

Decision for dispute CAC-UDRP-104570

Case number	CAC-UDRP-104570
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Time of filing	2022-10-05 09:46:10
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Domain names	BITZER-COMPRESSORS.COM
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Case administrator

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

Organization	BITZER Kühlmaschinenbau GmbH
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Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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Respondent

Organization	PMG Group
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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, inter alia, proprietor of the International registration 0320898 BITZER (fig.), registered on September 19, 1966 for goods in class 11. This registration was extended to numerous countries, inter alia the European Union. The Complainant has also trademark protection for BITZER in the United Arab Emirates (AE/270789 from November 20, 2017 in class 11). The marks are in effect.

FACTUAL BACKGROUND

The Complainant is a German company specializing in the manufacture of high-quality compressors. According to its website, the Complainant was founded in 1934. It's business group is represented at 72 locations around the world.

The disputed domain name was registered on August 26, 2019 and resolves to a page showing the Bitzer trademark stating on the low end of the home page written in a, in relation to the other fonts used on the website, very small font the following: „The names and part numbers referenced herein are trade marks for Bitzer company. Part numbers, images and logo of this organization is used for cross reference and interchange purposes only.“ The page shows and offers compressors. Under „About us“ the title is „Welcome to Bitzer Compressors“.

In the CAC's decision 104168 (<bitzerr.com>) of January 17, 2022, the Panel found the Bitzer mark of Complainant being widely - known.

Complainant sent cease and desist letters on February 14, 2020 and later to Respondent to the E-Mail address mentioned prominently on top of the home page. A response of Respondent was not reported.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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

In order to succeed in its claim, the Complainant must demonstrate that all of the elements enumerated in paragraph 4(a) of the Policy have been satisfied:

- (i) The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interests with respect to the domain name; and
- (iii) The domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has established the fact that it has valid trademark rights for BITZER in class 11 in several countries.

The disputed domain name is confusingly similar to the BITZER mark of the Complainant since the element "COMPRESSORS" being a descriptive and non-distinctive word cannot be considered as relevant to influence the overall impression of the disputed domain name.

The Panel therefore considers the disputed domain name to be confusingly similar to the trademarks BITZER in which the Complainant has rights in accordance with paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has no rights in the disputed domain name since the Respondent is not a licensee of the Complainant nor has the Complainant granted any permission or consent to the Respondent to use its trademarks. Furthermore, the Respondent has no legitimate interest in the domain name since there is no indication that the Respondent is commonly known by the name "BITZER" or „BITZER COMPRESSORS“ nor that the Respondent is using the domain name in connection with a bona fide offering of related goods or services.

The latter could be discussed since Respondent seems to offer products from the Complainant. However, the majority opinion of panelists follows in cases where a legitimate interest of resellers of original goods to use a trademark in the domain name is in question, the test of Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No.D2001-0903, <okidataparts.com> after which such use might be legitimate if the use comprise the actual offering of goods, only the trademarked goods are sold on the site, and the site is accurately and prominently disclosing the registrant's relationship with the trademark holder.

Although this Panel follows even the argumentation that any reseller is not allowed to use the trademark, unless otherwise authorized, in a manner which goes beyond the scope of informing the customer about the core of its business activities (see also Ferrero S.p.A. v. Fistagi S.r.l., WIPO Case No. D2001-0262; Raymond Weil SA v. Watchesplanet (M) Sdn Bhd, WIPO Case No. D2001-0601; dissenting opinion in DaimlerChrysler A.G. v. Donald Drummonds, WIPO Case No. D2001-0160) and unless it is not clear for the customer that the retailer is not an authorized partner of the Trademark owner, the present case does not meet even the less strong criteria of the test after Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No.D2001-0903, <okidataparts.com>, since the website under the disputed domain name creates the impression of being authorized by the Complainant or being even the Complainant himself.

The Panel therefore finds that the respondent does not have rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

Due to the long existence of Complainant and his marks and related trademark protection also in the country of the Respondent, the Respondent must have been well aware of the Complainant and its trademarks when registering the disputed domain name. The Complainant had not authorised the Respondent to make use of its mark. This Panel does not see any conceivable legitimate use that could be made by the Respondent of this particular domain name without the Complainant's authorization.

The circumstances of this case furthermore indicate that the Respondent registered and uses the domain name primarily with the intention of attempting to attract, for commercial gain, Internet users to a potential website or other online locations, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of such potential website or location, or of a product or service on such website or location.

The Panel therefore considers the disputed domain name to have been registered and used in bad faith in accordance with 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. **BITZER-COMPRESSORS.COM**: Transferred

PANELLISTS

Name	Dietrich Beier
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DATE OF PANEL DECISION 2022-11-08
