Decision for dispute CAC-UDRP-103303

Case number	CAC-UDRP-103303
Time of filing	2020-09-23 09:46:47
Domain names	aperarn.com

Case administrator

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

Complainant

Organization	APERAM S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Miller Dereck

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns various trade mark registrations for its APERAM trade mark including in particular United States trade mark registration for APERAM in logo form registered on 17 August 2011 and Canadian trade mark 1530566 for the APERAM word mark registered on 2 June 2014.

FACTUAL BACKGROUND

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

The Complainant is a global player in stainless steel and is also a leading producer of high value-added specialty products, including electrical steel and nickel alloys. It operates in six production facilities located in Brazil, Belgium and France and features a highly integrated network 14 Steel Service Centers, 8 transformation facilities and 20 sales offices. It also owns numerous domain names including its APERAM mark and operates a website at its main domain name <aperam.com>.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

Complainant's Contentions

The Complainant asserts that it owns registered trade mark rights in its APERAM trade mark and that this is a clear case of typosquatting and that the disputed domain name contains an obvious misspelling of the Complainant's trade mark. It notes that typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name as was the case in NAF Case No. 1597465, The Hackett Group, Inc. v. Brian Herns / The Hackett Group ("The Panel agrees that typosquatting is occurring, and finds this is additional evidence that Respondent has no rights or legitimate interests under Policy 4(a)(ii).").

Although the domain name now appears to be inactive, the Complainant notes that it has been set up with MX records which suggests that it may be actively used for e-mail purposes. This it says is also indicative of bad faith registration and use because any e-mail emanating from the disputed domain name could not be used for any good faith purpose. It notes in this regard CAC Case No. 102827 JCDECAUX SA v. Handi Hariyono ("There is no present use of the disputed domain name but there are several active MX records connected to the disputed domain name. It is concluded that it is inconceivable that the Respondent will be able to make any good faith use of the disputed domain name as part of an e-mail address.").

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 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 Complainant has demonstrated that it owns registered trade mark rights for its APERAM mark, namely United States trade mark registration for APERAM in logo form registered on 17 August 2011 of which the word APERAM is the dominant element. It also owns Canadian trade mark 1530566 for the APERAM word mark registered on 2 June 2014. The disputed domain name differs from the APERAM mark only in that it contains the letters "rn" instead of the letter "m". The Panel notes that visually the "aperarn" element of the disputed domain name looks very similar to the Complainant's APERAM mark and could easily be confused aurally. The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's APERAM trade mark registrations and that the Complaint succeeds under this element of the Policy.

The Complainant has submitted that the Respondent is not authorised by or affiliated with it in any respect and has not been licensed to use the Complainant's APERAM mark. Neither says the Complainant is the Respondent known by the disputed domain name and nor does the Respondent carry out any business or activity with the Complainant. The Complainant has asserted that this is a case of typosquatting in which the Respondent has sought to take advantage of an obvious misspelling of the Complainant's trade mark which is not consistent with the Respondent having rights or legitimate interests in the disputed domain name. Further, it says that the disputed domain name is not being used for any activity and does not resolve to an active website and it is not possible to conceive of any possible use in these circumstances that

would be legitimate. The Panel finds that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interests in the disputed domain name which case has not been rebutted by the Respondent. For this reason and also as described in relation to bad faith below the Panel finds that the Complaint succeeds under this element of the Policy.

The disputed domain name was registered on 19 May 2020, many years after the registration of the Complainant's trade marks or of its disputed domain name <aperam.com>. The APERAM mark appears to be very distinctive and had been used internationally and in trade and online in the course of a very established business for many years prior to the disputed domain name's registration. As a result, the Panel does not consider it likely that the Respondent registered the disputed domain name without some knowledge of the Complainant's APERAM mark or business and therefore finds that the disputed domain name was more likely than not registered in bad faith.

The disputed domain name does not resolve to an active website and there is nothing in the record to suggest that it has done so or has been used in relation to an active business to date. It seems to the Panel that Respondent has since registration made a passive holding of the disputed domain name. The factors that panels have previously considered to amount to a passive holding in bad faith are set out at section 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition and include: (i) the degree of distinctiveness or reputation of the complainant's mark, (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use, (iii) the respondent's concealing its identity or use of false contact details and (iv) the implausibility of any good faith use to which the disputed domain name may be put.

Assessing these factors, the Panel notes that it has already found that the Complainant's mark is distinctive. The Respondent has failed to submit a response and there seems to be no plausible good faith use or rationale for it having registered the disputed domain name containing a misspelt version of the very distinctive and at this point well established trade mark belonging to the Complainant. In these circumstances, the fact that according to the Respondent the disputed domain name has been set up in a way that would enable it to be used for e-mail purposes suggests that it may have been registered for potentially fraudulent purposes. Overall, it appears to the Panel that in the absence of any credible explanation the passive holding of the disputed domain name by the Respondent in what amounts to an example of typosquatting amounts to use in bad faith for the purposes of the Policy.

For these reasons, the Panel finds that the Respondent has registered and used the disputed domain name in and faith and as a consequence the Complaint also succeeds under this element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **APERARN.COM**: Transferred

PANELLISTS

Name	**Alistair Payne**

DATE OF PANEL DECISION 2020-10-27

Publish the Decision