

Decision for dispute CAC-UDRP-105272

Case number	CAC-UDRP-105272
Time of filing	2023-03-09 14:45:47
Domain names	hm-australia.com, hmegypt.com, hmfactoryoutlet.com, hmfactoryoutletuk.com, hmireland.com, hmpakistan.com, hmsaudiarabia.com, hmindonesia.com, hm-israel.com, hmmalaysia.com, hmnz.com, hmphilippines.com, hm-thailand.com, hmukonline.com, hm-argentina.com, hmbelgie.com, hm-canada.com, hm-chile.com, hm-costarica.com, hmdenmark.com, hm-factoryoutlet.com, hmgreece.com, hmhrvatska.com, hm-hu.com, hm-ireland.com, hm-norge.com, hmoutletonline.com, hm-peru.com, hm-philippines.com, hm-polska.com, hm-portugal.com, hmpraha.com, hm-romania.com, hmsaleuk.com, hmschweiz.com, hm-singapore.com, hmslovenija.com, hmsouthafrica.com, hmsrbija.com, hmsuomi.com, hm-uae.com, hmussale.com, hmargentina.com, hmchile.com, hmcostarica.com, hm-ecuador.com, hm-espana.com, hmguatemala.com, hmpanama.com, hmperuonline.com, hmmaroc.com

Case administrator

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

Organization	H & M Hennes & Mauritz AB
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Complainant representative

Organization	Stobbs IP
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Respondent

Organization	Web Commerce Communications Limited
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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 names.

IDENTIFICATION OF RIGHTS

Norwegian Trade Mark Registration Bo. 169063 H&M (Stylised) registered for various goods and services in classes 3, 14, 18, 25 and 28 with a registration date of 3 August 1995.

FACTUAL BACKGROUND

The Complainant is part of a multinational clothing retail group. "H&M" is its core brand, which is used in relation to fashion, beauty accessories, homeware and food. It promotes its "H&M" brand in more than 4,400 stores across 75 countries. As at 2021 it employed approximately 155,000 people and had acquired sales of approximately 199 billion Swedish krona.

The Complainant is the registered owner of various trade marks containing or consisting of "H&M" including the above mentioned registration which is over 25 years old. It is also the registrant of numerous domain names containing or consisting of "HM", including <hm.com> which has been registered since 29 June 2001.

The Respondent Web Commerce Communications Ltd. provides its address as a location in Malaysia.

Between 10 January 2023 and 14 February 2023, the Respondent registered the 51 disputed domain names that are the subject of this administrative complaint. All of those disputed domain names commence with the letters "hm" followed by either geographic or generic terms like "factory", "outlet" or "sale". Some also contain minor punctuation, like hyphens. All then conclude with common gTLD <.com>.

At the time of filing the Complaint 17 of the 51 disputed domain names directed internet users to websites. All such websites prominently displayed the Complainant's trade mark, including in the exact stylised form that appears in numerous trade mark registrations. The websites also featured account login fields that invited web users to insert login details. The remaining 34 of the 51 disputed domain names did not resolve to active websites.

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain names should be transferred to it.

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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 names have been registered and are 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 lists three elements that the Complainant must prove to merit a finding that the disputed domain names registered by the Respondent be transferred to the Complainant:

1) the disputed domain names are identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

2) the Respondent has no rights or legitimate interests in respect of the disputed domain names; and

3) the disputed domain names have been registered and is being used in bad faith.

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

1) RIGHTS IN AN IDENTICAL OR CONFUSINGLY SIMILAR TRADEMARK

The Complainant has demonstrated to the satisfaction of the Panel that it has registered rights in the trade mark H&M that predates the registration of the disputed domain names by the Respondent.

Reliance on registered rights in a single jurisdiction is sufficient for the purposes of establishing rights referred to in paragraph 4(a) (i) of the Policy (see *Koninklijke KPN N.V. v. Telepathy, Inc.*, WIPO Case No. D2001-0217; WIPO Case Nos. D2012-0141 and D2011-1436). The Complainant has provided evidence of numerous registrations, including the Norwegian registration referred to above.

Aside from some minor punctuation and the incorporation of the .com gTLD (both of which are unlikely to perform any distinguishing role in the eyes of web users) the disputed domain names vary from this trademark only by way of the addition of geographic or generic terms. In context, all these terms would logically appear to a web user to refer to a "HM" retail service being offered in a particular place.

Finally, the ampersand between "H&M" makes no material difference to the analysis. The absence or presence of an ampersand is likely to be ignored by a web user comparing "HM" and "H&M".

The disputed domain names are all confusingly similar to the H&M trademark.

2) NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent's name bears no resemblance to "H&M" or "HM". Further, there is no basis to conclude legitimate interests from any use of HM on the websites to which some of the disputed domain names resolve. To contrary, where there has been use of the Complainant's trademark of such websites there is a strong indication of a lack of legitimate interests.

In the circumstances, and in absence of a Response which would rebut the apparent lack of rights or legitimate interests, the Panel concludes that the Respondent has no rights or interests in all of the disputed domain names, including the ones that do not resolve to a website (see the reasoning of the Panelist in *Bloomberg L.P. v. Global Media Communications a/k/a Dallas Internet Services Forum* Case No. FA 0105000097136).

3) BAD FAITH

The Panel finds that the Respondent has both registered and used all of the disputed domain names in bad faith for the following three reasons.

First, based on the undistributed facts above H&M is a well-known internationally used trademark. It is implausible that the Respondent did not know this when it first registered the disputed domain names. Bad faith has been properly found by other panelists in circumstances where a domain name is so obviously connected with a well-known trademark that its very use by someone with no connection to the trademark suggests opportunistic bad faith (*Veuve Clicquot Ponsardin, Maison Fondée en 1772 v. The Polygenix Group Co.*, WIPO Case No. D2000-0163 and *Sanofi-Aventis v. Nevis Domains LLC*, WIPO Case No. D2006-0303). Such opportunistic bad faith has occurred here.

Second, the opportunistic nature of the Respondent's bad faith registration and use are clearly demonstrated by the fact it used 17 of the 51 disputed domain names to direct web users to websites that prominently displayed the Complainant's trade mark, including in the exact stylised form that appears in numerous trade mark registrations. This evidence showed clear intent to mimic the Complainant. It may be properly inferred from this repeated conduct that even through the Respondent was yet to direct the remaining 34 disputed domain names to active websites it intended to use those remaining domain names for a similar bad faith purpose.

Third, the bad faith use of 17 of the 51 disputed domain names in relation to websites was of particular concern given that these websites also featured account login fields that invited web users to insert login details. The Complainant made the following submissions in relation to these login fields:

"The Complainant submits, upon accessing the Websites, the user is presented with a variety of clothing at discounted prices, categories of clothing types and the option to log in to their account. It is reasonable to infer that visitors accessing the Websites will apply credentials used for the Complainant's genuine website, www.hm.com.

The Complainant submits the varied articles of clothing and footwear for sale via the Websites cannot be purchased without either registering with the Websites or entering login details.

The Complainant infers from the registration and use of the Disputed Domain Name (sic.), that the intention of the Respondent is to divert consumers (intended for the Complainant), to the Respondent's website. The Complainant asserts that the content at the Disputed Domain Names is (sic.) setup with the intention to harvest personal and/or financial information from the Complainant's customers and gain access to accounts held with the Complainant and its subsidiaries. The behaviour of the Respondent is commonly known as "phishing".

The Panel accepts these submissions. It is inferred that the only purpose these login fields served in the context of the Complainant's conduct was to fraudulently deceive internet users into providing their login details.

All the disputed domain names were registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **hm-australia.com**: Transferred
2. **hmegypt.com**: Transferred
3. **hmfactoryoutlet.com**: Transferred
4. **hmfactoryoutletuk.com**: Transferred
5. **hmireland.com**: Transferred
6. **hmpakistan.com**: Transferred
7. **hmsaudi Arabia.com**: Transferred
8. **hmindonesia.com**: Transferred
9. **hm-israel.com**: Transferred
10. **hmmalaysia.com**: Transferred
11. **hm-nz.com**: Transferred
12. **hmphilippines.com**: Transferred
13. **hm-thailand.com**: Transferred
14. **hmukonline.com**: Transferred
15. **hm-argentina.com**: Transferred
16. **hmbelgie.com**: Transferred
17. **hm-canada.com**: Transferred
18. **hm-chile.com**: Transferred
19. **hm-costarica.com**: Transferred
20. **hmdenmark.com**: Transferred
21. **hm-factoryoutlet.com**: Transferred
22. **hmgreece.com**: Transferred
23. **hmhrvatska.com**: Transferred
24. **hm-hu.com**: Transferred
25. **hm-ireland.com**: Transferred
26. **hm-norge.com**: Transferred
27. **hmoutletonline.com**: Transferred
28. **hm-peru.com**: Transferred
29. **hm-philippines.com**: Transferred
30. **hm-polska.com**: Transferred
31. **hm-portugal.com**: Transferred
32. **hmpraha.com**: Transferred
33. **hm-romania.com**: Transferred
34. **hmsaleuk.com**: Transferred
35. **hmschweiz.com**: Transferred
36. **hm-singapore.com**: Transferred
37. **hmslovenija.com**: Transferred
38. **hmsouthafrica.com**: Transferred
39. **hmsrbija.com**: Transferred

40. hmsuomi.com: Transferred
 41. hm-uae.com: Transferred
 42. hmussale.com: Transferred
 43. hmargentina.com: Transferred
 44. hmchile.com: Transferred
 45. hmcostarica.com: Transferred
 46. hm-ecuador.com: Transferred
 47. hm-espana.com: Transferred
 48. hmguatemala.com: Transferred
 49. hmpanama.com: Transferred
 50. hmperuonline.com: Transferred
 51. hmmaroc.com: Transferred
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PANELLISTS

Name	Andrew Sykes
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DATE OF PANEL DECISION	2023-04-11
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Publish the Decision
