

Decision for dispute CAC-UDRP-104859

Case number **CAC-UDRP-104859**

Time of filing **2022-09-21 09:34:46**

Domain names **fo-matmut.com**

Case administrator

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

Complainant

Organization **MATMUT**

Complainant representative

Organization **NAMESHIELD S.A.S.**

Respondent

Organization **Hjad**

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

Complainant owns rights in the “MATMUT” sign and shows valid trademark rights as follows:

- European Trademark “MATMUT” No. 003156098, dated of May 26, 2005 (renewed), for services in classes 36, 37, 42 and 44; and
- French Trademark “MATMUT” No. 98728962, dated of April 17, 1998 (renewed), for goods and services in classes 16, 35, 36, 38, 42, and 45.

Complainant also operates domain names including the same wording “MATMUT” namely <matmut.com> registered on September 16, 1998, and <matmut.fr> registered on June 23, 1997.

FACTUAL BACKGROUND

Created in 1961, Matmut (for “Mutuelle Assurance des Travailleurs Mutualistes”) is an insurance company. Complainant introduces itself as a major player on the French market; Matmut has 4.1 million members and more than 7.8 million contracts.

Respondent is Ms. Mary Leon from Hjad company, located in the United States.

On May 15, 2022, Respondent registered the disputed domain name <fo-matmut.com> which redirects to a website with pornographic content.

PARTIES CONTENTIONS

Complainant

- **Complainant argues that the disputed name is confusingly similar to its trademarks and its domain names associated**

Complainant considers that the disputed domain name <fo-matmut.com> is confusingly similar to its trademarks “MATMUT” and its domain names <matmut.com> and <matmut.fr>.

As a matter of facts, Complainant states that the disputed domain name fully reproduces the word “MATMUT” which is identical to its well-known trademark “MATMUT”.

Complainant then explains that the mere addition of the French acronym “FO”, meaning “Force Ouvrière”, a French trade union confederation recognized by the State as negotiating partner, is not enough to distinguish the disputed domain name from Complainant’s trademarks. It does not change the overall impression of the designation as being connected to the trademark “MATMUT”, thus increasing the likelihood of confusion.

Besides, Complainant reminds that the addition of the gTLD “.com” *“does not affect the domain name for the purpose of determining whether it is identical or confusingly similar”* according to WIPO, Case No. D2006-0451, F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.

To support its claims, Complainant added some decisions where the Panel have confirmed its rights over the term “MATMUT”: CAC, Case No. 103812, *MATMUT v. kiem nguyen <matmut-auto.com>*; WIPO, Case No. D2021-0384, *MATMUT v. François Milot <e-matmut.com>*; CAC, Case No. 102659, *MATMUT v. chen Ki <matmutinnovation.com>*.

- **Complainant argues that Respondent does not have any rights or legitimate interests in the disputed domain name**

Complainant explains that Respondent is not identified in the WHOIS database as the disputed domain name and is therefore not commonly known by the disputed domain name.

Complainant asserts that Respondent has no rights to the disputed domain name. Complainant indeed explains that it has not authorised nor licensed Respondent to use its trademarks and to register the disputed domain name.

Complainant states that Respondent has no rights or legitimate interests in the disputed domain name, there is also no proof of non-commercial use and Respondent does not have any business with the Respondent.

Finally, Complainant explains that the disputed domain name links to a website with pornographic content which tarnishes its trademark “MATMUT” and does not evidence non-commercial or fair use of the domain name. According to Forum, Case No. FA 1732665, Altria Group, Inc. and Altria Group Distribution Company v. xiazihong, such use does not provide any evidence of a legitimate non-commercial or fair use.

- **Complainant further argues that the disputed domain name was registered and used in bad faith**

Complainant shows a basic Google search on the word “MATMUT” which has yielded references to Complainant. Therefore, Respondent must have known of Complainant’s trademarks while registering the disputed domain name. Complainant thus considers that Respondent registered the disputed domain name in bad faith.

To support its claim, Complainant adds CAC, Case No. 102659, *MATMUT v. chen Ki: “the evidence in this case demonstrates that this trademark has been in longstanding use and the trademark is also rather distinctive. With no explanation or submission from the Respondent, this Panel concludes that it is more likely than not that the “MATMUT” would be used in the disputed domain name with knowledge of the Complainant’s trademark rights”*.

Further, the disputed domain name turns to a website with pornographic content. Therefore, Complainant finds that Respondent registered and used the domain name to create confusion with the trademark “MATMUT” for commercial gain. Such use may be evidence of bad faith according to Policy paragraph 4 (c) (iii).

Respondent

Respondent did not provide any response to the Complaint, and is therefore in default.

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

Paragraph 4(a) of the Policy requires the Complainant to prove three elements in order to obtain the transfer of the domain name:

- The disputed domain name is identical or confusingly similar to a trademark or service mark 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 disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights**

Complainant demonstrates that it owns valid trademark rights on the “MATMUT” sign. Furthermore, Complainant shows valid rights to two domain names bearing the signs “MATMUT”, namely <matmut.fr> and <matmut.com>.

The Panel recognises that Complainant’s trademark rights on the “MATMUT” signs are established.

The Panel also agrees that the disputed domain name is confusingly similar to Complainant’s “MATMUT” trademarks and “MATMUT” domain names. In fact, the mere addition of the letters “fo” separated by a hyphen is not sufficient to avoid a likelihood of confusion with the “MATMUT” trademark and domain names (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition “WIPO Jurisprudential Overview 3.0”).

WIPO Overview 3.0: “*In cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing*”).

Therefore, the Panel concludes that the disputed domain name is confusingly similar to Complainant’s rights and that Complainant has satisfied Policy 4(a)(i).

- **The Respondent has no rights or legitimate interests in respect of the disputed domain name**

Complainant shall provide a *prima facie* case that Respondent lacks rights and legitimate interests in the disputed domain name, under Policy 4 (a) (ii).

This standard has been recognised throughout continuous case law, such as in *LESAFFRE ET COMPAGNIE v. Tims Dozman*, Case No. 102430 (CAC, April 2, 2019) where it has been held that ‘*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 interest in the disputed domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP (please see, for example, WIPO case No. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.)*’.

Complainant asserts that Respondent is not authorised nor licensed by Complainant to use the disputed domain name. In addition, Respondent is not commonly known under the disputed domain name.

Respondent did not provide a response to the Complaint. Previous Panels have held that such lack of response from the Respondent’s part was proof that Complainant and Respondent had no relation and that Respondent is not commonly known under the disputed

domain name (See FILEHIPPO S.R.O. v. whois agent, Case No. 102279 (CAC January 31, 2019), *“In the absence of a response, the Panel accepts the Complainant’s allegations as true that the Respondent has no authorization to use the Complainant’s trademarks in the disputed domain name. Hence, as the Complainant has made out its prima facie case, and as the Respondent has not demonstrated any rights or legitimate interests as illustrated under paragraph 4(c) of the Policy, nor has the Panel found any other basis for finding any rights or legitimate interests of the Respondent in the disputed domain name, the Panel concludes that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.”*).

Further, Complainant has shown that the disputed domain name links to a website with pornographic content which does not provide any evidence of a legitimate non-commercial or fair use of the domain name by the Respondent (See Forum, Case No. FA 1732665, Altria Group, Inc. and Altria Group Distribution Company v. xiazihong, *“Complainant argues that Respondent has not made any bona fide offering of goods or services or any legitimate non-commercial or fair use of the disputed domain name because it resolves to a pornographic website. [...] Here, Complainant provided screenshots of Respondent’s resolving website which displays adult-oriented images. Therefore, the Panel holds that Respondent has not made any bona fide offering of goods or services or any legitimate non-commercial or fair use of the disputed domain name.”*).

The Panel concludes that Complainant has made a *prima facie* case that Respondent lacks rights or legitimate interests in the disputed domain name, and has therefore satisfied Policy 4 (a)(ii).

- **The disputed domain name has been registered and is being used in bad faith**

Complainant argues that given the distinctiveness and the widely known nature of its trademark and domain names containing its trademark “MATMUT”, Respondent could not ignore Complainant’s prior rights when registering the disputed domain name (See Case No. 102659, MATMUT v. chen Ki, *“the evidence in this case demonstrates that this trademark has been in longstanding use and the trademark is also rather distinctive. With no explanation or submission from the Respondent, this Panel concludes that it is more likely than not that the “MATMUT” would be used in the disputed domain name with knowledge of the Complainant’s trademark rights.”*). This is supported by the evidence provided by Complainant, showing an extract of a Google search of the word “MATMUT” where the results referred to Complainant.

Moreover, Complainant states that the disputed domain name is not used for any *bona fide* offering of goods and services but turns to a website with pornographic content, which tarnishes its reputation and trademarks. Therefore, Complainant finds that Respondent registered and used the domain name to create confusion with the trademark “MATMUT” for commercial gain only (See Forum, Case No. FA1412001596702, Molson Canada 2005 v. JEAN LUCAS / DOMCHARME GROUP and Forum Case No. 1638963, Andrey Ternovskiy dba Chatroulette v. Abdelbasset Selmi).

The Panel considers that the use of the disputed domain name cannot be considered as a use in good faith. It indeed seems that Respondent is using the domain name for commercial gain, by taking advantage of Complainant’s renown and diverting Internet users to lead them to its own website.

The Panel therefore considers that the disputed domain name has been registered and used in bad faith by Respondent within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **fo-matmut.com**: Transferred

PANELLISTS

Name	Nathalie Dreyfus
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DATE OF PANEL DECISION 2022-10-21

Publish the Decision