



(Hong Kong Office)

ADMINISTRATIVE PANEL DECISION

Case No.	HK-1700999
Complainant:	Meizu Technology Co., Ltd. (珠海市魅族科技有限公司)
Respondent:	Juanjo Serrano, Cloespain Distribution s.l.
Disputed Domain Name(s):	< meizuspain.com >; < meizuspain.net >; < meizuspain.org > & < meizuspain.info >

1. The Parties and Contested Domain Name

The Complainant is **Meizu Technology Co., Ltd. (珠海市魅族科技有限公司)**, of Meizu Technology Building, Technology & Innovation Coast, Zhuhai, Guangdong, P.R. China.

The Respondent is **Juanjo Serrano, Cloespain Distribution s.l.**, of Poligono la vega, nave 315, Tarifa, CADIZ, 11380, ES.

The domain names at issue are **< meizuspain.com >; < meizuspain.net >; < meizuspain.org > & < meizuspain.info >** (“*Disputed Domain Names*”), registered by Respondent with PDR Ltd. d/b/a PublicDomainRegistry.com, Unit No 501, 5th floor and Unit IT Building No 3, NESCO IT Park, Western Express Highway, Goregaon (East), Mumbai Maharashtra 400063, India.

2. Procedural History

On 5 July 2017, the Complainant filed a Complaint in this matter with the Hong Kong Office of the Asian Domain Name Dispute Resolution Centre (“ADNDRC-HK”). On the same day, the ADNDRC-HK notified PDR Ltd. (“Registrar”) of the Disputed Domain Names of the proceedings by email and requested registrar verification in connection with the domain names at issue. On the next day, the Registrar acknowledged the email of ADNDRC-HK confirming that the Disputed Domain Names are registered with the Registrar, that Juanjo Serrano is the holder of the Disputed Domain Names, and provided contact details. The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the “policy”), the Rules of Procedure under the Policy (the “Rules”), and the Center’s Supplemental Rules.

In accordance with the Rules, the ADNDRC-HK sent a Written Notice of Complaint (“Notification”), together with the Complaint, to the email address of the Respondent’s

nominated registrant contact for the Disputed Domain Name (as recorded in the WHOIS database) on 17 July 2017. The Notification gave the respondent twenty (20) calendar days to file a Response (i.e. on or before 6 August 2017).

The Panel comprising of Dr. Shahla F. Ali as a single panelist was appointed by the ADNDRC-HK on 15 August 2017. The papers pertaining to the case were delivered to the Panel by email on the same day. The Panel finds that it was properly constituted and has acted impartially in reaching its conclusion.

3. Factual background

For the Complainant

The Complainant, Meizu Technology Co., Ltd. (珠海市魅族科技有限公司, formerly called 魅族科技(中国)有限公司) (“Meizu”, “魅族”, or “Complainant”), was established in 2003 and is headquartered in Zhuhai, China. Since 2008, Meizu has designed and produced smartphones for commercial use. It currently has more than 1,000 employees and 600 retail stores worldwide. The Complainant and its MEIZU trademark are known internationally including Spain where the Respondent is domiciled, with trademark registrations across numerous countries including Spain, China and United States. The Complainant has marketed and sold its goods and services using this trademark since 2003.

For the Respondent

The Respondent has not responded to the ADNDRC-HK within the stipulated timeframe (i.e. on or before 6 August 2017). As such the Respondent has not contested the allegations of the Complainant.

4. Parties’ Contentions

A. Complainant

The Complainant’s contentions may be summarized as follows:

- i. The domain name in dispute is confusingly similar to the Complainant’s trademark “Meizu”.
- ii. Respondent has no rights or legitimate interests in the registration of the domain names in dispute.
- iii. Respondent has registered and used the domain name in bad faith.

B. Respondent

The Respondent did not file a Response to the ADNDRC-HK within the required timeframe stipulated by the ADNDRC-HK (ie. on or before 6 August 2017) and as such has not contested the allegations of the Complainant.

5. Findings

Having considered all the documentary evidence before me, and the Respondent's non-participation in these proceedings after being afforded every opportunity to do so in accordance with Paragraph 14 of the Rules for Uniform Domain Name Dispute Resolution Policy ("the Rules") the Panel is of the view that it should proceed to decide on the Disputed Domain Names based upon the Complaint and evidence submitted by the Complainant.

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent's domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and
- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

A) Identical / Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to prove that the Disputed Domain Name is identical or confusingly similar to a trademark or a service mark in which the Complainant has rights.

The Disputed Domain Name incorporates Complainant's MEIZU trademark in its entirety while merely adding the geographically descriptive term "Spain", thus rendering the Disputed Domain Name confusingly similar to this trademark. It is well established that the addition of a geographic term or place name does not alter the underlying trademark or negate the confusing similarity, and numerous Panels have established that the mere addition of geographical terms to a complainant's trademark does not sufficiently differentiate the disputed domain name from that trademark. See *Trip Network Inc. v. Alviera*, FA 0914943 (NAF Mar. 27, 2007) (finding that the addition of geographic terms, such as "cancun" to the CHEAPTICKETS mark in the <cheapticketscancun.com> domain name, among others, does not overcome a finding of confusing similarity under Policy ¶ 4(a)(i)). See also *Skype Ltd. v. Sacramento*, FA 0747948 (NAF Aug. 30, 2006) ("The addition of the geographic term "Brasil" does not avoid confusing similarity pursuant to Policy ¶ 4(a)(i)").

"Meizu" is the distinctive and prominent component of the Disputed Domain Name and the addition of the name "spain" does not substantively distinguish it from the MEIZU trademarks. In fact, the addition of "spain" adds further confusion by providing the appearance that the website is the Spanish website for Meizu, which it is not. The connection between "meizu" with the name "spain" as a suffix to the Complainant's "Meizu" trade mark is such that the relevant Disputed Domain Name considered as a whole would be likely regarded by potential customers of the Complainant as a reference to the Complainant's business. See, for example *eBay Inc. v. SGR Enterprises and Joyce Ayers* (Case No. D2001-0259) where, the Panel held that the domain names in question, namely <ebaylive.com> and <ebaystore.com>, were confusingly similar to the Complainant's trademark. This is compounded by the fact that Respondent is using the Disputed Domain Name to sell Complainant's product, which suggests that Respondent intended the Disputed Domain Name to be confusingly similar to Complainant's trademark as a means of

furthering consumer confusion. See the Gaming Board for Great Britain v. Gaming Board, D2004-0739 (WIPO Oct. 18, 2004) (“the way in which the Respondent has used the domain name [<gbgamingboard.org>] suggests that the Respondent intended users of the Respondent’s website to believe that the website at the disputed domain name was associated with the Complainant”). As a result, Respondent’s use of the Disputed Domain Name to resolve to a sell Complainant’s product is further evidence that the Disputed Domain Name is confusingly similar to Complainant’s trademark.

It is the view of this Panel that the Complainant has discharged its burden of proof in establishing the element of an identical and confusingly similar mark under Paragraph 4(a)(i) of the Policy.

B) Rights and Legitimate Interests

Complainant must first make a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name under Policy 4(a)(ii), and then the burden shifts to Respondent to show it does have rights or legitimate interests. See *Hanna-Barbera Prods., Inc. v. Entm’t Commentaries*, FA 741828 (Nat. Arb. Forum Aug. 18, 2006).

The Complainant contends that the Respondent is not authorized by the Complainant to register and use the trademark MEIZU. This contention is supported by documentary evidence. Thus, the Respondent does not have any rights with regard to the trademark MEIZU.

Second, the Respondent’s name, address and other identifying information cannot be linked with MEIZU.

It is also noted that according to the WHOIS search result, the Disputed Domain Name was registered on 24 July 2015, over 11 years after the Complainant’s first use in commerce of its trademark in 2003 and registration in 2004. Given the general recognition of the Complainant’s MEIZU trademark both in Asia and Europe, the Respondent must have known of the existence of the MEIZU trademark when registering the Disputed Domain Name.

Furthermore, Respondent is using the Disputed Domain Name in connection with a commercial website. Past Panels have concluded that a respondent’s efforts to sell products without authorization under the guise of a complainant’s brand, trademarks, and/or logos amounts to neither a bona fide offering of goods or services under Policy ¶ 4(c)(i), nor a Policy ¶ 4(c)(iii) legitimate noncommercial or fair use. See *Nokia Corp. v. Eagle*, FA 1125685 (NAF Feb. 7, 2008) (*finding the respondent’s use of the disputed domain name to pass itself off as the complainant in order to advertise and sell unauthorized products of the complainant was not a bona fide offering of goods or services pursuant to Policy ¶ 4(c)(i), or a legitimate noncommercial or fair use of the disputed domain name pursuant to Policy ¶ 4(c)(iii)*).

Given the above reasons alongside a lack of response by the Respondent on its right and/or interest in the Disputed Domain Name, this Panel concludes that the

Respondent has no rights and/or legitimate interests in respect of the Disputed Domain Name.

C) Bad Faith

Paragraph 4(b) of the Policy sets down four (4) factors which the Panel will need to examine to determine whether the Respondent has registered or used the Disputed Domain Name in bad faith. The four (4) factors are as follows:

“Evidence of Registration and Use in Bad Faith. For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(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 web site 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 your web site or location or of a product or service on your web site or location.”

The Respondent, domiciled in Spain, must have been aware of the Complainant's prior rights and interest in the Disputed Domain Name given the Complainant's reputation in the mark MEIZU internationally as of the date that the Respondent registered that Disputed Domain Name. By registering a domain name with the exact term “MEIZU,” the Respondent has demonstrated its knowledge of the MEIZU trademark, brand and business. Thus, it is not possible to conceive of a plausible situation in which the Respondent would have been unaware of the Complainant's brands at the time the Disputed Domain Name was registered. See *Alticor Inc v. TRAVIS JOHNSON, FA1702001718654* (NAF Apr 10, 2017) (“[A]lthough the UDRP does not recognize ‘constructive notice’ as sufficient grounds for finding Policy ¶ 4(a)(iii) bad faith,” the Panel finds actual knowledge by virtue of the name chosen and the use given. *Orbitz Worldwide, LLC v. Domain Librarian, FA 1535826* (FORUM Feb. 6, 2014). Complainant's mark is a famous one and its products widely distributed. It is inconceivable that Respondent would use the word AMWAY, Complainant's protected mark, without actual knowledge. Further, based on the use

made, Respondent knew of Complainant's rights in the mark and sought to compete under Complainant's own mark. See Victoria's Secret Stores Brand Mgmt., Inc. v. Michael Bach, FA 1426668 (FORUM March 2, 2012) ("Although Complainant has not submitted evidence indicating actual knowledge by Respondent of its rights in the trademark, the Panel finds that, due to the fame of Complainant's [VICTORIA'S SECRET] mark, Respondent had actual notice at the time of the domain name registration and therefore registered the domain name in bad faith under Policy ¶ 4(a)(iii)."). The Panel finds that circumstances indicate that Respondent had actual knowledge of Complainant's rights in its mark when it registered the domain name. Deep Foods, Inc. v. Jamruke, LLC, FA 648190 (FORUM Apr. 10, 2006). Such conduct supports findings of bad faith registration and use.") See also Associated Materials, Inc. d/b/a Alside v. Perma Well, Inc. a/k/a Robert Biser, FA0304000154121 (NAF May 23, 2003) ("Respondent is a distributor of Complainant, and is on notice as to Complainant's rights in the ULTRAGUARD mark through that relationship ... Respondent is using a domain name that is confusingly similar to Complainant's mark in order to divert Internet traffic interested in Complainant's product to Respondent's website. This behavior is evidence of bad faith registration and use pursuant to Policy ¶ 4(b)(iv) because Respondent is using a confusingly similar domain name to cause Internet confusion for commercial gain.")

According to the Complainant, the fact that the website <meizuspain.com> features the name MEIZU in relation to the sale of products bearing the Complainant's registered trademark, makes it clear that the Respondent knew of the Complainant's trademark and registered the Disputed Domain Name in an attempt to attract internet traffic to the website on the mistaken belief that it is associated with the Complainant's business, and to make profit from the sale of advertised goods.

Some of the Disputed Domain Names, <meizuspain.net>, <meizuspain.org> and <meizuspain.info>, currently resolve to an inactive site and are not being used. Prior Panels have noted that the word bad faith "use" in the context of ¶4(a)(iii) does not require a positive act on the part of the Respondent – instead, passively holding a domain name can constitute a factor in finding bad faith registration and use pursuant to Policy ¶ 4(a)(iii). See Telstra Corp. v. Nuclear Marshmallows, D2000-0003 (WIPO Feb. 18, 2000) ("it is possible, in certain circumstances, for inactivity by the Respondent to amount to the domain name being used in bad faith").

No evidence has been provided showing that the Respondent sought the permission of the Complainant to use its mark in relation to the disputed domain names, nor any evidence showing that the Complainant gave such permission to the respondent.

Given the above findings, the Panel is of the view that the Respondent registered and used the contested domain name in bad faith.

6. Decision

The Complainant has proved its case. It has a registered trademark in the name “MEIZU” to which the contested domain name is confusingly similar.

The Respondent has provided no evidence showing rights or legitimate interest in the Disputed Domain Name.

The Complainant has shown that the Respondent registered and used the Disputed Domain Name in bad faith.

For the foregoing reasons and in accordance with Paragraph 4 of the Policy, the Panel concludes that the relief requested by the Complainant be granted and orders that the Disputed Domain Names “<meizuspain.com >; < meizuspain.net >; < meizuspain.org > & < meizuspain.info > be transferred to the Complainant **Meizu Technology Co., Ltd.** (珠海市魅族科技有限公司).

/s/ Shahla F. Ali

Dr. Shahla F. Ali
Panelist

Dated: 28 August 2017