Decision for dispute CAC-UDRP-101395

Case number	CAC-UDRP-101395
Time of filing	2016-12-16 09:35:48
Domain names	m-cmcmarkets.com

Case administrator

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

Complainant

Organization	CMC Markets UK Plc

Complainant representative

Organization	Waterfront Solicitors LLP

Respondent

Name	Patricia Chaudry

OTHER LEGAL PROCEEDINGS

There are no other legal proceedings of which the Panel is aware, which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of the European Union trade mark "CMC MARKETS", number 003940954, which was registered on 20 April 2012.

FACTUAL BACKGROUND

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

The Complainant is a well-established financial services company that is authorised and regulated by the Financial Conduct Authority (the “FCA”) in the UK. The Complainant appears on the FCA’s Register with registration number 17370. The Complainant’s group is one of the world’s leading online contracts for difference and financial spread betting providers with over 30 million trades executed annually. The Complainant has offices in Europe, Asia, Australasia and the Americas and a worldwide client base. The Complainant’s profit after tax for the financial year 2015/2016 was in excess of £40 million.

The Complainant has been, from 20 April 2012, the owner of a European Union trade mark for the word mark CMC MARKETS

(the “Trade Mark”). The Complainant uses the disputed domain name <cmcmarkets.com> for its activities and also as part of email addresses used in its business.

The disputed domain name <m-cmcmarkets.com> (the “Domain Name”) was registered on 16 October 2016.

Almost immediately from registration, Domain Name has been used by an individual to send emails to further fraudulent activity. In particular, emails have been sent from the email address d.Ryan@m-cmcmarkets.com, in which the sender has impersonated the Complainant’s Head of Dealing and Front Office and sought to direct one of the Complainant’s staff to process a payment to Hong Kong.

On 20 October 2016 Waterfront Solicitors wrote to the Registrar of the Domain Name, Wild West Domains LLC, requesting that the Domain Name be immediately suspended, deleted or cancelled. A copy of that correspondence was sent by post and by email to Wild West Domains LLC.

Upon sending the above letter by email to the Registrar, an automatic reply was received from the email address legal@godaddy.com. The letter to Wild West Domains LLC was therefore forwarded to GoDaddy Operating Company LLC on that date. However, to date, neither the Registrar nor GoDaddy Operating Company LLC have suspended, deleted or cancelled the Domain Name as requested in the letter of 20 October 2016.

The Registrar of the Domain Name is Wild West Domains LLC whose underlying Registration Agreement, as far as the Complainant is aware, is in English and subject to the jurisdiction of the courts of Arizona, USA.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

Paragraph 4(a) of the Policy requires the Complainant to prove each of the following three elements:

(i) The disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complaint has rights.
(ii) The Respondent has no rights or legitimate interests in the domain name.

(iii) The domain name has been registered and used in bad faith.

(i) Identical or confusingly similar

The Panel is satisfied that the Complainant is the owner of the European Union trade mark CMC MARKETS, number 003940954, which was registered on 20 April 2012, and which predates the registration of the Domain Name.

The Domain Name is comprised of the Complainant's trade mark CMC MARKETS plus the addition of the prefix "m-" and the suffix.com. The most distinctive part of the Domain Name is the Complainant's mark, CMC MARKETS. The addition of the prefix "m-" and the suffix .com do not prevent the Domain Name being confusingly similar to the Complainant's trade mark CMC MARKETS.

The Panel finds that the Domain Name <m-cmcmarkets.com > is confusingly similar to the Complainant's trade mark CMC MARKETS.

(ii) No rights or legitimate interest in the Domain Name

The Complainant asserts that the Respondent has no rights or interests in the Domain Name.

The Complainant says that the Respondent is not associated with the Complainant and has not asked for or been given permission to use the Complaint's trade mark CMC MARKETS. The Complainant asserts that the Respondent chose to register a domain name that is highly similar to the Complainant's Trade Mark, and has used the Domain Name in email addresses to fraudulently impersonate the Complainant's Head of Dealing and Front Office and to direct one of the Complainant's staff to process a payment.

The Panel finds that the Complainant has established a prima facie case that the Respondent lacks rights or a legitimate interest in the Domain Name. The Respondent has not filed a Response and has not contested any of the Complainant's assertions, nor provided any evidence of any rights or legitimate interests in the Domain Name.

Panel finds that the Respondent does not have any rights or legitimate interest in the Domain Name.

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

The Complainant contends, among other things, that the Respondent registered the Domain Name for the purpose of causing harm to the Complainant's business, and in the hope that it would result in payment being made to the Respondent. The Complainant says that while the Domain Name appears connected with the Complainant's business, the Respondent has no connection to that business. The Complainant further contends that the Respondent's use of the privacy service is part of a wider scheme to hide their identity and engage in fraudulent activity.

There appears no reason why the Respondent would register the Domain Name, which incorporates the Complainant's mark, other than to create the impression that it is connected to the Complainant's business. Further, it appears from the evidence submitted with the Complaint that the Domain Name has been used in an email address to fraudulently impersonate the Complainant's Head of Dealing and Front Office.

The Panel finds that the Domain Name was registered and is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **M-CMCMARKETS.COM**: Transferred

PANELLISTS

Name	**Mrs Veronica Bailey**

DATE OF PANEL DECISION 2017-01-25

Publish the Decision