

## Decision for dispute CAC-UDRP-104870

Case number **CAC-UDRP-104870**

Time of filing **2022-09-27 11:21:26**

Domain names **storeatomic.com**

### Case administrator

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

### Complainant

Organization **ATOMIC Austria GmbH**

### Complainant representative

Organization **INSIDERS**

### Respondent

Name **Jgdfey Uget**

#### 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

United States Trade Mark Registration No. 1,048,126 ATOMIC for various sportswear and sporting goods in classes 25 and 28, registered since 14 September 1976.

#### FACTUAL BACKGROUND

The Complainant 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.

The Complainant has registered rights in the word ATOMIC in a number of jurisdictions, including the above-mentioned registration in the United States of America which is over 45 years old.

The Respondent registered the disputed domain name on 22 February 2022. The disputed domain name directs web-users to a website that displays the Complainant's logo and purports to sell sportswear and sporting equipment.

## PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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## 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).

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## 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).

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## 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).

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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

Paragraph (4)(a) of the Policy lists three elements that the Complainant must prove to merit a finding that the disputed domain name registered by the Respondent be transferred to the Complainant:

- 1) the disputed domain name is identical or confusingly similar to a trademark or service mark ("mark") in which the Complainant has rights; and
- 2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- 3) the disputed domain name has been registered and is being used in bad faith.

The Panel is satisfied the Complainant has satisfied all three elements for the principal reasons set out below.

## RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant asserts it has a trademark registration consisting of the word ATOMIC in the United States of America. This registration predates the registration date of the disputed domain name by over 45 years.

To satisfy paragraph 4(a)(i) of the Policy it is enough that the Panel is satisfied that the Complainant has registered rights in a trademark that predates the registration of the disputed domain name in a single jurisdiction (even if that single jurisdiction is not one in which the Respondent resides or operates) (Koninklijke KPN N.V. v. Telepathy, Inc D2001-0217 (WIPO May 7, 2001); see also WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has clearly satisfied such in relation to the trademark ATOMIC.

The next question is whether the disputed domain name is confusingly similar to the ATOMIC trademark.

The Panel disregards the gTLD suffix ".com" for the purpose of this comparison. And it also places little weight on the STORE element in the domain name, which would be viewed by web users to simply indicate the website is in the nature of an online store. Such web users are likely to focus entirely on the only distinctive element in the disputed domain name, being the ATOMIC element.

The disputed domain name is therefore confusingly similar to the ATOMIC trademark.

## NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name according to information provided by the registrar for the disputed domain name is "Jgdfey Uget". This name bears no resemblance to "ATOMIC". Further, the website to which the disputed domain name resolves has does not have content which would indicate any right or legitimate interest in the disputed domain name. Such content actually indicates an absence of rights and bad faith use, as discussed below.

The Respondent has no rights or interests in the disputed domain name.

## BAD FAITH

The Respondent has prominently used the Complainant's logo on the website to which the disputed domain name directs web users. The website also refers to the sale of sportswear and sporting goods. Such use provides an overall false and misleading impression that the Respondent has an official connection with the Complainant, which is clearly bad faith use of the recently registered disputed domain name (see Bayerische Motoren Werke Aktiengesellschaft, Rolls-Royce Motor Cars Limited v. Mr David Redshaw, Auto Crowd, Auto Crowd Group / MEDIAGROUP24/ WhoisGuard Protected / WhoisGuard, Inc., WIPO Case No. D2015-0589). The Respondent is clearly misleading consumers into believing such a connection exists with the Complainant's well known brand.

The Respondent has registered and used the disputed domain name in bad faith.

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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. **storeatomic.com**: Transferred

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## PANELLISTS

Name	<b>Andrew Sykes</b>
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DATE OF PANEL DECISION 2022-10-31

Publish the Decision

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