Decision for dispute CAC-UDRP-106122

Case number	CAC-UDRP-106122
Time of filing	2024-01-03 09:43:41
Domain names	aximum-europ.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	COLAS

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	anzeni aka

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

Complainant is the owner of the following AXIMUM trademarks:

- French trademark AXIMUM n° 3604776 registered on October 14, 2008;
- International trademark AXIMUM n° 1011558 registered since April 14, 2009.

FACTUAL BACKGROUND

Complainant, Colas S.A., from France, is a world leader in construction, upkeep and maintenance of transport infrastructures. In 2022, it achieved sales of 15.5 billion euros. It operates on 5 continents through a network of more than 3,000 production and recycling units for construction materials, and employs over 58,000 people.

AXIMUM, a subsidiary of Complainant, is an expert in the fields of safety and traffic management which operates throughout Europe and employs over 2000 people. In 2020, it achieved sales of 361 million euros. The submitted evidence shows that AXIMUM is active since 1958.

Complainant is holder of several domain names containing the term "AXIMUM", and submits evidence of the domain names:

- <aximum.com> registered on November 10th 2006 and regularly renewed;
- <aximum.fr> registered on October 15, 2008 and regularly renewed.

The disputed domain name <aximum-europ.com> was registered on August 14, 2023 and it resolves to an inactive page. Both facts are substantiated with evidence material.

The disputed domain name is of a later date than the trademark registrations of Complainant.

PARTIES CONTENTIONS

Complainant´s contentions are summarised below.

No administratively compliant Response has been filed.

RIGHTS

Complainant states that the disputed domain name <aximum-europ.com> is confusingly similar to its trademark AXIMUM. Indeed, Complainant's trademark is fully integrated in the domain name and the addition of the geographical term "EUROP" (referring to "EUROPE" with a typo) is not sufficient to escape the finding that the disputed domain name is confusingly similar to the trademarks AXIMUM, as Complainant states.

On the contrary, the addition of the term "EUROP" reinforces the risk of association with Complainant as Complainant operates with its trademark AXIMUM in several European countries through several factories in Europe.

Moreover, Complainant contends that the addition of the gTLD suffix ".COM" does not change the overall impression of the designation as being connected to the trademark AXIMUM. It does not prevent the likelihood of confusion between the disputed domain name and Complainant and its trademark.

Thus, according to Complainant, the disputed domain name <aximum-europ.com> is confusingly similar to Complainant's trademark AXIMUM.

The Panel agrees with the allegations of Complainant: by connecting AXIMUM by a hyphen (-) with EUROP it is clear that AXIMUM is meant to be stand alone, followed by an illustration of a quality of the word which is EUROP. EUROP would immediately be perceived as a typo of the geographical indication Europe and therefore Europe illustrates that this domain name is meant to inform about the geographical width of the company AXIMUM.

Complainant has, to the satisfaction of the Panel, shown the disputed domain name is confusingly similar to the trademark AXIMUM in which Complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

Complainant states that according to the WIPO Case No. D2003-0455, Croatia Airlines d. d. v. Modern Empire Internet Ltd., Complainant is required to make out a prima facie case that 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 Respondent fails to do so, Complainant is deemed to have satisfied paragraph 4(a) (ii) of the UDRP.

Complainant alleges that AXIMUM is a distinctive trademark as it has no meaning in English or any language. Moreover, Complainant alleges that its trademark has a reputation. With respect to the reputation of AXIMUM Complainant submits a printscreen from a Google search on AXIMUM showing only webpages related to Complainant's business.

Consequently, Complainant alleges that, given the distinctiveness of Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of Complainant's trademark.

Moreover, as the disputed domain name resolves to an inactive page, and as Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of Complainant's rights under trademark law, makes it impossible not to conclude that the disputed domain name is not registered and used in bad faith.

Complainant further elaborates that prior WIPO UDRP Panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use and cites some decisions.

The Panel follows Complainant that the trademark AXIMUM is distinctive as the trademark is not descriptive and in fact has no meaning whatsoever.

The reputation is nevertheless more questionable and scarcely substantiated. However, given that Complainant is a French company and it is likely that the reputation of Complainant is existing in France now that the company AXIMUM exists for more than 50 years and has a huge turnover, and is the sole party that pops up in a Google search when typing in AXIMUM the Panel finds that it may be true that AXIMUM has a reputation, at least in France.

Given that Respondent is French too or at least has a connection with France, which can be concluded as its telephone number is a French number, it is likely that Respondent has registered the disputed domain name having Complainant in mind. The registration of the disputed domain name <aximum-europ.com> is therefore in bad faith according to the Panel.

With respect to determining if the domain name is also used in bad faith, the Panel has to weigh whether the passive holding of the disputed domain name can be identified as use in bad faith. Respondent mentions two previous UDRP decisions in which indeed circumstances are described that would establish that also the use of the disputed domain name, namely the passing holding of it, is use in bad faith. Those circumstances are

(i) Complainant's trademark has a strong reputation and is widely known;

(ii) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,

(iv) Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

As written, the Panel follows that the trademark of Complainant has a reputation, at least in France and further it finds that the other above mentioned circumstances are at stake in the present case: Respondent has not reacted in this case; Respondent had a hidden identity and the disputed domain name did not resolve in any active webpage, use in bad faith is hereby proven.

In light of these particular circumstances, the Panel concludes that Respondent's passive holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is also being used in bad faith" by Respondent.

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).

BAD FAITH

Complainant alleges that AXIMUM is a distinctive trademark as it has no meaning in English or any language. Moreover, Complainant alleges that its trademark has a reputation. With respect to the reputation of AXIMUM Complainant submits a printscreen from a Google search on AXIMUM showing only webpages related to Complainant's business.

Consequently, Complainant alleges that, given the distinctiveness of the Complainant's trademark and reputation, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's trademark.

Moreover, as the disputed domain name resolves to an inactive page, and as Respondent has not demonstrated any activity in respect of the disputed domain name, and it is not possible to conceive of any plausible actual or contemplated active use of the domain name by Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law, makes it impossible not top conclude that the disputed domain name is not registered and used in bad faith.

Complainant further elaborates that prior WIPO UDRP Panels have held that the incorporation of a famous mark into a domain name, coupled with an inactive website, may be evidence of bad faith registration and use and cites some decisions.

The Panel follows the Complainant that the trademark AXIMUM is distinctive as the trademark is not descriptive and in fact has no meaning whatsoever.

The reputation is nevertheless more questionable and scarcely substantiated. However, given that Complainant is a French company and it is likely that the reputation of Complainant is existing in France now that the company AXIMUM exists for more than 50 years and has a huge turnover, and is the sole party that pops up in a Google search when typing in AXIMUM the Panel finds that it may be true that AXIMUM has a reputation, at least in France.

Given that Respondent is French too or at least has a connection with France, which can be concluded as its telephone number is a French number, it is likely that Respondent has registered the domain name having Complainant in mind. The registration of the disputed domain name <aximum-europ.com> is therefore in bad faith according to the Panel.

With respect to determining if the domain name is also used in bad faith, the Panel has to weigh whether the passive holding of the disputed domain name can be identified as use in bad faith. Respondent mentions two previous UDRP decisions in which indeed circumstances are described that would establish that also the use of the disputed domain name, namely the passing holding of it, is use in bad faith. Those circumstances are

(i) Complainant's trademark has a strong reputation and is widely known;

(ii) Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the domain name,

(iii) Respondent has taken active steps to conceal its true identity, by operating under a name that is not a registered business name,

(iv) Respondent has actively provided, and failed to correct, false contact details, in breach of its registration agreement, and

(v) taking into account all of the above, it is not possible to conceive of any plausible actual or contemplated active use of the domain name by Respondent that would not be illegitimate, such as by being a passing off, an infringement of consumer protection legislation, or an infringement of the Complainant's rights under trademark law.

As written, the Panel follows that the trademark of Complainant has a reputation, at least in France and further it finds that the other above mentioned circumstances are at stake in the present case: Respondent has not reacted in this case; Respondent had a hidden identity and the disputed domain name did not resolve in any active webpage, use in bad faith is hereby proven.

In light of these particular circumstances, the Panel concludes that the Respondent's passive holding of the domain name in this particular case satisfies the requirement of paragraph 4(a)(iii) that the domain name "is also being used in bad faith" by Respondent.

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).

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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **aximum-europ.com**: Transferred

PANELLISTS

Name	**Marieke Westgeest**

DATE OF PANEL DECISION 2024-02-09

Publish the Decision