# Decision for dispute CAC-UDRP-101282

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| Case number | CAC-UDRP-101282 |
| Time of filing | 2016-08-25 11:24:21 |
| Domain names | cmcspreadbet.com |

## Case administrator

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| Organization | Iveta Špiclová (Czech Arbitration Court) (Case admin) |

## Complainant

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| Organization | CMC Markets UK Plc |

## Complainant representative

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| Organization | Waterfront Solicitors LLP |

## Respondent

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| Name | Mohammad Shekh Sliman |

OTHER LEGAL PROCEEDINGS

None that the Panel has been made aware of.

IDENTIFICATION OF RIGHTS

The Complainant has supplied evidence that it is the owner of a European Union trade mark in the term CMC MARKETS, No. 003940954, registered on 20 April 2012 in Classes 9, 35, 36 and 41.

FACTUAL BACKGROUND

The Complainant's group is well known in the field of financial spread betting and has a number of offices worldwide.

Nothing is known about the Respondent, apart from the fact that he appears to be based in Israel.

The disputed domain name <cmcspreadbet.com> (the "Domain Name") was registered on 17 April 2014. It is currently pointing to a website in Arabic that has a very similar look and feel to the Complainant's website at <www.cmcmarkets.com>. The Complainant also owns <cmcspreadbet.co.uk> which it uses to redirect users to its aforementioned website <www.cmcmarkets.com>.

On 19 April 2016, the Complainant sent a letter to the Respondent’s email address, taken from the Whois of the Domain Name. No response was received, and so the Complainant submitted a claim to Domains By Proxy LLC for the underlying

Whois details. On 17 May 2016, Domains By Proxy LLC provided these. On 20 May 2016 the Complainant sent a further letter to the Respondent using the contact details provided by Domains By Proxy LLC. No response was received.

At the time that the Complaint was filed, the First Respondent appeared in the publicly available Whois database. However, when the CAC asked the registrar for confirmation that the First Respondent was indeed the registrant of the disputed Domain Name, the registrar lifted the privacy shield to reveal the underlying details of the Second Respondent (the First and Second Respondents are collectively referred to as the Respondent).

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PARTIES CONTENTIONS

Parties' Contentions

Complainant

The Complainant states that it is a well-established financial services company that is authorised and regulated by the Financial Conduct Authority (the "FCA") in the UK. The Complainant and CMC Spreadbet Plc, a company within the Complainant's group, both appear on the FCA's Register with registration numbers 17370 and 170627 respectively. The Complainant underlines that its group is one of the world's leading online contracts for difference and financial spread betting providers with over 66.8 million trades executed annually. The Complainant highlights that it has offices in Europe, Asia, Australasia and the Americas and a worldwide client base which includes customers in the Middle East. The Complainant states that its profit after tax for the financial year 2014/2015 was in excess of £28 million.

The Complainant points out that the Respondent is pointing the Domain Name to a website that is very similar in design to the Complainant's website, but in Arabic. When the content of the Respondent's website is translated, it seems that the Respondent is offering very similar (if not identical) services to the Complainant. However, the Complainant underlines that when viewing the translated versions of the "Who Are We", "Overview" and "Our Company" pages of the Respondent's website, the only information provided by the Respondent about the entity behind the website is a reference to a company called "cmcspreadbet". No registration or contact details are provided. Accordingly, the Complainant asserts that the Respondent is using the Domain Name to impersonate the Complainant.

Identical or confusingly similar

The Complainant asserts that, by reason of its trading activities, in addition to its registered trade mark rights in the term CMC MARKETS, it is also the owner of significant goodwill in the "CMC Markets" name in respect of financial services related activities both in the United Kingdom and elsewhere. Accordingly, the Complainant argues that it has rights under the law of passing off in the United Kingdom which are recognized as unregistered trade mark rights for the purposes of the Policy.

The Complainant contends that the Domain Name is highly similar to its registered and unregistered trade mark rights in the term CMC MARKETS, as it includes the dominant element of the mark "CMC" as well as the term "spreadbet", which describes the predominant service provided by the Complainant. Therefore, the Domain Name is confusingly similar to the trade marks in which the Complainant has rights.

No rights or legitimate interests

The Complainant asserts that the Respondent chose to register a domain name that is highly similar to the Complainant's registered and unregistered trade marks, and the <cmcmarkets.com> and <cmcspreadbet.co.uk> domain names, and in doing so has knowingly and intentionally sought to confuse the Complainant's customers. In the Respondent's view, the intent to create confusion is evident from the content of the Respondent's website and its similarity to the Complainant's website.

The Complainant points out that the Respondent is not associated with the Complainant and has not asked for or been given

permission to use the CMC Markets trade mark.

The Complainant states that it is not aware of any evidence that:

1. before any notice to the Respondent of the dispute, the Respondent used the Domain Name, or a name corresponding to the Domain Name, in connection with a bona fide offering of goods or services; or

2. the Respondent (as an individual, business, or other organization) has been commonly known by the Domain Name, even if the Respondent has acquired no trade mark or service mark rights; or

3. the Respondent is making a legitimate noncommercial 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.

In the circumstances, the Complainant underlines that the burden of proof passes to the Respondent to show rights or legitimate interests in the Domain Name.

Registered and used in bad faith

The Complainant mentions that previous case law under the Policy makes it clear that where a domain name is registered in the name of a Whois privacy service, regardless of who is formally named as the respondent, the assessment of bad faith can be judged by reference to the knowledge and intent of the person who actually controls the domain name.

The Complainant argues that it is clear that the Respondent registered the Domain Name for the purpose of causing harm to the Complainant’s business and/or to attract internet users to its website for commercial gain. In the Complainant's view, the Respondent has created a likelihood of confusion with the Complainant's registered and unregistered trade marks as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or of a product/service on the Respondent’s website.

The Complainant points out that the similarity to the Complainant's registered and unregistered trade marks and the use of the term "CMC" in the Domain Name means that it is implausible that the Respondent would not have been aware at the time of registration of the Domain Name of this similarity and registered the Domain Name to exploit the Complainant’s reputation for its own gain. The Complainant argues that the Respondent would have been aware that internet users would believe that an entity owning the Domain Name was the Complainant or in some way associated with the Complainant. In the Complainant's opinion any use of the Domain Name is highly likely to misrepresent an association with the Complainant and its goodwill.

Given that the Domain Name is so obviously connected with the Complainant’s business and the Respondent has no connection to that business, the Complainant argues that the Respondent is also guilty of “opportunistic bad faith”.

Finally, the Complainant contends that the fact that the Respondent has registered the Domain Name through a privacy service is supportive of a finding of bad faith. No legitimate corporate entity is identified on the Respondent’s website or contact details provided, and accordingly the Complainant argues that the use of a privacy service in this case clearly forms part of a course of conduct embarked upon by the Respondent to conceal its identity.

Respondent

The Respondent did not respond to the Complaint.

RIGHTS

The Complainant has shown, to the satisfaction of the Panel, that the disputed Domain Name is confusingly similar to a trade 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 shown, to the satisfaction of the Panel, that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has shown, to the satisfaction of the Panel, that the disputed Domain Name has been registered and is 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 the Policy were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under the Rules, the Panel shall draw such inferences therefrom as appropriate.

In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that a complainant must prove each of the following for a panel to order a transfer of the domain name at issue:

(i) the domain name registered by the respondent is identical or confusingly similar to a trade mark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Panel to first consider whether the Complainant has established relevant trade mark rights. Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has trade mark rights in the term CMC MARKETS.

The Panel is also required under paragraph 4(a)(i) of the Policy to examine whether the disputed Domain Name is identical or confusingly similar to the Complainant’s trade mark. In this regard, the Panel notes that the Domain Name incorporates the dominant part of the Complainant’s CMC MARKETS trade mark, "CMC", and also includes the descriptive term "spreadbet". The Panel agrees with the Complainant that the mere addition of this term is insufficient to avoid a finding of confusing similarity with the Complainant’s trade mark. Indeed, it only serves to increase such confusing similarity, given that such term is closely associated with the Complainant and its services.

The Panel considers that, as previously held in numerous decisions, the generic Top Level Domain suffix .COM is without legal significance and has no effect on the issue of similarity.

On the basis of these considerations, the Panel finds that the disputed Domain Name is confusingly similar to a trade mark in which the Complainant has rights, in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed Domain Name (Policy, paragraph 4(a)(ii)).

Paragraph 4(c) of the Policy sets out various ways in which a respondent may demonstrate rights or legitimate interests in the domain name at issue, as follows:

"Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your 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) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trade mark or service mark rights; or

(iii) you are 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."

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant has presented a clear prima facie showing of the Respondent's lack of rights or legitimate interests in the disputed domain name. As a result of its default, the Respondent has failed to rebut that showing.

The Respondent cannot be considered to be making a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy referred to above, given that the disputed Domain Name is being used to point to a website closely resembling the look and feel of the Complainant's website, but with no registration or contact details on display. Neither can such use be said to be a legitimate non-commercial or fair use of the disputed Domain Name within the meaning of paragraph 4(c)(iii) of the Policy. Furthermore, no evidence has been supplied that the Respondent is commonly known by the disputed Domain Name, as referred to in paragraph 4(c)(ii) of the Policy.

Given the above, the Panel finds that the Respondent has no rights or legitimate interests in the disputed Domain Name and that paragraph 4(a)(ii) of the Policy is satisfied.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove is that the disputed Domain Name has been registered and is being used in bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy sets out various circumstances which may be treated by the Panel as evidence of the registration and use of a domain name in bad faith, as follows:

"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 trade mark 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 trade mark 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 website 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 website or location or of a product or service on your website or location."

The Panel is satisfied that the Respondent's conduct falls within paragraph 4(b)(iv) of the Policy. By using the disputed Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, internet users to his website, by creating a likelihood of confusion with the Complainant's trade mark as to the source, sponsorship, affiliation, or endorsement of his website or of a product or service on his website. This is underlined by the fact that the content of the website to which the disputed Domain Name is pointing closely resembles that of the Complainant's website.

In addition, given the Complainant's notoriety, the fact that its trade mark pre-dates the registration of the disputed Domain Name, and the content of the website to which the disputed Domain Name is pointing, it is clear that the Respondent registered the disputed Domain Name in bad faith.

Finally, the Panel finds that the lack of contact details on the website to which the disputed Domain Name is pointing, the Respondent's failure to respond to the Complainant's two cease and desist letters and his decision to use a privacy protection service are all, under the circumstances, indications of the Respondent's desire to remain hidden and thus his bad faith.

Last but not least, it should be noted that the Respondent has deactivated the website to which the disputed Domain name resolved after the commencement of the administrative proceedings; therefore the disputed Domain Name currently leads to no website. This also supports finding of bad faith on part of the Respondent.

The Panel therefore finds that the disputed Domain Name has been registered and is being used in bad faith and that paragraph 4(a)(iii) of the Policy is satisfied.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CMCSPREADBET.COM**: Transferred

## PANELLISTS

| Name | **Jane Seager** |
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DATE OF PANEL DECISION 2016-10-07

Publish the Decision