

Decision for dispute CAC-UDRP-105236

Case number CAC-UDRP-105236

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Domain names MECAAL.COM

Case administrator

Name Olga Dvořáková (Case admin)

Complainant

Organization Mecal Machinery S.r.l.

Complainant representative

Organization Perani Pozzi Associati

Respondent

Organization A&c

OTHER LEGAL PROCEEDINGS

The Panel is unaware of any other pending or decided legal proceedings in respect of the domain name <mecaal.com> ('the disputed domain name').

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark:

- International trade mark registration no. 1286889, registered on 25 September 2015, for the word mark MECAL, in class 7 of the Nice Classification, designating several countries, including USA; and
- EU trade mark registration no. 014579346, registered on 22 February 2016, for the word mark MECAL, in class 7 of the Nice Classification.

(Hereinafter, 'the Complainant's trade mark'; 'the Complainant's trade mark MECAL'; or 'the trade mark MECAL' interchangeably).

The disputed domain name was registered on 3 February 2023 and, at present, does not resolve to an active website ('the Respondent's website').

FACTUAL BACKGROUND

The Complainant's contentions can be summarised as follows:

A. Background history

The Complainant is an Italian company founded in 1978 and specialised in the production of machines and systems for the processing of aluminium, PVC and light alloys.

The Complainant has achieved a worldwide presence through joint ventures, distribution and direct sales agreement, accounting for more than 37,250 customers.

In addition to the trade marks mentioned above, the Complainant is the owner of the domain names <mecal.com> (registered in 1997) and <mecal.it> (registered in 2000).

By way of relief, the Complainant seeks to obtain the ownership of the disputed domain name <mecaal.com> on the grounds advanced in section B below.

B. Legal Grounds

I. The disputed domain name is confusingly similar to a trade mark in which the Complainant has rights

The Complainant avers that the disputed domain name is identical or, at least, confusingly similar to the Complainant's trade mark MECAL.

The disputed domain name reproduces the well-known trade mark MECAL with the mere doubling of the letter 'a', which is a clear case of typosquatting.

II. The Respondent has no rights or legitimate interests in respect of the disputed domain name

The Complainant asserts that the Respondent has no rights in the disputed domain name, and that the Respondent has not been authorised or licensed by the Complainant to make any use of the Complainant's trade mark MECAL nor the disputed domain name.

In addition, the Respondent is not known by the disputed domain name; the Respondent is not making a bona fide offering of goods or services by means of the disputed domain name, nor is the Respondent using the disputed domain name for legitimate non-commercial or fair use.

In view of the above factors, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

III. The Respondent registered and is using the disputed domain name in bad faith

Registration

The Complainant states that the trade mark MECAL is well-known and distinctive. The Complainant further states that, given the distinctiveness and reputation of the Complainant's trade mark, it is reasonable to infer that the Respondent has registered the disputed domain name with knowledge of the Complainant's trade mark MECAL.

Use

The Complainant avers that the disputed domain name is held passively, and that the Respondent has intentionally used it to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant as to the source, sponsorship, affiliation, or endorsement of the Respondent's website (paragraph 4(b)(iv) of the UDRP Policy).

The Complainant claims that the disputed domain name is not used for any bona fide offerings. This is evidenced by the Respondent's use of email addresses bearing the sign 'mecaal' to correspond with the Complainant's customers in connection with payment requests.

In the alternative, the Complainant claims that the Respondent's aim with the registration of the disputed domain name might be to resell it to the Complainant, which is evidence of registration and use of the disputed domain name in bad faith (paragraph 4(b)(i) of the UDRP Policy).

The Complainant therefore concludes that the Respondent has registered and is using the disputed domain name in bad faith.

PARTIES CONTENTIONS

Complainant's contentions are summarised above.

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 UDRP 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 UDRP 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 UDRP 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

A. UDRP Threshold

Pursuant to Rule 15 of the UDRP Rules, the Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the UDRP Policy, the UDRP Rules, and any rules and principles of law that the Panel deems applicable.

Paragraph 4(a) of the UDRP Policy sets out the following threshold for the Complainant to meet for the granting of the relief sought (transfer of the disputed domain name):

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

It is incumbent on the Complainant the onus of meeting the above threshold. The evidentiary standard under the UDRP proceedings is the balance of probabilities and, on that basis, the Panel will now proceed to determine each of the three UDRP Policy grounds in turn.

B. Identical or Confusingly Similar

The Panel is satisfied that the Complainant owns trade mark rights in 'MECAL' since 2015.

The disputed domain name is <mecaal.com>, and the Complainant's trade mark is MECAL.

The Panel notes that the Complainant's trade mark MECAL is wholly incorporated into the disputed domain name, the only difference being the additional keyboard letter 'a' contiguous with the term 'mecal'. In the Panel's view, this adjoint letter has no material impact on the confusing similarity assessment, such that the disputed domain name clearly evokes the Complainant's trade mark MECAL.

The Panel therefore finds that the Complainant has met the requirement under paragraph 4(a)(i) of the UDRP Policy.

C. Rights or Legitimate Interests

The Respondent has defaulted in these UDRP proceedings. Nevertheless, the Panel is empowered to draw adverse inferences from the Respondent's silence (Rule 14 (b) of the UDRP Rules).

The Panel notes that the Complainant denies any affiliation and/or association with, or authorisation for, the Respondent of any nature. Moreover, the Complainant argues that the Respondent is not known by the disputed domain name; and that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.

The Respondent has submitted no evidence to refute any of the Complainant's assertions.

On balance, the Panel considers the available evidence to lend credence to the Complainant's contentions.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

Registration

The following facts are compelling evidence to this Panel that the disputed domain name was registered in bad faith:

- The Complainant has been used the trade mark MECAL since at least 2015;
- The Complainant operates its activities through the domain name <mecal.com>, which was registered in 1997;
- The disputed domain name <mecaal.com> was registered on 3 February 2023;
- UDRP panels have consistently found that a typo of a widely-known trade mark can by itself create a presumption of bad faith (WIPO Panel Views on Selected UDRP Questions, Third Edition, paragraph 3.1.4 ('WIPO Jurisprudential Overview 3.0')), and the Panel accepts that the Complainant's trade mark MECAL is widely known in its segment of business;
- The Respondent's lack of participation in the course of this UDRP proceeding; and
- This Panel additionally views the provision of false contact information as an indication of bad faith. In this instance, the Respondent appears to have adopted a non-existent address.

Use

The Complainant alleges that the Respondent has engaged in the conduct described in paragraph 4(b)(iv) of the UDRP Policy, which provides as follows:

(iv) by using the domain name, the respondent has intentionally attempted to attract, for commercial gain, Internet users to its website 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 the respondent's website or location or of a product or service on the respondent's website or location.'

The Respondent's website does not currently hold any active content. The Panel therefore refers to paragraph 3.3 of the WIPO Jurisprudential Overview 3.0 to determine whether or not there has been bad faith use of the disputed domain name. UDRP panels have found that the non-use of a domain name may support a finding of bad faith under certain circumstances. Factors that have supported such finding include, but are not limited to (i) the degree of distinctiveness or reputation of the complainant's trade mark; (ii) the respondent's default; (iii) the respondent's concealing of its identity; and (iv) the implausibility of any good faith use to which the domain name may be put.

The Panel considers that all four factors listed above are relevant and present in this UDRP proceeding. Furthermore, the Complainant has adduced evidence of what appears to be an exchange of emails between the Respondent and of the Complainant's customers in connection with a payment request. The Panel notes the Complainant's claim that the Respondent has used the Respondent's website for fraudulent purposes. The Panel cannot disregard this possibility given the above findings, and therefore views as implausible any good faith use of the disputed domain name.

The Panel therefore finds that the Complainant has succeeded under paragraph 4(a)(iii) of the UDRP Policy.

In view of the above finding, the Panel will not make a determination on the Complainant's alternative claim under paragraph 4(b)(i) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. MECAAL.COM: Transferred

PANELLISTS

Name	Yana Zhou
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DATE OF PANEL DECISION 2023-04-05

Publish the Decision
