# Decision for dispute CAC-UDRP-106032

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| Case number | CAC-UDRP-106032 |
| Time of filing | 2023-12-04 10:18:25 |
| Domain names | martinbencher.com |

## Case administrator

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| Name | Olga Slanařová (Case admin) |

## Complainant

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| Organization | Martin Bencher (Scandinavia) A/S |

## Complainant representative

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| Organization | Convey srl |

## Respondent

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| Name | Bahadir Tonguc |

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant relies upon the following registered trade mark, amongst others:

- Australian trade mark registration no. 1427331, filed on 26 May 2011, for the word mark MARTIN BENCHER, in class 39 of the Nice Classification;
- International trade mark registration no. 1713311, filed on 15 November 2022, for the word mark MARTIN BENCHER, designating, inter alia, Turkey, in classes 6, 12, 35 and 39 of the Nice Classification; and
- EU trade mark registration no. 018702756, filed on 16 May 2022, for the word mark MARTIN BENCHER, in classes 6, 12, 35, and 39 of the Nice Classification.

(hereinafter, 'the Complainant's trade mark' or 'the trade mark MARTIN BENCHER', interchangeably).

The disputed domain name was registered on 4 August 2023 and, at the time of writing of this decision, it resolves to a parking webpage with the domain broker Natro (for present purposes, 'the Respondent's website').

FACTUAL BACKGROUND

### A. Complainant's Factual Allegations

The Complainant’s statements of fact can be summarised as follows:

Martin Bencher was founded in 1881 in the UK as a shipping and freight forwarding company to serve the maritime industry in the UK and continental Europe. Martin Bencher was eventually wound up. In 1997, the Complainant was founded in Denmark with the aim of offering freight forwarding and shipping services mainly to Scandinavian customers.

The Complainant has expanded its presence globally, with offices across many countries, including Turkey (set up in 2019), counting more than 170 employees and c. USD 150m of turnover.

The Complainant's trade mark is distinctive and known worldwide in the sector of freight forwarding, shipping services and moving oversized cargo.

On 5 August 2022, shipping group A.P. Moller-Maersk announced the acquisition of the Complainant.

In addition to the trade marks set out in the above section 'Identification of rights', and others in its portfolio, the Complainant operates its activities through the domain name <martin-bencher.com>, which was registered 12 October 1998.

The Complainant claims that the Respondent is prima facie active in the maritime sector owing to the following indicia:

i. The Respondent has published an academic article addressing issues pertaining to the field of ship brokerage;

ii. The Respondent is a former lecturer of Maritime Training & Education Ltd; and

iii. The telephone number belonging to the Respondent in the Whois information corresponds to the head office of Supramar Shipping Ltd, which is a Turkish company competitor of the Complainant.

### B. Respondent's Factual Allegations

The Respondent served a Response in this UDRP administrative proceeding on 12 December 2023, the contents of which are laid down in the below section 'Parties Contentions'.

In the Response and further submission in response to the PO1 (defined below), the Respondent does not deny its academic activities as revealed by the Complainant.

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## PARTIES CONTENTIONS

### A. Complainant's Submissions

The Complainant's contentions can be summarised as follows:

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

The Complainant states that the disputed domain name incorporates the trade mark MARTIN BENCHER in its entirety, and that the generic Top-Level Domain (gTLD) <.com> is a standard registration requirement and, therefore, it should be disregarded in the assessment of confusing similarity.

The Complainant therefore concludes that the disputed domain name is identical and confusingly similar to the Complainant's trade mark.

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

The Complainant states that the Respondent is not known by the disputed domain name, as individual, business or other organisation nor does its name correspond to 'Martin Bencher' or the disputed domain name. In fact, the Complainant claims that the Respondent's name is 'Mehmet Basaran', as indicated in the exchange of correspondence with the Complainant, and that the Respondent also uses the alias 'Milan Popovic' in his email address.

Furthermore, the Respondent has offered the disputed domain name for sale to the Complainant for USD 1500, whose amount is well in excess of the costs corresponding to registration and maintenance of the disputed domain name. The Complainant avers that such behaviour further evidences of the Respondent’s lack of rights or legitimate interests in the disputed domain name.

In view of the above, the Complainant concludes that the Respondent has no rights or legitimate interests in the dispute domain name.

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

**Registration**

The Complainant states that the disputed domain name was registered in bad faith, owing to the following indicia:

• The Complainant's trade mark MARTIN BENCHER is so widely known in the maritime industry that the Respondent could not have possibly ignored the existence of the Complainant's trade mark at the time of registering the disputed domain name. Besides, the Complainant has been likewise for many years active in Turkey where the Respondent is prima facie based;

• The Complainant's trade mark MARTIN BENCHER has been in use since 1881 for shipping transport, is known worldwide in the sector of freight forwarding, shipping services and moving oversized cargo, whereas the disputed domain name was registered in 2023;

• The Respondent registered the disputed domain name one year later the widespread news about the acquisition of the Complainant by the company A.P. Moller – Maersk, at which time the Respondent would have known of the existence of the Complainant; and

• The Respondent also registered the domain name <martinbencher.com.tr> on 4 August 2023, which showcases the Respondent's intent to profit in some fashion from, or otherwise exploit, the Complainant's trade mark.

Use

The Complainant avers that the Respondent uses the disputed domain name in bad faith in so far as the Respondent offers the disputed domain name for sale in excess of the initial registration costs (USD 1500). The Complainant further avers that an offer to sell a disputed domain name in excess of out-of-pocket costs may evidence bad faith under 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.

B. Respondent's Submissions

The Respondent served a Response in this UDRP administrative proceeding on 12 December 2023, the content of which is copied below:

‘I contest the claim that I have no legitimate rights or interests in the domain name "marEnbencher.com". Contrary to the complainant's assertions, the offered sale of the domain name is not indicative of bad faith but rather a reasonable negotiation.

I acknowledge the complainant's cease and desist letter and expressed my willingness to cooperate and negotiate in finding a mutually acceptable solution. The proposed fee of $1,500 reflects a fair and balanced approach to resolve this matter.

I request a fair evaluation of the facts and consider my genuine intention to use the domain for a legitimate purpose. I am open to further discussions to reach an amicable resolution.

I hereby submit the exchanges for the tribunal's scrutiny where it is obvious that both the former owner and the current owner of Martin Bencher company and related trademark(s) have opted not to register it until now and are currently seeking to seize it in a hostile manner.

I am confident that the arbitral tribunal will indeed render a fair decision, and the dispute between the parties will come to an end.

I hereby reserve all my rights.'

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the disputed domain name is identical or confusingly similar to a trade 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

A. Procedural Order No. 1

The Panel transmitted to the Parties the Procedural Order No. 1 ('PO1') on 20 December 2023, as follows:

> '1. PROCEDURAL BACKGROUND
>
> 1.1 This administrative proceeding is conducted pursuant to the Uniform Domain Name Dispute Resolution Policy ('the UDRP Policy'); the Rules for Uniform Domain Name Dispute Resolution Policy ('the UDRP Rules'), both of which issued under the auspices of the Internet Corporation for Assigned Names and Numbers (ICANN); and the Center of the Czech Arbitration Court ('the CAC') Supplemental Rules for Uniform Domain Name Dispute Resolution Policy ('the Supplemental Rules').
>
> 1.2 Rule 10 of the UDRP Rules affords a latitude of discretion for panels to conduct a UDRP administrative proceeding as they see fit, so long as it conforms to the procedural legal framework.
>
> 1.3 The Panel has reviewed the available record and hereby issues a procedural order, the particulars of which are set out in section 2 below ('the Procedural Order No.1' or 'PO1' interchangeably).
>
> 2. PARTICULARS OF PROCEDURAL ORDER NO. 1
>
> 2.1 The Procedural Order No.1 is made to seek clarification from the Respondent in respect of the underlying intention to use the disputed domain name.
>
> 2.2 Paragraph 4(c) of the UDRP Policy sets out a non-exhaustive list of examples by which the Respondent can demonstrate its rights or legitimate interests in the disputed domain name, as follows:
>
> > (i) before any notice of the dispute, the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or
> >
> > (ii) the Respondent (as an individual, business, or other organization) has been commonly known by the disputed domain name, even if the respondent has acquired no trademark or service mark rights; or
> >
> > (iii) the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.
>
> 2.3 Paragraph 4(a)(ii) of the UDRP Policy therefore requires the Respondent to put forward evidence eliciting rights on legitimate interests in the disputed domain name.
>
> 2.4 In the Response, the Respondent refers to his 'genuine intention to use the domain [martinbencher.com] for a legitimate purpose…'. The Respondent further states in an exchange with the Complainant dated 7 August 2023 (as evidenced in annex to the Response) that the Respondent 'registered this domain [<martinbencher.com>] with the intention of utilizing it for a project I [the Respondent] had in mind…'.
>
> 2.5 The Panel is however unable to locate any further evidence informing the Respondent's intention to use the disputed domain name.
>
> 2.6 In view of the above, the Panel hereby **ORDERS** the Respondent to clarify the basis upon which the Respondent asserts that he has rights or legitimate interests in the disputed domain name <martinbencher.com> to satisfy the requirement under paragraph 4(a)(ii) of the UDRP Policy.
>
> 2.7 The Panel invites the **Respondent** to respond to the PO1 by **25 December 2023** (CET time).
>
> 2.8 The **Claimant** is at liberty to comment on the Complainant's response by **27 December 2023** (CET time).
>
> 2.9 The Panel invites the Parties to confirm their position on settlement and encourages the Parties to consider seeking the suspension of this UDRP administrative proceeding to explore potential settlement options.'

B. Respondent's Response to PO1

The Respondent provided his response to PO1 on 25 December 2023, the content of which is copied below:

> 'In response to PO1; As a professional businessperson and an academic, I have consistently engaged in pro-bono educational activities, authored articles for journals, and consistently aimed to educate young individuals. These details have already been presented to you by the claimant.
>
> My commitment to education and knowledge-sharing has been a fundamental aspect of my professional identity since as long as I can remember. I have been building a broad education platform with the specific intent of "non-commercial" educational purposes and aiming young students' development especially in special cargoes. Upon an instant decision and action to register martinbencher.com among some other domain names, my fellow trainers, with whom I work closely, informed me that

this company has been acquired by Maersk (and a rebranding has taken place). At that point, I promptly sought to transfer this domain, which is evidenced by the contents and aim of the messages sent to them.

I would like to emphasize that if I were aware beforehand and aimed to exploit, I would not have offered to transfer the domain without expecting any additional gains. As evident from my approaches, the intellectual property department/people of the claimant did not respond to our messages for a long 'me. Despite this, we refrained from using the domain and, through considerable effort, managed to reach their board of directors to inform them of the situation. I believe there could be no greater indication of good faith than this. Besides, while the claimant claims a rich history dating back to 1881, it is notable that the specific domain name 'MartinBencher.com' was registered by us in August 2023. As the claimant describes Martin Bencher as an established company with a significant history, the question arises as to why neither Martin Bencher, nor Maersk, nor A.P. Moller secured this particular domain until now.

In the light of above, we believe that the only thing that could be discussed is the cost of the domain to us but nothing more. My belief is unwavering that individuals and organizations should not be allowed to neglect registering domains for years which they consider essential and, when someone else registers them for legitimate purposes, maliciously attempt to seize control.

I would like to emphasize that, as from the date of registration of the domain, I have not utilized "MartinBencher.com" for any website or engaged in any communication with individuals or entities with malicious intent. There is no evidence of malicious use, and the domain was offered for sale to the claimant from the beginning, reflecting a willingness to cooperate.'

**C. Complainant's Response to PO1**

The Complainant provided its comments in reply to the Respondent's Response to PO1 on 27 December 2023. The Complainant reiterated its position articulated in the Complaint regarding the Respondent's purported lack of rights or legitimate interests in the disputed domain name.

**D. Panel's further directions**

On 30 December 2023, and at the request of the Respondent, the Panel provided further directions to the Parties on the potential suspension of this UDRP administrative proceeding, as per Rule 17 of the UDRP Rules, and invited the Complainant to confirm, by 2 January 2024, whether it was the Complainant's position that the Panel should proceed to issue a substantive decision.

**E. Complainant's reply to the Panel's further directions**

On 2 January 2024, the Complainant confirmed its position that the Panel proceed to a substantive decision on the merits of this UDRP administrative proceeding.

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.

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## PRINCIPAL REASONS FOR THE DECISION

**A. General**

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 'MARTIN BENCHER' since at least 2011.

The disputed domain name is <martinbencher.com> was registered in 2023, and it consists of the term 'martinbencher' in addition to the gtLD <.com>.

The Complainant's trade mark MARTIN BENCHER is wholly incorporated into the disputed domain name. Furthermore, and as rightly

asserted by the Complainant, the gTLD <.com> is typically disregarded by UDRP panels under this UDRP Policy ground given that the gTLD is part of the domain name's anatomy.

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 Panel notes that the Respondent does not appear to carry out any activity for, or have any business or relationship of any nature with, the Complainant. There is no evidence of any contractual arrangement/endorsement/sponsorship between the parties to that effect, nor has the Complainant otherwise authorised the Respondent to make any use of the Complainant's trade mark or to register the disputed domain name on the Complainant's behalf. In addition, nothing on the record suggests that the Respondent (as an individual, business, or other organisation) has been commonly known by the disputed domain name.

The Panel has issued PO1 to seek clarification from the Respondent with respect to his rights or legitimate interests in connection with the disputed domain name. The Respondent's response to PO1 was nevertheless rather unsatisfactory and somewhat evasive, in the Panel's view.

The Panel has already decided in other instances (see eg CAC-ADREU-008272, Julian Marius Pöppel v Manuel Costa) that the business of resale of domain names may be a legitimate business to the extent that it does not violate third party rights. Nonetheless, the Respondent in this instance simply alleges that it has decided 'to register martinbencher.com among some other domain names...'. The Respondent has also made some vague and unsupported by evidence claims that 'I [the Respondent] have been building a broad educational platform with the specific intent of "non-commercial" educational purposes and aiming young students' development especially in special cargoes...'. These statements are however unaccompanied by any documentary proof or further explanation informing the prospective use of the disputed domain name nor are the statements compelling or sufficiently clear as to whether the disputed domain name may, for example, belong to a portfolio of domain names for sale.

The Panel further notes that the Respondent has also attempted to sell to the Complainant the domain name <martinbencher.com.tr>, and this registration also belongs to the Respondent. In the Panel's view, the Respondent's attempt to sell these domain names, weakens the Respondent's position even further, not the least the Respondent being professionally and academically involved in the maritime sector.

The Panel is therefore unconvinced that, before any notice of the dispute, the Respondent used, or made demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services.

In view of the above, the Panel finds that the Complainant has succeeded under paragraph 4(a)(ii) of the UDRP Policy.

D. Registered and Used in Bad Faith

D.1 Registration in bad faith

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

- The Complainant's trade mark has been registered since at least 2011;
- The Complainant is the owner of the domain name <martin-bencher.com>, which was registered in 1998;
- The disputed domain name <martinbencher.com> was registered in 2023 and the Respondent appears to operate in the same industry sector as the Complainant;
- The lack of any credible evidence-backed rationale for the Respondent's choice of the disputed domain name; and
- The Respondent's uncompelling and elusive submissions which suggests, in the circumstances, that the Respondent has registered the disputed domain name in an attempt to target the Complainant.

D.2 Use in bad faith

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

> '(i) circumstances indicating that the respondent has registered or has acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name.'

It is uncontroversial between the Parties that the Respondent has offered the disputed domain name for sale to the Complainant in exchange of USD 1500, which the Panel considers - in the particular circumstances of this case - to be in excess of the documented out-of-pocket costs directly related to the disputed domain name. The Respondent's behaviour would consequently fall in the realm of paragraph 4(b)(i) of the UDRP Policy.

Accordingly, the Panel finds that the Complainant has succeeded under paragraph 4(a)(iii) 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. **martinbencher.com**: Transferred

## PANELLISTS

| Name | **Gustavo Moser** |
|---|---|

DATE OF PANEL DECISION 2024-01-02

Publish the Decision