Decision for dispute CAC-UDRP-107178

Case number	CAC-UDRP-107178
Time of filing	2024-12-13 14:21:47
Domain names	wwwmatmut.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	MATMUT

Complainant representative

Organization	NAMESHIELD S.A.S.

Respondent

Name	Soumyajit Jana

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 the owner of the following trademark registrations, namely:

- European trademark MATMUT n° 003156098 registered on May 26, 2005 in classes 36, 37, 42 and 44; and
- French trademark MATMUT & dev. n° 98728962 registered on April 17, 1998 in classes 16, 35, 36, 38, 42 and 45.

The Complainant is also the owner of several domain names related to its MATMUT trademark, including, among others, <matmut.com> registered since September 16, 1998 and <matmut.fr> registered since June 23, 1997.

FACTUAL BACKGROUND

Created in 1961, the Complainant, Matmut (“Mutuelle Assurance des Travailleurs Mutualistes”), is an insurance company. The Complainant introduces itself as a major player in the French market. The Complainant has over 4,5 million members and more than 8,3 million contracts, registering a turnover of 2 923 million euros.

The Respondent is Soumyajit Jana with the address of residence in India.

The disputed domain name was registered November 10, 2024 and at the moment of filing the complaint resolved to a website

offering mats for sale. Besides, MX servers are configured.

PARTIES CONTENTIONS

The Complainant

The Complainant asserts that all the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. Specifically, the Complainant contends the following:

1. The disputed domain name is confusingly similar to the Complainant's registered MATMUT The addition of the prefix "WWW" does not negate a finding of confusing similarity to the Complainant's trademarks and it does not change the overall impression of the designation as being connected to the trademark MATMUT. The inclusion of the generic Top-Level Domain (gTLD) ".com" is a standard registration requirement and should be disregarded in the analysis.
2. The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent is not identified in the WHOIS database as the disputed domain name. The Complainant has not authorized the Respondent to use its mark, and there is no relationship or license between the Complainant and the Respondent. The Respondent has not used it in connection with a bona fide offering of goods or services. Instead, the disputed domain name resolves to a platform offering mats. The Complainant contends that the Respondent used the disputed domain name in a way that fails to confer rights and legitimate interests, as it is used to promote unrelated services.
3. The disputed domain name was registered and is being used in bad faith. The term "MATMUT" has no signification except in relation to the Complainant, and a simple Google search shows the Complainant's trademark presence online. 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 trademarks and rights. The disputed domain name resolves to a website offering mats. The Complainant contends that the Respondent attempts to attract internet users by creating a likelihood of confusion with the Complainant's trademark. The Respondent is obtaining commercial gain from its use of the domain name and the resolving website. The it has been set up with MX records which suggests that it may be actively used for email purposes. This is also indicative of bad faith registration and use because any email emanating from the disputed domain name could not be used for any good faith purpose.

The Complainant requires the disputed domain name to be transferred.

The Respondent

The Respondent did not reply to the Complainant's contentions.

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

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

1) that the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark in which the Complainant has rights;

2) that the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

3) that the disputed domain name has been registered and is being used in bad faith.

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has shown rights in respect of its MATMUT mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.7. The addition of the prefix "www" does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.8.

The Panel further notes that the gTLD ".com" is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant's mark to the disputed domain name. WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is well established that, as it is put in WIPO Overview 3.0, section 2.1, while the overall burden of proof in the proceedings is on the complainant, proving a respondent lacks rights or legitimate interests in a domain name may result in the often impossible task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a prima facie case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name, notably by demonstrating rights in the MATMUT trademark, which precede the Respondent's registration of the disputed domain name for years, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant's MATMUT trademark or any domain names incorporating the MATMUT trademark.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, and taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel concludes that the Respondent has no trademark rights related to the disputed domain name.

Although the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain name, the Panel must assess the evidence provided by the Complainant to determine whether the Complainant has established that the Respondent does not possess any rights or legitimate interests in the disputed domain name.

The case file provides no indication of any legitimate or bona fide use of the disputed domain name that could establish the Respondent's rights or interests in it. On the moment of filing of the complaint the disputed domain name resolved to a platform offering mats. The Complainant contends that the Respondent used the disputed domain name in a way that fails to confer rights

and legitimate interests, as it is used to promote unrelated services.

The Panel finds that the nature of the disputed domain name, being confusingly similar to the Complainant's trademark MATMUT with the only difference, a prefix "WWW" (which in itself does not have distinguishing capacity, since it stands for "world wide web" and precedes many domain names in URL addresses), carries a risk of implied affiliation and cannot constitute fair use, as it effectively impersonates the Complainant and suggests sponsorship or endorsement by the Complainant (WIPO Overview 3.0, section 2.5.1).

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, and that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel found that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With the evidence on file, the Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

Registered or Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. (WIPO Overview 3.0, section 4.2).

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. (WIPO Overview 3.0, section 3.2.1).

In the present case, the Panel notes that the Complainant has submitted evidence that the Respondent registered the disputed domain name long after the Complainant registered its MATMUT trademark. Given that the Complainant's trademark has been registered for a long time, it is highly unlikely that the Respondent did not know of the Complainant and its MATMUT mark prior to the registration of the disputed domain name.

Furthermore, the Panel is also of the view that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website in terms of paragraph 4(b)(iv) of the Policy. Commercial gain may include the respondent gaining or seeking reputational and/or bargaining advantage, even where such advantage may not be readily quantified. (WIPO Overview 3.0, section 2.5.3).

The disputed domain name is an exact match for the Complainant's MATMUT trademark with the addition of the prefix "WWW". Where a mark has built up goodwill through substantial activities, including via a particular Complainant's domain names <matmut.com> and <matmut.fr> over a lengthy period (see also CAC Case No. 102659, MATMUT v. chen Ki <matmutinnovation.com>, CAC Case No. 104859, MATMUT v. Mary Leon (Hjad) <fo-matmut.com>), the deliberate and opportunistic registration of the disputed domain name by an unauthorized party is highly likely to lead to confusion with the Complainant's trademark, if not inevitably so.

Given the circumstances of this case, the Panel finds an attempt by the Respondent to confuse and/or mislead Internet users seeking or expecting the Complainant's website.

The Respondent did not submit a Response in this proceeding which is a further indication of the Respondent's bad faith, which was considered by the Panel.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered and is being used in bad faith. In light of the above, the third element under paragraph 4(a)(iii) of the Policy has been established.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **wwwmatmut.com**: Transferred

PANELLISTS

Name	**Ganna Prokhorova**

DATE OF PANEL DECISION 2025-01-18

Publish the Decision