Decision for dispute CAC-UDRP-101469

Case number	CAC-UDRP-101469
Time of filing	2017-03-14 09:41:54
Domain names	MAN-USED.COM

Case administrator

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

Complainant

Organization	MAN Truck & Bus AG

Complainant representative

Organization	Grünecker Patent- und Rechtsanwälte PartG mbB

Respondent

Name	Lewis Michael

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant validly owns the following trademark registrations:

German Trademark Registration no. 30644424 "Man TopUsed" (&device) registered with priority of 18.7.2006 in international classes 12, 35, 36, 39

EUTM no. 010158012 "MAN TopUsed" registered with priority of 28.07.2011 for international classes 12, 35, 36, 39

International Trademark registration no. 920080 "MAN TopUsed" (&device) with priority of 18.07.2006 for international classes 12, 35, 36, 39 with protection in AL, AM, AZ, BA, BG, BY, CH, EG, EM, GE, HR, KE, KG, KZ, LI, MD, ME, MK, NO, RO, RS, RU, SD, TJ, TM, TR, UA, UZ

International Trademark registration no 542762 MAN (&device) with priority of 25.8.1989 for international classes 7,12,37 with protection in AM, AT, AZ, BG, BX, CH, DE, DZ, EE, EG, ES, FR, GE, HU, IT, KG, KZ, LI, LT, LV, MA, MD, ME, PT, RO, RS, RU, SK, TJ, TM, UA, UZ,

and,

International Trademark registration no. 863418 MAN (&device) with priority of 24.06.2005 for international classes 16,25,35 with protection in CH, EM, NO, TR

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

1. The Disputed domain name is confusingly similar to the Complainant's trademarks

The Disputed domain name is confusingly similar to the Complainant's trademarks, as it contains the initial and final element of the Complainant's trademark. Only the middle element "top" is omitted, which regularly receives less attention by the relevant public than the initial and the final element. At least parts of the relevant public have also apparently not noticed the differences between the Complainant`s trademarks/authentic domain name, as potential buyers responded to the fake offers considering them as authentic and at least one buyer paid a deposit for an allegedly purchased truck.

2. The Respondent does not have any rights or legitimate interest in the Disputed domain name

The Respondent is not affiliated in any way with the Complainant. The Disputed domain was registered by the Respondent for exclusively fraudulent purposes, as fake offers for trucks were sent to transporting companies across Europe via the email address (discount@man-used.com) based on the Disputed domain name. Interested buyers responding to the email address discount@man-used.com were asked to pay substantial deposits. The use of the Disputed domain name and the email address based on the Disputed domain name provided the necessary credibility required for inducing potential buyers to respond to the offers and pay the requested deposits. Additional credibility was created by the fact that users accessing the Disputed domain name, were automatically referred to the Complainant's website.

3. The Disputed domain name has been registered and is being used in bad faith

The Disputed domain name was registered on January 10, 2017. The first fake discount offers the Complainant is aware of were sent by the Respondent on January 15, 2017 using the email address discount@man-used.com. The emails, offers and invoices were held in the corporate design of the Complainant, creating the impression that they were authentic. The Respondent is attempting to pass itself off as the Complainant by using its registered trademarks in violation of the Policy.

The Complainant therefore finds that the Respondent has registered the Disputed domain name in bad faith and has used the Disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant’s trademarks as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy, and thus has acted in bad faith.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Disputed domain Name is 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).

The domain name contains the initial and final element of the Complainant's trademark. Although the middle element "top" is omitted, the Panel is of the opinion that it can be upheld that it receives less attention by the relevant public than the initial and the final element. As has been proven by the Complainant, at least several customers have apparently not noticed the difference between the Complainant`s trademarks/authentic domain name. The Panel holds that these examples can serve as examples for the relevant public, namely those interested in the market for second hand heavy trucks. Potential buyers responded to the false offers. The buyers considered the offers as authentic and at least one buyer paid a deposit for an

allegedly purchased truck, and was confused and mislead.

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 name (within the meaning of paragraph 4(a)(ii)of the Policy).

The Respondent is not affiliated in any way with the Complainant. The Disputed domain name was registered by the Respondent for exclusively fraudulent purposes. False offers for trucks were sent to transporting companies throughout Europe via the email address (discount@man-used.com) based on the Disputed domain name.

Interested buyers responding to the email address discount@man-used.com were asked to pay deposit amounts. The use of the Disputed domain name and the email address based on the Disputed domain name provided the necessary credibility required for inducing potential buyers to respond to the offers and pay the requested deposits.

Additional credibility was created by the fact that users accessing the Disputed domain name, were automatically referred to the Complainant's website.

The Respondent has thereby clearly demonstrated an illegal interest in the Disputed domain name.

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown 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).

Emails, offers and invoices were issued copying the corporate design of the Complainant, creating the impression that they were authentic MAN Truck & Bus AG documents. The Panel finds that it is proven that the Respondent is attempting to present itself as the Complainant by using its registered trademarks.

The Disputed domain name was used for sending emails to various transporting companies with false offers for trucks, allegedly sold by the Complainant respectively its subsidiaries. The false offers were based on authentic offers published by the Complainant on its authentic www.man-topused.com website, only the prices were significantly reduced and the contact details were exchanged. The false offers contained an email address based on the Disputed domain name, namely discount@man-used.com.

Potential buyers responding to this email address, received false pro forma invoices and were requested to pay deposits to a bank account, which was based on a prepaid credit card issued by Poste Italiane S.P.A.. Payments received on this account, were immediately withdrawn via cash machines in Italy.

These fraudulant acts together make clear that the Disputed domain name has been registered in bad faith in order to mislead buyers of used trucks.

The Respondent has registered the Disputed domain name in bad faith and has used the Disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant’s trademarks as to source, affiliation or endorsement, in the meaning of paragraph 4(b)(iv) of the Policy. The Respondent has thus acted in bad faith.

As the Respondent failed to object to the above-mentioned Complainant's allegations, the Panel concludes that the aforementioned assertions are true.

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 finds that the Disputed domain name is confusingly similar to the Complainant's trademarks Man TopUsed and MAN. The Disputed domain name consists of the trademark without the element TOP. The elements MAN and USED are the most dominant elements in the trademark Man TopUsed. The Respondent has left out TOP in the Disputed domain name to attract attention of those interested in used (pre-owned) trucks.

No administratively compliant Response has been filed by the Respondent and in accordance with the UDRP Rule 5(f) the Panel must then decide the dispute based upon the Complaint, in the absence of exceptional circumstances. It is up to the Panel to decide whether the Complainant has made out a prima facie case, meaning that the Panel is not bound to transfer the Disputed domain name to the Complainant solely based on the lack of Response by the Respondent. On the other hand the Panel takes into consideration that the Respondent did have time to file a Respond but chose not to.

The Panel's views are the Respondent does not have any rights or legitimate interest in the Disputed domain name.

The Panel views that the Respondent has no affiliation with nor is authorized by the Complainant and is in no way related to its business. The Complainant has convincingly demonstrated that the Respondent has registered the Disputed domain name in bad faith, with intentions to commit fraudulent acts, thereby negatively impacting the reputation of the trademark owned by the Complainant.

Based on the reasons set out above, the Panel concludes that the Complainant has established a prima facie case showing that the Respondent registered without any right or legitimate interest and used the Disputed domain name MAN-USED.COM in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAN-USED.COM**: Transferred

PANELLISTS

Name	**Mr. E.J.V.T. van den Broek**

DATE OF PANEL DECISION 2017-04-10

Publish the Decision