

ADMINISTRATIVE PANEL DECISION

Mutuelle Nationale des Constructeurs et Accédants à la Propriété (MNCAP)

v. Oliver Olivo, Room One

Case No. D2023-0660

1. The Parties

The Complainant is Mutuelle Nationale des Constructeurs et Accédants à la Propriété (MNCAP), France, represented by Alain Bensoussan Selas, France.

The Respondent is Oliver Olivo, Room One, Dominican Republic.

2. The Domain Name and Registrar

The disputed domain name <mncappservices.com> is registered with Instra Corporation Pty Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed in French with the WIPO Arbitration and Mediation Center (the “Center”) on February 13, 2023. On February 14, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 15, 2023, 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 (Non visible sur les bases de données Whois) and contact information in the Complaint. The Center sent an email communication to the Complainant on February 23, 2023 providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. On the same date, the Center informed the Parties that the language of the registration agreement for the disputed domain name was English. The Complainant filed an amended Complaint in English on February 27, 2023. There were some email exchanges between the Center, the Complainant and the Registrar regarding the expiry of the disputed domain name in the period between March 1, 2023 and March 29, 2023.

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 of the Complaint, and the proceedings commenced on March 8, 2023. In accordance with the Rules, paragraph 5, the due date for Response was March 28, 2023. The Respondent did not submit a formal Response but sent several informal emails to the Center on March 8, March 13 and March 15, 2023. Accordingly, the Center notified the Commencement of Panel Appointment Process on March 31, 2023.

The Complainant submitted a supplemental filing on March 27, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on April 20, 2023. 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 independent mutual group specializing in loan insurance. It operates under the brand "MNCAP".

The Complainant is the owner of the French trademark MNCAP with registration No. 3706223, registered on July 2, 2010 for goods and services in International Classes 9, 16, 35, 36, 38, 39, 41, 42 and 45 (the "MNCAP trademark").

The Complainant is also the owner of the domain name <mncap.fr> registered on October 19, 2007, which resolves to the Complainant's official website.

The Respondent has provided no information about itself.

The disputed domain name was registered on March 15, 2022. At the time of filing of the Complaint, it resolved to a parked webpage containing third-party links.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is confusingly similar to its MNCAP trademark, because "mncap" is its dominant first element, and the only differences between the disputed domain name and the Complainant's trademark are the addition of the letter "p" after "mncap" and the addition of the word "services". The Complainant points out that the Complainant has a subsidiary under the name "MNCAP Services", established in Morocco in 2011. The Complainant adds that its MNCAP trademark has no meaning in the French language and has been used by the Complainant in relation to its services since 1971.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has not used it in connection with a *bona fide* offering of goods or services, has not made any legitimate noncommercial use or fair use of the disputed domain name, and is not known by the disputed domain name. The Complainant adds that the disputed domain name refers to a parking webpage and that searches on the Google search engine using the Respondent's names and address as keywords do not generate any results related to the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It resolves to a parking webpage containing links to third-party websites such as discussion forums, job searches for payroll software and business creation services. According to the Complainant, the Respondent thus seeks to divert traffic from the Complainant's official website and attract Internet users to these third-party websites. The Complainant also notes that the disputed domain name has mailbox

exchange (“MX”) settings configured, so it may be used to send misleading emails to the Complainant’s customers.

B. Respondent

The Respondent did not formally reply to the Complainant’s contentions.

In its informal letters to the Center, the Respondent stated in relevant part that it did not “own” the disputed domain name.

6. Discussion and Findings

6.1. Procedural issue - Language of Proceedings

The Complainant filed the original Complaint in French. According to the information provided by the Registrar, the language of the Registration Agreement for the disputed domain name is English. The Center informed the Parties about this, following which the Complainant filed an amended Complaint in English.

Therefore, the language of this administrative proceeding is English.

6.2. Procedural issue – Supplemental Filing

On March 27, 2023, the Complainant has filed a supplemental filing in the form of an amended Complaint.

Paragraph 12 of the Rules expressly provides that it is for the Panel to request, in its sole discretion, any further statements or documents from the Parties it may deem necessary to decide the case, and Paragraph 10 vests the Panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition.

As discussed in section 4.6. of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), unsolicited supplemental filings are generally discouraged, unless specifically requested by the Panel. In all such cases, Panels have repeatedly affirmed that the party submitting or requesting to submit an unsolicited supplemental filing should clearly show its relevance to the case and why it was unable to provide the information contained therein in its complaint or response (*e.g.*, owing to some “exceptional” circumstance).

The supplemental filing of the Complainant does not include any explanation as to why it would be relevant to the case, and the only new issue introduced with it is related to the statement of the Respondent that it is not the registrant of the disputed domain name. In the circumstances of the present case, the Panel does not find that this statement by the Respondent requires any further submission by the Complainant, so he does not accept the supplemental filing of the Complainant.

6.3. Substantive issues

Pursuant to the Policy, paragraph 4(a), the Complainant must prove each of the following to justify the transfer of the disputed domain name:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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 Respondent has registered and is using the disputed domain name in bad faith.

In this case, the Center has employed the required measures to achieve actual notice of the Complaint to the Respondent, in compliance with the Rules, paragraph 2(a), and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name [...]”

A. Identical or Confusingly Similar

The Complainant has provided evidence that it is the owner of the MNCAP trademark and has thus established its rights in this trademark for the purposes of the Policy.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the generic Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). See section 1.11.1 of the [WIPO Overview 3.0](#). The Panel sees no reason not to follow the same approach here, so it will disregard the “.com” gTLD of the disputed domain name.

The disputed domain name incorporates the MNCAP trademark with the addition of the letter “p” and the dictionary word “services”. The MNCAP trademark is the first of these elements and is easily recognizable in the disputed domain name. As discussed in section 1.8 of the [WIPO Overview 3.0](#), where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the MNCAP trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

While the overall burden of proof in UDRP proceedings is on the complainant, UDRP panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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. See section 2.1 of the [WIPO Overview 3.0](#).

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it is not commonly known by the disputed domain name and is using it for a parking website containing third-party links.

The Respondent does not deny the Complainant’s contentions and does not allege having rights or legitimate interests in the disputed domain name. It does not provide any explanation why it has registered and how it intends to use the disputed domain name. In its informal communications to the Center, the Respondent alleges not being the registrant of the disputed domain name and thus denies having any rights or legitimate interests in it. This allegation is however contradicted by the information provided by the Registrar, according to which the Respondent is the registrant of the disputed domain name.

As discussed in section 2.5 of the [WIPO Overview 3.0](#), fundamentally, a respondent’s use of a domain name will not be considered “fair” if it falsely suggests affiliation with the trademark owner; the correlation between a domain name and the complainant’s mark is often central to this inquiry. Even where a domain name consists of a trademark plus an additional term (at the second- or top-level), UDRP panels have largely held

that such composition cannot constitute fair use if it effectively impersonates or suggests sponsorship or endorsement by the trademark owner. Here, the disputed domain name incorporates the distinctive MNCAP trademark and the word “services”, and this combination appears as the name of one of the affiliates of the Complainant, which makes it appear as belonging to it. The disputed domain name resolves to a parking webpage containing third-party commercial links, and Internet users, attracted by its confusing similarity to the Complainant’s trademark, would be exposed to these links when they arrive at the associated parking webpage.

The above considerations lead the Panel to the conclusion that it is more likely that the Respondent knew of the Complainant and registered the disputed domain name because it is confusingly similar to the MNCAP trademark and to the name of the Complainant’s affiliate to benefit from the likelihood of confusion that the disputed domain name belongs to the Complainant or to its affiliate. The Panel does not regard the circumstances of the present case as disproving the Complainant’s *prima facie* case and giving rise to rights or legitimate interests of the Respondent in the disputed domain name.

Therefore, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have 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 your documented out-of-pocket costs directly related to the domain name; or

(ii) you have 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 you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

As discussed in section 3.1. of the [WIPO Overview 3.0](#), given that the scenarios described in UDRP paragraph 4(b) are non-exclusive and merely illustrative, even where a complainant may not be able to demonstrate the literal or verbatim application of one of the above scenarios, evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in behavior detrimental to the complainant’s trademark would also satisfy the complainant’s burden.

The disputed domain name is confusingly similar to the MNCAP trademark and to the name of the Complainant’s affiliate, which carries a risk of implied affiliation with the Complainant. It resolves to a parking webpage containing third-party commercial links. These links appear as being “pay-per-click” links for Internet marketing, where advertisers paying a fee each time one of their ads is clicked.

The disputed domain name also has MX records activated, so, as submitted by the Complainant, if it is used for sending of email messages, their recipients may well believe such messages to be originating from the Complainant or its affiliate.

The Respondent does not provide any plausible explanation for the registration and use of the disputed domain name.

This combination of factors leads the Panel to the conclusion that it is more likely than not that the Respondent is well aware of the Complainant and its MNCAP trademark, and has attempted to impersonate it and mislead Internet users to believe that the disputed domain name and the links featured on the associated webpage are affiliated to or endorsed by the Complainant, and thus take advantage of its reputation for financial gain.

For these reasons, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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 <mncappservices.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: May 4, 2023