PROCEDURAL HISTORY

The Complaint was filed with CPR on May 29, 2001, by Complainant and, after review for administrative compliance, served on the Respondent on June 13, 2001. The Respondent did not file a Response. I was appointed Arbitrator pursuant to the Uniform Domain Name Dispute Resolution Policy ("UDRP") and Rules promulgated by the Internet Corporation for Domain Names and Numbers (ICANN). Upon the written submitted record including the Complaint and Complainant’s Brief, I find as follows:

FINDINGS

Respondent’s registered domain name, “mateer-burt.com”, was registered with Internet Names WorldWide, a division of Melbourne IT Ltd. on December 21, 2000. In registering the name, Respondent agreed to submit to this forum to resolve any dispute concerning the domain name, pursuant to the UDRP.

The UDRP provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which complainant has rights; and

ii. Respondent has no rights or legitimate interests in respect of the domain name; and

iii. Respondent’s domain name has been registered and is being used in bad faith.

IDENTITY/CONFUSING SIMILARITY: Complainant alleges that “mateer-burt.com” is identical or confusingly similar to Complainant’s trademark, “mateerburt.com.”

The domain name “mateer-burt.com” is identical to Complainant’s domain name “mateerburt.com.” The addition of a hyphen is not a distinguishing feature.

I therefore conclude that the registered domain name is identical or confusingly similar to Complainant’s protected mark.
RIGHTS AND LEGITIMATE INTERESTS: Complainant alleges that Respondent has no rights or legitimate interests with respect to the domain name at issue. Complainant alleges that it owns U.S. Registered Trademark “Mateer,” Reg. No. 0716681 and “Burt,” Reg. No. 1569251 and that the famous mark and trade name of Mateer Burt has been used by itself and predecessors since 1893.

The goods associated with these marks are a variety of machinery, including, but not limited to, machines for: powder filling; multi-lane vffs pouch; horizontal roll-through labelers; pressure-sensitive labelers; and print & apply label applicators. The services associated with these marks are the technical, sales, and customer support connect with the machinery.

Complainant further alleges that at no time has Respondent conducted business under the Mateer-Burt name, nor has Respondent ever been granted a license to do so by Complainant. The parties compete not only with regard to the same products, but to the same markets in the United State, the United Kingdom, and elsewhere in Europe. Respondent competes in the same industry to sell similar products offered, such as powder filling machines and labelers.

UDRP Paragraph 4(c) provides that Respondent’s rights or legitimate interests in a domain name may be demonstrated, without limitation, by showing that (a) before notice to Respondent of the dispute, Respondent has used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or (b) Respondent has been commonly known by the domain name; or (c) Respondent is making legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Respondent has not shown that it has ever been licensed or otherwise authorized to use the name Mateer Burt and does not trade under such name other than under a web site address.

I therefore conclude that Respondent does not have rights or legitimate interests with respect to the domain name at issue.

BAD FAITH: In support of the contention of Respondent’s bad faith registration and use, Complainant alleges that Respondent knew or ought to have known that “mateerburt.com” was registered by his competitor, the Complainant, and bad faith can be inferred from the redirection of traffic from the contested domain name to Respondent’s web page and the offering of competitive products.

Paragraph 4(b) of the UDRP provides that indications of bad faith include, without limitation, (a) registration for the purposes of selling, renting or transferring the domain name to the Complainant for value in excess of Respondent’s cost; (b) a pattern of registration in order to prevent Complainant from reflecting the mark in a corresponding domain name; (c) registration for the primary purpose of disrupting the business of a competitor; or (d) an intentional attempt to attract, for commercial gain, Internet users to Respondent’s web site by creating a likelihood of confusion with Complainant’s mark as to the source, sponsorship, affiliation or endorsement of Respondent’s web site or location, or of a product or service on Respondent’s web site or location.

The Respondent is a head-to-head competitor with Complainant. As their web pages demonstrate, both companies sell competing equipment. For example, on the first page of each company’s web page both offer powder filling machines for sale. Respondent places no information at the web address of “mateer-burt.com.” Rather, the viewer is directed to the Respondent’s web site at “webbautomation.co.uk,” which was first registered by the Respondent in June 1999.

Bad faith can be inferred because of the direct competition between the parties. Both parties sell similar products. Both sell powder-filling machines, as shown on their web pages. Respondent directs traffic at the disputed domain site to its own. Customers seeking out Mateer Burt on the web are, instead, being diverted to its competition, G Webb Automation, Ltd. Such acts are prima facie proof of bad faith.

I therefore conclude that Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy.

CONCLUSION

In light of my findings above that (a) the registered domain name is identical or confusingly similar to Complainant’s protected mark; (b) Respondent does not have rights or legitimate interests with respect to the domain name at issue; and (c) Respondent did register and use the domain name in bad faith, as that term is defined in the ICANN Policy, I find in favor of Complainant.
REMEDY

Respondent’s domain name “mateer-burt.com” is hereby canceled.

_________________________________________  _______________________
Signature of Arbitrator                  Date