

ADMINISTRATIVE PANEL DECISION

Meroil, S.A. v. Khalil Ahmad

Case No. D2023-4182

1. The Parties

The Complainant is Meroil, S.A., Spain, represented by PONS IP, Spain.

The Respondent is Khalil Ahmad, Pakistan.

2. The Domain Name and Registrar

The disputed domain name <meroil.com> is registered with Paknic (Private) Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 2, 2023. On October 9, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 11, 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 (unknown) and contact information in the Complaint.

The Center sent an email communication to the Complainant on October 11, 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 October 13, 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 October 16, 2023. In accordance with the Rules, paragraph 5, the due date for Response was November 5, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 8, 2023.

The Center appointed Taras Kyslyy as the sole panelist in this matter on November 13, 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 was founded in 1993 as an oil operator in Spain with the aim of supplying fuel and related products to service stations, distributors, industry and agricultural sector. The Complainant's annual sales in 2021 reached EUR 608 million, reaching 14th position in the national oil companies ranking. The Complainant has logistics facilities in Barcelona, Valencia, Cartagena, Córdoba, Seville, Huelva, Vigo, Coruña, Bilbao, Zaragoza and Madrid. The Complainant has the second largest fuel storage plant in Spain and the first on the coast with a storage capacity of 1,000,000 m³ gas oil and petrol distributed in 45 tanks. The Complainant has an extensive network of more than 200 fuel service stations distributed throughout Spain using the MEROIL trademark.

The Complainant is the owner of a wide range of trademark registrations consisting of the trademark MEROIL, including, for instance Spanish trademark registration No. M2518636:



Registered on December 1, 2003.

The Complainant also owns domain name <meroil.es>, registered on May 8, 1998.

The disputed domain name was registered on August 21, 2008 and resolves to a webpage comprising of pay-per-click ("PPC") links related to businesses competing with the Complainant's. Before that., during 2000 to 2003, it was owned by the Complainant and used as a company website.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

In particular, the Complainant contends that the disputed domain name is identical to the Complainant's trademark. The disputed domain name comprises in its entirety the Complainant's trademark and the company name. Therefore, the disputed domain name is identical to the prior trademarks owned by the Complainant.

The Complainant also contends that the Respondent does not have rights or legitimate interests in respect of the disputed domain name. The Respondent has not been known by the name of "meroil" in the course of trade and business, nor has any legal, commercial or any other kind of relationship with the Complainant. A search of trademarks with the term "meroil" confirms no trademark consisting or including these terms has been registered or applied on behalf of a third company or person different from the Complainant. The Respondent has no rights, either trademarks, or trade name, or whatever on the term "meroil". The Complainant has not authorized to use and/or register any of the trademarks MEROIL, nor granted any license to the Respondent on the term MEROIL, neither has any relation with the Respondent. The Respondent does not have any legitimate interest in respect of the content of the website <meroil.com>, hosting links to energy and fuel services furnished by the Complainant's competitors in Spain. Beyond that, the Respondent is not using and has not used the disputed domain name in connection with a *bona fides* purposes.

Finally, the Complainant contends that the disputed domain name was registered and is being used in bad faith. The Respondent acquired the disputed domain name with full knowledge of the fact that the Respondent was previously using it for a company website in relation with their fuel services. The Complainant did not sell the disputed domain name to the Respondent. The disputed domain was acquired by the Respondent in 2008, primarily for the purpose of selling it to the Complainant. After the Respondent acquired the disputed domain name, it is using it to offer links related with fuel services, including links to direct competitors of the Complainant in Spain, with the aim of forcing the Complainant to gain interest in recover the disputed domain name. The Respondent initially put to sale the disputed domain name to the public for EUR 1,440.00. Right after the Complainant offered to buy the disputed domain name, the Respondent increased the selling price from EUR 1,440 to EUR 9,990. The price asked for transferring the disputed domain name exceeds the Respondent documented out-of-pocket costs directly related to the disputed domain name. The Respondent is CEO of the Registrar, which further confirms he was well aware of the Complainant and its rights and acted in bad faith.

B. Respondent

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

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

Panel assessment of identity or confusing similarity involves comparing the (alpha-numeric) domain name and the textual components of the relevant mark. To the extent that design (or figurative/stylized) elements would be incapable of representation in domain names, these elements are largely disregarded for purposes of assessing identity or confusing similarity under the first element. [WIPO Overview 3.0](#), section 1.10. Thus, the Panel disregards design element of the Complainant's trademark for the purposes of the confusing similarity check.

The applicable generic Top-Level Domain ("gTLD") in a domain name (e.g., ".com", ".club", ".nyc") is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. Thus, the Panel disregards gTLD ".com" for the purposes of the confusing similarity test. [WIPO Overview 3.0](#), section 1.11.1.

The Panel finds the entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is identical to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

While the overall burden of proof in UDRP proceedings is on the complainant, 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. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

The available evidence does not confirm that the Respondent is commonly known by the disputed domain name, which could demonstrate its rights or legitimate interests (see, e.g., *World Natural Bodybuilding Federation, Inc. v. Daniel Jones, TheDotCafe*, WIPO Case No. [D2008-0642](#)).

The Complainant did not license or otherwise agree for use of its prior registered trademarks by the Respondent.

The use of the disputed domain name to host a parked page comprising PPC links does not represent a *bona fide* offering where such links compete with or capitalize on the reputation and goodwill of the Complainant’s mark and otherwise mislead Internet users. [WIPO Overview 3.0](#), section 2.9. Thus, no actual or contemplated *bona fide* or legitimate use of the disputed domain name could be reasonably claimed.

Based on the available record, the Panel finds the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular but without limitation, that if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

A number of factors including the nature of the domain name, the chosen Top-Level Domain, any use of the domain name, or any respondent pattern, may obviate a respondent’s claim not to have been aware of the complainant’s mark. [WIPO Overview 3.0](#), section 3.2.2. In the present case, the disputed domain name was registered after it was previously owned by the Complainant and then used to place PPC links to the Complainant’s competitors. The Panel finds the above confirms that the Respondent was aware of and targeted the Complainant and its trademark when registering the disputed domain name which indicates bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s mark. To facilitate assessment of whether this has occurred, and bearing in mind that the burden of proof rests with the complainant, paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent’s bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name 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 respondent’s documented out-of-pocket costs directly related to the domain name; or

- (ii) the respondent 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 respondent has engaged in a pattern of such conduct; or
- (iii) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 website or location or of a product or service on the respondent's website or location.

In this regard, noting that the disputed domain name was previously owned by the Complainant, the use of the disputed domain name to place PPC links to the Complainant's competitors, and the Respondent's offer to sell the disputed domain name for EUR 9,990, likely in excess of the Respondent's out-of-pocket costs, the Panel finds that at least the first, the second, and the fourth of the above scenarios apply to the present case confirming the Respondent's bad faith. [WIPO Overview 3.0](#), section 3.1.

Based on the available record, the Panel finds the third element of the Policy has been established.

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, <meroil.com> be transferred to the Complainant.

/Taras Kyslyy/

Taras Kyslyy

Sole Panelist

Date: November 27, 2023