

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. Enver Uslu
Case No. D2022-1559

1. The Parties

The Complainant is Agfa-Gevaert N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is Enver Uslu, Turkey.

2. The Domain Name and Registrar

The disputed domain name <agfagraphicsasialimited.com> is registered with Hosting Concepts B.V. d/b/a Registrar.eu. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2022. On April 29, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 2, 2022, 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 May 2, 2022, 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 May 2, 2022.

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 May 3, 2022. In accordance with the Rules, paragraph 5, the due date for Response was May 23, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 24, 2022.

The Center appointed Charles Gielen as the sole panelist in this matter on May 29, 2022. 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 active in the graphics and photographic sector and owns a number of registrations for the trade mark AGFA in different regions and countries in the world. Among others, it concerns the following registrations:

- European Union trade mark No. 3353463 for the word AGFA, registered on January 24, 2005, for goods in classes 1, 2, 7, 9 and 10 and services in class 42;
- European Union trade mark No. 009440801 for the word AGFA registered on March 20, 2011, for goods in classes 1, 2, 7, 9 and 10;
- European Union trade mark No. 011649803 for the word AGFA registered on August 7, 2013, for goods in class 2.

The Complainant owns various domain names containing the word "agfa". Furthermore, the Complainant had as subsidiary called Agfa Graphics Asia Limited, incorporated in 2010 in Hong Kong, China.

The disputed domain name was created on December 18, 2021 and directs to a website on which products such as printing machines are offered for sale.

5. Parties' Contentions

A. Complainant

The Complainant is active in the graphics and photographic sector as well as in medical imaging and in the medical software sector since many years and enjoys a worldwide reputation. Its activities cover a major part of the world. It was formerly very well-known as a player in the photography sector, namely as a manufacturer of cameras and film.

The Complainant submits that the disputed domain name <agfagraphicsasialimited.com> is confusingly similar to the trade mark AGFA. The disputed domain name incorporates the name "agfa" which is identical to the trade mark AGFA. Finally, the Complainant submits that in assessing whether a disputed domain name is confusingly similar to a trade mark the domain extension is disregarded. Therefore, the disputed domain name is confusingly similar to the trade mark AGFA.

Furthermore, the Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The following reasons are given: First, the Respondent is not commonly known by the name AGFA or by the company name Agfa Graphics Asia Limited. Second, the Complainant has not licensed or otherwise authorized the Respondent to use its trade mark or any domain name including the trade mark AGFA.

The Complainant finally argues that the Respondent registered and uses the disputed domain name in bad faith. First, the Complainant submits that the trade mark AGFA is famous and far predates the registration of the disputed domain name. The Respondent could therefore not have ignored the preexistence of the Complainant's trade mark and the Respondent must have been fully aware of it when selecting the disputed domain name. Second, the Complainant points out that the disputed domain name is identical to the company name of its subsidiary in Hong Kong, China, which is a clear indication of the bad faith intentions of the Respondent. Third, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location. Finally, the Complainant submits that the Respondent has selected the disputed domain name to draw the impression that it is affiliated with the

Respondent, or endorsed by it.

B. Respondent

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

6. Discussion and Findings

The Panel is of the opinion that the Complainant's contentions are reasoned and that the disputed domain name should be transferred to the Complainant pursuant to the Policy.

A. Identical or Confusingly Similar

The Complainant proves that it has rights in the trade mark AGFA based on different trade mark registrations in the world. The Panel is of the opinion that the disputed domain name <agfagraphicsasialimited.com> is confusingly similar to the trade mark of the Complainant. The disputed domain name contains the word "agfa" which is the first part of the disputed domain name and is a dominant feature thereof. The trade mark AGFA is clearly recognizable in the disputed domain name. The fact that the trade mark AGFA in the disputed domain name is followed by the words "graphics" and "asialimited" does not prevent a finding of confusing similarity.

The added suffix ".com" does not change the finding that the disputed domain name is confusingly similar, since the ".com" suffix is understood to be a technical requirement. In making the comparison between the trade mark and the disputed domain name, the generic Top-Level-Domain ("gTLD"), is therefore disregarded. The Panel is of the opinion that applying these principles to this case, the disputed domain name is confusingly similar to the trade mark.

Therefore, the requirement under paragraph 4(a)(i) of the Policy is met.

B. Rights or Legitimate Interests

The Panel is of the opinion that the Complainant made out a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. First, the Respondent did not show that it owns any rights to the name "AGFA" nor that it has any licence from the Complainant to use its trade mark or a similar sign, such as the company name of its Hong Kong, China, subsidiary, Agfa Graphics Asia Limited. Second, the Respondent did not argue that it is known, or that it has ever been known under the name "AGFA".

Finally, the Respondent has not come forward with evidence of any rights or legitimate interests and the Panel does not find any in the present record.

In view of the aforementioned, the Panel is of the opinion that the requirement of paragraph 4(a)(ii) of the Policy is met.

C. Registered and Used in Bad Faith

The Panel is of the opinion that the disputed domain name was registered and is being used in bad faith.

With respect to the registration, the Panel finds that it is plausible that the Respondent must have been aware of the Complainant's earlier trade mark when he registered the disputed domain name. The trade mark is a very distinctive trade mark without any specific meaning and furthermore the Complainant showed that it is a very well-known mark and in use for a long time. Choosing a domain name that comprises a reproduction of such a trade mark in its entirety clearly makes the registration thereof a bad faith registration. This also follows from the fact that the disputed domain name is identical to the company name of the Hong

Kong, China, subsidiary of the Complainant.

Furthermore, the Panel is of the opinion that the Respondent, by using the disputed domain name that is confusingly similar to the Complainant's trade mark AGFA, will attract Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trade mark and its business. This is caused by two facts. First, the website to which the disputed domain name directs offers for sale printing machines which are very similar to the graphics and photographic products sold by the Complainant. Second, by using the disputed domain name that is identical to the company name of the Hong Kong, China, subsidiary of the Complainant, confusion will be created with the Complainant's trade mark and its business. In addition, the full name of the Hong Kong, China, subsidiary of the Complainant is present on the header of the website at the disputed domain name, likely to give a false impression of affiliation with the Complainant. The conclusion therefore is that the disputed domain name has been registered and is being used in bad faith.

The Panel therefore considers the requirement of paragraph 4(a)(iii) of the Policy to be met.

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 <agfagraphicsasialimited.com> be transferred to the Complainant.

/Charles Gielen/

Charles Gielen

Sole Panelist

Date: June 7, 2022