

Decision for dispute CAC-UDRP-105645

Case number	CAC-UDRP-105645
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Time of filing	2023-07-21 08:49:26
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Domain names	avem-holding.com
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Case administrator

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

Organization	AVEO
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Complainant representative

Organization	NAMESHIELD S.A.S.
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Respondent

Name	Penelope Price
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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 owns trademark registrations with the trademark AVEM® in several countries, such as:

- The French trademark AVEM® n° 4143498 registered since December 19, 2014;
- The French trademark AVEM® n° 4198189 registered since July 21, 2015;
- The European trademark AVEM® n° 014098271 registered since September 25, 2015;
- The European trademark AVEM® n° 015019987 registered since July 13, 2016.

The Complainant owns several domain names comprising the term “AVEM”, such as <avem-groupe.com>, registered on January 9, 2015 and used for its official website.

FACTUAL BACKGROUND

AVEO was found in April 2013. Since the purchase of ATEM Solutions by the Complainant, the Company operates under the name ATEM. With 1 500 employees, the Complainant provides solutions for points of sale, cashless card systems and banking OT services.

The disputed domain name <avem-holding.com> was registered on July 11, 2023 and resolves to a website offering payment solutions (such as credit cards) and online loans under the name ATEM HOLDING, based in Lyon.

PARTIES CONTENTIONS

COMPLAINANT:

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

The Complainant contends that the disputed domain name is confusingly similar to the trademark ATEM® including it in its entirety.

The Complainant asserts that the addition of the generic term "HOLDING" is not sufficient to escape the finding that the domain name is confusingly similar to the trademark and branded goods ATEM®. It does not change the overall impression of the designation as being connected to the Complainant's trademark ATEM®. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names. It is well established that *"a domain name that wholly incorporates a Complainant's registered trademark may be sufficient to establish confusing similarity for purposes of the UDRP"*. Please see WIPO Case No. D2003-0888, *Dr. Ing. h.c. F. Porsche AG v. Vasily Terkin*.

The addition of the term "HOLDING" cannot be coincidental, as it directly refers to the Complainant's IT subsidiary ATEM HOLDING SAS.

Furthermore, the Complainant contends that the addition of the gTLD ".COM" does not change the overall impression of the designation as being connected to the Complainant's trademark. It does not prevent the likelihood of confusion between the disputed domain name and the Complainant, its trademark and domain names. Please see WIPO Case No. D2006-0451, *F. Hoffmann-La Roche AG v. Macalve e-dominios S.A.* (*"It is also well established that the specific top level of a domain name such as ".com", ".org" or ".net" does not affect the domain name for the purpose of determining whether it is identical or confusingly similar."*).

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

According to WIPO Case No. D2003-0455 *Croatia Airlines d. d. v. Modern Empire Internet Ltd.*, the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a) (ii) of the Policy.

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. Thus, the Respondent is not known as the disputed domain name. Please see for instance Forum Case No. FA 1781783, *Skechers U.S.A., Inc. and Skechers U.S.A., Inc. II v. Chad Moston / Elite Media Group <bobsfromsketchers.com>* (*"Here, the WHOIS information of record identifies Respondent as "Chad Moston / Elite Media Group." The Panel therefore finds under Policy 4(c)(ii) that Respondent is not commonly known by the disputed domain name under Policy 4(c)(ii)."*).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant's trademark ATEM®, or apply for registration of the disputed domain name by the Complainant.

Furthermore, the disputed domain name points to a website offering payment solutions (such as credit cards) and online loans under the name ATEM HOLDING, based in Lyon. Therefore, the Complainant contends that the domain name was registered in order to create a likelihood of confusion with the Complainant and its trademarks. By passing off as the Complainant, the Respondent uses the disputed domain name to offer services in direct competition with Complainant. Using a confusingly similar domain name that resolves to a competing webpage is not a bona fide offering of goods or services.

C. The disputed domain name was registered and are being used in bad faith

The Respondent has registered the disputed domain name <avem-holding.com> many years after Complainant had established a strong reputation and goodwill in its mark. Moreover, the word "ATEM" has no meaning in any language, and a Google search on the expression "ATEM HOLDING" displays several results, all of them being related to the Complainant or its subsidiary.

Finally, the Respondent uses the Complainant's official address "8 AVENUE TONY GARNIER, 69007 LYON 07, France" on the website.

Thus, the Panel should find that Respondent likely targeted Complainant and its ATEM® trademark when registering the disputed domain name.

The disputed domain name resolves to a website offering payment solutions (such as credit cards) and online loans under the name AVEM HOLDING, based in Lyon. The Complainant contends that the Respondent uses the disputed domain name to divert Internet users searching for Complainant's website to Respondent's website, and to create a likelihood of confusion with Complainant's mark for Respondent's commercial gain by offering competing products. Past panels have established that it is an evidence of bad faith.

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

The disputed domain name registered in 2023 is confusingly similar to the Complainant's trade mark (registered, inter alia, in 2014 for financial services as set out above) adding only a hyphen, the generic word 'holding' and the gTLD .com none of which prevents confusing similarity between the disputed domain name and the Complainant's mark. The disputed domain name appears to reference the name of a subsidiary of the Complainant.

The Respondent is not commonly known by the disputed domain name or authorised by the Complainant. The use of the disputed domain name is commercial so cannot be non commercial legitimate or fair use.

The disputed domain name has been pointed to a site using the Complainant's mark in its masthead (and which states the Complainant's real-world address) to offer competing services to the Complainant which is confusing and so is not a bona fide use for goods or services.

The Respondent has not answered this Complaint or rebutted the prima facie case evidenced by the Complainant.

The Respondent has diverted Internet users for commercial gain and disrupted the business of a competitor. This supports finding of use of the disputed domain name in bad faith. The use of the Complainant's real-world address on the web site attached to the disputed domain name shows the Respondent is aware of and is targeting the Complainant, therefore the Panel finds that the registration of the disputed domain name took place in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **avem-holding.com**: Transferred

PANELLISTS

Name Dawn Osborne

DATE OF PANEL DECISION 2023-08-23

Publish the Decision