Decision for dispute CAC-UDRP-102439

Case number	**CAC-UDRP-102439**
Time of filing	**2019-05-03 10:08:46**
Domain names	**bitmex.red, bitmex.ren**

Case administrator

Name	**Šárka Glasslová (Case admin)**

Complainant

Organization	**HDR Global Trading Limited**

Complainant representative

Organization	**RiskIQ, Inc. c/o Jonathan Matkowsky**

Respondent

Organization	**Liu Cheng Jia**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain names.

IDENTIFICATION OF RIGHTS

The Complainant owns EUTM trade mark registration number 016462327 for BITMEX in class 36, which was registered on 11 August 2017.

FACTUAL BACKGROUND

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

BitMEX is the Complainant's Bitcoin-based Peer-to-Peer (P2P) crypto-products trading platform, offering leveraged contracts bought and sold in Bitcoin. BitMEX has received widespread coverage in the global media, as well as in leading digital media for the crypto asset and blockchain technology community.

The Complainant owns the trade mark registrations for BITMEX in several jurisdictions around the world since 2017, prior to the registration of the disputed domain names

The disputed domain names were registered on 16 June 2018.

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).

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).

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).

PROCEDURAL FACTORS

The Complaint raises the following procedural issues:
• The caption of the proceedings.
• A request to consolidate CAC Case No. 10244 (<bitmex.ren>) with CAC Case No 102439 (<bitmex.red>).
• The language of the proceedings.
• The domain name registrations expiring after the Complaint was filed.
• The Complainant's supplemental filing.

A. Caption of the Proceedings.
The Complainant says that the on-line platform does not technically permit a complainant to include both the registrant name and the registration organisation name in the caption of the Amended Complaint and requests that the caption identify the Respondent as "Liu Cheng Jia, liu chengjia" the name of the registrant organization identified by the registrar as the Respondent, followed by the name of the registrant.

The Registrar Verification indicates that Lui Cheng Jia is the current registrant of the disputed domain names (see answer to question 2 of the Request for Registrar Verification). However, the registrant's details opposite the word "Name" is "lui chenjia" and opposite the word "Organisation" is "Lui Cheng Jia". Given that the Registrar's response confirms that Lui Cheng Jia is the current registrant of the disputed domain name there appears no need to change the caption of the proceedings.

B. Request to consolidation proceedings.
Paragraph 10(e) of the UDRP Rules grants a panel the power to consolidate multiple domain name disputes. Paragraph 3(c) of the Rules provides that a complaint may relate to more than one domain name, provided that the domain names are registered by the same domain-name holder.

The Registrar Verification indicates that Lui Cheng Jia is the current registrant of the disputed domain names <bitmex.red> and <bitex.ren>. CAC Case No. 10244 and CAC Case number 102439 involve the same Respondent, the same trade mark and the same Registrar.

The Panel finds that it is appropriate to consolidate CAC Case No. 10244 with CAC Case number 102439 to expeditiously resolve both disputes in accordance with paragraph 10(c) of the UDRP Rules.

C. Language of the Proceedings
Under 11 of the UDRP Rules, the default language of the proceedings is the language of the registration agreement, subject

to the authority of the panel to determine otherwise. The language of the registration agreement is Chinese, but Complainant requests the Panel to accept Amended Complaint in English. The Complainant asserts that:
(a) The disputed domain names are registered in Latin characters.
(b) The domains incorporate in full a trade mark in Latin script. BITMEX has no meaning in Chinese and the Respondent targeted in this sense, a trade mark in Latin script.
(c) The ".ren" top-level domain could have been registered in Chinese script, but the Respondent registered it in English. (See Guinness World Records Limited v . Liu Hui,) WIPO Case No. D2017-0229 in which the panel ordered the .ren (<xn--9prs4qm6h.ren>) to be transferred to Guinness Records).
(d) The Respondent has registered in the past <guangdong.rocks>. Guangdong is English for a coastal province of southeast China, and <guangdong.rocks> has a particular meaning only to someone that understands English because it suggests, in English, that the province is fun, or a fan-site about the province.
(e) The Respondent's appears to have the ability to use its English name and Chinese name interchangeably as supported by the historical Whois record for <0016300.cn>.
(f) The Complainant communicated with Respondent in both English and Chinese, and Respondent chose to ignore the notice rather than respond in Chinese to resolve the issues.

Taking the above factors into consideration, the Panel accepts that the Respondent can be presumed to have sufficient knowledge of English and would not be unduly prejudiced by the proceedings being conducted in English. In keeping with the Policy aim of facilitating a relatively time and cost-efficient procedure for the resolution of domain name disputes, and in accordance with Rule 11 (a) of the UDRP Rules, the Panel determines that it would be appropriate for English to be the language of the proceedings.

D. The domain name registrations expiring.
The Response to the Registrar Verification confirmed that the disputed domain names have been placed on lock and would remain so during the course of the proceedings. On 17 June, during the course of the proceedings, the disputed domain names expired.

The Panel notes that under clause 3.7.5.7 of ICANN's Registrar Accreditation Agreement, if "a domain which is the subject of a UDRP dispute is deleted or expires during the course of the dispute, the complainant in the UDRP dispute will have the option to renew or restore the name under the same commercial terms as the registrant… If the complaint is terminated, or the UDRP dispute finds against the complainant, the name will be deleted within 45 days. The registrant retains the right under the existing redemption grace period provisions to recover the name at any time during the Redemption Grace Period, and retains the right to renew the name before it is deleted".

The Panel notes that at the time of the decision in this case it is possible for disputed domain names to be renewed before the expiration of the Redemption Grace Period, failing which they will be deleted.

E. Complainant's non-standard communication.
The Complainant made a further supplemental filing to bring to the attention of the Panel two CAC cases that had been publish in the preceding week relating to the BITMEX mark. In this case the Panel has accepted the supplemental filing as it refers to cases that were not available when the Amended Complaint was filed.

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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:
(i) That the disputed domain names are identical or confusingly similar to a trade mark or service mark in which the Complainant has rights.
(ii) The Respondent has no rights or legitimate interests in the disputed domain names.
(iii) The disputed domain names have been registered and used in bad faith.

A. Rights
The Complainant owns the trade mark BITMEX that predates the registration of the disputed domain names.

It is well recognised that the generic top level suffix may be disregarded when considering whether a disputed domain name is confusingly similar to the Complainant's trade mark (See WIPO Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A).

Ignoring the ".red" and ".ren" suffixes the disputed domain names incorporate the Complainant's trade mark entirely. The Panel finds that the disputed domain names are identical to the Complainant's trade mark BITMEX and that the requirements of Paragraph 4(a)(i) of the Policy have been met.

B. No rights of legitimate interests
The Complainant contends that:
• The Respondent is not commonly known by the disputed domain names and has not responded to the Complainant's cease and desist letter giving written notice of the Complaint's rights.
• It has not authorised, licensed, or otherwise permitted Respondent to use its trade mark (see International Trading GmbH and "Dr. Maertens" Marketing GmbH v. Godaddy.com, Inc., WIPO Case No. D2017-0246)
• There are no trade mark rights of record related to the disputed domain names (see Merck KGaA v. W. King, WIPO Case No. D2018-0077).

The Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The burden of proof now shifts to the Respondent.

The Respondent has not filed a Response nor disputed any of the Complainant's submissions. The Respondent is not commonly known by the disputed domain names, is not authorised to use the Complainant's trade mark and has not responded to the cease and desist letter. There is nothing to indicate that the Respondent is using the disputed domain names in connection with a bona fide offering of goods or services, or for a legitimate non-commercial use.

Taking these factors into account, the Panel concludes that the Complainant has shown that the Respondent has no rights or legitimate interests in respect of the disputed domain names and that the requirements of paragraph 4(a)(ii) of the Policy have been met.

C. Registered and used in bad faith
Complainant's asserts that:
• The BITMEX mark has had a presence on the Internet since 2015, well before Respondent registered the disputed domain names.
• Its EU trade mark registration predates the registration of the disputed domain names.
• It seems implausible that Respondent unintentionally created domain names out of Complainant's mark, which has no dictionary meaning.
• It seems likely that Respondent had searched top level domain extensions for the second level domain name "BitMex" before registering the disputed domain names, and found out the existence of the website www.bitmex.com, which already referred to Complainant since at least 2015.
• The passive holding of an identical domain to Complainant's distinctive trade mark constitutes use in bad faith.
• In the absence of any explanation from Respondent, it seems reasonable to infer that Respondent registered the disputed domain names intending to use them in a manner calculated to create and exploit confusion with Complainant's mark, most likely either by selling the domain names or by using them to attract Internet users seeking Complainant (See State Farm Mutual Automobile Insurance Company v. Jim Malloy, Forum No. FA1904001837227).

Taking into account the combined factors of the distinctiveness of the BITMEX mark, its presence on the Internet before the disputed domain names were created, the implausibility of any good faith use of the disputed domain names, the failure of the Respondent to respond to the cease and desist notice, and the passive holding of the domain names, the Panel finds that the disputed domain names were registered and used in bad faith and that the requirement of paragraph 4(a)(iii) of the

Policy have been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BITMEX.RED**: Transferred
2. **BITMEX.REN**: Transferred

PANELLISTS

Name	**Veronica Bailey**

DATE OF PANEL DECISION 2019-06-25

Publish the Decision