

ADMINISTRATIVE PANEL DECISION

Athesia Kalenderverlag GmbH v. Heroux Leslie
Case No. D2024-1590

1. The Parties

The Complainant is Athesia Kalenderverlag GmbH, Germany, represented by UNVERZAGT Rechtsanwälte Partnerschaftsgesellschaft mbB, Germany.

The Respondent is Heroux Leslie, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <harensnop.com> is registered with Gname.com Pte. Ltd. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 16, 2024. On April 16, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 17, 2024, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on April 19, 2024, 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 amended Complaint on April 22, 2024.

The Center verified that the Complaint together with the amended 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 April 29, 2024. In accordance with the Rules, paragraph 5, the due date for Response was May 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 23, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on May 27, 2024. 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 produces and sells calendars, weekly planners and puzzles under different brands, one of which is Harenberg. During the last four years, the Complainant has sold about 1.3 million Harenberg calendars and planners per year.

The Complainant is the owner of a number of trademark registrations of the sign HARENBERG (the “HARENBERG trademark”), including the following:

- the German trademark HARENBERG with registration No. 30418365, registered on October 7, 2004, for services in International Class 41; and
- the European Union trademark HARENBERG with registration No. 003991585, registered on November 18, 2005, for goods and services in International Classes 16 and 41.

The Complainant also owns the domain name <harenberg-kalender.de>, which resolves to its official website for the Harenberg line of products.

The disputed domain name was registered on September 5, 2023. It resolves to a German language website that offers Harenberg calendars at discounted prices in Euro.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant submits that the disputed domain name is confusingly similar to the HARENBERG trademark, because it consists of two components, “haren” and the dictionary word “shop”, where “haren” is identical to the first element of the Complainant’s HARENBERG trademark. According to the Complainant, this may deceive Internet users that the disputed domain name and the associated online shop are operated by the Complainant directly or through a licensee.

The Complainant maintains that the Respondent has no rights or legitimate interests in the respect of the disputed domain name, because the Complainant has not licensed it to use the HARENBERG trademark, which far predates the registration date of the disputed domain name, or to register any domain name incorporating elements of this trademark, and the Respondent is not commonly known under the disputed domain name. The Complainant submits that the Respondent is not using the disputed domain name for bona fide activities. On its online shop at the disputed domain name, the Respondent offers calendars that are labelled with the HARENBERG trademark, while misleading potential customers to believe that this online shop is associated with the Complainant. This impression is reinforced by the use of the “&” sign as favicon of the Respondent’s website, which copies the identical favicon used on the Complainant’s online shops, and this may lead the public to assume that the online shop at the disputed domain name is also operated by the Complainant and that the calendars offered there originate from the Complainant.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the Respondent has registered the disputed domain name and designed the associated website as an imitation of the Complainant’s online shops and offers in an attempt to mislead and attract Internet users for commercial gain and to disrupt the business of the Complainant.

B. Respondent

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

6. Discussion and Findings

A. 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. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown rights in respect of the HARENBERG trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the HARENBERG trademark is recognizable within the disputed domain name, because its dominant part "haren" is included as the first part of the disputed domain name, and the trademark and the disputed domain name share the same structure "haren + [dictionary word]". The second part of the HARENBERG trademark is the German word for "mountain", while the second part of the disputed domain name is the dictionary word "shop". Also, although the addition of other terms (here, "shop") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the HARENBERG trademark for the purposes of the Policy. Accordingly, the disputed domain name is confusingly similar to the HARENBERG trademark for the purposes of the Policy. See [WIPO Overview 3.0](#), sections 1.7 and 1.8. It is also notable that the website at the disputed domain name offers Harenberg calendars and contains the header "& Harenberg Kalender Online Geschäft – Harenshop" (translated in English as "& Harenberg Calendar Online Shop – Harenshop"), which prima facie indicates that the Respondent seeks to target the HARENBERG trademark through the disputed domain name. See section 1.15 of the [WIPO Overview 3.0](#).

Therefore, the Panel finds that the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of "proving a negative", requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant's prima facie showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have recognized that resellers, distributors, or service providers using a domain name containing the complainant's trademark to undertake sales or repairs related to the complainant's goods or services may be making a bona fide offering of goods and services and thus have a legitimate interest in such domain name, if they comply with the requirements, set out in the so-called "Oki Data test". See section 2.8.1 of the [WIPO Overview 3.0](#). The Oki Data test contains the following cumulative requirements:

- (i) the respondent must actually be offering the goods or services at issue;
 - (ii) the respondent must use the site to sell only the trademarked goods or services;
 - (iii) the site must accurately and prominently disclose the registrant's relationship with the trademark holder;
- and
- (iv) the respondent must not try to "corner the market" in domain names that reflect the trademark.

The Panel will therefore consider whether the Respondent complies with the requirements of the Oki Data test. The evidence shows that the Respondent's website resolves to a German language website that offers for sale Harenberg calendars at discounted prices in Euro. The website has the header "*& Harenberg Kalender Online Geschäft – Harenshop*" (translated in English as "*& Harenberg Calendar Online Shop – Harenshop*") and includes the copyright notice "*Copyright 2024 © harenshop.com*". The website contains no contact details about the provider of the goods offered on it, apart from an indication of its opening hours, and does not contain any disclaimer for the lack of relationship with the Complainant.

Considering the above, the Panel finds that the Respondent's conduct does not meet the cumulative requirements of the Oki Data test, because the website at the disputed domain name does not disclose the lack of relationship between the Respondent and the Complainant.

The Panel therefore finds that the second element of the Policy has been established.

C. Registered and 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 circumstances of this case point to a conclusion that the Respondent had knowledge of the Complainant and its HARENBERG trademark when it registered and started using the disputed domain name, and that it targeted the Complainant with these actions for commercial gain. The HARENBERG trademark was registered nineteen years before the Respondent registered the disputed domain name in 2023. The disputed domain name is confusingly similar to the Complainant's HARENBERG trademark and the Respondent has used it for a website selling the Complainant's products without disclosing the lack of relationship with the Complainant. The Respondent has not submitted a Response and has not brought forward any arguments why the registration and use of the disputed domain name should be regarded as being carried out in good faith.

In these circumstances, the Panel finds that the Respondent has registered and is using the disputed domain name to intentionally attempt to attract, for commercial gain, Internet users to the associated website, by creating a likelihood of confusion with the Complainant's HARENBERG trademark as to the affiliation or endorsement of its website and of the products and services offered on it.

Based on the available record, the Panel therefore finds that the Complainant has established the third element 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 <harenshop.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: June 10, 2024