

ADMINISTRATIVE PANEL DECISION

Peter Millar LLC v. Frei Mandy; Jens Eberhardt; and Client Care, Web
Commerce Communications Limited

Case No. D2023-2112

1. The Parties

The Complainant is Peter Millar LLC, United States of America ("United States"), represented by Corsearch, United States.

The Respondents are Frei Mandy, Germany; Jens Eberhardt, Germany; and Client Care, Web Commerce Communications Limited, Malaysia.

2. The Domain Names and Registrar

The disputed domain names <petermillaraustralia.com>, <petermillarcanada.com>, <petermillardanmark.com>, <petermillardeutschland.com>, <petermillardubai.com>, <petermillarespana.com>, <petermillarfrance.com>, <petermillarindia.com>, <petermillarireland.com>, <petermillaritaly.com>, <petermillarjapan.com>, <petermillarmagyarorszag.com>, <petermillarmalaysia.com>, <petermillarmexico.com>, <petermillarnederland.com>, <petermillarnorge.com>, <petermillarnz.com>, <petermillaroutlet.com>, <petermillarphilippines.com>, <petermillarportugal.com>, <petermillarromania.com>, <petermillarsale.com>, <petermillarschweiz.com>, <petermillarsouthafrica.com>, <petermillarsverige.com>, <petermillarturkiye.com>, and <petermillaruk.com> (together referred to as the "Domain Names") are registered with Alibaba.com Singapore E-Commerce Private Limited (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 12, 2023. On May 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Names. On May 15, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Names which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2023, 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 on May 22, 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 Respondents of the Complaint, and the proceedings commenced on May 25, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 14, 2023. The Respondents did not submit any response. Accordingly, the Center notified the Respondents’ default on June 21, 2023.

The Center appointed Gregor Vos as the sole panelist in this matter on June 29, 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 a lifestyle brand located in the United States and founded in 2001. The Complainant’s products are sold worldwide and include luxury sportswear, clothing, and accessories.

The Complainant is the owner of *inter alia* the following trademark registrations (hereinafter jointly referred to as the “Trademarks”).

- United States trademark registration No. 2881454 for PETER MILLAR registered on September 7, 2004;
- United States trademark registration No. 5297581 for PETER MILLAR registered on September 26, 2017;
- European Union trademark registration No. 003681277 for PETER MILLAR registered on July 8, 2005.

Further, it is undisputed that the Complainant is the owner of the domain name <petermillar.com>.

The Domain Names have been registered in February 22, 2023. At the time of filing of the Complaint, the Domain Names resolved to websites that appear to mimic the Complainant’s website and on which the Trademarks are depicted.

5. Parties’ Contentions

A. Complainant

With the Complaint, the Complainant seeks that the Domain Names are transferred to the Complainant.

Preliminarily, according to the Complainant, the Domain Names are under common control of one entity. Therefore, the different domain name disputes should be consolidated in these proceedings.

Substantively, the Complaint is based on the following factual and legal grounds: the Domain Names are identical or confusingly similar to the Complainant’s Trademarks, the Respondent has no rights or legitimate interests in the Domain Names, and the Domain Names have been registered and are being used in bad faith.

Firstly, according to the Complainant, the Domain Names are confusingly similar to its Trademarks. The Trademarks are included in all the Domain Names and the additions in the Domain Names of country names and generic terms, the omission of spaces and the addition of the generic Top-Level Domains “.com” do not detract from a finding of confusing similarity.

Secondly, the Respondent has no rights or legitimate interests in the Domain Names. To support this, the Complainant argues that the Respondent is not commonly known by the Domain Names, never received permission to register or use the Domain Names and is not otherwise affiliated with the Complainant. Furthermore, the Trademarks are depicted on the websites to which the Domain Names resolved and these websites appear to mimic the Complainant's website, thus creating a false impression of the Respondent's affiliation with the Complainant.

Finally, according to the Complainant, the Respondent is disrupting the Complainant's business by diverting confused Internet users to the Respondent's websites on which counterfeit products are sold, which does not constitute a *bona fide* offering of goods or services. Also, in light of the worldwide reputation of the Complainant and its Trademarks, it can be assumed that the Respondent was aware of the Trademarks under which the Complainant is doing business. Further, the Respondent has engaged in a pattern of the registration of Domain Names in bad faith.

B. Respondents

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

6. Preliminary Procedural Issue: Consolidation of Multiple Domain Names and Respondents

The Panel will first deal with the question of whether the different domain name disputes should be consolidated in single proceedings.

The consolidation of multiple domain name disputes under paragraph 3(c) or 10(e) of the Rules may be appropriate where the particular circumstances of a case indicate that common control is being exercised over the disputed domain names or the websites to which the domain names resolve and the panel, having regard to all of the relevant circumstances, determines that consolidation would be procedurally efficient and fair and equitable to all parties.

Indicia of common control have been found based on commonalities in registrant information, such as shared administrative or technical contacts and shared postal or email addresses, as well as other circumstances in the record indicating that the respondents are related or that a sufficient unity of interests otherwise exists that they may be essentially treated as a single domain name holder for purposes of paragraph 3(c) of the Rules (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 4.11.2; *Speedo Holdings B.V. v. Programmer, Miss Kathy Beckerson, John Smitt, Matthew Simmons*, WIPO Case No. [D2010-0281](#)).

In the present case, the Panel finds that the consolidation of the domain name disputes is justified. First, all Domain Names incorporate the Trademarks in their entirety with the addition of a geographical term and in two Domain Names a dictionary term. Second, all Domain Names are registered with same Registrar, Alibaba.com Singapore E-Commerce, and were registered on the same date. Third, at the time of filing of the Complaint, all Domain Names resolved to a website that appeared to mimic the official website of the Complainant and on which the Trademarks are prominently depicted. Finally, the Respondents have not objected to consolidation of the domain name disputes and the Panel notes that the registrant information disclosed seems to parallel other prior proceedings before the UDRP where consolidation has been found involving the Respondent, "Client Care, Web Commerce Communications Limited", and apparently fake German registrant details (as here, noting that the courier was unable to send or deliver the Center's written communications to the physical contact details disclosed for the Respondents, "Frei Mandy" and "Jens Eberhardt"). See, for example, *Sebago S.r.l. and Basic Net S.r.l. v. Dong Dou, Kristin SCHWARZ, Client Care, Web Commerce Communications Limited, and Julius Bergman*, WIPO Case No. [D2022-3756](#); *Basic Trademark S.R.L, BASIC NET S.p.a v. Yhetgb OjfeK, Rhdsj Ojdjsd, Nadine Gruenewald, Martin Saenger, Ute Schwartz, Steffen Vogt, Dieter Hoffmann, Julia Loewe, Claudia Rothstein, Client Care, Web Commerce Communications Limited, Domain Admin, Whoisprotection.cc, Max Vogler, Katja Jaeger, Lucas Lehmann, Katharina Naumann, Birgit Kalb, Leon Engel, Alexander Rothschild, Kalb Daniel, Kuhn Maik, Alexander*

RICHTER, Ralf METZGER, Brigitte SAENGER, Yaomine EKSTROM, Stephan Kaiser, WIPO Case No. [D2022-2669](#).

Therefore, the Panel finds, having regard to all relevant circumstances, that the Domain Names are under common control and that it is procedurally efficient and fair and equitable to all Parties when the domain name disputes are consolidated. Accordingly, hereinafter the Respondents will collectively be referred to as the “Respondent”, unless otherwise indicated.

7. Discussion and Findings

In view of the lack of a response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(f), 14(a), and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed factual presentations.

For the Complainant to succeed, it must prove, within the meaning of paragraph 4(a) of the Policy and on the balance of probabilities that:

- i. the Domain Names are identical or confusingly similar to a trademark or a service mark in which the Complainant has rights;
- ii. the Respondent has no rights or legitimate interests in respect of the Domain Names; and
- iii. the Domain Names have been registered and are being used in bad faith.

Only if all three elements have been fulfilled, the Panel is able to grant the remedy requested by the Complainant. The Panel will deal with each of the requirements in turn.

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the Domain Names are (i) identical or confusingly similar to a trademark or service mark, (ii) in which the Complainant has rights.

With respect to having rights pursuant to paragraph 4(a)(i) of the Policy, it is noted that the Complainant is registered as the owner of the Trademarks. Consequently, the Panel finds that the Complainant has proven that it has rights in the Trademarks.

With regard to the assessment of identity or confusing similarity of the Domain Names with the Trademarks, it is generally accepted that this test involves a reasoned but relatively straightforward comparison between the Trademarks and the Domain Names (see section 1.7 of the [WIPO Overview 3.0](#)). In cases where a domain name incorporates the entirety of a trademark, 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 mark (see section 1.7 of the [WIPO Overview 3.0](#)).

In the present case, the Trademarks are incorporated in their entirety in the Domain Names. Additionally, the additional terms in the Domain Names do not prevent a finding of confusing similarity (see section 1.8 of the [WIPO Overview 3.0](#)). Consequently, the Panel finds that the requirement under paragraph 4(a)(i) of the Policy has been satisfied.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Names. The *onus* of proving this requirement, like each element, falls on the Complainant. Given the difficulty in proving a negative, however, it is usually sufficient for a complainant to

make out a *prima facie* case that a respondent lacks rights or legitimate interests. If a complainant does establish a *prima facie* case, the burden of production shifts to the respondent (see, e.g. [WIPO Overview 3.0](#), section 2.1; *Sanofi v. Cimpres Schweiz GmbH*, WIPO Case No. [D2017-0522](#)).

Paragraph 4(c) of the Policy lists three non-limitative examples of instances in which a respondent may establish rights or legitimate interests in a disputed domain name.

The Complainant has substantiated that none of these circumstances apply in this case. By defaulting, the Respondent has failed to rebut the *prima facie* case established by the Complainant. Furthermore, based on the record before it, the Panel does not see an indication that any of the circumstances of paragraph 4(c) of the Policy is present. Specifically, given the construction and use of the Domain Names, it is evident that the Respondent's intent was to create a direct inference with the Complainant and to capitalize on the reputation and goodwill of the associated Trademarks, which cannot confer rights or legitimate interests upon the Respondent.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Names. Paragraph 4(a)(ii) is thereby fulfilled.

C. Registered and Used in Bad Faith

Under paragraph 4(a)(iii) of the Policy, a complainant must show that the disputed domain name has been registered and is being used in bad faith. Paragraph 4(b) of the Policy lists four non-limitative circumstances which may be considered as evidence of registration and use in bad faith of a domain name.

In the present case, the Trademarks are registered by the Complainant and have been used for many years. The Complainant's rights to the Trademarks predate the registration date of the Domain Names. In light of the fact that the Trademarks and copyrighted images of the Complainant are prominently depicted on the websites connected to the Domain Names, the Panel agrees with the Complainant that it is not conceivable that the Respondent chose the Domain Names without knowledge of the Complainant's activities and its Trademarks under which the Complainant is doing business.

With regard to the use of the Domain Names in bad faith, the Panel finds that the use of the Trademarks in the Domain Names signals an intention on the part of the Respondent to confuse Internet users into thinking that the Domain Names are connected to the Complainant. This is reinforced by the fact that the Domain Names resolved to a website displaying the Trademarks and purportedly offering for sale the Complainant's products at discounted prices. Further, the Respondent does not provide any information on its (nonexistent) relationship with the Complainant, which creates the false impression of an affiliation with the Complainant (see [WIPO Overview 3.0](#), section 3.2.1).

Given the nature of the Domain Names, the Panel finds that there is no conceivable use of the Domain Names in good faith. Also, the Respondent failed to submit a response and to rebut the *prima facie* case thus established by the Complainant.

Accordingly, the Panel finds that the Domain Names have been registered and are being used in bad faith and that the third element of paragraph 4(a)(iii) of the Policy is fulfilled.

8. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Names, <petermillaraustralia.com>, <petermillarcanada.com>, <petermillardanmark.com>, <petermillardeutschland.com>, <petermillardubai.com>, <petermillarespana.com>, <petermillarfrance.com>, <petermillarindia.com>, <petermillarireland.com>, <petermillaritaly.com>, <petermillarjapan.com>, <petermillarmagyarorszag.com>, <petermillarmalaysia.com>, <petermillarmexico.com>, <petermillarnederland.com>, <petermillarnorge.com>,

<petermillarnz.com>, <petermillaroutlet.com>, <petermillarphilippines.com>, <petermillarportugal.com>, <petermillarromania.com>, <petermillarsale.com>, <petermillarschweiz.com>, <petermillarsouthafrica.com>, <petermillarsverige.com>, <petermillarturkiye.com>, and <petermillaruk.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: July 13, 2023