

ADMINISTRATIVE PANEL DECISION

Webcentral Ltd (ACN 073 716 793) v. Segey
Case No. D2022-1382

1. The Parties

The Complainant is Webcentral Ltd (ACN 073 716 793), Australia, represented by Cornwalls, Australia.

The Respondent is Segey, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <melbourneit.info> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 19, 2022. On April 19, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 20, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the 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 the Respondent of the Complaint, and the proceedings commenced on May 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 29, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on May 30, 2022.

The Center appointed Knud Wallberg as the sole panelist in this matter on June 9, 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

The Complainant is the originator and owner of the brand name MELBOURNE IT and associated “globe” symbol (collectively the “MELBOURNE IT Marks”). The Complainant has used the MELBOURNE IT Marks for over two decades as brands for various information technology services, including domain name registration services, provided by the Complainant and its related bodies corporate.

The Complainant holds multiple trademark registrations in relation to the MELBOURNE IT Marks, including Australian trademark registration No. 799142 MELBOURNE IT (word mark) registered on October 21, 2002 for services in classes 35 and 42, and Australian trademark registration No. 801840  (“globe” symbol) registered on January 8, 2000 for goods and services in classes 9, 16, 35, 38, 41, and 42.

The Complainant holds among others the domain name <melbourneit.com.au>, which is used for the Complainant’s main website on which it promotes and offers its services.

The Complainant used to own the disputed domain name until about October 5, 2019 under its previous company name “Melbourne IT Ltd”. Due to an inadvertent oversight, the Complainant did not renew the disputed domain name. The disputed domain name was then registered on October 15, 2019 and resolves to a website that is a copy of the Complainant’s previous website at the same domain name.

5. Parties’ Contentions

A. Complainant

The Complainant asserts that disputed domain name <melbourneit.info> is identical to the trademark MELBOURNE IT in which the Complainant has rights because the disputed domain name consists solely of the words “melbourne it”, and that the spelling of the disputed domain name is identical to the spelling of the trademark MELBOURNE IT.

The Complainant further asserts that is not aware of any evidence showing that the Respondent has used, or made preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services, or that the Respondent has been commonly known by the disputed domain name without acquiring any associated trademark rights, or that the Respondent is making a legitimate noncommercial or fair use of the disputed domain name. On the contrary, the Respondent is using the disputed domain name to promote a copy of the previous website owned and used by the Complainant. The Complainant was previously the registrant for the disputed domain name but, due to an inadvertent oversight, the Complainant did not renew the disputed domain name and it has been subsequently acquired by the Respondent, who is using the disputed domain name for a website that is a virtually identical copy of the previous website used by the Complainant. Furthermore, the website used by the Respondent includes identical copies of the Complainant’s MELBOURNE IT Marks. In particular, copies of the Complainant’s “globe” symbol appear on the current website for the disputed domain name.

The Complainant finally asserts that the disputed domain name was registered and is being used in bad faith by the Respondent. The mere registration of the disputed domain name which is identical to the Complainant’s famous and widely-known MELBOURNE IT trademark by the unaffiliated Respondent creates a presumption of bad faith. Such presumption is given further force considering that there is no obvious or plausible good faith use to which the disputed domain name might be put by the Respondent. In addition, the Respondent’s use of the disputed domain name for a virtually identical copy of the Complainant’s previous website at the same domain name is clear and unequivocal evidence demonstrating a high level of bad faith by the Respondent regarding its registration and use of the disputed domain name.

B. Respondent

The Respondent did not reply to the Complainant's contentions.

6. Discussion and Findings

According to paragraph 15(a) of the Rules the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following:

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

Paragraph 4(a) of the Policy states that the burden of proving that all these elements are present lies with the Complainant. At the same time, in accordance with paragraph 14(b) of the Rules, if a party, in the absence of exceptional circumstances, does not comply with any provision of, or requirement under the Rules, or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

A. Identical or Confusingly Similar

The disputed domain name comprises the Complainant's MELBOURNE IT trademark in its entirety. The generic Top-Level Domain ("gTLD") ".info" is a standard registration requirement and as such is typically disregarded under the first element confusing similarity test. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.11.1.

The Panel therefore finds that the conditions in paragraph 4(a)(i) of the Policy are fulfilled in relation to the disputed domain name.

B. Rights or Legitimate Interests

It is clear from the facts of the case that the Complainant has not licensed or otherwise permitted the Respondent to use its trademark and given the circumstances of this case, the Panel finds that the Complainant has established a *prima facie* case that the Respondent has no rights to or legitimate interests in the disputed domain name.

The Respondent has not produced, and there is no evidence of the types of circumstances set out in paragraph 4(c) of the Policy that might give rise to rights or legitimate interests in the disputed domain name on the part of the Respondent in these proceedings. The Complainant has produced evidence to show that it previously owned the disputed domain name and used it for promoting the Complainant's business. The Respondent is using the disputed domain name that is identical to the Complainant's MELBOURNE IT Marks to direct Internet users to its website where it displays a virtually identical copy of the Complainant's previous website including the Complainant's logo. Not only does the construction of the disputed domain name itself carry a high risk of an implied affiliation to the Complainant, but the content further reinforces the said association when none exists. It is thus evident that the Respondent's use is not a *bona fide* offering of goods or services, nor does such use constitute fair use.

The Panel there finds that the conditions in paragraph 4(a)(ii) of the Policy are fulfilled in relation to the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(a)(iii) of the Policy requires the Complainant to prove both registration and use of the disputed domain name in bad faith. Paragraph 4(b) of the Policy provides examples of circumstances which shall be evidence of registration and use in bad faith:

- (i) circumstances indicating that the holder has registered or has 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 complainant, for valuable consideration in excess of the holder's documented out-of-pocket costs directly related to the domain name; or
- (ii) the holder 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 holder has engaged in a pattern of such conduct; or
- (iii) the holder has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the holder has intentionally attempted to attract, for commercial gain, Internet users to the holder's 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 holder's website or location or of a product or service on the holder's website or location.

Accordingly, for the Complainant to succeed, the Panel must be satisfied that the disputed domain name has been registered and is being used in bad faith.

Given the circumstances of the case, in particular the prior registration of the Complainant's trademark MELBOURNE IT, the disputed domain name being identical to the Complainant's trademark, and the website at the disputed domain name being a copy of the Complainant's previous website, it is inconceivable to the Panel that the Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's marks.

The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name is used for a website that purports to be the Complainant's official website. The website is a virtually identical copy of the Complainant's previous website associated with the disputed domain name, which *inter alia* contains a reproduction of the Complainant's registered "globe" symbol. The Panel therefore finds that it is obvious that the Respondent intentionally attempts to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's marks as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (see [WIPO Overview 3.0](#), section 3.1.4).

The Panel there finds that the conditions in paragraph 4(a)(iii) of the Policy are fulfilled in relation to the disputed domain name.

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, <melbourneit.info>, be transferred to the Complainant.

/Knud Wallberg/

Knud Wallberg

Sole Panelist

Date: June 24, 2022