

## ADMINISTRATIVE PANEL DECISION

Kuok Meng Jun v. 覃旭全  
Case No. D2022-1723

### 1. The Parties

The Complainant is Kuok Meng Jun, Singapore, represented by Shook Lin & Bok LLP, Singapore.

The Respondent is 覃旭全, China.

### 2. The Domain Name and Registrar

The disputed domain name <mjkuok.com> is registered with Domain International Services Limited (the “Registrar”).

### 3. Procedural History

The Complaint was filed in English with the WIPO Arbitration and Mediation Center (the “Center”) on May 12, 2022. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On the following day, 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 the Complainant on May 20, 2022 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint in English on May 23, 2022.

On May 20, 2022, the Center transmitted another email communication to the Parties in English and Chinese regarding the language of the proceeding. On May 23, 2022, the Complainant confirmed its request that English be the language of the proceeding. The Respondent did not comment on the language of the proceeding.

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 the Respondent in Chinese and English of the Complaint, and the proceedings commenced on May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any

response. Accordingly, the Center notified the Respondent's default on June 21, 2022.

The Center appointed Matthew Kennedy as the sole panelist in this matter on July 4, 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 an individual. He is a musical artist, disc jockey, and musical producer. He offers his music under his personal name, MJ Kuok, and he has an Instagram account named "mjkuok". According to evidence provided by the Complainant, he previously used the disputed domain name <mjkuok.com> in connection with a website in 2010 that he used to announce the release of music and connect with listeners. The evidence shows that he created that domain name again on December 2, 2018, but that registration subsequently lapsed in approximately November 2020. The Complainant has also registered the domain name <mjkuok.online> that he uses in connection with a website where he provides information about himself and his music.

The Respondent is an individual resident in China.

The disputed domain name was registered on May 13, 2021. It formerly resolved to a website displaying pornographic content and links to gambling and prostitution websites. The Complainant's legal representative sent a cease-and-desist letter to the Registrar on December 21, 2021. Since that time the disputed domain name has not resolved to any active website; rather, it has been passively held.

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

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

The disputed domain name is identical to the marks MJKUOK and MJ KUOK, in which the Complainant holds common law rights. Since as early as 2009, the Complainant has been operating in the field of music. Throughout his musical career and when providing his musical services he has consistently operated under the distinctive MJKUOK and MJ KUOK brands.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. The disputed domain name was registered without the consent or authorization of the Complainant. Save for the display of pornographic material, the Respondent is not making a genuine offer of goods or services. The Respondent is not commonly known by the disputed domain name. The Respondent has not made any legitimate noncommercial or fair use of the disputed domain name.

The disputed domain name was registered and is being used in bad faith. The Respondent knew or should have known of the Complainant's trademarks at the time of registration of the disputed domain name, due to the marks' high degree of distinctiveness. The Respondent's uploading of pornographic content onto the website formerly associated with the disputed domain name would lead to consumer confusion or tarnish the Complainant's reputation, or both.

##### **B. Respondent**

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

## 6. Discussion and Findings

### 6.1 Language of the Proceeding

Paragraph 11(a) of the Rules provides that “unless otherwise agreed by the Parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding”. The Registrar confirmed that the Registration Agreement for the disputed domain name is in Chinese.

The Complainant requests that the language of the proceeding be English. Its main arguments are that the website formerly associated with the disputed domain name displayed certain English words so that use of English would not be disadvantageous to the Respondent, whereas translation of the Complaint and its annexes into Chinese would place an undue financial burden on the Complainant and delay the proceeding.

Paragraphs 10(b) and (c) of the Rules requires the Panel to ensure that the Parties are treated with equality, that each Party is given a fair opportunity to present its case and that the administrative proceeding take place with due expedition. Prior UDRP panels have decided that the choice of language of the proceeding should not create an undue burden for the parties. See, for example, *Solvay S.A. v. Hyun-Jun Shin*, WIPO Case No. D2006-0593; *Whirlpool Corporation, Whirlpool Properties, Inc. v. Hui'erpu (HK) electrical appliance co. ltd.*, WIPO Case No. D2008-0293.

The Panel observes that in this proceeding the Complaint and amended Complaint were filed in English. Despite the Center having sent the notification of the Complaint, and an email regarding the language of the proceeding in both Chinese and English, the Respondent has not commented on the issue of the language of the proceeding nor expressed any interest in otherwise participating in this proceeding. Therefore, the Panel considers that requiring the Complainant to translate the amended Complaint would create an undue burden and delay, whereas accepting it as filed without translation will not cause unfairness to either Party.

Having considered all the circumstances above, the Panel determines under paragraph 11(a) of the Rules that the language of this proceeding is English. The Panel would have accepted a Response in Chinese, but none was filed.

### 6.2 Substantive Issues

Paragraph 4(a) of the Policy provides that a complainant must prove the following elements:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (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.

#### A. Identical or Confusingly Similar

The Complainant bases its claim on alleged trademark rights in MJ KUOK (with a space) and MJKUOK (without a space). The Panel notes that both claimed marks consist of the Complainant’s initials and family name. While the Policy does not explicitly provide for standing based on personal names which are not registered or otherwise protected as trademarks, a personal name may satisfy the first element in paragraph 4(a) the Policy where it is being used as a trademark-like identifier in commerce. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”), section 1.5.

The Complainant claims common law or unregistered rights in the alleged marks MJ KUOK and MJKUOK. The Panel recalls that, in order to establish common law trademark rights for the purposes of the Policy, the Complainant must show that its mark has become a distinctive identifier that consumers associate with his goods or services. See WIPO Overview 3.0, section 1.3.

The Panel notes that the combination of the Complainant's family name and his initials is distinctive. This is despite the fact that his family name is very common and the combination of that family name with his initials is presumably not unique.

The Complainant provides very little evidence of use of the alleged marks prior to 2015. His former website appears to have displayed "MJ Kuok" in its title in 2010.

However, the Complainant provides more evidence of his continuous use of MJ KUOK (with a space) in connection with his music on Apple Music and Spotify since 2015. That alleged mark has been used in connection with his music on those platforms for seven years, which is a considerable duration. He has at least 20 songs made available under that name on Apple Music and he is a verified artist under the same name on Spotify, where he has over 44,000 monthly listeners, mostly in Taiwan, Province of China; the United States of America; Japan; and south-east Asia. According to evidence provided by the Complainant, since January 1, 2015, his music has been streamed 8.5 million times on Spotify and listened by 1.9 million listeners on the same platform. This audience data indicates a considerable degree of public recognition of the MJ KUOK as a mark indicating the Complainant's music. While the evidence does not include data on advertising or the number of paid subscribers in the Complainant's audience, the Panel is satisfied that, on the balance of probabilities, consumers in Taiwan, Province of China and elsewhere associate MJ KUOK (with a space) with the Complainant's music, such that the Complainant has enjoyed common law rights in that mark since some point in time after 2015 and before 2021. Accordingly, there is no need to consider the Complainant's claim regarding the alleged mark MJKUOK (without a space).

The disputed domain name incorporates the MJ KUOK mark, omitting only the space in the mark for technical reasons. The only additional element in the disputed domain name is a generic Top-Level Domain ("gTLD") suffix (".com") but, as a mere standard requirement of domain name registration, that element may be disregarded in the comparison between the disputed domain name and the MJ KUOK mark. See WIPO Overview 3.0, section 1.11.

Therefore, the Panel finds that the disputed domain name is identical to a trademark in which the Complainant has rights. The Complainant has satisfied the first element in paragraph 4(a) of the Policy.

## **B. Rights or Legitimate Interests**

Paragraph 4(c) of the Policy sets out the following circumstances which, without limitation, if found by the panel, shall demonstrate that the respondent has rights to, or legitimate interests in, a disputed domain name, for the purposes of paragraph 4(a)(ii) of the Policy:

- (i) before any notice to [the respondent] of the dispute, [the respondent's] use of, or demonstrable 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
- (ii) [the respondent] (as an individual, business, or other organization) [has] been commonly known by the [disputed] domain name, even if [the respondent has] acquired no trademark or service mark rights; or
- (iii) [the respondent is] making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

As regards the first and third circumstances set out above, the disputed domain name formerly resolved to a website displaying pornographic content and links to gambling and prostitution websites. The Complainant

submits that the disputed domain name was registered without its consent or authorization. The disputed domain name is identical to the Complainant's MJ KUOK mark, which carries a high risk of implied affiliation. It is not clear from the evidence whether the Respondent's website charged for access to the pornographic content but, in any case, the site was operated for the Respondent's own commercial gain, if he was paid to direct traffic to the linked websites, or for the commercial gain of the operators of the linked websites, or both. The disputed domain name is now passively held. In view of these circumstances, the Panel does not consider that the Respondent is using the disputed domain name in connection with a *bona fide* offering of goods or services, nor that he is making a legitimate noncommercial or fair use of the disputed domain name.

As regards the second circumstance set out above, the Respondent is identified in the Registrar's Whois database as “覃旭全” which may be transliterated as “Qin Xuquan”, not the disputed domain name. There is no evidence that the Respondent has been commonly known by the disputed domain name.

In summary, the Panel considers that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Respondent failed to rebut that *prima facie* case because he did not respond to the Complaint.

Therefore, based on the record of this proceeding, the Panel finds that the Complainant has satisfied the second element in paragraph 4(a) of the Policy.

### **C. Registered and Used in Bad Faith**

Paragraph 4(b) of the Policy provides that certain circumstances shall be evidence of the registration and use of a domain name in bad faith. The fourth of these is as follows:

(iv) by using the [disputed] domain name, [the respondent has] intentionally attempted to attract, for commercial gain, Internet users to [the respondent's] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the respondent's] web site or location or of a product or service on [the respondent's] web site or location.

With respect to registration, the disputed domain name was registered in 2021, after the Complainant acquired common law rights in his MJ KUOK mark for the reasons set out in Section 6.2A above. The Complainant has gained a considerable audience for his music, which is offered under that mark. The disputed domain name is identical to the mark yet MJ KUOK is an arbitrary combination of the Complainant's initials and family name. The Respondent provides no alternative explanation for his choice to register the disputed domain name. In view of these circumstances, the Panel is persuaded that, on the balance of probabilities, the Respondent was aware, or should have been aware, of the Complainant's trademark when he registered the disputed domain name.

With respect to use, the disputed domain name is passively held but that circumstance does not preclude a finding of use in bad faith. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. D2000-0003. In the present dispute, the Complainant has gained a considerable audience for his music, which is offered under the MJ KUOK mark. The disputed domain name is identical to that mark and the Respondent formerly used it in connection with a website displaying pornographic content and links to gambling and prostitution websites, until the Complainant sent a cease-and-desist letter to the Registrar. The disputed domain name operated by creating a likelihood of confusion with the Complainant's MJ KUOK mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website. This use was intentional and either for the Respondent's own commercial gain, if he was paid to direct traffic to the linked websites, or for the commercial gain of the operators of those linked websites, or both. Such use also risked tarnishing the Complainant's MJ KUOK mark. In the Panel's view, the Respondent's most likely intended use of the disputed domain name now is the same as his former active use. The Respondent offers no other explanation. In all these circumstances, the Panel considers that the Respondent is using the disputed domain name in bad faith.

Accordingly, the Panel finds that the disputed domain name has been registered and is being used in bad faith. The Complainant has satisfied the third element in paragraph 4(a) of the Policy.

## **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 <mjkuok.com> be transferred to the Complainant.

*/Matthew Kennedy/*

**Matthew Kennedy**

Sole Panelist

Date: July 18, 2022