

**Decision for dispute CAC-UDRP-103807**

Case number	<b>CAC-UDRP-103807</b>
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Time of filing	<b>2021-05-19 09:13:04</b>
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Domain names	<b>aperann.com</b>
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**Case administrator**

Organization	<b>Iveta Špiclová (Czech Arbitration Court) (Case admin)</b>
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**Complainant**

Organization	<b>APERAM S.A.</b>
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**Complainant representative**

Organization	<b>Nameshield (Enora Millocheau)</b>
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**Respondent**

Organization	<b>Travis Constructions</b>
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## 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 name.

## IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademarks APERAM – International trademarks no 1083497 and no 1097502, registered June 6, 2011 and August 17, 2011, United States trademark no 4326298, registered on August 17, 2011 and Canadian trademark no 1530566, registered in June 2014. The Complainant also owns domain name <aperam.com>.

The disputed domain name <aperann.com> was registered on April 13, 2021.

## FACTUAL BACKGROUND

The Complainant is a global player in stainless steel with 2.5 million tones of flat stainless steel capacity in Europe and Brazil. The Company is also a leading producer of high value-added specialty products, including electrical steel and nickel alloys. Complainant's production capacity is concentrated in six production facilities located in Brazil, Belgium and France and is unique by its capability to produce stainless and specialties from low cost Biomass/Charcoal.

The Complainant is the owner of many trademarks APERAM and also owns an important domain names portfolio, including the same distinctive wording APERAM, the main domain name is <aperam.com>.

The disputed domain name was registered on April 13, 2021, is inactive, but the corresponding MX servers are configured.

#### I. The disputed domain name is confusingly similar to the protected mark

The Complainant states that the disputed domain name is confusingly similar to its trademark APERAM. The misspelling in the disputed domain name (the substitution of the letter “M” by two “N”) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademark APERAM. Thus, this is a clear case of typosquatting, the disputed domain name contains an obvious misspelling of the Complainant’s trademark. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant’s trademark.

According to CAC Case No. 100740, ARCELORMITTAL v. arcelornnittal <arcelornnittal.com>, replacing the “M” in the complainant’s mark <ArcelorMittal> with a double “N” does not sufficiently change the overall impression of confusing similarity.

Moreover, the Complainant contends that the addition of the gTLD “.COM” does not change the overall impression of the designation as being connected to the trademark APERAM. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and its domain names associated.

Finally, the Complainant’s rights over the term “APERAM” have been confirmed by previous panels (CAC Case No. 103303, APERAM S.A. v. Miller Dereck <aperarn.com>).

So the disputed domain name is confusingly similar to the Complainant’s trademark APERAM.

#### II. The Respondent does not have any rights or legitimate interest in the disputed domain name

The 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 Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

The Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the Whois information was not similar to the disputed domain name. Thus, the Respondent is not known as the disputed domain name.

The Complainant contends that the Respondent is not affiliated with nor authorized by Complainant in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name, and he is not related in any way to its business. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark or apply for registration of the disputed domain name by the Complainant.

The Complainant also claims that the disputed domain name is a typosquatted version of the trademark APERAM. 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.

Accordingly, the Respondent has no rights or legitimate interests to the disputed domain name.

#### III. The disputed domain name has been registered and is being used in bad faith

The Complainant states that the disputed domain name <aperann.com> is confusingly similar to its trademark.

The Respondent has registered the disputed domain name, which is a typosquatted version of the Complainant's trademark, many years after Complainant had established a strong reputation and goodwill in its mark. Besides, a Google search on the expression "APERAM" displays several results, all of them being related to the Complainant and its activity.

Finally, the Complainant states that the disputed domain name is confusingly similar to its trademark. Indeed, the substitution of the letter "M" by two "N" is not sufficient to escape the finding that the domain name is confusingly similar to the trademark. The Complainant states that this misspelling was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP panels have seen such actions as evidence of bad faith.

Thus, the Panel finds that Respondent likely targeted Complainant and its trademark when registering the disputed domain name.

Furthermore, the disputed domain name is inactive. The Complainant contends that the Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the disputed domain name by the Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

Although the disputed domain name now appears to be inactive, it has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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#### PARTIES CONTENTIONS

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#### NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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#### RIGHTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

The Complainant has established the fact that it has valid rights for the international trademark no 1083497 registered since 2011 and international trademark no 1097502 registered since 2011, United States trademark no 4326298 registered since 2011 and Canadian trademark no 1530566 registered since 2014, all of them containing the term "APERAM", and that it uses domain name <aperam.com> that include the trademark "APERAM". The disputed domain name has been registered on April 13, 2021, i.e. almost 10 years after the first trademark registration.

The disputed domain name (aperann) is not identical to the Complainant's trademark (aperam), but the only difference is the use of double "n" letter in the disputed domain name instead of letter "m" in the trademark. The use of similar letters where the overall width of the letters "nn" is almost the same as the letter "m" leads to the conclusion, that the words "aperam" and "aperann" are visually similar and this could cause confusion with the Complainant's trademark. Therefore, the use of letters "nn" in the domain name instead of letter "m" does not change the overall impression of the designation as being connected to Complainant's trademark.

Furthermore, the addition of the generic top level domain ".COM" does not change the overall impression of the designation as being connected to Complainant's trademark.

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to the Complainant's trademarks "APERAM" in which the Complainant has rights (within the meaning of paragraph 4(a)(i) of the

Policy).

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#### NO RIGHTS OR LEGITIMATE INTERESTS

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (ii) the respondent has no rights or legitimate interests in respect of the domain name.

The Complainant has established a prima facie case (not challenged by the Respondent who did not file any response to the complaint) that the Respondent has no rights or legitimate interests in the disputed domain name, since the Respondent is not related in any way with the Complainant and there is no indication that the Respondent is commonly known by the term “APERAM” or that the Respondent is using the disputed domain name in connection with a bona fide offering of goods or services.

The Respondent used the proxy service (Privacy service provided by Withheld for Privacy ehf) to hide its identity in the WHOIS service and even after the disclosure its identity (Travis Constructions) during this ADR proceedings, there is no indication that the Respondent is commonly known by the term “APERAM” or “APERANN”.

Moreover, the disputed domain name is inactive with the configured MX servers only and the disputed domain name, therefore, does not constitute a bona fide offering of goods and services or a legitimate noncommercial fair use.

The Panel therefore considers that 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).

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#### BAD FAITH

For the Complainant to succeed it must prove, within the meaning of paragraph 4(a) of the Policy, that (iii) the domain name has been registered and is being used in bad faith.

The Respondent has registered the disputed domain name which consists of the misspelled words “APERANN” that refers to the term “APERAM” used by the Complainant in his trademarks. The Complainant’s trademark is distinctive and corresponds to the name of the Complainant.

It is clear, that the disputed domain name is a typosquatting variant of the Complainant’s trademarks and name based on the fact, that two letters “nn” looks similarly to one letter “m”. Use of the disputed domain name could, therefore, attract the internet users to the corresponding web page by creating a likelihood of confusion with the Complainant’s trademark (paragraph 4(b)(iv) of the Policy). Moreover, the phishing scheme could be realized with the disputed domain name within the e-mails (as the configured MX servers could indicate).

Considering the (i) similarity between the Complainant’s trademark and the disputed domain name due the typosquatting, (ii) inactive web page but configured MX servers and (iii) the failure of the Respondent to submit a response or to provide any evidence of good faith use, the Panel finds that the disputed domain name has been registered and is being used in bad faith.

Thus 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).

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#### 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.

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#### PRINCIPAL REASONS FOR THE DECISION

The Panel considers that the Complainant has shown that the disputed domain name <aperann.com> is confusingly similar to the trademarks in which the Complainant has rights, the Respondent has no rights or legitimate interests in respect of the disputed domain name and the disputed domain name has been registered and is being used in bad faith. The Complainant has

thus established all three elements of paragraph 4(a) of the Policy.

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FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **APERANN.COM**: Transferred

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## PANELLISTS

Name	<b>JUDr. Petr Hostaš</b>
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DATE OF PANEL DECISION 2021-06-16

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Publish the Decision

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