

Decision for dispute CAC-UDRP-105979

Case number	CAC-UDRP-105979
Time of filing	2023-11-15 10:08:32
Domain names	moubootsusa.com, mouparis.com, mouaustraliasale.com, mouireland.com, moudanmark.com, mouargentina.com, moubelgique.com, moubrasil.com, moucolombia.com, mououtletnl.com, mouportugal.com, moushoessuomi.com, mouuruguay.com, mouchile.com, mouisrael.com, mouxmexicoshop.com, mouromania.com, mouuae.com, moujapan.com, moukuwait.com, mouxcanada.com, mouuksale.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	Mou Limited
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Complainant representative

Organization	Convey srl
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Respondents

Name	bi cai rong
Name	Village TERRAZZA
Name	Qiu Xiaofeng
Name	Sean Gill
Name	Jay Armstrong
Name	Corey Stanley
Name	Qiu Xiaofeng

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of many trademarks for MOU, e.g. United States trademark registration no. 3663689 MOU

(word) registered on August 4, 2009 for goods in class 25; European trademark registration no. 008164204 registered on December 11, 2009 for goods in classes 3, 18 and 25.

FACTUAL BACKGROUND

It results from the Complainant's undisputed allegations that it was founded in London in 2002 and now it is the internationally recognized brand for premium, handcrafted shoes and accessories in luxurious natural fibres. Complainant's products are sold online and via selected boutiques and department stores worldwide.

The Complainant further contends its trademark MOU be distinctive and well-known.

Furthermore, the Complainant use the domain names <mou.com> (registered on May 22, 1998), <mou-online.com> (registered on January 26, 2006), mou-online.cn and <mou-online.com.cn> to connect to its official website for advertising and commercializing its products.

The disputed domain name < mouargentina.com > was registered on May 22, 2023;

the disputed domain name < mouaustraliasale.com > was registered on May 20, 2023;

the disputed domain name < moubelgique.com > was registered on May 22, 2023;

the disputed domain name < moubrasil.com > was registered on May 22, 2023;

the disputed domain name < moucanada.com > was registered on May 20, 2023;

the disputed domain name < mouchile.com > was registered on May 22, 2023;

the disputed domain name < moucolombia.com > was registered on May 22, 2023;

the disputed domain name < moudanmark.com > was registered on May 20, 2023;

the disputed domain name < mouireland.com > was registered on May 20, 2023;

the disputed domain name < mouisrael.com > was registered on May 22, 2023;

the disputed domain name < moujapan.com > was registered on May 22, 2023;

the disputed domain name < moukuwait.com > was registered on May 22, 2023;

the disputed domain name < mouxmexicoshop.com > was registered on May 22, 2023;

the disputed domain name < mououtletnl.com > was registered on May 22, 2023;

the disputed domain name < mouparis.com > was registered on July 7, 2023;

the disputed domain name < mouportugal.com > was registered on May 22, 2023;

the disputed domain name < mouromania.com > was registered on May 22, 2023;

the disputed domain name < mouxhoessuomi.com > was registered on May 22, 2023;

the disputed domain name < mouuae.com > was registered on May 22, 2023;

the disputed domain name < mouuksale.com > was registered on May 20, 2023;

the disputed domain name < mouuruguay.com > was registered on May 22, 2023;

the disputed domain name < moubootsusa.com > was registered on July 26, 2023.

Furthermore, the undisputed evidence provided by the Complainant proves that the disputed domain names resolve to websites purportedly offering for sale products under the Complainant's trademarks, displaying without authorization the Complainant's trademark and logo.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names have been registered and are being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

According to the information provided by the Registrars upon the Request for Registrar Verification sent by Online ADR Center of the Czech Arbitration Court, the disputed domain names are registered by different Registrants (Respondents): (i.e. **bi cai rong** (CHINA) is the Registrant of <moubootsusa.com>; **Village TERRAZZA** (FRANCE) is the Registrant of <mouparis.com>; **Qiu Xiaofeng** (CHINA) is the Registrant of <mouaustraliasale.com>, <mouireland.com>, <moudanmark.com>; **Sean Gill** (GERMANY) is the Registrant of <mouargentina.com>, <moubelgique.com>, <moubrasil.com>, <moucolombia.com>, <mououtletnl.com>, <mouportugal.com>, <moushoessuomi.com>, <mouuruguay.com>; **Jay Armstrong** (GERMANY) is the Registrant of <mouchile.com>, <mouisrael.com>, <moumexicoshop.com>, <mouromania.com>, <mouuae.com>; **Corey Stanley** (GERMANY) is the Registrant of <moujapan.com>, <moukuwait.com>; **Qiu Xiaofeng** (CHINA) is the Registrant of <moucanada.com>, <mouuksale.com>.

In its Amended Complaint the Complainant requests the Panel to consolidate the cases.

Under Paragraph 10(e) of the Rules for Uniform Domain Name Dispute Resolution Policy (the Rules) “A Panel shall decide a request by a Party to consolidate multiple domain name disputes in accordance with the Policy and these Rules”.

In the Panel's view the Complainant submitted sufficient evidence to justify the consolidation in terms of common control of the domain names or corresponding websites and fairness and equitableness of the consolidation to all parties.

As specified in WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Jurisprudential Overview 3.0”) at point 4.11.2 “Panels have considered a range of factors, typically present in some combination, as useful to determining whether such consolidation is appropriate, such as similarities in or relevant aspects of (i) the registrants' identity(ies) including pseudonyms, (ii) the registrants' contact information including email address(es), postal address(es), or phone number(s), including any pattern of irregularities, (iii) relevant IP addresses, name servers, or webhost(s), (iv) the content or layout of websites corresponding to the disputed domain names, (v) the nature of the marks at issue (e.g., where a registrant targets a specific sector), (vi) any naming patterns in the disputed domain names (e.g., <mark-country> or <mark-goods>), (vii) the relevant language/scripts of the disputed domain names particularly where they are the same as the mark(s) at issue, (viii) any changes by the respondent relating to any of the above items following communications regarding the disputed domain name(s), (ix) any evidence of respondent affiliation with respect to the ability to control the disputed domain name(s), (x) any (prior) pattern of similar respondent behaviour, or (xi) other arguments made by the complainant and/or disclosures by the respondent(s).

The Panel considers the consolidation as appropriate, taking into consideration, in particular, the layout and the content of the websites corresponding to the disputed domain names. In particular, the content of the websites is identical for all the disputed domain names, displaying the same photography in the homepage (but the disputed domain name <moubootsusa.com>). In addition, all the disputed domain names resolve to websites that have the same layout, i.e. web shops allegedly advertising Complainant's MOU products, all displaying the Complainant's trademark MOU in the middle of the headers, the black banner in the header relating to the free shipping and the icons related to children, men and women (in different corresponding languages). In addition, there are similarities in the naming

patterns in the disputed domain names, e.g. all disputed domain names contain at least the Complainant's trademark MOU and a geographical term. Thus, the content and layout of the websites corresponding to the disputed domain names and the naming patterns in the disputed domain names give evidence of a common control of the domain names at issue.

On the balance of probabilities and taking into account the above circumstances of the present case, the Panel finds that the disputed domain names are under common control. The Panel is also satisfied that consolidation of these disputes is fair and equitable to all parties, and that they should be consolidated in the interest of procedural efficiency (s. Pandora A/S v. Larry Sack, Alice Ferri, marino blasi, Sirkin Mösening, Meghan Pier, Monica Lugo, Tom Fargen, CAC Case No. 103259).

Furthermore, the Respondent has not contested or provided any rebuttal regarding the consolidation request made by the Complainant. Therefore, the Panel finds that consolidation would be fair and equitable.

Moreover, 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”.

However, as noted by previous UDRP panels, paragraph 11 of the Rules must be applied in accordance with the overriding requirements of paragraphs 10(b) and 10(c) of the Rules that the parties are treated equally, that each party is given a fair opportunity to present its case and that the proceeding takes place with due expedition, see WIPO Jurisprudential Overview 3.0 at point 4.5.1. Accordingly, account should be taken of the risk that a strict and unbending application of paragraph 11 of the Rules may result in delay, and considerable and unnecessary expenses of translating documents.

The Complainant in its Amended Complaint requested that English be the language of the proceedings, even if the language of the registration agreement of one of the disputed domain names, i.e. <moubootsusa.com>, is Chinese. According to the Complainant, the Respondent has familiarity with English since the website corresponding to the disputed domain name is in English; the disputed domain name contains Latin characters and the trademark; the disputed domain name includes the English words “boot” and “USA”. The translation of the Complaint into Chinese would also cause additional expense and delay, making unfair to proceed in Chinese.

In deciding whether to allow the proceedings to be conducted in a language other than the language of the Registration Agreement, the Panel must have regard to all “the relevant circumstances”. The factors that the Panel should take into consideration include whether the Respondent is able to understand in the language in which the Complaint has been made and would suffer no real prejudice, and whether the expenses of requiring translation and the delay in the proceedings can be avoided without at the same time causing injustice to the parties (see e.g. Carrefour SA v. Matias Barro Mares WIPO Case No. D2020-3088; Volkswagen AG v. Nowack Auto und Sport - Oliver Nowack, WIPO Case No. D2015-0070; SWX Swiss Exchange v. SWX Financial LTD, WIPO Case No. D2008-0400).

In the case at issue, this Panel considers that conducting the proceedings in English would not be disadvantageous to the Respondent, since it results from the Complainant's undisputed allegations that the Respondent has demonstrated an ability to understand English, since the English terms “boot” and “usa” – are incorporated in the disputed domain name and the website to which the disputed domain name resolves is in English. Moreover, the Respondent registered the disputed domain name under the generic Top-Level Domain “.com”. By choosing such very popular gTLD extension, the Respondent has aimed at targeting a global and broad audience of Internet users rather than Chinese speakers only. The Panel is therefore prepared to infer that the Respondent is able to understand English.

Furthermore, the Panel finds that substantial additional expense and delay would likely be incurred if the Complaint had to be translated into Chinese. The Panel is of the view that the language requirement should not cause any undue burden on the parties or undue delay.

Finally, the Panel notes that the Respondent did not object to the request made that the proceedings be conducted in English. Taking all these circumstances into account, this Panel finds that it is appropriate to exercise its discretion, according to paragraph 11(a) of the Rules and allow the proceedings to be conducted in English.

1. Pursuant to paragraph 4(a)(i) of the Policy, the complainant must establish rights in a trademark or service mark, and that the domain name is identical or confusingly similar to a trademark in which the complainant has rights.

It results from the evidence provided, that the Complainant is the registered owner of various MOU trademarks.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“WIPO Overview 3.0”) at section 1.7. This Panel shares this view and notes that the Complainant's registered trademark MOU is fully included in the disputed domain names.

Furthermore, it is the view of this Panel that the addition of the additional terms in the disputed domain names at issue cannot prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark since the Complainant's trademark is clearly recognizable in the disputed domain names (see WIPO Overview 3.0 at section 1.8).

Finally, the generic Top-Level Domain (“gTLD”) “.com” of the disputed domain names is typically disregarded under the first element confusing similarity test (see WIPO Overview 3.0 at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainants have rights.

2. Pursuant to paragraph 4(a)(ii) of the Policy, the complainant must secondly establish that the respondent has no rights or legitimate interests in respect of the domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain names.

In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a prima facie case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondents and did, in particular, not authorize the Respondents' use of the Complainant's trademark MOU, e.g. by registering the disputed domain names comprising said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondents might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the nature of the disputed domain names carry a risk of implied affiliation, since all the disputed domain names contains the Complainant's trademark MOU plus a geographical term/geographical abbreviation. Geographical terms are seen as tending to suggest sponsorship or endorsement by the trademark owner, see WIPO Overview 3.0 at section 2.5.1.

It is acknowledged that once the Panel finds a prima facie case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see WIPO Overview 3.0 at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondents have no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

3. According to paragraph 4(a)(iii) of the Policy, the complainant must thirdly establish that the domain name has been registered and is being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the domain name's registration and use in bad faith. One of these circumstances is that the Respondent by using the disputed domain names, has intentionally attempted to attract, for commercial gain, Internet users to its 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 its website or location or of a product or service on its website or location (paragraph 4(b)(iv) of the Policy).

It is the view of this Panel that these circumstances are met in the case at hand.

It results from the Complainant's documented allegations that the disputed domain names resolved to websites allegedly offering for sale Complainant's goods and reproducing without any authorization the Complainant's trademark and logo. For the Panel, it is therefore evident that the Respondent knew the Complainant's mark when it registered the disputed domain names. Consequently, and in the absence of any evidence to the contrary, the Panel is convinced that the Respondent knew that the disputed domain names included the Complainant's trademark when it registered the disputed domain names. This is underlined by the fact that the disputed domain names are clearly constituted by the Complainant's registered trademark MOU plus the geographic terms.

Finally, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondents have registered and are using the disputed domain names in bad faith (see WIPO Overview 3.0 at section 3.2.1):

- (i) the nature of the disputed domain names (i.e., incorporating the Complainant's mark plus geographical terms plus the addition of terms which are related to the Complainant's business activity);
- (ii) the content of the websites to which the disputed domain names direct (allegedly advertising and selling Complainant's goods;
- (iii) a clear absence of rights or legitimate interests coupled with no credible explanation for the Respondents choice of the disputed domain names;
- (iv) the respondents concealing their identity;

In light of the above the Panel finds that the disputed domain names have been registered and are being used in bad faith pursuant to paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **moubootsusa.com**: Transferred
 2. **mouparis.com**: Transferred
 3. **mouaustraliasale.com**: Transferred
 4. **mouireland.com**: Transferred
 5. **moudanmark.com**: Transferred
 6. **mouargentina.com**: Transferred
 7. **moubelgique.com**: Transferred
 8. **moubrasil.com**: Transferred
 9. **moucolombia.com**: Transferred
 10. **mououtletnl.com**: Transferred
 11. **mouportugal.com**: Transferred
 12. **mouhoessuomi.com**: Transferred
 13. **mouuruguay.com**: Transferred
 14. **mouchile.com**: Transferred
 15. **mouisrael.com**: Transferred
 16. **moumexicoshop.com**: Transferred
 17. **mouromania.com**: Transferred
 18. **mouuae.com**: Transferred
 19. **moujapan.com**: Transferred
 20. **moukuwait.com**: Transferred
 21. **moucanada.com**: Transferred
 22. **mouuksale.com**: Transferred
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PANELLISTS

Name	Dr. Federica Togo
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DATE OF PANEL DECISION	2023-12-27
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Publish the Decision
