

Decision for dispute CAC-UDRP-106366

Case number CAC-UDRP-106366

Time of filing 2024-03-21 10:43:59

Domain names mandatummam.com

Case administrator

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

Complainant

Organization Mandatum Oyj

Organization Mandatum Holding Oy

Complainant representative

Organization Berggren Oy

Respondent

Name John Dragisic

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 owns various national and other marks in 30 countries and including, but not limited to, the following:

1. an EUTM, being the word mark, MANDATUM, Registered Number 002136869, registered on 26 June 2002 in classes 35 and 36;
2. an EUTM, being the word mark, MANDATUM AM, Registered Number 018626044, registered on 3 June 2002 in classes 9, 35 and 36;
3. an EUTM, being the word mark, MANDATUM TRADER Registered Number, 018626047 registered on 3 June 2002 in classes 9, 35 and 36;
4. an EUTM, being the word mark, MANDATUM Registered Number, 018626053 registered on 3 June 2002 in classes 9, 35 and 36;
5. an EUTM, being the word mark, MANDATUM ASSET MANAGEMENT Registered Number, 018627227 registered on 3 June 2002 in classes 9, 35 and 36;
6. an EUTM, being a device mark with the word element, MANDATUM Registered Number, 018627416 registered on 3 June 2002 in classes 9, 35 and 36;

7 an EUTM, being the word mark, MAM, Registered Number, 018626011 registered on 3 June 2002 in classes 9, 35 and 36;

8. a national mark being the word mark, MANDATUM, registered in Finland as Registered Number 224758.

The Complainant also owns many domain names which include the name and word mark, including but not limited to <mandatum.fi>, <mandatum.eu>, <mandatum.se>, <mandatumam.com>, <mandatumam.fi>, <mandatumam.se>, <mandatumtrade.fi>, <mandatumtrader.com> and <mandatumtrader.se>.

FACTUAL BACKGROUND

The Complainant is a Finish asset management company and part of a group whose parent company, Mandatum Holding Oy, is listed on the Helsinki Stock Exchange.

The disputed domain name <mandatumam.com > was registered on 14 December 2023. Its MX servers are configured as on 15-18 December 2023, it was used to send emails. Nothing is known of the Respondent other than name and jurisdiction.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant says the disputed domain name is confusingly similar to its trademarks, the word marks MANDATUM and MAM and the only character that differs is the additional N –at the end of mandatum in the disputed domain name.

That imperceptible change by the additional letter “N” is classic typo-squatting. The Complainant says that misspelling does not prevent the disputed domain name from being confusingly similar to the Complainant’s trademarks.

The Complainant says the Respondent is not identified in the WHOIS database as known by 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. See The Forum Case No. FA 1781783, Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group. Furthermore, the Complainant says typo-squatting can be evidence that a respondent lacks rights and legitimate interests in the domain name. See The Forum Case No. 1765498, Spotify AB v. The LINE The Line / The Line and The Forum Case No. 1597465, The Hackett Group, Inc. v. Brian HERNs / The Hackett Group.

It also says the disputed domain name is used for illegal activity or phishing which can never be a bona fide offering of goods or services or legitimate non-commercial or fair use. See The Forum Case No. FA 970871, Vance Int’l, Inc. v. Abend and WIPO Case No. D2007-1695, Mayflower Transit LLC v. Domains by Proxy Inc./Yariv Moshe.

Finally, given the distinctiveness of the Complainant’s trademark it says it is reasonable to infer that the Respondent has registered and used the domain name with full knowledge of the Complainant’s trade marks.

Further, the Respondent has also tried to deliberately hide his identity by use of the privacy service, and that can support an inference of bad faith, see TTT Moneycorp Limited v. Diverse Communications, WIPO Case No. D2001-0725, and Schering Corporation v. Name Redacted, WIPO Case No D2012-0729, as well as section 3.2.1 of the Overview.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

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).

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).

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

Under paragraph 4(a) of the UDRP, the Policy, a complainant can only succeed in administrative proceeding if the panel finds:

- (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 in respect of the domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A complainant must prove that each of these three elements are present.

In this case, the Complainant, clearly has registered rights and its highly distinctive name and mark, are well-known in financial circles, particularly in the Nordic region.

There is only one-character difference between the mark and the disputed domain name—the extra N in the disputed domain name. So, the Complainant's name and marks are used in full and this is a blatant and obvious case of typo-squatting and also an attempt at impersonation. The choice of the .com also compounds the impression that the disputed domain name is official.

As to the second limb, a complainant is only required to make out a prima facie case that a respondent lacks rights or legitimate interests and then the burden shifts to the respondent to show it has rights or legitimate interests in the domain name. If it fails to do so, the complainant is deemed to have satisfied the limb in paragraph 4(a) (ii). See WIPO Case No. D2003-0455, Croatia Airlines d. v. Modern Empire Internet Ltd.

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. The Respondent has not come forward to explain the selection of the disputed domain name.

Panels have consistently and categorically held that the use of a domain name for illegal activity (e.g., the sale of counterfeit goods or illegal pharmaceuticals, phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. See WIPO overview para. 2.13.

In this case –there is hard evidence of unlawful phishing by e-mail. So not only is there no legitimate use or right, rather there is actual illegitimate and unlawful use by the phishing e-mails. These are sent from investors@mandatunmam.com and appear as if they were sent by the Complainant –with all the attendant risks. The attachment to those emails apparently originally had links to the website of the Complainant but the bank account details in the emails were for the Respondent's bank account. We do not know if there were any actual fraudulent payments, but they were invited by the emails.

Further, while there are recognized legitimate uses of privacy and proxy registration services, this can impact a panel's assessment of bad faith. Where it appears that a respondent employs a privacy or proxy service merely to avoid being notified of a UDRP proceeding filed against it, panels tend to find that this supports an inference of bad faith; although a respondent filing a response may refute such inference. Here, again, the Respondent has not come forward with any explanations whatsoever.

The Panel agrees that the appropriate inferences and a finding of bad faith are warranted.

The Complainant has discharged its burden under the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **mandatunmam.com**: Transferred

PANELLISTS

Name	Victoria McEvedy
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Name	James Bridgeman
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Name	Lars Karnoe
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DATE OF PANEL DECISION 2024-04-25

Publish the Decision
