

Decision for dispute CAC-UDRP-105407

Case number	CAC-UDRP-105407
Time of filing	2023-05-30 10:36:06
Domain names	amarr.com, amarr.com

Case administrator

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

Organization	ASSA ABLOY AB
Organization	AMARR COMPANY

Complainant representative

Organization	Coöperatieve Vereniging SNB-REACT U.A.
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RESPONDENTS

Name	QMD mengdanqian
Organization	@amarr.com

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 (the "Domain Names").

IDENTIFICATION OF RIGHTS

The Complainants rely upon the following registered trade marks:

- (a) US Registered trade mark no 2423406, for Amarr as a typed drawing mark registered on 23 January 2001, in class 6 and 19;
- (b) US Registered trade mark no 3293020, for Amarr as a word in stylized form mark registered on 18 September 2007, in class 6 and 19;
- (c) EU registered trade mark no 1777721 for Amarr as a word mark registered on 26 October 2001, in class 6, 9 and 19; and
- (d) EU registered trade mark no 5794698 for Amarr as a figurative registered on 17 December 2007 in class 6 and 19 (the reference to class 9 in the Complaint appears to be in error).

Each of these trade marks is owned by the Amarr Company ("Amarr"). Amarr is a wholly owned subsidiary of Assa Abloy AB ("Assa Abloy").

FACTUAL BACKGROUND

The Complainants in these proceedings are Amarr and Assa Abloy.

Amarr is a US-based company that has been specialized in garage doors since 1951. Amarr produces garage doors in several styles and for both the residential and commercial markets. It has an extensive network in North America, consisting of over 4000 independent professional dealers, and its products are also sold by large retailers such as Costco and Amazon. Amarr has used its official domain name <amarr.com> since 1996.

Assa Abloy is the parent company of the trade mark holder. It is at the head of the ASSA Abloy Group, and Amarr is thus a subsidiary of Assa Abloy. Assa Abloy acquired the trademark holder in 2013.

The ASSA Abloy Group is a global leader in door opening solutions with sales of Swedish kronor 94 billion in 2019. It is present in more than 70 countries worldwide and has a market leading position in Europe, North America and the Asia Pacific region, within areas such as mechanical and electromechanical locking, access control, identification technology, entrance automation, security doors, hotel security and mobile access.

The Domain Name <amarr.com> was registered on 26 May 2020 and the Domain Name <arnarr.com> was registered on 21 February 2023 respectively.

From at least January 2023 Domain Names were used in e-mails sent to a third-party who is an authorized distributor of Amarr.

The e-mails falsely represented that they had come from employees of Amarr. E-mail addresses in those e-mail were "spoofed" and some of these e-mails included signatures that used Amarr's name and figurative mark.

The e-mails asked their recipients to switch payment details in the ACH (Automated Clearing House) system to different accounts, which accounts were most likely controlled by the Respondent.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

It is rare that a complainant will fail to show that it has rights in a trade mark confusingly similar to a domain name the subject of UDRP proceedings. As was stated in Smart Design LLC v Carolyn Hughes WIPO Case No D2000-0993 (a case that the Complainants expressly rely upon):

"In this Panel's view the test under paragraph 4(a)(i) of the Policy, ... is or ought to be a relatively easy test for a Complainant to satisfy, its purpose simply being to ensure that the Complainant has a bona fide basis for making the Complaint in the first place".

Similarly, paragraph 1.7 of the WIPO Overview 3.0 states that "It is well accepted that the first element functions primarily as a standing requirement".

This approach has manifest itself in a number of ways. First, panels have tended to adopt a low threshold when it comes to the question of "confusing similarity" and it is usually sufficient to merely demonstrate that the mark relied upon is recognizable in the domain name (again see section 1.7. of the WIPO Overview 3.0). Second, a significant number panels have been prepared to adopt a wide definition of what is a trade mark for the purposes of the UDRP, such that not only are common law trade mark rights recognised but also analogous rights in civil law systems (see section 1.3 of the WIPO Overview 3.0). Third, what constitutes "rights" in a trade mark has also been given a relatively wide interpretation, extending not just to trade mark holders but at times licensees and affiliates of trade mark owners.

In the present case there is no doubt that Amarr is the owner of at least a number of registered trade mark rights in different jurisdiction which comprise or incorporate the term Amarr.

The Panel is also more than satisfied that those trade marks are confusingly similar to each of the Domain Names. One of the Domain Names is essentially that term with the addition of an extra letter "r" combined with the ".com" top level domain. The other Domain Name can best be read as "amarr.com" with the letter "m" substituted with the letters "rn". When read quickly the letters "rn" are likely to be misread as the letter "m". Further, the Panel has little doubt given the way in which the Domain Names have been used, that this was the deliberate intent of the Respondent in this case. It follows that the relevant mark is in the view of the Panel clearly recognisable in each of the Domain Name and the Complainants has demonstrated confusing similarity.

Accordingly, the only real issue in this case so far as the first element of the Policy is concerned is whether the Complainants have relevant rights in the relevant trade marks.

Assa Abloy originally was the sole Complainant in these proceedings. It contends that it has rights in the relevant trade marks for the purposes of the Policy by reason of the fact that it is the parent of the trade mark holder. In addition (in response to the first procedural order issued in these proceedings) it claimed that it held those rights because it had been expressly authorised to commence these proceedings. However, for reasons that the Panel will go on to explain in greater detail, it is important to note that Assa Abloy has at no time claimed that it has ever used the AMARR trade mark in respect of any goods and services. The claim of rights essentially is said to arise solely out of its corporate relationship with the rights holder and the rights holder's authorisation.

The Panel disagrees that in these circumstances Assa Abloy has rights. That conclusion is now somewhat academic since in response to a second procedural order, Assa Abloy requested that Amarr be joined as an additional Complainant in these proceedings and the Panel has acceded to that request. However, this was only done after the Panel gave the parties an indication that were this not done the Complaint was likely to be rejected. Further, Assa Abloy has put in detailed argument in this case on this issue which deserves to be addressed in this decision. There is also the fact that in Assa Abloy AB v Xandra Leet CAC-UDRP-105072 it would appear that the panel was satisfied that Assa Abloy had relevant rights in the trade marks the subject of the current proceedings. For all these reasons the Panel considers it appropriate to address the question of Assa Abloy's rights in some detail and to explain why it has rejected Assa Abloy's arguments in this respect.

The issue of who has rights in a trade mark is addressed in section 1.4 of the WIPO Overview 3.0. This reads as follows:

1.4 Does a trademark owner's affiliate or licensee have standing to file a UDRP complaint?

1.4.1 A trademark owner's affiliate such as a subsidiary of a parent or of a holding company, or an exclusive trademark licensee, is considered to have rights in a trademark under the UDRP for purposes of standing to file a complaint.

While panels have been prepared to infer the existence of authorization to file a UDRP case based on the facts and circumstances described in the complaint, they may expect parties to provide relevant evidence of authorization to file a UDRP complaint.

In this respect, absent clear authorization from the trademark owner, a non-exclusive trademark licensee would typically not have standing to file a UDRP complaint.

1.4.2 Where multiple related parties have rights in the relevant mark on which a UDRP complaint is based, a UDRP complaint may be brought by any one party, on behalf of the other interested parties; in such case, the complainant(s) may wish to specify to which of such named interested parties any transfer decision should be directed.

The Complainant contends that there is a typographical error in the WIPO Overview 3.0 and that the words "subsidiary of a parent", should in fact read "subsidiary or a parent". In support of that contention, it refers to the previous version of the Overview (i.e. WIPO Overview 2.0), which stated at section 1.8

1.8 Can a trademark licensee or a related company to a trademark holder have rights in a trademark for the purpose of filing a UDRP case?

...

Consensus view: In most circumstances, a licensee of a trademark or a related company such as a subsidiary **or** parent to the registered holder of a trademark is considered to have rights in a trademark under the UDRP. For the purpose of filing under the UDRP, evidence of such license and/or authorization of the principal trademark holder to the bringing of the UDRP complaint would tend to support such a finding. Panels have in certain cases been prepared to infer the existence of a license and/or authorization from the particular facts, but in general, relevant evidence is desirable. ... [emphasis added].

The Panel is not persuaded that the change of the word "or" to "of a" was an error, but ultimately whether this is right or wrong is not determinative. The WIPO Overview attempts to conveniently synthesise a very large number of UDRP decisions from which it draws certain propositions, themes and conclusions. As such it is an incredibly useful tool both for parties and panelists, who can and do cite the same in submissions and decisions, without the need to cite specific cases. That such a resource exists is particularly helpful in a system such as the UDRP where there is no formal doctrine of precedent and the vast number of cases that have been decided under the Policy mean that it can be all too easy to find a case where the wording of the decision can be misread out of context or represents a view that has not been adopted or has even been expressly rejected by the vast majority of panelists.

However, the Overview is not akin to legislation. As such what matters as much, if not more so, than the precise wording used in the Overview, is the reasoning advanced for a particular view either in the text of the Overview itself and in the cases that are said to support it. In this respect, all versions of the Overview to date have also identified a selection of cases that are said to illustrate and support the propositions advanced.

The last two versions of the Overview make it clear that the consensus among panelist is that trade mark licensees may be able to bring proceedings under the UDRP. They do not explain why this is the case, although it is relatively easy to understand why that may be so. First, the grant of the licence grants "rights" in the sense of being able to use the trade mark without objection from the trade mark holder. Second, in some cases under national trade mark law the grant of a licence will also confer rights that are also exercisable against third parties. So, for example, when it comes to EU trade marks, Article 25 (3) of the EU Trade Mark Regulation (EU) 2017/1001 states:

"Without prejudice to the provisions of the licensing contract, the licensee may bring proceedings for infringement of an EU trade mark only if its proprietor consents thereto. However, the holder of an exclusive licence may bring such proceedings if the proprietor of the

trade mark, after formal notice, does not himself bring infringement proceedings within an appropriate period.”

As the wording of the relevant European law demonstrates, the existence or otherwise of consent of the trade mark owner can sometimes be important when it comes to determining whether a licence grants rights against a third party.

Although the way in which Section 1.4 of the WIPO Overview 3.0 is expressed is very similar to the position in European law, it is not quite the same and the Overview does not say that whether a licensee has “rights” depends upon local law. Instead, it appears to set out an autonomous concept of “rights in” a trade mark for the purposes of the UDRP regardless of in what jurisdiction or jurisdictions the underlying trade mark exist (in the same way as the second and third elements of the Policy tend to be interpreted autonomously – as to which see section 4.15 of the WIPO Overview 3.0).

However, regardless of whether “rights” is assessed by reference to local law or autonomously, the fact that a licensee may have rights under the Policy is conceptually intelligible.

Why an “affiliate” of a trade mark holder (i.e. a company belonging to the same group of companies as a trade mark holder) might also have sufficient rights to commence UDRP proceedings is at first sight less obvious. Although they may form part of the same group and as a consequence are under common control, they nevertheless remain separate legal entities each with their own distinct assets, rights and obligations. It does not follow from the fact that one company in the group has certain rights that all other companies also hold those rights.

That said, it is common practice for a single specific company within a corporate group to hold the intellectual property rights used by companies within the group. When it comes to trade marks, sometimes the use of the marks by other companies within the group will be governed by some form of inter-company agreement, but even if no such formal agreement exists, as a matter of common sense it is likely that the formal trade mark holder has agreed to that use and the user at least benefits from some sort of implied or informal licence.

Looked at in this way, the grounds upon which an affiliate may have rights in a trade mark is conceptually no different from that of any other licensee. Further, although section 1.4 does not suggest that affiliates, in contrast to unrelated non-exclusive licensees, require express authorisation from the trade mark holder to bring proceedings under the UDRP, that is perhaps unsurprising given that the very fact that the affiliate forms part of a broader corporate group of which the trade mark owner forms a part, means that the consent of the trade mark owner can usually also be inferred.

Further, if the basis upon which an affiliate may have rights in a trade mark is no different to that of any other licensee, it also follows that if the affiliate is not a licensee, its position is not improved merely because the trade mark owner has expressly authorised that affiliate to commence UDRP proceedings on its behalf. Law firms are frequently authorised to bring intellectual property proceedings on behalf of their clients, but that does not mean they themselves have rights in the intellectual property in question such as to allow them to bring UDRP proceedings in their own name. An argument could possibly be advanced based on local law that the position is different when it comes to collecting societies (as to which see Article 4 (c) of EU Directive 2004/48/EC and the decision of the CJEU in *Coöperatieve Vereniging SNB-REACT U.A. v Deepak Mehta* C-521/17), and the Panel notes that the Complainants’ representative in this case is such a society. However, this collecting society is not a named Complainant in these proceedings and it has not advanced any argument along these lines.

It might be argued that a parent of a trade mark owner, also has rights in a trade mark by reason of the fact that it directly or indirectly owns the trade mark owner. However, ultimately this Panel is not persuaded that this is correct. Ownership of the whole or part a corporate entity is legally very different in character to having rights in an item of intellectual property owned by that corporate entity. A holder of shares in a company, does not merely by reason of that shareholding have any rights in that company’s IP. It not easy to see why as a matter of principle the fact that all the shares are owned by a single entity makes any difference.

In the opinion of the Panel, this analysis is consistent with the language used in both the current and previous drafts of the WIPO Overview, but what is more important is whether this is consistent with the case law cited in this respect in both the WIPO Overview 2.0 and the WIPO Overview 3.0 and the reasoning advanced in that case law.

With this in mind the Panel has reviewed each of the relevant cases. Of the six cases cited by section 1.8 of the WIPO Overview 2.0, five involve affiliates relying upon rights of other companies in their group.

In particular:

- In *Toyota Motor Sales U.S.A. Inc. v. J. Alexis Productions* WIPO Case No. D2003-0624 the Complainant was a subsidiary of the trade mark owner but was also expressly identified as a licensee of the relevant mark.
- In *Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington* WIPO Case No D2003-0796, a number of the complainants were owners of relevant marks. The panel did accept that one of the complainant’s Grupo Televisa, S.A also had rights by reason of being the parent of companies that held relevant rights. However, that conclusion was not necessary for the panel to reach its decision in this case and it also clear from merely the name of that parent and the fact that the rights relied upon included rights in the mark TELEVISA, that the parent was using the rights in question.
- In *Spherion Corporation v. Peter Carrington, d/b/a Party Night Inc.* WIPO Case No. D2003-1027, the panel accepted that the complainant had rights by reason of being the parent company of companies holding the relevant trade mark registration. However, yet again it is clear from the name of the complainant that it was also using and was at least an informal licensee of those rights.

- In *Teva Pharmaceutical USA, Inc. v. US Online Pharmacies* WIPO Case No. D2007-0368, the complainant as well as being part of the same group as the relevant trade mark holder was expressly recorded as being an exclusive licensee of the relevant mark.
- *Komatsu Deutschland GmbH v. Ali Osman / ANS* WIPO Case No. D2009-0107 was a case where the complainant was a subsidiary of the trade mark holder, was clearly using the relevant trade mark and was acknowledge to have a right to do so under a distribution agreement.

Similarly, section 1.4 of the WIPO Overview 3.0, makes reference to another five cases where a claim was brought by an affiliate. They are as follows:

- *Allianz Sigorta A.S v. Efe Sancak*, WIPO Case No. D2011-0111, where the complaint was brought by a Turkish subsidiary of the trade mark holder. In that case the panel appeared to consider the fact that the complainant was “authorized [by reason of a document that predated the commencement of the UDRP proceedings] to claim trademark rights in the mark ALLIANZ in any UDRP proceedings against alleged trademark infringer on behalf of Allianz SE”. However, it is also clear that the complainant had for a number of years been using the relevant mark with the trade mark owner’s consent.
- *RGM Trading, LLC v. rgm-trading.com, RGM-Trading / Ronald Perry, rgmthk.com, RGM-Trading / Bushan Shimpi* WIPO Case No. D2012-1049, which again was a case where a subsidiary was using the trade mark rights of the parent. Interestingly the panelist in that case questioned whether the mere corporate relationship between the trade mark owner and the complainant was sufficient to grant rights.

In particular, he stated as follows:

“However, is the RGM trade mark a trade mark in which the Complainant has rights? Ordinarily, one would expect a licensee to produce evidence of the licence and some indication from the licensor that the licensor supports the complaint and is happy for the domain name in issue to be transferred to the licensee.”

The Complainant did none of those things. However, in response to a procedural order issued by the Panel, the Complainant produced a letter from its parent company confirming that the Complainant is a subsidiary and a licensee of the RGM trade mark.” [emphasis added]

- *Volkswagen Group of America, Inc. v. Kim Hyeonsuk a.k.a. Kim H. Suk, Domain Bar, Young N. and Kang M.N.*, WIPO Case No. D2014-1596, where the complainant claimed to have the “specific authority to pursue this matter by the relevant trademark owners and parent companies”. The panel did appear to consider the grant of this authority to be significant but also appeared to rely upon the fact that the Complainant had asserted that it was “the exclusive licensed importer into the U.S. of Audi and Volkswagen motorcars, and Ducati products”, which bore the marks used in the domain names in issue. The complainant was accordingly clearly a licensee of all the relevant marks.
- *BSH Home Appliances Corporation v. Michael Stanley / Michael Sipo*, WIPO Case No. D2014-1433, where the complainant was a subsidiary of the trade mark holder. The case is one where it appears that once again the complainant was using the relevant marks. It is, however, notable that this is one of the few cases where the panel purports to put forward a rationale for the rights of a subsidiary in such circumstances. In that case the panelist asserted as follows:

“The Respondents raise a preliminary issue about this Complainant’s right to invoke the Policy when its German parent holds the trademarks upon which the Complaint is based. While it is clear that not only a mark owner may have sufficient rights in a mark to maintain a Policy proceeding, little case law focuses on the issue presented here: whether a wholly-owned subsidiary may do so when the parent holds the trademarks. The limited precedent that exists indicates that it may, either under a theory of implied license, see *DigiPoll Ltd. v. Raj Kumar*, WIPO Case No. D2004-0939, or a more general notion based on corporate control and common sense. As stated in *Grupo Televisa, S.A., Televisa, S.A. de C.V., Estrategia Televisa, S.A. de C.V., Videoserpel, Ltd. v. Party Night Inc., a/k/a Peter Carrington*, WIPO Case No. D2003-0796, “It has been accepted in several decisions that a company related as subsidiary or parent to the registered holder of a mark may be considered to have rights in the mark. See for example *Miele, Inc. v. Absolute Air Cleaners and Purifiers*, WIPO Case No. D2000-0756 where Complainant’s grand-parent corporation had a long established U.S. trademark registration for the mark for vacuum cleaners.”

- *Taylor Wimpey Holdings Limited and Taylor Wimpey PLC v. Annette Johnson, Tangerineuk*, WIPO Case No. [D2016-2116](#), where the complainants both formed part of the same group, one held relevant trade mark rights and it was clear not only that the other used that mark but that the other did so under an express license.

Therefore, in summary, not a single one of the cases referred to in either edition of the Overview involved a parent company successfully claiming rights in a mark, where that parent company was not also either an express or implied licensee of the rights holder. Although, on occasion some panelists appear to consider it significant that the complainant had express authorisation from the trade mark holder to commence UDRP proceedings, others did not. There also appears to be no example of a panel holding that the complainant had rights merely by reason of the authorisation alone, let alone providing any explanation as to why this would be sufficient.

Many of the cases also appear to consider the fact that the complainant was a licensee of the trade mark owner to be a matter of significance. Further, in the case of *BSH Home Appliances Corporation v. Michael Stanley / Michael Sipo*, WIPO Case No. D2014-1433 endorsed “a theory of implied license” which seems to be consistent with this Panel’s analysis. Admittedly that same panel also appeared to endorse “a more general notion based on corporate control and common sense”, but that “general notion” is not further explained and is not supported by any earlier authority.

Further, the arguments advanced by Assa Abloy in its response to Procedural Order No. 1 do not in the opinion of the Panel take matters much further.

In particular:

- Assa Abloy contends in support of its contention that there is a typographical error in the WIPO Overview 3.0 that “[t]here is no logical argument to be made for an indirectly related company such as a sister company to have standing in a UDRP proceeding, but a parent company itself not having such standing”. However, the argument proceeds on the assumption that what matters here is not whether a complainant has rights in a trade mark, but the degree of practical control that the complainant has within a corporate group of the trade mark holder. For reasons that have been explained, the Panel disagrees with that assumption.
- Assa Abloy makes reference to two passages said to come from Bettinger and A. Waddel in their contribution regarding the Uniform Domain Name Dispute Resolution Policy [UDRP] in the Domain Name Law and Practice, an International Handbook (second edition, 2015). The first refers to a “licensee or subsidiary who possesses the right to use a given trademark under the relevant license or internal agreement” and therefore appears to endorse the approach adopted by the Panel. The second, is the assertion that “where the parent company (mark owner) has given its express consent to the complainant [...] such evidence will normally provide sufficient evidence of rights for the purposes of the Policy”. However, the page from which this quote is taken is not provided and it not possible to discern the context in which it was said. The Complainants also identify no case law which is said to support that conclusion.

Accordingly, and in conclusion, the Panel rejects the Complainants’ contention that Assa Abloy has rights in the relevant marks merely by reason of its position as a parent of the rights holder and having authority to bring UDRP proceedings, when that parent was not actually using the marks in question and is not at least an implied licensee in respect of those marks. Instead, it is Amarr that has those rights, and it is on this basis alone that the Complainants have satisfied the first element of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

For reasons that are addressed in greater detail in the Principal Reasons section of this Decision, the Complainants have shown to the satisfaction of the Panel, that the Respondent has no rights or legitimate interests in respect of each of the Domain Names (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

For reasons that are addressed in greater detail in the Principal Reasons section of this Decision, the Complainants have shown to the satisfaction of the Panel, that each of the Domain Names 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 on reviewing the case file noted that the trade mark rights relied upon by Assa Abloy, the then sole Complainant, were owned by a subsidiary of the Complainant and there was no evidence that Assa Abloy (as opposed to its subsidiary) used the trade mark in respect of goods or services. Accordingly on 26 June 2023, the Panel issued a procedural order ("Procedural Order No. 1"), inter alia, inviting Assa Abloy to file submissions as to the basis upon which it had rights in the marks relied upon (referring the Complainant in this respect to [section 1.4](#) of the WIPO Overview 3.0) and/or to either join or substitute Amarr as a complainant in these proceedings.

Assa Abloy filed submissions setting out further contentions and evidence as to why it claimed rights for the purposes of the Policy. Having considered the same and on 30 June 2023 the Panel issued a further procedural order ("Procedural Order No. 2") stating that it was not persuaded by the arguments advanced by Assa Abloy and would explain why this was the case in its decision in due course. Procedural Order No. 2 also extended the time for Assa Abloy to either join or substitute Amarr as a complainant in these proceedings.

On 3 July 2023, Assa Abloy made a request that Amarr be added as a complainant in these proceedings and the Panel acceded to that request.

Procedural Order No. 1 also noted that although the Respondent was entitled to respond to the issues raised in the Procedural Order No. 1, the Respondent was highly unlikely to do so. Accordingly, Procedural Order No.1 provided that if the Respondent wanted to have an opportunity to put in a further submission in this respect, it must first make a request to that effect accompanied by disclosure of the identity and genuine contact details for the Respondent and evidence that the person so identified was indeed making that request. Procedural Order No. 2 extended the time for the Respondent to make such a request. No such request was filed by the Respondent.

A further procedural issue in this case is that notwithstanding that each of the Domain Names were registered at different times and prima facie in the names of different persons, the Complainants contended that in reality the Domain Names are controlled by the same person or persons and that this is a case where it is appropriate to "consolidate" the proceedings in relation to these Domain Names. For reasons that were explained in greater detail by this Panel in Meta Platforms, Inc., Instagram, LLC, WhatsApp, LLC v. Domains By

Proxy et al WIPO Case No. D2022-0212 it is questionable whether "consolidation" is the correct terminology in this sort of case, but nevertheless it is clear that where domain names are held in the names of multiple persons but are in fact controlled by the same person or persons, it is legitimate for the complainant to ask that all relevant domain names be dealt with in a single set of proceedings.

In Procedural Order No. 1 the Panel provisionally stated that it had been persuaded "consolidation" was appropriate in this case. That remains the Panel's position. The Panel is satisfied that the Domain Names are indeed controlled by the same person or persons notwithstanding that they were registered at different times. The reasons for this are not only that both Domain Names are essentially typo squatting variants of Amarr's trade marks and have been used in a similar manner to engage in the same sort of fraud. It is also the case that e-mails using both Domain Names have named the same purported employees of Amarr, have been sent to the same recipient and even go so far as to use the same Amarr account number for that recipient. Last but not least the Domain Name <amarr.com> has been used in the organisation details for the Domain Name <arnarr.com>. Accordingly, the Panel accedes to the Complainant's request in this respect.

Finally, Procedural Order No. 1 also recorded that the need to issue a procedural order in this case and the need to consider Assa Abloy's request for consolidation were such as to justify the payment of an Additional Fee pursuant to paragraph 1(a) of Annex A of the Supplemental Rules, and made a formal determination to that effect. In so doing it relied upon its previous decision in ECCO Sko A/S v Zhouyiming CAC-UDRP-100389 as to when such a determination might be appropriate. As a consequence, Assa Abloy was required to pay a further fee of €300, and this was paid by within 5 days.

Accordingly, the Panel is satisfied that there is no procedural reason why these UDRP proceedings cannot proceed to determination.

PRINCIPAL REASONS FOR THE DECISION

The Complainants have demonstrated that Amarr owns registered trade mark rights in various forms and jurisdictions in respect of the trade mark AMARR. The Panel is also satisfied that the AMARR trade mark is confusingly similar to each of the Domain Names. Each Domain Name can most sensibly be understood as typopsquatting variants of the AMARR mark and although the test of confusing similarity involves an objective assessment the Panel is persuaded that the Respondent deliberately intended that the Domain Names be understood as referring to the AMARR mark.

For reasons that are explained in great detail in the Rights section of this decision, the Panel was unconvinced that the initial Complainant in this case, Assa Abloy, has rights in the relevant marks merely by reason of its position as a parent of the rights holders, in circumstances where the parent has not actually used the marks in question. In the opinion of the Panel the conceptual basis for an affiliate of a trade mark holder claiming rights for the purposes of the UDRP in a mark owned by an affiliate is essentially no different from any other licensee. In practical terms that requires the parent to show that it is at least an implied licensee of the mark. An affiliate will also usually need to show that it is authorised by the rights holder to bring UDRP proceedings but this can usually be inferred from the corporate relationship alone.

The questions of lack of rights or legitimate interests and bad faith registration and use are much more straight forward. The Panel is more than satisfied that each of the Domain Names have been deliberately registered and held with a view to furthering fraud. That fraud has taken the form of using the Domain Names to impersonate Amarr and employees of Amarr with a view to attempting to persuade an authorised distributor of Amarr to pay monies into an account controlled by the Respondent.

There is no right or legitimate interest in holding a domain name in a manner that fraudulently impersonates another (see, for example, *Vestey Group Limited v. George Collins*, WIPO Case No. D2008-1308) and such use provides positive evidence of the fact that no such right or interest exists. Further, the registration and holding of a domain name for such a purpose provides a clear-cut examples of bad faith registration and use.

The procedural complications in this case which included issuing procedural orders to address the question of whether Assa Abloy held rights in the relevant trade marks and the need to consider the Complainant's request for "consolidation" of proceedings involving Domain Name registered in different names also led the Panel to make a formal determination that an Additional Fee was due pursuant to paragraph 1(a) of Annex A of the Supplemental Rules. In so doing the Panel relied upon its previous decision in ECCO Sko A/S v Zhouyiming CAC-UDRP-100389 as to when such a determination might be appropriate.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **amarr.com**: Transferred
2. **arnarr.com**: Transferred

PANELLISTS

Name	Matthew Harris
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DATE OF PANEL DECISION	2023-07-06
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Publish the Decision	
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