



(Hong Kong Office)

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-2101479</b>
<b>Complainant:</b>	<b>Hangzhou Miya Painting Material Technology Co. Ltd.</b>
<b>Respondent:</b>	<b>Domain Admin</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;miyahimi.com&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is Hangzhou Miya Painting Material Technology Co. Ltd. of Room 502, Floor 5, No.1, Yinhu Innovation Center, No. 9, Fuxian Road, Yinhu Street, Fuyang District, Hangzhou City, Zhejiang Province.

The Respondent is Domain Admin, of 2635 Walnut St, Denver, Colorado 80205, United States of America.

The domain name at issue is <miyahimi.com> (“**Domain Name**”), registered by Respondent with GoDaddy.com, LLC of 14455 North Hayden Rd., Suite 219 Scottsdale, AZ 85260.

**2. Procedural History**

On 17 June 2021, the Complainant filed a Complaint with the Hong Kong Office of Asian Domain Name Dispute Resolution Centre (“**ADNDRC**”), pursuant to the Uniform Domain Name Dispute Resolution Policy (“**Policy**”) approved by the Internet Corporation for Assigned Names and Numbers (“**ICANN**”) on 24 October 1999, the Rules for Uniform Domain Name Dispute Resolution Policy (“**Rules**”), approved by ICANN Board of Directors on 28 September 2013 and the ADNDRC Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (“**Supplemental Rules**”) effective from 31 July 2015. The Complainant chose to have a sole panelist to handle the dispute.

On 18 June 2021, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. A reminder was sent to the Registrar on 22 June 2021. On 23 June 2021, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 23 June 2021, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On 28 June 2021, the Complainant filed a rectified Complaint. The ADNDRC formally notified the Respondent of the Complaint and the proceedings commenced on 30 June 2021. The ADNDRC did not receive any

formal response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules. A request for an extension of time to file the Response on 20 July 2021 was contested by the Complainant on 21 July 2021. Accordingly, on 21 July 2021, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist.

On 26 July 2021, the ADNDRC appointed Ms. Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

### **3. Factual background**

The Complainant, based in China, is a producer and supplier of art material and supplies including paints, paint boxes, painting boards, paper, art pens, art books and children's puzzle colour mud. Founded in 2018, it created the use of gouache pigment in the form of jelly in China and has its own raw materials and filing production lines. The Complainant owns/controls/licences two art supply brands – MIYA which was established in 2011 and owned by its affiliate company and HIMI which is for its children's art materials line. The Complainant's products are used by art students, teachers and professors of fine art and professional painters. It has online stores on the main retail platforms like Tmall.com and Jd.com.

The earliest MIYA trade mark registration submitted in evidence (China TM No. 16016907) has an effective registration date of December 25, 2014 (the "**MIYA Trade Mark**") and the earliest HIMI trade mark registration (China TM No. 259044156) has an effective registration date of August 18, 2017 (the "**HIMI Trade Mark**", in combination, the "**Trade Mark**").

The Respondent registered the Domain Name on April 7, 2020. The Domain Name is inactive but has prior to the filing of the Compliant been offered for sale on the major domain name trading platforms and on domain name registration platforms including Sedo.com and GoDaddy.com. The offer price on one of the sites was \$4295.

### **4. Parties' Contentions**

#### **A. Complainant**

The Complainant's contentions may be summarized as follows:

The Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name has been registered and is being used in bad faith. The Complainant requests transfer of the Domain Name.

#### **B. Respondent**

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

### **5. Findings**

#### **A. General**

The 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.

## **B. Identical / Confusingly Similar**

The Panel is satisfied that the Complainant has established that it has rights to the MIYA Trade Mark and the HIMI Trade Mark.

The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the trade mark and the domain name to determine whether the domain name is confusingly similar to the trade mark. The test involves a side-by-side comparison of the domain name and the textual components of the relevant trade mark to assess whether the mark is recognizable within the domain name.

In this case the Respondent has combined two separate trade marks of the Complainant's. Both are recognizable within the Domain Name. This is sufficient to find confusing similarity to both the MIYA Trade Mark and The HIMI Trade Mark individually under the first element as made clear in Section 1.12.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("**WIPO Overview 3.0**") which concludes the same in the case of a combination of a complainant's trade mark and the addition of a third party trade mark.

For the purposes of assessing identity or confusing similarity under paragraph 4(a)(i) of the Policy, it is permissible for the Panel to ignore the generic Top-Level Domain which in this case is ".com". It is viewed as a standard registration requirement.

The Panel finds that the Domain Name is confusingly similar to trade marks in which the Complainant has rights and that the requirements of paragraph 4(a)(i) of the Policy therefore are fulfilled.

## **C. Rights or Legitimate Interests**

Pursuant to paragraph 4(c) of the Policy, a respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trade mark or service mark rights; or
- (iii) the respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain, to misleadingly divert consumers, or to tarnish the trade mark or service mark at issue.

Although the Policy addresses ways in which a respondent may demonstrate rights or legitimate interests in a disputed domain name, it is well established that, as it is put in section 2.1 of the WIPO Overview 3.0, that a complainant is required to make out a *prima facie* case that the respondent lacks rights or legitimate interests. Once such *prima facie* case is made, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel weighs all the evidence, with the burden of proof always remaining on the complainant.

The Complainant contends that there is no evidence that the Respondent is commonly known by the Domain Name nor has any trade mark rights to the Trade Mark. Further, it has not authorised, licensed, sponsored or otherwise permitted the Respondent to use the Trade Mark in the Domain Name or for any other purpose. The offer for sale of the Domain Name neither qualifies as *bona fide* nor as legitimate noncommercial or fair within the meaning of the Policy.

The Panel finds that the Complainant has made out a *prima facie* case, a case calling for an answer from the Respondent. The Respondent has not in its response provided any explanation of its rights or legitimate interests in relation to the Domain Name and the Panel is unable to conceive of any basis upon which the Respondent could sensibly be said to have any rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

#### **D. Registered and Used in Bad Faith**

To succeed under the Policy, the Complainant must show that the Domain Name has been registered and is being used in bad faith.

The Panel is satisfied that the Respondent was aware of the Trade Mark when it registered the Domain Name given the fact that it is made up of the combination of two separate trade marks of the Complainant which have been used and registered prior to the registration of the Domain Name. It is therefore implausible that the Respondent was unaware of the Complainant when it registered the Domain Name.

In the WIPO Overview 3.0, section 3.2.2 states as follows:

“Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant’s mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant’s mark. Further 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.”

The fact that there is a clear absence of rights or legitimate interests coupled with the

Respondent's choice of the Domain Name is also a significant factor to consider (as stated in section 3.2.1 of the WIPO Overview 3.0). The Domain Name falls into the category stated above and the Panel finds that registration is in bad faith.

The Panel also finds that the actual use of the Domain Name is in bad faith. The fact that the Domain Name is inactive does not prevent a finding of bad faith. The Panel has to examine the circumstances of the case to determine whether the Respondent is acting in bad faith. UDRP panels may draw inferences about whether the domain name was used in bad faith given the circumstances surrounding registration, and *vice versa*. In this case, inferences of bad faith use is found in the fact that the Domain Name is being offered for sale for a very high sum of money on various domain name trading and purchase websites. The fact that the Respondent has failed to file a Response is also a factor to be considered.

The Panel therefore concludes that the Domain Name was registered and is being used in bad faith both under paragraph 4(b)(i) and (iv) of the Policy.

## 6. Decision

For the foregoing reasons, and in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the Domain Name <miyahimi.com> be transferred to the Complainant



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Karen Fong  
Panelist

Dated: 10 August 2021