

Decision for dispute CAC-UDRP-105319

Case number	CAC-UDRP-105319
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Time of filing	2023-04-04 10:19:49
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Domain names	isabelmurant.com
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Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	IM PRODUCTION
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Organization	Fundacion Comercio Electronico
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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 a French company specializing in the manufacture and marketing of ready-to-wear, shoes, handbags and jewellery. The Complainant markets these products under the brand "ISABEL MARANT", and now has stores around the world.

The Complainant owns a large portfolio of trademarks including the wording "ISABEL MARANT" in several countries, such as the international trademark ISABEL MARANT® n. 1284453, registered since November 16, 2015 and the European trademark ISABEL MARANT® n. 001035534 registered since December 23, 1998.

Furthermore, the Complainant owns multiple domain names consisting in the wording "ISABEL MARANT", such as <isabelmarant.com> registered since April 20, 2002.

The disputed domain name <isabelmurant.com> was registered on November 7, 2022 and redirects to a parking page with commercial links. Besides, it is offered for sale.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

A. The domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant states that the disputed domain name <isabelmuran.com> is confusingly similar to its trademark ISABEL MARANT® and its domain names associated.

The obvious misspelling of the Complainant's trademark, *i.e.* the substitution of the letter "A" by the letter "U", is characteristic of a typosquatting practice intended to create confusing similarity between the Complainant's trademark and the disputed domain name. Previous panels have found that the slight spelling variations does not prevent a domain name from being confusing similar to the Complainant's trademark. Please see for instance CAC Case No. 102708, *Boehringer Ingelheim Pharma GmbH & Co.KG v. stave co ltd <boehringer-ingelheim.com>* ("It is the common view among UDRP panelists that a domain name which contains a common or obvious misspelling of a trademark normally will be found to be confusingly similar to such trademark, where the misspelled trademark remains the dominant or principal component of the domain name, see *Edmunds.com, Inc. v. Digi Real Estate Foundation, WIPO Case No.D2006-1043, <edmundss.com>*. The disputed domain name is such a typosquatting domain and is accordingly confusingly similar to the trademark of the Complainant.").

Moreover, past Panels commonly stated that the gTLD is not relevant in the appreciation of confusing similarity. Please see WIPO Case No. D2006-0451, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.* ("It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.")

Finally, the Complainant's rights over the terms "ISABEL MARANT" have been confirmed in several previous UDRP decision.

- CAC Case No. 104297, *IM PRODUCTION v. LIUQINGRU <isabelmarant.xyz>*;
- CAC Case No. 103810, *IM PRODUCTION v. Xing Chun Ding <isabelmarantrakuten.com>*;
- CAC Case No. 104241, *IM PRODUCTION v. Zhichao Yang <isabelmaran.com>*.

Thus, the disputed domain name is confusingly similar to the Complainant's trademark.

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

According to the WIPO Case No. D2003-0455, *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, a 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, Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

The Respondent contends that the Respondent is not known as the disputed domain name. Past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Please see for instance Forum Case No. FA 1781783, *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group* ("Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy ¶ 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy ¶ 4(c)(ii).")

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name <isabelmuran.com> and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ISABEL MARANT®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the Complainant also claims that the disputed domain name is a typosquatted version of the trademark ISABEL MARANT®. Typosquatting is the practice of registering a domain name in an attempt to take advantage of Internet users' typographical errors and can be evidence that a respondent lacks rights and legitimate interests in the domain name. Please see:

Furthermore, the disputed domain name resolves to a parking page with commercial links. Past panels have found it is not a bona fide offering of goods or services or legitimate non-commercial or fair use. Please see for instance:

Thus, the Complainant contends that the Respondent has no rights or legitimate interest on the disputed domain name.

C. The domain name was registered and is being used in bad faith

The Complainant states that the disputed domain name is confusingly similar to its trademark ISABEL MARANT®. The trademark was registered several years before the registration of the disputed domain name.

Besides, all the Google results for the term "ISABEL MURANT" refers to the Complainant and its trademark.

Thus, given the distinctiveness of the Complainant's trademark and its reputation, it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant's trademark. Please see WIPO Case No. D2016-2097, *IM Production v. Erica Wong* ("The Panel is satisfied that the ISABEL MARANT trade mark is sufficiently well-known in China that, in all likelihood, the Respondent would have been aware of the Complainant's trade mark at the time the disputed domain name was registered.").

Therefore, by registering the domain name <isabelmuran.com> with the misspelling of the trademark ISABEL MARANT®, the Complainant can state that this practical was intentionally designed to be confusingly similar with the Complainant's trademark. Previous UDRP Panels have seen such actions as evidence of bad faith. Please see Forum Case No. FA 877979, *Microsoft Corporation v. Domain Registration Philippines* ("In addition, Respondent's misspelling of Complainant's MICROSOFT mark in the <microsoft.com> domain name indicates that Respondent is typosquatting, which is a further indication of bad faith registration and use pursuant to Policy ¶ 4(a)(iii).").

Furthermore, the disputed domain name resolves to a parking page with commercial links. The Complainant contends the Respondent has attempt to attract Internet users for commercial gain to his own website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of bad faith. Please see for instance WIPO Case No. D2018-0497, *StudioCanal v. Registration Private, Domains By Proxy, LLC / Sudjam Admin, Sudjam LLC* ("In that circumstance, whether the commercial gain from misled Internet users is gained by the Respondent or by the Registrar (or by another third party), it remains that the Respondent controls and cannot (absent some special circumstance) disclaim responsibility for, the content appearing on the website to which the disputed domain name resolve [...] so the Panel presumes that the Respondent has allowed the disputed domain name to be used with the intent to attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, affiliation, or endorsement of the Respondent's website to which the disputed domain name resolves. Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.").

Moreover, the disputed domain name is offered for sale. The Complainant contends that the Respondent has registered the disputed domain name in order to sell it back for out-of-pockets costs, which evinces bad faith registration and use. Please see Forum Case No. FA 1623939, *Citigroup Inc. v. Kevin Goodman* ("Respondent offered the <citi.club> domain name for sale or lease at prices well above even its alleged but unverified acquisition costs. [...] Therefore, the evidence shows that Respondent registered <citi.club> primarily for the purpose of transferring it for a profit and demonstrates Respondent's bad faith registration and use of the <citi.club> domain name pursuant to Policy ¶ 4(b)(i).").

Finally, the Respondent, Fundacion Comercio Electronico, has already been involved in numerous UDRP cases. See for instance WIPO Case No. D2023-0418, *CK Franchising, Inc. v. Carolina Rodrigues*, Fundacion Comercio Electronico; WIPO Case No. D2023-0172, *Telefonaktiebolaget LM Ericsson v. Carolina Rodrigues*, Fundacion Comercio Electronico; WIPO Case No. D2023-0145, *Everest Reinsurance Company v. Carolina Rodrigues*, Fundacion Comercio Electronico.

On these bases, the Complainant concludes that the Respondent has registered and is using the disputed domain name in bad faith.

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).

This is a case of "typosquatting", i.e. the disputed domain name contains an obvious misspelling of the Complainant's trademark. It is well established that the specific top level of a domain name such as ".com", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar.

Previous panels have found that the slight spelling variations does not prevent a domain name from being confusingly similar to the complainant's trademark. exchanging the first "a" in MARANT with the letter "u", does not take away the confusing similarity between the domain name and the trademark.

Simple exchange or adding of letters is not a sufficient element to escape the finding that the disputed domain name is confusingly similar to the Complainant's trademarks and domain names.

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).

The Complainant contends that the Respondent is not affiliated with him nor authorized by him in any way to use his trademarks in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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).

Given the circumstances of the case, including the provided information of the use and reputation of the Complainant's trademark ISABEL MARANT and the distinctive nature of this mark, it is inconceivable to the Panel in the current circumstances that the

Respondent registered the disputed domain name without prior knowledge of the Complainant and the Complainant's mark. The Panel therefore finds that the disputed domain name was registered in bad faith.

The disputed domain name currently resolves to a parking page with commercial links. This is an attempt to attract Internet users for commercial gain to the Respondent's website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of use in bad faith.

Accordingly, the Panel finds that the disputed domain name was registered and is being used in bad faith.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

- i. the disputed 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 disputed domain name; and
- iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark, nor is there any authorization for the Respondent by the Complainant to use or register the disputed domain name. The Panel did not find any legitimate use of the disputed domain name.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered. It is presumable that the Respondent registered the disputed domain name with awareness of Complainant's trademarks. The present use of the disputed domain name merely attracts Internet users for commercial gain to the Respondent's website thanks to the Complainant's trademarks for its own commercial gain, which is an evidence of use in bad faith.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **isabelmurant.com**: Transferred

PANELLISTS

Name	Lars Karnoe
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DATE OF PANEL DECISION	2023-05-08
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Publish the Decision
