

Decision for dispute CAC-UDRP-104648

Case number	CAC-UDRP-104648
Time of filing	2022-06-14 09:28:17
Domain names	atomiconlineshop.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
--------------	---------------------------------

Complainant

Organization	ATOMIC Austria GmbH
--------------	---------------------

Complainant representative

Organization	INSIDERS
--------------	----------

Respondent

Name	Xuhe Huang
------	------------

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 a worldwide recognized Austrian winter sports equipment's Company, which owns the following Trademarks:

-International Trademark, Reg. No. 465608 ATOMIC, granted on September 7, 1981 and in force until September 7, 2031, in connection with classes 7, 9, 18, 25, and 28;

-US Trademark, Reg. No. 1,048,126 ATOMIC, granted on September 14, 1976 and in force until September 14, 2026; in connection with the classes 18, 25 and 28; and

-US Trademark, Reg. No. 3,193,143 ATOMIC, granted on January 2, 2007 and in force until January 2, 2027; in connection with the classes 9 and 25.

The disputed domain name <atomiconlineshop.com> was registered on December 14, 2021 and resolves to an online store of Complainant's products.

FACTUAL BACKGROUND

FAC TUAL BACKGROUND

The Complainant, founded in 1955 by Alois Rohrmoser, is a well-known winter sports equipment company, present in countries all over the world. It is based in the heart of the Austrian alps since its conception. It is the largest ski manufacturer in the world with 1000 in-house employees and produces over 400,000 pairs of skis per year. The Complainant has been part of elite level competitions as the World Cup, the Freeride World, and the Vasaloppet. The Complainant also counts with an innovation team, R&D experts, and the validation of relevant athletes as Hermann Maier, Sofia Goggia, Mikaela Shiffrin, among others, and of the ski artist Chris Benchetler to shape its ATOMIC brand.

The Complainant's promotes its products under the Trademark ATOMIC on the website 'www.atomic.com' and sells them in both physical and online stores. The sales are made directly on the official 'www.atomic.com' website, and also via a network of authorized retailers. The domain name <atomic.com> was registered on May 5, 1994.

The Complainant owns the International Trademark ATOMIC since September 7, 1981 and US Trademarks ATOMIC since at least September 14, 1976.

According to the evidence presented before the Panel, the disputed domain name <atomiconlineshop.com> was registered on December 14, 2021 and resolves to an online store based on Complainant's trademarks and products.

By the time of this Decision, the disputed domain name and the website are active.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT CONTENTIONS:

- 1) The Complainant states, that it is a well-known winter sports equipment company, present in countries all over the world. It promotes its products under the brand ATOMIC on the website atomic.com and sells them in both physical and online stores. The sales are made directly on the official atomic.com website, and also via a network of authorized retailers.
- 2) The Complainant asserts that ATOMIC Austria GmbH, owns the word ATOMIC which has been registered in several different goods classes (including classes 9,18, 25 and 28) as both an international trademark, including China where the Respondent resides, according to the Whols information (registration number: 465608) and in the United States (registration numbers 1048126 and 3193143).
- 3) The Complainant states that the disputed domain name <atomiconlineshop.com> contains in its entirety the word ATOMIC, identical to the registered ATOMIC word marks; that the domain name in question, ATOMIC is followed by "onlineshop" which merely describes nature of the website, and that such simple addition does not allow a clear distinction between the registered trademark and the disputed domain name, and that creates a strong likelihood of confusion among the public.
- 4) The Complainant states that the Respondent is not affiliated with the Complainant in any way and was not authorized by ATOMIC Austria GmbH to use the registered ATOMIC trademark.
- 5) That the Respondent has no legitimate interest in the disputed domain name, since the Whols records show no business name that may justify an interest in the disputed domain name. Also, that the Respondent is not an authorized ATOMIC retailer, nor it is commonly known by the disputed domain name.
- 6) The Complainant also argues that the disputed domain name has been both acquired and is being used in bad faith, that the Respondent knows ATOMIC brand and its products.
- 7) The Complainant asserts, that the website to which the disputed domain name resolves was designed to create an appearance of connection with ATOMIC. Therefore, the Respondent intentionally attracts potential ATOMIC clients by creating a likelihood of confusion with the brand ATOMIC: the website displays ATOMIC products and logo (both on the websites and as

favicon). That the Respondent is intentionally exploiting ATOMIC's popularity and recognition for its own gain.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is 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

In relation to the First UDRP Element, the Complainant has sufficiently proved before the Panel, that owns Trademark Rights over the word ATOMIC since at least September 7, 1981, at international level, including in China (International Trademark Reg. No. 465608).

The disputed domain name <atomiconlineshop.com> registered on December 14, 2021, exactly reproduces the trademark ATOMIC, in addition of the descriptive terms "online shop", addition that "does not negate the confusion confusing similarity created by the Respondent." (see Hoffmann-La Roche Inc. v. Onlinetamiflu.com, WIPO Case No. D2007-1806).

It is well established by the Domain Name Jurisprudence that for the purposes of the analysis of the First UDRP Element, in this case, the gTLD ".com", is considered "as a standard registration requirement and as such is disregarded under the first element confusing similarity test" (see point 1.11.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Jurisprudential Overview 3.0")).

In relation with the use of a trademark in the disputed domain name plus descriptive terms, point 1.8 of the WIPO Jurisprudential Overview has stated:

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements."

Therefore, the disputed domain name <atomiconlineshop.com> is confusingly similar to Complainant's trademark ATOMIC.

In relation to the Second UDRP Element, to this Panel it is very clear that:

(1) the Respondent is not associated or affiliated or hasn't been authorized or licensed from the Complainant to use the Trademark or to sell the Complainant's products.

(2) there is no evidence in Respondent's favor that could possibly justify the selection of such well-known trademark as ATOMIC in addition of descriptive words as "online shop".

(3) there is no evidence that the Respondent corresponds or has become commonly known by the term "atomiconlineshop.com".

(4) the Respondent registered the disputed domain name on December 14, 2021, meaning at least 40 years AFTER the Complainant's acquired its trademark rights over the word ATOMIC on September 7, 1981.

(5) the Respondent is not making a bona fide offering of goods or services, or a legitimate non-commercial or fair use of the disputed domain name, since it resolves to an unauthorized website based in the Complainant's Trademark ATOMIC and its very own products, representing undeniably strong evidence of its lack of rights or legitimate interests over the disputed domain name.

To the satisfaction of the Panel, the Complainant has made out its prima facie case. No Response has been submitted. In the absence of a Response, this Panel accepts Complainant's undisputed factual averments as true. Therefore, this Panel concludes that the Respondent to have no rights or legitimate interests in respect of the disputed domain name (see Hoffmann-La Roche Inc. v. Onlinetamiflu.com, WIPO Case No. D2007-1806).

In relation to the Third UDRP Element, the Bad Faith, this Panel analyses the following:

Bad Faith Registration:

The Complainant acquired its trademark rights on September 7, 1981, meaning at least 40 years BEFORE the Respondent registered the disputed domain name on December 14, 2021. The Respondent reproduces the Complainant's Trademark ATOMIC in the disputed domain name plus descriptive terms and dedicates the website to the selling of Complainant's original products, therefore this Panel concludes that the Respondent has more than consistent knowledge of Complainant's trademark value and reputation at the time of the registration of the disputed domain name.

In any event, the WIPO Jurisprudential Overview 3.0. which states at point 3.2.2:

"Noting the near instantaneous and global reach of the Internet and search engines, and particularly in circumstances where the complainant's mark is widely known (including in its sector) or highly specific and a respondent cannot credibly claim to have been unaware of the mark (particularly in the case of domainers), panels have been prepared to infer that the respondent knew, or have found that the respondent should have known, that its registration would be identical or confusingly similar to a complainant's mark. Further factors including the nature of the domain name, the chosen top-level domain, any use of the domain name, or any respondent pattern, may obviate a respondent's claim not to have been aware of the complainant's mark."

Therefore, this Panel concludes that the disputed domain name has been registered in bad faith.

Bad Faith Use:

According to the evidence presented before the Panel, the disputed domain name is being used to sell Complainant's products as such, for unauthorized (very low) prices, on a potential attempt to defraud customers. The Respondent has even reproduced -as front-page website- an image of Ms. Sofia Goggia, who is a World Cup recognized alpine skier, elite athlete, who supports the ATOMIC brand.

Paragraph 4(b)(iv) of the Policy states as evidence of the registration and use of a domain name in bad faith:

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your web site or location or of a product or service on your web site or location.

In the present Case scenario, the Respondent is using a domain name to intentionally attract Internet users, for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, or affiliation (see F. Hoffmann-La Roche AG v. Bulent Sedef, WIPO Case No. D2008-0636; F. Hoffmann-La Roche AG v. Aleksandr Kalinin, WIPO Case No. D2009-1214). This Panel has not found any conceivable good faith use for the disputed domain name. Therefore, this

Panel concludes that, the disputed domain name has been registered and is being used in bad faith as well.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ATOMICONLINESHOP.COM**: Transferred

PANELLISTS

Name	Ms. MARÍA ALEJANDRA LÓPEZ GARCÍA
------	---

DATE OF PANEL DECISION	2022-07-13
------------------------	------------

Publish the Decision
