

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. maojianhua (毛建华)

Case No. D2022-1712

1. The Parties

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

The Respondent is maojianhua (毛建华), China.

2. The Domain Name and Registrar

The disputed domain name <agfa-hces.com> is registered with 17 Domain 1, Limited (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 11, 2022. On May 11, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 24, 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 the same date, 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 the same date.

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 June 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 5, 2022.

The Center appointed William R. Towns as the sole panelist in this matter on July 20, 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 Agfa-Gevaert N.V., a Belgian-German multinational corporation founded in 1867, and headquartered in Mortsel, Belgium. The Complainant has promoted its products under the AGFA brand for many years, is well known and today is commercially active in over 40 countries. The Complainant is best known for its manufacture and distribution of analogue and digital AGFA imaging products and software and systems.

The Complainant has registered its AGFA brand in a number of jurisdictions in the European Union (“EUTM”), including among the following:

AGFA – EUTM Reg. No. 003353463, filed September 16, 2003, with a registration date of January 24, 2005;

AGFA – EUTM Reg. No. 008133167, filed March 3, 2009, and registered February 17, 2010; and

AGFA – EUTM Reg. No. 009440801, filed October 13, 2010 and registered March 20, 2011.

The disputed domain name was registered on April 7, 2022, according to the Registrar’s Whois data. It appears the disputed domain name has been used with websites displaying images of sexually oriented and pornographic materials, in some instances portraying men and women in various sexual activities.

5. Parties’ Contentions

A. Complainant

The Complainant submits that the disputed domain name is confusingly similar to the Complainant’s AGFA mark, in which the Complainant asserts rights. The Complainant is very well known as a player in the photography sector, namely as a manufacturer of cameras and film.

According to the Complainant, its AGFA mark enjoys a worldwide reputation, with activities around the world. The Complainant observes that it owns numerous domain names comprising its AGFA mark. The Complainant emphasizes as well that the generic Top-Level Domain (“gTLD”) “.com” does not need to be taken into consideration.

The Complainant contends that the Respondent lacks rights or legitimate interests in respect of the disputed domain name. The Complainant asserts that the Respondent has neither been licensed nor otherwise authorized or permitted to license, register or use the disputed domain name incorporating its AGFA mark.

According to the Complainant, the disputed domain name has been used with one or more websites prominently displaying pornographic material. The Complainant explains that the “www.agfa-hces.com” website currently is in use, and further observes that the website is in the Chinese language and contains hard-core pornographic videos. The Complainant submits that the Respondent has no legitimate interest in the disputed domain name, and asserts that the use of the disputed domain name for a pornography site tarnishes the Complainant’s reputation and the Complainant’s AGFA mark.

The Complainant submits that the Respondent registered and is using disputed domain name in bad faith. According to the Complainant, the Respondent has sought to capitalize on the reputation of the Complainant’s well-known and famous AGFA mark, intentionally diverting unsuspecting Internet users to websites displaying sexually oriented and pornographic material. The Complainant reiterates that the disputed domain name is being used for an adult sex site, which the Complainant maintains clearly does not constitute a “*bona fide*” offering of goods or services.

The Complainant concludes that bad faith can be found as the Respondent has registered and is using the disputed domain name in an attempt to attract for commercial gain Internet users to a website or other on-line location, seeking to create a likelihood of confusion with the Complainant's AGFA mark as to source, sponsorship, affiliation or endorsement of the respondent's website or location of a product or service.

B. Respondent

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

6. Discussion and Findings

A. Scope of the Policy

The Policy is addressed to resolving disputes concerning allegations of abusive domain name registration and use. *Milwaukee Electric Tool Corporation v. Bay Verte Machinery, Inc. d/b/a The Power Tool Store*, WIPO Case No. [D2002-0774](#). Accordingly, the jurisdiction of this Panel is limited to providing a remedy in cases of "the abusive registration of domain names", also known as "cybersquatting". *Weber-Stephen Products Co. v. Armitage Hardware*, WIPO Case No. [D2000-0187](#). See Final Report of the First WIPO Internet Domain Name Process, April 30, 1999, paragraphs 169-177. The term "cybersquatting" is most frequently used to describe the deliberate, bad faith abusive registration of a domain name in violation of rights in trademarks or service marks. *Id.* at paragraph 170. Paragraph 15(a) of the Rules provides that the panel shall decide a complaint on the basis of statements and documents submitted and in accordance with the Policy, the Rules and any other rules or principles of law that the panel deems applicable.

Paragraph 4(a) of the Policy requires that the complainant proves each of the following three elements to obtain a decision that a domain name should be either cancelled or transferred:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and
- (ii) the respondent has no rights or legitimate interests with respect to the domain name; and
- (iii) the domain name has been registered and is being used in bad faith.

Cancellation or transfer of the domain name is the sole remedy provided to the complainant under the Policy, as set forth in paragraph 4(i).

Paragraph 4(b) of the Policy sets out four situations under which the registration and use of a domain name is deemed to be in bad faith, but does not limit a finding of bad faith to only these situations.

Paragraph 4(c) of the Policy in turn identifies three means through which a respondent may establish rights or legitimate interests in a domain name. Although the complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, UDRP panels have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily, if not exclusively, within the knowledge of the respondent. Thus, the view is that the burden of production shifts to the respondent to come forward with evidence of a right or legitimate interest in the domain name, once the complainant has made a *prima facie* showing. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.1. See, e.g., *Document Technologies, Inc. v. International Electronic Communications Inc.*, WIPO Case No. [D2000-0270](#).

B. Identical or Confusingly Similar

The Panel finds that the disputed domain name is confusingly similar to the AGFA mark, in which the Complainant has demonstrated rights through registration and use. In considering confusing similarity, the

first element of the Policy serves essentially as a standing requirement,¹ and involves a relatively straightforward comparison between the complainant's trademark and the disputed domain name.

The Complainant's AGFA mark is clearly recognizable in the disputed domain name.² The first element test typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name.³ Applying this comparison, the Complainant's mark is recognizable.⁴ When as here the relevant trademark is recognizable in the disputed domain name, the addition of other terms does not preclude a finding of confusing similarity under paragraph 4(a)(i) of the Policy.⁵ Further, the inclusion in the disputed domain name of geographical, meaningless, or descriptive words as such does not prevent a finding of the confusing similarity between the disputed domain name and the Complainant's mark.⁶

When at least a dominant feature of the relevant trademark is recognizable in the disputed domain name, the domain name normally will be considered confusingly similar to that mark for purposes of UDRP standing.⁷ See *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#) (addition in disputed domain names <autocadcloud.com> and <hostedautocad.com> of descriptive words "cloud" and "hosted" does not prevent confusing similarity). See, e.g., *National Association for Stock Car Auto Racing, Inc. v. Racing Connection / The Racin' Connection, Inc.*, WIPO Case No. [D2007-1524](#).

Top-Level Domains ("TLDs"), in this case ".com", generally are disregarded in determining identity or confusing similarity under paragraph 4(a)(i) of the Policy, irrespective of any ordinary meaning that might be ascribed to the TLD.⁸

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

C. Rights or Legitimate Interests

As noted above, once the complainant makes a *prima facie* showing under paragraph 4(a)(ii) of the Policy, the burden of production shifts to the respondent to come forward with evidence of rights or legitimate interests in a domain name. The Panel is persuaded from the record of this case that a *prima facie* showing under paragraph 4(a)(ii) of the Policy has been made. It is undisputed that the Respondent has not been authorized to use the Complainant's AGFA mark. Regardless, the Respondent intentionally has registered the disputed domain name, misappropriating the Complainant's well-known mark, and pointing the disputed domain name to one or more websites displaying sexually oriented and pornographic material.

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating any of the following:

- (i) before any notice to it of the dispute, the Respondent's use of, or demonstrable preparations to use, the disputed domain name or a name corresponding to the disputed domain name in connection with a *bona fide* offering of goods or services; or
- (ii) the Respondent has been commonly known by the disputed domain name, even if it has acquired no

¹ See [WIPO Overview 3.0](#), section 1.7.

² *Id.* When the relevant trademark is recognizable in the disputed domain name, the domain name normally will be considered confusingly similar to the mark for purposes of paragraph 4(a)(i) of the Policy.

³ *Id.*

⁴ See [WIPO Overview 3.0](#), section 1.8 and cases cited therein.

⁵ *Id.*

⁶ See [WIPO Overview 3.0](#), section 1.8 and cases cited *therein*. The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) does not prevent a finding of confusing similarity under paragraph 4(a)(i) of the Policy.

⁷ See [WIPO Overview 3.0](#), section 1.7 and cases cited therein.

⁸ See [WIPO Overview 3.0](#), section 1.11 and cases cited therein.

trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

The Respondent has not submitted any response to the Complaint, in the absence of which the Panel may accept all reasonable inferences and allegations in the Complaint as true. See *Talk City, Inc. v. Michael Robertson*, WIPO Case No. [D2000-0009](#). The Panel has carefully reviewed the record in this case, and has found nothing therein that would bring the Respondent's registration and use of the disputed domain name within any of the "safe harbors" of paragraph 4(c) of the Policy.

It is apparent to the Panel that the Respondent knew of the Complainant and had the Complainant's distinctive AGFA mark in mind when registering the disputed domain name, which as previously noted is confusingly similar to the Complainant's well-known mark.

The Complainant considers that Internet users anticipating the Complainant but arriving instead at one or more of the Respondent's websites (even if encountering sexually oriented materials) might nonetheless be more likely than not likely to conclude that the websites they have arrived at are affiliated with, endorsed or otherwise sponsored by the Complainant. See *Levantur, S.A. v. Media Insight*, WIPO Case No. [D2008-0774](#).

Having regard to all of the relevant circumstances in this case, and absent any explanation by the Respondent, the Panel concludes that the Respondent has neither used nor made demonstrable preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services within the contemplation of paragraph 4(c)(i) of the Policy. See *Autodesk, Inc. v. Brian Byrne, meshIP, LLC*, WIPO Case No. [D2017-0191](#). Further, and for the reasons discussed above, the Panel holds that the Respondent has not made a legitimate noncommercial or fair use of the disputed domain name. As previously noted, the Respondent has not been authorized to use the Complainant's AGFA mark, and the Panel has found no indication in the record that the Respondent has been commonly known by the disputed domain name within the meaning of paragraph 4(c)(ii) of the Policy. In short, nothing in the record before the Panel would support a claim by the Respondent of rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

D. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy states that any of the following circumstances, in particular but without limitation, shall be considered evidence of the registration and use of a domain name in bad faith:

- (i) circumstances indicating that the respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant (the owner of the trademark or service mark) or to a competitor of that complainant, for valuable consideration in excess of the Respondents' documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the respondent registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that the respondent has engaged in a pattern of such conduct; or
- (iii) circumstances indicating that the respondent registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) circumstances indicating that the respondent is using the domain name to intentionally attempt 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 the respondent's website or location or of a product or service on its website or location.

The examples of bad faith registration and use set forth in paragraph 4(b) of the Policy are not meant to be exhaustive of all circumstances from which such bad faith may be found. See *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#). The overriding objective of the Policy is to curb the abusive registration of domain names in circumstances where the registrant seeks to profit from and exploit the trademark of another. See *Match.com, LP v. Bill Zag and NWLAWS.ORG*, WIPO Case No. [D2004-0230](#).

Moreover, UDRP panels have consistently found that the mere registration of a domain name confusingly similar to a famous or widely-known trademark by an unaffiliated entity can of itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4.

For the reasons discussed under this and the preceding heading, the Panel concludes that the Respondent's conduct in this case constitutes bad faith registration and use of the disputed domain name within the meaning of paragraph 4(b)(iv) of the Policy. The Panel considers that the Respondent's use of the disputed domain name clearly constitutes bad faith registration and use of the disputed domain name. The record is convincing that the Respondent was likely aware of and had the Complainant's well-known AGFA mark in mind when registering the disputed domain name. Moreover, the use of the disputed domain name for adult content in these circumstances is indicative of bad faith.

The Panel thus finds that the Complainant has satisfied the requirements of paragraph 4(a)(iii) 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 <agfa-hces.com> be transferred to the Complainant.

/William R. Towns/

William R. Towns

Sole Panelist

Date: August 3, 2022