



NOMINET

DISPUTE RESOLUTION SERVICE

D00018556

Decision of Independent Expert

Midea Group Co., Ltd.

and

Dylan

1. The Parties:

Lead Complainant: Midea Group Co., Ltd.
No. 6 Midea Avenue, Beijiao, Shunde
Foshan City
Guangdong Province
528311
China

Respondent: Dylan
C16 Firhill Court
80 Firhill Road
Glasgow
G20 7BA
United Kingdom

2. The Domain Name(s):

midea.co.uk

3. Procedural History:

I can confirm that I am independent of each of the parties. To the best of my knowledge and belief, there are no facts or circumstances, past or present, or that could arise in the foreseeable future, that need be disclosed as they might be of a such a nature as to call in to question my independence in the eyes of one or both of the parties.

16 February 2017 19:08 Dispute received

17 February 2017 14:41 Complaint validated

17 February 2017 14:48 Notification of complaint sent to parties

08 March 2017 01:30 Response reminder sent

13 March 2017 10:29 No Response Received

13 March 2017 10:29 Notification of no response sent to parties

14 March 2017 15:29 Expert decision payment received

4. Factual Background

The Domain Name was registered on 29 October 2004 by the Respondent.

The Complainant was established in 1968 and is an electrical appliance manufacturer, headquartered in China. It is a substantial entity with over 100,000 employees and operates in more than 200 countries, with net revenues in excess of £17.56 billion (2015). The Complainant asserts that it is well known in the EU, including in the UK for providing residential and commercial air conditioner products and that it has continually operated under the MIDEA trade mark.

It has various EU and UK trade mark registrations in respect of its trade mark which cover the goods which it manufactures, the earliest of which was applied for on 4 August 2000.

The Complainant operates a website at www.midea.com. The domain name for this was registered on 11 May 1998. In January 2017 the website had 370,000 unique visitors.

The Complainant's advisers sent letters to the Respondent several times in November and December 2016 setting out the Complainant's objection to the registration and use of the Domain Name. The Complainant has provided a tracking document from FedEx to show that efforts to deliver these communications to the Respondent were not successful, however the dates on the tracking document do not accord with the dates of the letters.

5. Parties' Contentions

a. The Complaint

The Complainant asserts that it has the exclusive right to use the MIDEA trade mark for the goods that are covered by its trade mark registrations. It further contends that the mark is fully incorporated into the Domain Name and that the registration/use thereof is abusive for the following reasons:

- i. it amounts to a blocking registration;
- ii. it was registered for the purpose of unfairly disrupting the Complainant's business;
- iii. it is being used in a way that has caused or is likely to confuse people into believing that it is registered or operated by the Complainant;
- iv. the Respondent is not commonly known by the name or legitimately connected with it; and
- v. it is not generic or descriptive and the Respondent is not making fair use.

In support of the above reasons the Complainant makes the following points:

- a) the Domain Name prevents the Complainant from pointing to a website from a domain name that is the same as its trade mark;
- b) the Respondent knew or should have known of the existence of the Complainant's well-known trade mark given that the Complainant's goods can be bought easily within the UK and internet searches for the name show links to the Complainant's website and articles relating to it, and that the registration of a domain name containing that mark constitutes bad faith;
- c) the Domain Name points to a parking page from which the Respondent presumably earns click-per-view revenue by exploiting the fame of the Complainant's brand and disrupting its business;
- d) the Domain Name previously resolved to a website which offered import services for electronic devices in competition with the

- Complainant's own business and identified that the Respondent was soon to be opening an office in China;
- e) the Complainant's letters to the Respondent were returned which is indicative that the *whois* contact information provided to Nominet is false;
 - f) The Domain name falsely implies that the website hosted at the Domain Name is an official website of the Complainant or is authorized by it;
 - g) The Complainant cannot control the content of the website to which the Domain name is pointed and its reputation and business is therefore detrimentally affected; and
 - h) The Respondent has not been commonly known by the name MIDEA, has made no legitimate non-commercial or fair use of the Domain Name, the Domain Name is not considered to be generic or descriptive and the Respondent has no authorisation from the Complainant to use it.

The Complainant asks for the Domain Name to be transferred.

b. The Response

No Response was filed.

6. Discussions and Findings

a. General

To succeed in this Complaint, the Complainant must, in accordance with Paragraph 2 of the Policy, prove to the Expert on the balance of probabilities that:

- (i) it has Rights (as defined in paragraph 1 of the Policy) in respect of a name or mark identical or similar to the Domain Name; and
- (ii) the Domain Name in the hands of the Respondent is an Abusive Registration (as defined in paragraph 1 of the Policy).

Notwithstanding the failure by the Respondent to file a Response (and I am confident that Nominet has taken all necessary steps to bring the Complainant to his attention), the burden of proof as set out above remains on the Complainant, however the expert is entitled to take into consideration when making his determination that the Respondent, despite having the opportunity

to do so, has not availed himself of the opportunity to rebut the allegations that have been made by the Complainant.

b. Complainant's Rights

The DRS Policy defines Rights as follows:

"Rights means rights enforceable by the Complainant whether under English law or otherwise, and may include rights in descriptive terms which have acquired a secondary meaning".

The Complainant relies upon the rights that arise from its trade mark registrations and its use of the MIDEA sign. For the purpose of analysing whether the Domain Name is identical or similar to the name or mark in which Rights are claimed, one should ignore the .co.uk suffix. The Domain Name consists solely of the word "MIDEA". In my opinion the Complainant has therefore established that it has Rights in a mark identical to the disputed Domain Name.

c. Abusive Registration

I now go on to consider the extent to which the disputed Domain Name is an Abusive Registration.

The Complainant asserts that the Domain Name is an Abusive Registration for the reason identified above.

The Policy defines an Abusive Registration as -

"a Domain Name which either:

- i. *was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or*
- ii *is being or has been used in a manner which has taken unfair advantage of or has been unfairly detrimental to the Complainant's Rights"*

and goes on to set out a (non-exhaustive) list of factors which may be evidence that a domain name is an Abusive Registration, many of which are the same as or similar to the reasons given by the Complainant.

Two such grounds are that the Respondent registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant (Paragraph 5.1.1.3 of the Policy) or circumstances indicating that the Respondent is using or threatening to use the Domain Name in a way which has confused or is likely to confuse people or businesses into believing that

the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant (Paragraph 5.1.2 of the Policy).

To be successful in its complaint on these grounds, the Complainant must show that the Respondent had knowledge of the Complainant's Rights and intended to take unfair advantage of or cause unfair detriment to them. In appeal case DRS 04331 *Verbatim*, the Appeal Panel said the following (N.B the Policy at that time set out the above grounds at Paragraph 3 of the Policy):

"8.13 In this Panel's view the following should be the approach to the issues of knowledge and intent in relation to the factors listed under paragraph 3 of the Policy:

- (1) First, some knowledge of the Complainant and/or its brand/rights is a pre-requisite for a successful complaint under all heads of the DRS Policy other than paragraph 3(a)(iv) (giving false contact details). The DNS is a first-come-first-served system. The Panel cannot at present conceive of any circumstances under which a domain name registrant, wholly unaware of the Complainant and its Rights, can be said to be taking unfair advantage of or causing unfair detriment to the Complainant's Rights.*
- (2) Secondly, 'knowledge' and 'intention' are pre-requisites for a successful complaint under all heads of paragraph 3(a)(i) of the Policy. The wording of that paragraph expressly calls for the relevant intent, which cannot exist without the relevant knowledge.*
- (3) Thirdly, 'intention' is not a necessary ingredient for a complaint under paragraph 3(a)(ii) of the DRS Policy. The test is more objective than that. However, some knowledge of the Complainant or its name/brand is a pre-requisite.*
- (4) Fourthly, while some knowledge of the Complainant or its name/brand is a pre-requisite for a successful complaint under the DRS Policy (save for a complaint under paragraph 3(a)(iv)), knowledge is not of itself conclusive in favour of the Complainant. The Expert/Appeal Panel will still need to be satisfied that the registration/use takes unfair advantage of or is causing unfair detriment to the Complainant's Rights.*
- (5) Fifthly, when a Respondent denies all knowledge of the Complainant and/or its Rights at the relevant time, that denial is not necessarily the end of the matter. The credibility of that denial will be scrutinised carefully in order to discern whether, on the balance of probabilities, the relevant degree of knowledge or awareness was present."*

It seems to me that given the inherent distinctiveness of the Complainant's trade mark, the use that the Complainant has made of its trade mark and the use that has been made of the Domain Name by the Respondent, it is very

likely that the Respondent was aware of the Complainant's Rights at the time that he registered the Domain Name. He has not availed himself of the opportunity to deny this assertion by the Complainant and provide any evidence in support thereof. It therefore seems to me that absent any particular factors which might support the Respondent's position, the use of the Domain Name was likely registered to disrupt or take advantage of the Complainant's business and that use of the Domain Name is very likely to cause confusion. I think it therefore follows that reasons (i)-(iii) set out above and relied upon by the Complainant, are made out. I do not accept that the Complainant has provided satisfactory evidence that the Respondent gave false contact details, and accordingly reject that ground of complaint.

Paragraph 8 of the Policy provides a (non-exhaustive) list of factors which may be evidence that a domain name is not an Abusive Registration and many of these have been rebutted by the Complainant. I have no information before me which causes me to conclude that any of the factors contained within Paragraph 8 of the Policy are applicable.

7. Decision

For the reasons set out above, I find that the Complainant does have Rights in respect of a name which is identical to the Domain Name <midea.co.uk> and that the Domain Name in the hands of the Respondent is an Abusive Registration. The Complaint therefore succeeds and the Domain Name should be transferred to the Complainant.

Dated 11.04.2017