vacuum Mop," among others.
- (v) The term "XIAOMI", which is the dominant portion of the disputed domain name, has no specific meaning in the Vietnamese language.

Pursuant to UDRP Rule 11(a), the Panel finds the Complainant's arguments persuasive. After considering the specific circumstances of this case, and in the absence of a Response or any objection to the Complainant's request regarding the language of proceedings, the Panel determines that the proceedings shall be conducted in English.

The Panel is satisfied that all procedural requirements under the UDRP have been met, and there is no reason why a decision should not be issued.

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#### PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules for the UDRP ('the Policy') instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable." Paragraph 4(a) of the Policy requires that Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

- (1) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- (2) Respondent has no rights or legitimate interests in respect of the domain name; and
- (3) the domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations and inferences set forth in the Complaint as true unless the evidence is clearly contradictory. See *Vertical Solutions Mgmt., Inc. v. webnetmarketing, inc.*, FA 95095 (FORUM July 31, 2000) (holding that the respondent's failure to respond allows all reasonable inferences of fact in the allegations of the complaint to be deemed true); see also *Talk City, Inc. v. Robertson*, D2000-0009 (WIPO Feb. 29, 2000) ("In the absence of a response, it is appropriate to accept as true all allegations of the Complaint.").

#### Rights

The Complainant asserts ownership of the registered trademark XIAOMI, as identified in the "Identification of Rights" section above. The Panel recognizes that an international or national trademark registration is sufficient to establish rights in a mark. Accordingly, the Panel finds that the Complainant has established its rights in the XIAOMI trademark.

The Complainant further contends that the disputed domain name is confusingly similar to its XIAOMI mark, as it fully incorporates the mark with the mere addition of the geographic descriptor "TN." The Panel notes that "TN" refers to Thái Nguyên, a city in Vietnam where the Complainant operates an authorized service center and production facility. Moreover, the inclusion of a generic top-level domain (gTLD) does not sufficiently distinguish a disputed domain name from a trademark. See *Franklin Covey Co. v. franklincoveykorea*, FA 1774660 (Forum Apr. 11, 2018) ("The addition of a geographic term and a gTLD does not negate confusing similarity between a domain name and a mark per Policy paragraph 4(a)(i)."); see also *DBI Brands Management LLC v. Client Care / Web Commerce Communications Limited*, FA 2059984 (Forum Sept. 28, 2023) (holding that the addition of a geographic term and a gTLD does not eliminate confusing similarity between a domain name and a mark under Policy paragraph 4(a)(i)). Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainant's XIAOMI mark.

#### No rights or legitimate interests

A complainant must first make a prima facie case that a respondent lacks rights and legitimate interests in the disputed domain name under Policy paragraph 4(a)(ii), after which the burden shifts to the Respondent to demonstrate it does have rights or legitimate interests. See Section 2.1, WIPO Jurisprudential Overview 3.0 ("Where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.").

The Complainant argues that the Respondent has no rights or legitimate interests in the disputed domain name because the Respondent is not commonly known by the disputed domain name, nor has the Respondent been authorized by the Complainant to use the Complainant's mark, and the Respondent is not affiliated with the Complainant. Relevant information, such as WHOIS data, can serve as evidence to demonstrate whether a respondent is or is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii). The Panel notes that the WHOIS data lists "N/A (Nguyễn Đức Đạt)" as the registrant, and there is no evidence in the record indicating that the Respondent was authorized to use the mark. Therefore, the Panel finds that the Respondent is not commonly known by the disputed domain name under Policy paragraph 4(c)(ii).

The Complainant asserts that the Respondent does not use the disputed domain name in connection with a bona fide offering of goods or services, nor for any legitimate noncommercial or fair use, as the Respondent is employing the disputed domain name to pass itself off as the Complainant. When a respondent impersonates a complainant through a disputed domain name, the Panel may find that the respondent has failed to establish a bona fide offering of goods or services or a legitimate noncommercial or fair use under Policy paragraph 4(c)(i) or (iii). See *Ripple Labs Inc. v. Jessie McKoy / Ripple Reserve Fund*, FA 1790949 (Forum July 9, 2018) (holding that a respondent's use of a domain name to feature the complainant's mark and related content did not constitute a bona fide offering of goods or services under Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii)).

The Complainant provides evidence in the form of a screenshot of the disputed domain name's website, demonstrating that the Respondent offers products of the Complainant's competitors, which directly compete with the Complainant's own offerings, or unauthorized versions of the Complainant's products. The Respondent's website prominently displays the Complainant's XIAOMI trademark, images, products, and services, as found on the Complainant's official website.

The Panel finds that the Respondent's activities associated with the disputed domain name are fraudulent, create a likelihood of confusion with the Complainant's trademarks, and are likely to mislead or disrupt Internet users. Accordingly, the Panel concludes that the Respondent's fraudulent activities and passing off do not constitute use of the disputed domain name in connection with a bona fide offering of goods or services under Policy paragraph 4(c)(i) or a legitimate noncommercial or fair use under Policy paragraph 4(c)(iii).

Based on the foregoing considerations, the Panel finds that the Complainant has established a prima facie case against the Respondent. As the Respondent has failed to submit a Response or otherwise rebut the Complainant's prima facie case, the Panel determines that the Respondent has no rights or legitimate interests in the disputed domain name.

#### **Bad faith**

Paragraph 4(b) of the Policy provides a non-exclusive list of circumstances that evidence registration and use of a domain name in bad faith. Any one of the following is sufficient to support a finding of bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that the complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of the respondent's website or location or of a product or service on the respondent's website or location.

The Complainant asserts that the Respondent registered and is using the disputed domain name in bad faith by disrupting the Complainant's business and attempting to attract Internet users to its competing website for commercial gain. When a respondent impersonates a complainant through a disputed domain name, such conduct may constitute bad faith disruption of the complainant's business under Policy paragraph 4(b)(iii) and an attempt to attract users for commercial gain under Policy paragraph 4(b)(iv). See *Bittrex, Inc. v. Wuxi Yilian LLC*, FA 1760517 (Forum Dec. 27, 2017) (finding bad faith under Policy paragraph 4(b)(iv) where "Respondent registered and uses the <bittrex.com> domain name in bad faith by directing Internet users to a website that mimics Complainant's own website to confuse users into believing that Respondent is Complainant, or is otherwise affiliated or associated with Complainant").

As previously noted, the Respondent's website offers products of the Complainant's competitors, which directly compete with the Complainant's offerings, or unauthorized versions of the Complainant's products. The Respondent's website prominently displays the Complainant's XIAOMI trademark, images, products, and services, as found on the Complainant's official website. The Panel finds that the Respondent's use of the disputed domain name disrupts the Complainant's business by offering competing products. This conduct misleads Internet users, falsely suggesting an affiliation with the Complainant, thereby redirecting users to the Respondent's website. Consequently, the Panel concludes that the Respondent registered and used the disputed domain name in bad faith under Policy paragraph 4(b)(iv).

Additionally, the Complainant argues that the Respondent registered the disputed domain name with actual knowledge of the Complainant's rights, as evidenced by its misleading use of the Complainant's XIAOMI mark in its entirety. While constructive knowledge alone is insufficient to establish bad faith under Policy paragraph 4(a)(iii), actual knowledge of a complainant's

trademark rights is sufficient and may be inferred from a respondent's use of the disputed domain name to impersonate the complainant. See *Orbitz Worldwide, LLC v. Domain Librarian*, FA 1535826 (Forum Feb. 6, 2014) ("The Panel notes that although the UDRP does not recognize 'constructive notice' as sufficient grounds for finding bad faith under Policy paragraph 4(a)(iii), the Panel here finds actual knowledge through the name used for the domain and the use made of it."); see also *Spectrum Brands, Inc. v. Guo Li Bo*, FA 1760233 (Forum Jan. 5, 2018) ("[T]he fact that Respondent registered a domain name that looked identical to the SPECTRUM BRANDS mark and used it as an email address to pass itself off as Complainant shows that Respondent knew of Complainant and its trademark rights at the time of registration.").

The Panel infers that the Respondent had actual knowledge of the Complainant's rights in the XIAOMI mark at the time of registration, as demonstrated by the Respondent's use of the mark, its offering of competing products, and the widespread recognition of the Complainant's trademark. Accordingly, the Panel concludes that the Respondent registered the disputed domain name in bad faith under Policy paragraph 4(a)(iii).

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

**Accepted**

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

1. **xiaomitn.com**: Transferred

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## PANELLISTS

Name	<b>Mr. Ho-Hyun Nahm Esq.</b>
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DATE OF PANEL DECISION **2025-02-12**

**Publish the Decision**

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