

Decision for dispute CAC-UDRP-104713

Case number	CAC-UDRP-104713
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Time of filing	2022-07-08 09:17:30
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Domain names	maisonsdumonde.top
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Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Maisons du Monde France
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Complainant representative

Organization	IP TWINS
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Respondent

Name	Steve Webb
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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 Maisons du Monde France is the holder of many trademark registrations for the sign MAISONS DU MONDE, amongst them:

- French trademark MAISONS DU MONDE (device) N° 99792285, registered on 10 May 1999, for goods and services in international classes 03, 04, 08, 11, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27 and 28; and
- European trademark MAISONS DU MONDE N° 005120481, registered on 27 May 2010, for goods in international classes 11, 20, 21, 24, and 28.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

A. The disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights

The Complainant is Maisons du Monde France. The Complainant is a French furniture and home decor company founded in

1996. The Complainant is one of the leaders on the furniture and home decor market.

As of 2020, the Complainant had more than 360 stores across Europe, in particular in France, Italy, Spain, Luxembourg, Belgium, Germany, Portugal, Austria and Switzerland. The Complainant also sells online to the 9 above-mentioned States, the United Kingdom and the Netherlands, its website being available in 9 different languages. The Complainant is equally renown beyond the borders of Europe thanks to a franchise network and numerous partnerships (notably in Algeria, Morocco, Dubai, Qatar, Martinique, Reunion, US, etc.).

The Complainant undertakes various actions and commitments at the international scale:

- In 2012, MAISONS DU MONDE joined the United Nations Pact;
- In 2014, MAISONS DU MONDE joined the American association "1% for the planet";
- In 2016, as MAISONS DU MONDE is very committed to humanitarian and environmental causes, it launched its own foundation (<https://foundation.maisonsdumonde.com/> which carries out numerous humanitarian and environmental projects around the world. For examples, in 2021, it has supported 33 associative projects (including but not limited to Colombia, Peru, Senegal, Indonesia, India, Madagascar, etc.).

In 2020, it generated sales of almost 1,2 billion euros and employed over 8,500 people. The Complainant is also listed on the Paris stock exchange Euronext.

The Complainant owns several dozen trademark rights in the terms MAISONS DU MONDE, and in particular the following trademarks, registered well before the registration of the disputed domain name:

- French trademark MAISONS DU MONDE (device) N° 99792285 registered on 10 May 1999, duly renewed and designating goods and services in international classes 03, 04, 08, 11, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27 and 28; and
- European trademark MAISONS DU MONDE N° 005120481 registered on 27 May 2010, duly renewed and designating goods in international classes 11, 20, 21, 24, and 28.

The Complainant is also the owner of maisonsdumonde.com registered on 22 July 2004, which is actively used in connection with the Complainant's official website.

The Complainant submits that its earlier trademarks MAISONS DU MONDE enjoy a wide-spread continuous reputation in relation with home decorative goods. The Complainant's Facebook page is followed by more than 2 million users, and its Instagram page is also followed by more than 2,5million users. All these tend to establish the Complainant's trademarks reputation.

The disputed domain name is <maisonsdumonde.top>.

The Complainant submits that the disputed domain name is exactly identical to its earlier trademarks MAISONS DU MONDE. Indeed, the only difference lies the absence of spaces between the word elements of the trademark, while such spaces are not allowed in domain names. The earlier trademarks of the Complainant are easily recognizable in the disputed domain names as they are reproduced without addition or deletion of any word or letter.

The addition of the top-level domain ".top" is not significant in determining whether the domain name is identical or confusingly similar to the rights of the Complainant. On the contrary, the addition of ".top" even adds to the confusion as the Complainant is one of the leaders in its field and users will thus be led to believe that the Complainant registered a top-level domain name to offer its products and services.

The Complainant submits it has established rights in the term MAISONS DU MONDE and that the disputed domain name is identical to its earlier trademarks. The first condition of Paragraph 4(a) of the Policy is deemed satisfied.

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

At the time of original filing of the Complaint, the registered owner and Respondent is unknown. The Complainant submits that

the Respondent has no right or legitimate interest in respect of the disputed domain name. Further to the Registrar Verification, the Complainant was identified as Steve Webb.

Firstly, the Complainant performed searches and found no MAISONS DU MONDE trademark owned by any other than the Complainant. From this finding, the Complainant asserts that the Respondent has acquired no trademark in the terms MAISONS DU MONDE which could have granted the Respondent rights in the disputed domain name.

Secondly, the Respondent reproduces the Complainant's earlier registered trademarks MAISONS DU MONDE in the disputed domain name without any license or authorization from the Complainant, which is strong evidence of the lack of legitimate interest. The Complainant states that it has not authorized the use of the terms "MAISONS DU MONDE" in the disputed domain name in any manner or form.

Thirdly, the Complainant puts forth that the Respondent has not, before the original filing of the Complaint, used or made preparations to use the disputed domain name in relation to a bona fide offering of goods or services. On the contrary, the disputed domain name resolves to a Google Safebrowsing Page indicating that the website is potentially harmful. The disputed domain name resolves to a website downloading malicious and potentially harmful content on the device of the Internet user, which triggers a security alert on the device of the Complainant's Representative. See WIPO case Carrefour SA. v. Withheld for Privacy Purposes, Privacy Service Provided by Withheld for Privacy ehf / Ben Luis, D2021-2910 where the Panel stated: "the absence of use or rather the apparently malevolent underlying use of the Domain Names and associated websites, as suggested by the security warnings triggered when the Panel tried to access the websites associated with the Domain Names cannot be considered bona fide, legitimate, or fair."

Fourthly, since the adoption and extensive use by the Complainant of the trademarks MAISONS DU MONDE predate by far the first entry of the domain name, the burden is on the Respondent to establish the Respondent's rights or legitimate interests the Respondent may have or have had in the domain name. None of the circumstances which set out how a respondent can prove rights or legitimate interests in the disputed domain name, are present in this case.

Considering all the elements mentioned above, the Respondent should be considered as having no rights or legitimate interests in respect of the domain name that is the subject of the Complaint. The second condition of the Policy should be deemed satisfied.

C. The disputed domain name has been registered and is being used in bad faith

The Complainant contends that the Respondent has registered and is using the disputed domain name in bad faith, for the following reasons.

Firstly, the Complainant submits that the Complainant and its trademarks enjoy a long-standing reputation so much so that it is inconceivable that the Respondent ignored the Complainant or its earlier rights on the terms MAISONS DU MONDE.

The Respondent obviously had the Complainant's name and trademark in mind when registering the domain name. The Respondent's choice of domain name cannot have been accidental and must have been influenced by the fame of the Complainant and its earlier trademarks. UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or well-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See for instance Carrefour SA v. blackwhite, dolly Tiwari, WIPO Case D2021-0274.

Furthermore, a simple search on an online search engine yields results only related to the Complainant. Annexes to this Complaint shows search results for "maisons du monde" on an internet search engine. All results relate to the Complainant.

Therefore, at the very least, the Respondent knew or should have known that, when acquiring and using the domain name, they would do so in violation of the Complainant's earlier rights.

Secondly, the Complainant submits that it is highly likely that the Respondent chose the domain name because of its identity with a trademark in which the Complainant has rights and legitimate interest. This was most likely done in the hope and

expectation that Internet users searching for the Complainant's services and products would instead come across the Respondent's domain. Such use cannot be considered a good faith use. See *Shaw Industries Group Inc. & Columbia Insurance Company v. Administrator, Domain*, WIPO Case No. D2007-0583, citing *Express Scripts, Inc. v. Windgather Investments Ltd/ Mr. Cartwright*, WIPO Case No. D2007-0267.

Such use of domain name must necessarily be seen as a bad faith use of the disputed domain name under the Policy.

The Complainant thus states that the Respondent acquired and is using the disputed domain name to attract Internet users by creating a likelihood of confusion with the Complainant's earlier marks, and to intentionally deceive Internet users.

Thirdly, the Complainant's MAISONS DU MONDE trademark registrations significantly predate the registration date of the disputed domain name.

In this regard, previous panels have established that knowledge of the Complainant's intellectual property rights, including trademarks, at the time of registration of the disputed domain name, proves bad faith registration. A quick trademark search would have revealed to Respondent the existence of Complainant and its trademarks. Respondent's failure to do so is a contributory factor to its bad faith. See WIPO Case No. D2008-0226.

Fourthly, the Complainant submit that the disputed domain name and associated website are written in the French language, while the Complainant originates from France. Undoubtedly, The Respondent knew of the Complainant when the disputed domain name was registered. By registering the disputed domain name and using it, by creating the likelihood of confusion, the Respondent clearly traded off the Complainant's reputation.

In addition, the current use of the disputed domain name, currently blocked by Google SafeBrowsing's algorithms as potentially harmful, which triggers a security alert on the device of the Complainant's Representative, cannot be seen as a use of good faith of the disputed domain name.

The Respondent clearly intended from the very beginning to mislead the average consumer.

The Panel must examine all the circumstances of the case to determine whether the Registrant is acting in bad faith. Examples of what may be circumstances found to be indicative of bad faith include the complainant having a well-known trademark, no response to the complaint having been filed, and the registrant's concealment of its identity. Panels may draw inferences about whether the domain names were used in bad faith given the circumstances surrounding registration, and vice versa.

The relevant issue is not limited to whether the Registrant is undertaking a positive action in bad faith in relation to the domain names, but instead whether, in all the circumstances of the case, it can be said that the Registrant is acting in bad faith. The distinction between undertaking a positive action in bad faith and acting in bad faith may seem a rather fine distinction, but it is an important one. The significance of the distinction is that the concept of a domain name "being used in bad faith" is not limited to positive action; inaction is within the concept.

Considering all the elements above, the Complainant contends that the domain name was registered and is being used in bad faith by the Respondent. The combination of all the elements listed and detailed above unequivocally show that the Respondent has acted in bad faith, in line with the Policy.

The third condition under the Policy is deemed satisfied.

PARTIES CONTENTIONS

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

I. RIGHTS

The Disputed domain name is identical to the Complainant's registered trademarks since it reproduces the Complainant's mark MAISONS DU MONDE, merely adding the CC top-level domain identifier ".TOP" at the end.

The Panel therefore concludes that the Complainant has fulfilled paragraph 4(a)(i) of the Policy.

II. NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has not submitted any response. Therefore, it has submitted no information on possible rights or legitimate interests it might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the disputed domain name.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D20020856:

"As mentioned [in the decision], the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed domain name, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right or legitimate interest exists." WIPO Case No. D20020273 <sachsenanhalt>; WIPO Case No. D20020521 <volvovehicles.com>.

When accessing the web page hosting the domain name, a warning appears in the browser that the website may be malicious. Obviously, this use cannot be considered as legitimate.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name.

III. BAD FAITH

The Respondent has, as a result of his default, not invoked any circumstances which could invalidate the Complainant's allegations and evidence with regard to the Respondent's registration and use of the disputed domain name in bad faith.

The Complainant has filed evidence of the well-known character of the MAISONS DU MONDE trademark. The disputed domain name resolves to a website apparently malicious. Consequently, it seems clear that the Respondent is trying to impersonate the Complainant and that the Respondent registered the disputed domain name for a fraudulent purpose.

Paragraph 4(b) (iii) of the Policy provides that the following circumstances are deemed to be evidence that the Respondent has registered and is using the disputed domain name in bad faith:

(iv) by using the domain name, 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 its website or location or of a product or service on its website or location.

As mentioned in *Andrey Ternovskiy dba Chatroulette v. Alexander Ochki*, WIPO Case No. D2017-0334:

"It is clear in the Panel's view that in the mind of an Internet user, the disputed domain names could be directly associated with the Complainant's trademark, which is likely to be confusing to the public as suggesting either an operation of the Complainant or one associated with or endorsed by it (see *AT&T Corp. v. Amjad Kausar*, WIPO Case No. D2003-0327)."

Furthermore, the Respondent concealed his identity in a privacy service, which together with the fraudulent use of the domain name only confirms the appearance of bad faith. See *H & M Hennes & Mauritz AB v. Domain Admin, Private Registrations Aktien Gesellschaft / Domain Admin, C/O ID#10760, Privacy Protection Service INC d/b/a PrivacyProtect.org*, WIPO Case No. D2017-0491.

It has, therefore, been satisfactorily demonstrated to the Panel that the disputed domain name have been registered and used in bad faith.

For the foregoing reasons, in accordance with paragraphs 4(i) of the Policy, the Panel orders that the disputed domain name be transferred to the Complainant. The transfer of the disputed domain name shall be ordered without prejudice to any rights of any third party in the disputed domain name.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MAISONSDUMONDE.TOP**: Transferred

PANELLISTS

Name	José Ignacio San Martín
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DATE OF PANEL DECISION	2022-08-10
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Publish the Decision
