

ADMINISTRATIVE PANEL DECISION

Georg Mez AG v. Mez Kalra
Case No. D2016-1932

1. The Parties

The Complainant is Georg Mez AG of Rotkreuz, Switzerland represented by Rechtsanwalt Michael Stefan, Germany.

The Respondent is Mez Kalra of Nashik, India represented by ESQwire.com PC, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <mez.com> is registered with BigRock Solutions Pvt Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 22, 2016. On September 22, 2016, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On September 23, 2016, 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 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 September 30, 2016. In accordance with the Rules, paragraph 5, the due date for Response was October 20, 2016.

On October 11, 2016, the Respondent requested the extension of the response due date. On the same day, the Center extended the Response due date until October 24, 2016 in accordance with paragraph 5(b) of the Rules and invited the Complainant to comment on a further extension. The Complainant did not submit a comment in this regard. On October 14, 2016, the Center extended the Response due date until October 27, 2016 in accordance with paragraph 5(e) of the Rules.

The Response was filed with the Center October 27, 2016.

The Complainant submitted a supplemental filing on November 17, 2016.

The Respondent submitted a supplemental filing in response on November 22, 2016.

The Center appointed Adam Taylor, Thomas Hoeren and The Hon Neil Brown Q.C. as panelists in this matter on December 9, 2016. The Panel finds that it was properly constituted. Each member of 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 supplies industrial products relating to duct systems.

The Complainant owns various registered trade marks for "MEZ" including: German trade mark no. 916958, registered April 3, 1974, in classes 6, 7, 9, 11 and 17; United States trade mark no. 1042087, registered June 29, 1976, in classes 6 and 17; and Indian trade mark no. 799918, registered April 24, 1998, in class 6.

The disputed domain name was transferred by William Mezian, the previous registrant, to Aishwin Vihona on or around April 7, 2015 (according to an "escrow.com"-printout exhibited to the Respondent's supplemental filing).

On April 10, 2015, the Complainant's lawyer sent a legal letter / purchase offer to William Mezian.

On February 2, 2016, the Complainant's lawyer sent a legal letter to Aishwin Vihona asserting that the Complainant possessed trade mark and other rights in the word "MEZ", that Aishwin Vihona had no rights in the corresponding name or trade mark, expressing the assumption that Aishwin Vihona had no "urgent" interest in using the disputed domain name because it was not being used for a website and offering USD 600.

A Whois report of February 2, 2016, shows that Aishwin Vihona was still the registrant as of that date. At some point thereafter, the Respondent became the registrant of the disputed domain name.

As of March 5, 2016, the disputed domain name was used for a website with content and links relating to Hungarian honey. The site was entitled "World famous Hungarian Honey". The "About us" section added: "We choose "Mez" as our name, because in Hungarian language the word "Mez" means "Honey" and that's exactly what we are buying and marketing...".

On March 22, 2016, a Mark Thomas of VIP Brokerage wrote to the Complainant's representative in response to the Complainant's letter, suggesting times for a call to discuss the Complainant's offer.

Thereafter, the Complainant's counsel responded and declined to discuss the matter, reiterating the Complainant's original offer.

5. Parties' Contentions

A. Complainant

A summary of the Complainant's contentions is as follows:

The disputed domain name is identical to the Complainant's trade marks. Trade marks grant a trade mark owner the exclusive right to use the trade marks in the course of trade.

The Respondent has no rights in respect of the disputed domain name. The Respondent possesses no registered trade marks or other earlier rights in respect of the name comprised in the disputed domain name. Nor does the Respondent have any "name right" in relation to the disputed domain name as it does not bear the name "MEZ".

The disputed domain name is not currently being used for a website.

The contents of the website "have only been included for the sake of appearance in order to pretend that the domain is in use".

At the time of an earlier UDRP complaint filed by the Complainant on May 13, 2016, the website at the disputed domain name was used to sell honey: "however no relevant information whatsoever concerning the sales of honey has been found". Furthermore, no contact information was provided. The online form was only included for the sake of appearances. No means of direct contact has been offered, e.g., by email or phone.

The disputed domain name was resold recently. A Whois search shows that as of February 2, 2016, the disputed domain name was registered to Aishwin Vikhona, Global Websoft, Maharashtra, India. Thereafter the disputed domain name was transferred to the Respondent. There is currently no website at the disputed domain name.

B. Respondent

A summary of the Respondent's contentions is as follows:

The Respondent's business partner and cousin Aishwin Vikhona bought the disputed domain name on April 13, 2015. On February 24, 2016, the Respondent and his cousin formed a partnership to manage the disputed domain name. At various times thereafter the Whois was modified to reflect the names of a company owned by Aishwin Vikhona (Global Websoft) and one owned by the Respondent (Zen Infotech).

The disputed domain name was previously used for a website for links related to honey because "mez" means honey in Hungarian and a contractor offered to pay the Respondent for leads. The Respondent terminated the honey related website after the contractor became non-responsive.

Most recently the Respondent moved the disputed domain name to a new registrar after becoming a majority owner of the disputed domain name and he modified the register to reflect his email address.

The Respondent bought the disputed domain name because it was an inherently valuable three-letter domain name and not to target the Complainant. The Respondent was unaware of the Complainant or its trade mark at the time of acquisition of the disputed domain name in April 2015.

The Respondent and Mr. Vikhona collectively own many three-letter domain names, which have diverse commercial uses and are not exclusively owned by any one company.

There are limitless potential uses of the term "MEZ", which is a common acronym. A Google search for the term yielded some 27 million results.

There have never been any links on the website relating to the Complainant.

There is no evidence that the Complainant operates a well-known brand.

The fact that "MEZ" is a three-letter combination and used by many third parties, including as a common acronym for entities unrelated to the Complainant, is evidence that the Complainant has no exclusive rights in the term and this supports the Respondent's legitimate interest in the disputed domain name.

The Respondent's use as a lead generation site for "honey", consistent with the definition of "honey" in Hungarian, is evidence of legitimate use.

As the Respondent also invests in domain names, its ownership of the disputed domain name, with intent to resell, itself satisfies the legitimate interest requirement of the Policy as there is no evidence that the Respondent targeted a trade mark.

Because of the substantial third party use of the term "MEZ", the Complainant must produce specific evidence of the Respondent's bad faith but has failed to do so.

The disputed domain name reflects a common term and the Complainant has not established that the Respondent intended to create a likelihood of confusion vis-à-vis the Complainant. Such a claim is bound to fail because of the Respondent's legitimate non-infringing use of the site for honey. There is no likelihood of confusion with the Complainant's metal products.

The lack of advertisements targeting the Complainant's goods or services indicated that the Respondent did not intend to confuse Internet users into thinking that the Complainant was associated with the Respondent's website.

The Complainant took no action against the original owner of the disputed domain name, registered in 1996, for over two decades and only decided to pursue the disputed domain name in February 2016. However, the Complainant effectively concedes there is no evidence of targeting or bad faith use of the disputed domain name. The best that the Complainant can claim is that the disputed domain name was "resold". The Complainant has therefore failed to prove bad faith.

There should be a finding of Reverse Domain Name Hijacking.

Before filing the Complaint, the Complainant knew that its claim was baseless. The Complainant remained silent for over two decades and then engineered this case after the Respondent purchased the disputed domain name from its owner and declined to accept the Complainant's unsolicited offer to buy the disputed domain name. This is a clear "Plan B" case to seize a valuable three-letter domain name.

The lack of bad faith should have been apparent to the Complainant's counsel. The fact that the Complaint provides no evidence of the Respondent's wrongdoing is itself proof of the Complainant's bad faith.

6. Discussion and Findings

A. Supplemental Filing

Each party has made an unsolicited supplemental filing.

Paragraphs 10 and 12 of the Rules in effect grant the Panel sole discretion to determine the admissibility of supplemental filings. Paragraph 10(d) states: "The Panel shall determine the admissibility, relevance, materiality and weight of the evidence". Paragraph 12 states: "In addition to the complaint and the response, the Panel may request, in its sole discretion, further statements or documents from either of the Parties".

The principles which the Panel should apply in deciding whether or not to admit supplemental filings have been considered in many cases under the Policy. See, e.g., *The E.W. Scripps Company v. Sinologic Industries*, WIPO Case No. D2003-0447. The principles include: that additional evidence or submissions should only be admitted in exceptional circumstances, such as where the party could not reasonably have known the existence or relevance of the further material when it made its primary submission; that if further material is admitted, it should be limited so as to minimize prejudice to the other party or the procedure; and that the reasons why the Panel is invited to consider the further material should, so far as practicable, be set

out separately from the material itself.

The Complainant has not clearly explained or justified its filing. The Complainant claims that the Response gave rise to a “new” statement of facts, which it attacks in general terms as incomplete, incorrect, lacking in credibility etc. The supplemental filing, entitled “Replication”, then continues in the form of a lengthy point-by-point rebuttal of the Response. The supplemental filing is broadly the same length as the Complaint and includes more exhibits. It appears to the Panel that the Complainant is at least in part attempting to compensate for the lack of detail and supporting evidence in the original Complaint and that at least some of this material could, and should, have been included in the Complaint. In any case, much of the information in the Complainant’s supplemental filing is irrelevant, given the Panel’s findings regarding the third element of the Policy (see further below).

It is clearly prejudicial to the Policy, which is intended to comprise a relatively straightforward process, if a party files extensive additional supplemental filings without (a) clearly demonstrating the exceptional circumstances which allegedly warrant the submission and then (b) tailoring its submissions tightly to the exceptional circumstances claimed including an explanation as to why any supporting evidence was not reasonably known at the time of its primary submission.

The Respondent’s supplemental filing is purely a response to that of the Complainant.

Accordingly, except for a few limited matters referred to below, the Panel declines to admit either filing. The Panel would add, however, that the outcome of this case would have been the same, even if it had admitted both filings.

B. Identical or Confusingly Similar

It is not in dispute that the Complainant has acquired rights in the mark MEZ, based on its registered trade marks for that term.

The disputed domain name is identical to the Complainant’s trade mark, disregarding the generic Top-Level Domain (“gTLD”).

The Panel therefore finds that the Complainant has established the first element of paragraph 4(a) of the Policy.

C. Rights or Legitimate Interests

It is unnecessary to consider this element in light of the Panel’s conclusion below under the third element.

D. Registered and Used in Bad Faith

For reasons explained below, the Panel uses the term “Respondent” below to refer collectively to all of the various entities shown as registrant of the disputed domain name after April 7, 2015 - unless it is necessary to mention them separately.

In the Panel’s view, the Complainant has fallen well short of establishing registration and use in bad faith.

There is no evidence that the Respondent knew or was likely to have been aware of the Complainant’s mark on acquisition of the disputed domain name on April 7, 2015.

The Panel rejects the Complainant’s assertion in its supplemental filing that the Complainant’s legal letter of February 2, 2016, alone was sufficient to create relevant knowledge of its rights on the part of subsequent registrants of the disputed domain name. The Panel is assessing registration in bad faith as of April 7, 2015, some ten months earlier. The Respondent claims that all registrants of the disputed domain name after April 7, 2015, are connected and, certainly, the Panel has no reason to think that any of the entities shown

as registrant after April 7, 2015, are unrelated. Nor has the Complainant suggested otherwise. Accordingly, the Panel treats all subsequent registrant transfers as effectively “internal” and insufficient to trigger a new assessment of registration in bad faith.

The Complainant has provided no information, let alone supporting evidence, regarding the nature or scale of its activities or extent of its reputation, if any, in April 2015 – or at indeed at any other time. And there is nothing suggestive of use by the Respondent of the disputed domain name in a manner related to the Complainant’s specialised industry.

While the Complainant has criticized the alleged lack of genuineness of the Respondent’s former use of the disputed domain name for a honey-related website, the Panel does not consider that such criticism, whether or not justified, assists the Complainant in establishing that the Respondent acted in bad faith vis-à-vis the Complainant.

The Respondent has established that, as one might expect, the term “MEZ” is in widespread use, particularly as an acronym and that the disputed domain name is part of a pattern of similar three-letter domain names owned by it.

The Panel therefore concludes the Complainant has failed to establish the third element of paragraph 4(a) of the Policy.

E. Reverse Domain Name Hijacking (“RDNH”)

The Respondent argues that the Complainant has been guilty of RDNH.

Paragraph 15(e) of the Rules provides that, if “after considering the submissions the panel finds that the complaint was brought in bad faith, for example in an attempt at Reverse Domain Name Hijacking or was brought primarily to harass the domain-name holder, the panel shall declare in its decision that the complaint was brought in bad faith and constitutes an abuse of the administrative proceeding”. RDNH is defined under the Rules as “using the UDRP in bad faith to attempt to deprive a registered domain-name holder of a domain name”.

The Panel considers that the Complainant has been guilty of RDNH for the following reasons:

1. The Complainant has failed by a large margin. In the Panel’s opinion, the Complainant knew, or at least should have known, that it could not prove one of the essential UDRP elements. Indeed, the Complainant made no real effort to establish that the Respondent was likely to have been aware of it on acquisition of the disputed domain name, including the lack of any information or evidence about the Complainant’s trading activities. Indeed, there was virtually no evidence at all relating to bad faith; for example the Complainant supplied no screenshots illustrating the use of the disputed domain name which the Complainant invoked. (This information only emerged in later submissions.) Instead, the Complainant resorted to some vague and unpersuasive arguments, none of which were directed to the likelihood that the Respondent was aware of the Complainant, and which appeared to rest on the basis that the Complainant had an exclusive right to the disputed domain name.
2. The Complaint lacked candour in that it made no mention of the prior communications between the parties including its initial offer to purchase the disputed domain name.
3. In the Panel’s view, this is a classic “Plan B” case where a party, having been frustrated in its negotiations to buy a domain name, resorts to the ultimate option of a highly contrived and artificial claim not supported by any facts or the plain wording of the UDRP. This stratagem has been described in many UDRP cases as “a highly improper purpose” and it has contributed to findings of RDNH. See, e.g., *Patricks Universal Export Pty Ltd. v. David Greenblatt*, WIPO Case No. D2016-0653 and *BERNINA International AG v. Domain Administrator, Name Administration Inc. (BVI)*, WIPO Case No. D2016-1811.

4. The Complainant in its supplemental filing expressly declined to respond to the Respondent's assertion of RDNH. The Complainant submitted simply that "Statements in relation to Reverse Domain Name Hijacking are not required". In the context of this proceeding, statements in relation to RDNH were certainly required and it is not unreasonable to expect that they would have been provided. If so, they would certainly have been admitted. When a panel finds that a party will not engage in debate on a particular issue, it is entitled to conclude that the party's case on the issue in question has some inherent deficiencies.

7. Decision

For the foregoing reasons, the Complaint is denied and the Panel finds that the Complaint was brought in bad faith and constitutes an abuse of the administrative proceeding.

Adam Taylor
Presiding Panelist

Thomas Hoeren
Panelist

The Hon Neil Brown Q.C.
Panelist
Date: January 6, 2017