

## **ADMINISTRATIVE PANEL DECISION**

MVH I, Inc. v. Domain Administrator, See PrivacyGuardian.org/ Vadim Yudin  
Case No. D2022-0085

### **1. The Parties**

Complainant is MVH I, Inc., United States of America (“United States”), represented by 101domain.com, United States.

Respondent is Domain Administrator, See PrivacyGuardian.org, United States / Vadim Yudin, United Arab Emirates.<sup>1</sup>

### **2. The Domain Name and Registrar**

The disputed domain name <myle-dubai.com> is registered with NameSilo, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on January 11, 2022. On January 12, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On January 12, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to Complainant on January 13, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amended Complaint on January 13, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “Policy” or “UDRP”), the Rules for Uniform Domain Name Dispute Resolution Policy (the “Rules”), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified Respondent of the Complaint, and the proceedings commenced on January 24, 2022. In accordance with the Rules, paragraph 5, the due

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<sup>1</sup> It is evident from the case file that Domain Administrator, See PrivacyGuardian.org, United States, is a privacy protection service and that Vadim Yudin, United Arab Emirates, is the underlying registrant of the disputed domain name. Therefore, unless otherwise indicated, the term “Respondent” is used by the Panel in the case at hand to refer to the latter underlying registrant only.

date for Response was February 13, 2022. Respondent did not submit any response. Accordingly, the Center notified Respondent's default on February 14, 2022.

The Center appointed Stephanie G. Hartung as the sole panelist in this matter on February 17, 2022. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

#### **4. Factual Background**

Complainant is a company organized under the laws of the United States that is active in the electronic cigarettes and vaping products industry.

Complainant has provided evidence that it is the registered owner of the following trademarks relating to its brand MYLÉ:

- Word mark MYLÉ, United States Patent and Trademark Office ("USPTO"), registration number: 5,652,774, registration date: January 15, 2019, status: active;
- Word mark MYLÉ, International registration designating various jurisdictions worldwide, registration number: 1462089, registration date: March 4, 2019, status: active.

Moreover, Complainant has documented to own a large portfolio of domain names relating to its MYLÉ trademark, *inter alia*, the domain name <myle.com> which resolves to Complainant's main website at "www.myle.com", used to promote Complainant's products and related services worldwide.

Respondent, according to the disclosed Whois information for the disputed domain name, is a resident of the United Arab Emirates who registered the disputed domain name on June 25, 2019. By the time of the rendering of this decision, the disputed domain name does not resolve to any active content on the Internet. Complainant, however, has demonstrated that, at some point before the filing of the Complaint, the disputed domain name resolved to a website at "www.myle-dubai.com", offering Complainant's electronic cigarettes and vaping products for online sale by using official images of such products and displaying Complainant's MYLÉ trademark, while at the same time also promoting for online sale various vaping products manufactured by Complainant's direct competitors in the electronic cigarettes and vaping products industry. Respondent's website in its footer contains a disclaimer according to which: "Myle-Dubai.com has no connection to Mylé vapour and is only a reseller of their brand in the UAE."

Complainant requests that the disputed domain name be transferred to Complainant.

#### **5. Parties' Contentions**

##### **A. Complainant**

Complainant contends to have been operating in the electronic cigarettes industry since 2016 and to have built an entire brand around their trademarked and fanciful term MYLÉ, which apparently has no other meaning in a foreign language. Also, Complainant's company distributes MYLÉ electronic cigarettes and vaping products in over 20 countries and five different regions worldwide, including the Middle East.

Complainant submits that the disputed domain name is confusingly similar to Complainant's MYLÉ trademark, as it uses the entirety of Complainant's trademark and primary URL. Moreover, Complainant asserts that Respondent has no rights or legitimate interests in respect of the disputed domain name since (1) Complainant has neither licensed nor allowed Respondent to use the MYLÉ trademark for any purpose and Complainant's company is not associated with Respondent in any way, and (2) the website under the

disputed domain name intentionally displays Complainant's products as available for purchase, while at the same time attempting to sell nearly identical products offered by Complainant's direct competitors on the electronic cigarettes and vaping products market.

Finally, Complainant argues that Respondent has registered and is using the disputed domain name in bad faith since (1) Respondent fraudulently impersonates as a licensed reseller of Complainant's known vaping products, (2) Respondent promotes under the disputed domain name various vaping products manufactured by Complainant's direct competitors, which is why Respondent must be considered an indirect competitor of Complainant in the electronic cigarettes industry, and (3) the disputed domain name misleads Complainant's customers into believing the products displayed are associated with Complainant's MYLÉ trademark, and is, thus, disrupting Complainant's business by profiting from Complainant's reputation in the electronic cigarettes industry.

## **B. Respondent**

Respondent did not reply to Complainant's contentions.

## **6. Discussion and Findings**

Under paragraph 4(a) of the Policy, Complainant carries the burden of proving:

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

Respondent's default in the case at hand does not automatically result in a decision in favor of Complainant, however, paragraph 5(f) of the Rules provides that if Respondent does not submit a response, in the absence of exceptional circumstances, the Panel shall decide the dispute solely based upon the Complaint. Further, according to paragraph 14(b) of the Rules, the Panel may draw such inferences from Respondent's failure to submit a Response as it considers appropriate.

### **A. Identical or Confusingly Similar**

The Panel concludes that the disputed domain name is confusingly similar to the MYLÉ trademark in which Complainant has rights.

The disputed domain name incorporates the MYLÉ trademark almost entirely, simply omitting the tegu accent on the letter "e". Numerous UDRP panels have recognized that where a domain name incorporates a trademark in its entirety, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that trademark (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see [WIPO Overview 3.0](#), section 1.8), that the addition of other terms (whether, e.g., geographic or otherwise) would not prevent the finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the geographic term "dubai" does not dispel the confusing similarity arising from the incorporation of Complainant's MYLÉ trademark in the disputed domain name.

Therefore, Complainant has established the first element under the Policy as set forth by paragraph 4(a)(i).

## B. Rights or Legitimate Interests

The Panel is further convinced on the basis of Complainant's undisputed contentions that Respondent has not made use of the disputed domain name in connection with a *bona fide* offering of goods or services, nor has Respondent been commonly known by the disputed domain name, nor can it be found that Respondent has made a legitimate noncommercial or fair use thereof without intent for commercial gain.

Respondent has neither been granted a license nor has it been otherwise authorized by Complainant to use its MYLÉ trademark, either as a domain name or in any other way. Also, there is no reason to believe that Respondent's name somehow corresponds with the disputed domain name, and Respondent does not appear to have any trademark rights associated with the term "myle" on its own. Finally, Complainant has demonstrated that at some point in the past the disputed domain name resolved to a commercially active website at "www.myle-dubai.com", offering Complainant's electronic cigarettes and vaping products for online sale by using official images of such products and displaying Complainant's MYLÉ trademark, while at the same time also promoting for online sale various vaping products manufactured by Complainant's direct competitors in the electronic cigarettes and vaping products industry.

While UDRP panels generally recognize that resellers – whether authorized or unauthorized – using a domain name containing the complainant's trademark to undertake sales related to the complainant's goods or services may be making a *bona fide* offering of goods or services and, thus, have a legitimate interest in such domain name, the site under the disputed domain name then must *e.g.* actually be offering the goods or services at issue, use the website to sell only the trademarked goods or services and accurately, prominently disclose the registrant's relationship with the trademark holder, and the respondent must not try to "corner the market" in domain names that reflect the trademark (so-called "*Ok! Data* test", see [WIPO Overview 3.0](#), section 2.8). In the case at hand, it remains somewhat unclear from the case file whether the electronic cigarettes and vaping products offered by Respondent under the MYLÉ trademark are truly original MYLÉ or rather counterfeit products. But even if they were to be original MYLÉ products, it must still be recognized that Respondent – though showing a disclaimer and thereby disclosing the non-existing relationship with Complainant (albeit using small text at the bottom of Respondent's website) – still uses the disputed domain name to also offer electronic cigarettes and vaping products by some of Complainant's direct competitors in the electronic cigarettes and vaping products industry, which is why the *Ok! Data* test still must fail.

Accordingly, Complainant has established a *prima facie* case that Respondent has no rights or legitimate interests in the disputed domain name. Now, the burden of production shifts to Respondent to come forward with appropriate allegations or evidence demonstrating to the contrary (see [WIPO Overview](#), section 2.1). Given that Respondent has defaulted, it has not met that burden.

The Panel, therefore, finds that Respondent has no rights or legitimate interests in respect of the disputed domain name and that Complainant has also satisfied paragraph 4(a)(ii) and, thus, the second element of the Policy.

## C. Registered and Used in Bad Faith

The Panel finally holds that the disputed domain name was registered and is being used by Respondent in bad faith.

Resolving the disputed domain name, which is confusingly similar to Complainant's MYLÉ trademark, to a website offering both electronic cigarettes and vaping products under such trademark as well as those of Complainant's direct competitors in the electronic cigarettes and vaping products industry, is a clear indication that Respondent intentionally attempted to attract, for commercial gain, Internet users to its own website by creating a likelihood of confusion with Complainant's MYLÉ trademark as to the source, sponsorship, affiliation or endorsement of Respondent's website. Such circumstances are evidence of registration and use of the disputed domain name in bad faith within the meaning of paragraph 4(b)(iv) of the policy.

Therefore, the Panel concludes that Complainant has also satisfied the third element under the Policy as set forth by paragraph 4(a)(iii).

## **7. Decision**

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <myle-dubai.com> be transferred to Complainant.

*/Stephanie G. Hartung/*

**Stephanie G. Hartung**

Sole Panelist

Date: February 24, 2022