

ADMINISTRATIVE PANEL DECISION

CMA CGM SA v. yusuf kaplan
Case No. D2023-2062

1. The Parties

The Complainant is CMA CGM SA, France, internally represented.

The Respondent is yusuf kaplan, Türkiye.

2. The Domain Name and Registrar

The disputed domain name <cmacgm.website> is registered with Google LLC (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 10, 2023. On May 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 10, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain name which differed from the named Respondent (Privacy Inc. Customer 7151571251) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 23, 2023, providing the registrant and contact information disclosed by the Registrar, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on May 26, 2023.

The Center sent an email communication in English and Turkish to the parties on May 23, 2023, regarding the language of the proceeding, as the Complaint has been submitted in English and the language of the registration agreement for the disputed domain name is Turkish. The Complainant sent an email to the Center requesting English to be the language of the proceeding on May 25, 2023. The Respondent did not comment on the language of the proceeding.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2 and 4, the Center formally notified the Respondent of the Complaint, and the proceedings commenced on June 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 28, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on July 3, 2023. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

4. Factual Background

The Complainant is a container shipping and transport company, which is active in more than 160 countries worldwide. It provides freight, shipping, intermodal, and logistics services (Annex 4 to the Complaint).

The Complainant is the owner of the CMA CGM trademark, which is registered in many jurisdictions worldwide, including in Türkiye, where the Respondent is reportedly located. Among others, the Complainant is the registered owner of the International Trademark Registration No. 1191384 for CMA CGM, registered on October 2, 2013, and covering protection for various goods and services as protected in classes 12, 37 and 39 (Annexes 5 and 6 to the Complaint).

Since at least 1997, the Complainant further owns and operates various domain names comprising its CMA CGM trademark, such as <cma-cgm.com> (Annex 8 to the Complaint).

The disputed domain name was registered on January 20, 2023.

As demonstrated in the Complaint, the disputed domain name previously resolved to a website prominently featuring the Complainant's CMA CGM word and figurative trademark together with further copyright protected content of the Complainant. In fact, the associated website was mimicking the official website of the Complainant.

At the date of this Decision, access to the website associated to the disputed domain name is blocked because of suspected fraudulent activities.

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is identical to its CMA CGM trademark.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

6.1. Language of the Proceeding

The Panel determines in accordance with the Complainant's request and the Rules, paragraph 11(a), that the language of this administrative proceeding shall be English.

Although the language of the registration agreement is Turkish, the Panel finds that it would be inappropriate, given the circumstances of this case, to conduct the proceedings in Turkish and request a Turkish translation of the Complaint while the Respondent has failed to raise any objection or even to respond to the Center's communication about the language of the proceedings, even though communicated in Turkish and in English. The Panel particularly notes that the Respondent was given the opportunity to respond in Turkish and that also this opportunity remained unused by the Respondent. Furthermore, the Panel notes that the language used on the website associated to the disputed domain name is English.

Consequently, the Panel is convinced that the Respondent will not be prejudiced by a decision being rendered in English.

6.2. Substantive Issues

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark in which the Complainant has rights; and
- (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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

It is further noted that the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views captured therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having relevant trademark rights. As evidenced in the Complaint, the Complainant is the owner of the CMA CGM trademark (Annexes 5 and 6 to the Complaint).

The Panel finds that the disputed domain name is identical to the Complainant's CMA CGM trademark as it incorporates the Complainant's trademark in its entirety without any additions or amendments, except the missing blank space between "cma" and "cgm", which in view of the Panel does not avoid a finding of identity or confusing similarity in the present case.

In this regard, the Panel notes that the generic Top-Level Domain (".website" in this case) may, as a general principle, be disregarded when assessing identity or confusing similarity between a domain name and a trademark. See [WIPO Overview 3.0](#), section 1.11.1.

In view of the finding above, the Panel is satisfied that the Complainant has met the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge 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 of evidence shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's CMA CGM trademark within the disputed domain name.

In the absence of a substantive Response, the Respondent has failed to demonstrate any of the nonexclusive circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name.

There is particularly no doubt that the Respondent was well aware of the Complainant and its CMA CGM trademark before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its business among Internet users. Also, the Panel notes that the nature of the disputed domain name along with the content of the associated website (obviously a reproduction of the Complainant's official website), indicates the Respondent's intention to create a risk of affiliation or association with the Complainant and its trademarks. It is in fact obvious to the Panel that the disputed domain name is used to impersonate the Complainant, which results in an illicit use that can never confer rights or legitimate interests upon the Respondent. See section 2.13 of [WIPO Overview 3.0](#).

Bearing all this in mind, the Panel does also not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Panel believes that the Respondent deliberately attempted to create a likelihood of confusion among Internet users for illegitimate purposes, particularly for the following reasons.

At the date of registration of the disputed domain name, the Respondent was apparently well aware of the Complainant and its CMA CGM trademark. It is obvious to the Panel, that the Respondent has deliberately chosen the disputed domain name to target and mislead Internet users. Consequently, the Panel is convinced that the Respondent has registered the disputed domain name in bad faith.

Additionally, the Panel finds that the Respondent is using the disputed domain name in bad faith. The Panel particularly notes that the inherently misleading disputed domain name resolves to a website falsely creating the impression to be operated by the Complainant or at least with its authorization. The Panel concludes that the attempt to impersonate the Complainant is *per se* considered as evidence of bad faith. The fact that access to the website associated to the disputed domain name currently is blocked, does in view of the Panel not prevent a finding of bad faith.

Taking all facts of the case into consideration, the Panel believes that this is a typical cybersquatting case, which the UDRP was designed to stop.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <cmacgm.website> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: July 17, 2023