

## **ADMINISTRATIVE PANEL DECISION**

Deutz AG v. Krisztian FEHER, Fex-Kft.

Case No. D2022-2592

### **1. The Parties**

Complainant is Deutz AG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

Respondent is Krisztian FEHER, Fex-Kft., Hungary.

### **2. The Domain Name and Registrar**

The disputed domain name <allaboutdeutz.com> is registered with NETIM SARL (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 15, 2022. On July 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 18, 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 Complainant on July 19, 2022, providing the registrant and contact information disclosed by the Registrar, and inviting Complainant to submit an amendment to the Complaint. Complainant filed an amendment to the Complaint on July 26, 2022.

The Center verified that the Complaint together with the amendment to the 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 Respondent of the Complaint, and the proceedings commenced on July 27, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 16, 2022. On July 24, 2022, the Center received an email from an email address connected to the disputed domain name, stating that the Center’s provided registrant information disclosed by the Registrar is incorrect. On August 8, 2022, the Center received an email from the email address which was listed by the Registrar as the technical and billing contact of the disputed domain name, stating that the registrant data has been modified on July 22, 2022. Respondent did not file a formal Response. Accordingly, the Center notified the Commencement of Panel Appointment Process on August 18, 2022.

The Center appointed Brian J. Winterfeldt as the sole panelist in this matter on August 24, 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**

Complainant Deutz AG (“Complainant” or “Deutz”) is a German engine manufacturer founded in 1864. Complainant has continuously used the Deutz name since July 10, 1884. Today, Complainant manufactures and distributes worldwide diesel engines and engine components for agricultural machinery, marine propulsion, automobiles, and construction equipment.

Complainant owns several international trademark registrations for DEUTZ (the “Mark”) worldwide for use in connection with engine manufacturing, with sample registration details as follows:

- DEUTZ (device), International Trademark Reg. No. 739507, registered on March 30, 2000;
- DEUTZ (device), International Trademark Reg. No. 290367, registered on October 30, 1964;
- DEUTZ, International Trademark Reg. No. 158321, registered on December 17, 1951.

Complainant has continuously used the DEUTZ Mark in connection with engine manufacturing since at least as early as 1884. Complainant also owns and operates the <deutz.com> domain name, which was created on April 18, 1996.

The disputed domain name was registered on October 12, 2015. The disputed domain name currently redirects to a Hungarian website under the domain name <mindenamideutz.hu> claiming to offer Deutz and third party engines and parts for sale. The website under the domain name <mindenamideutz.hu> includes direct references to, and contact details associated with, the dispute domain name.

#### **5. Parties’ Contentions**

##### **A. Complainant**

According to Complainant, the disputed domain name is identical or confusingly similar to Complainant’s DEUTZ trademark in which Complainant has rights as demonstrated through its cited registrations. The Mark was adopted and has been continuously used since at least as early as 1884 in connection with engine manufacturing. Complainant maintains its online presence through multiple websites, including one hosted at its domain name <deutz.com>.

Complainant argues that the disputed domain name fully incorporates the Mark. Complainant also argues that the addition of the element “allabout” in addition to the Mark is clearly not sufficient to avoid a finding of confusing similarity. Complainant argues that the composition of the disputed domain name emphasizes an association between Complainant’s famous trademark and the disputed domain name.

Complainant asserts that Respondent lacks any rights or legitimate interests in the disputed domain name. According to Complainant, Respondent does not have any trademark rights to the Mark. Complainant alleges that Respondent is not using the disputed domain name in connection with any legitimate noncommercial or fair use without intent for commercial gain. Complainant argues that Respondent’s use of the disputed domain name to offer engines and engine parts for sale clearly shows that Respondent is intentionally using Complainant’s DEUTZ Marks to redirect potential customers away from Complainant’s website. Complainant also asserts that it has not granted Respondent, by license or otherwise, permission to use the Mark in any way. Complainant asserts that it has never had any contractual relationship with

Respondent, especially with regard to resale of engines and engine parts. Complainant argues that the disputed domain name was registered by Respondent without Complainant's consent. Moreover, Complainant contends that Respondent's use does not meet the principle of fair use for reseller or distributors set out in the case *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#).

Complainant argues that Respondent both registered and is using the disputed domain name in bad faith. According to Complainant, Respondent registered and used the disputed domain name intentionally in an attempt to attract Internet users to its website by creating a likelihood of confusion with Complainant's trademark. Complainant argues that Respondent intends to attract Internet users and consumers looking for legitimate Deutz goods and services and/or authorized partners to Respondent's own webpage. Complainant argues that Respondent could not have been unaware of the existence of Complainant's famous trademarks and company name when registering the disputed domain name. Complainant also argues that the mere fact that Respondent has registered the disputed domain name which incorporates the famous DEUTZ mark belonging to a famous engine manufacturing business is alone sufficient to give rise to an inference of bad faith. Complainant further argues that the content and use of Respondent's website also evidences bad faith on account of the offer of Complainant-branded products for sale. Complainant argues that such actions clearly show the domain name was registered and is being used in bad faith.

## **B. Respondent**

Respondent did not reply to Complainant's contentions. However, on July 24, 2022, the Center received an email from an email address connected to the disputed domain name, stating that the Center's provided registrant information disclosed by the Registrar is incorrect, and which actually relates to a former administrative contact associated with the disputed domain name. On August 8, 2022, the Center received an email from the email address which was listed by the Registrar as the technical and billing contact of the disputed domain name, stating that the registrant data has been modified on July 22, 2022 to identify "Toni Zs GOTTHARD, DTZ SZERVIZ KOZVETITO KFT".

The Panel notes paragraph 1 of the Rules indicate: "Respondent means the holder of a domain-name registration against which a complaint is initiated." For the purposes of this proceeding, the Panel considers the Registrar-confirmed registrant "Krisztian FEHER, Fex-Kft." to be Respondent. In any event, the Panel has considered all communications received in this case and notes that the modified registrant data put forward by the technical and billing contact does not materially impact the outcome in this Decision.

## **6. Discussion and Findings**

Under paragraphs 5(f) and 14(a) of the Rules, the effect of a default by a respondent is that, in the absence of exceptional circumstances, the panel shall proceed to a decision on the basis of the complaint.

Under paragraph 4(a) of the Policy, to succeed Complainant must satisfy the Panel that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights;
- (ii) Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name was registered and is being used in bad faith.

### **A. Identical or Confusingly Similar**

A national or international trademark registration is *prima facie* evidence that the holder has the requisite rights in the registered mark for purposes of paragraph 4(a)(i) of the Policy. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.2.1. Complainant has provided evidence that it owns multiple trademark registrations for the DEUTZ trademark as referenced

above. Therefore, Complainant has established that it has rights in the Mark.

The remaining question under the first element of the Policy is whether the disputed domain name (typically disregarding the Top-Level Domain (“TLD”) in which the domain name is registered) is identical or confusingly similar to Complainant’s mark. It is well accepted that the first element functions primarily as a standing requirement and that the threshold test for confusing similarity involves a “reasoned but relatively straightforward comparison between the complainant’s trademark and the disputed domain name”.

[WIPO Overview 3.0](#), section 1.7. This 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. *Id.*

Here, the disputed domain name incorporates the entirety of the Mark, adding only the words “all” and “about” to the Mark, which does not prevent a finding of confusing similarity between the disputed domain name and the Mark. A side-by-side comparison of the Mark and the disputed domain name reveals that the Mark is easily recognizable within the disputed domain name.

Therefore, the Panel finds that Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy in establishing its trademark rights and showing that the disputed domain name is confusingly similar to its DEUTZ mark.

## **B. Rights or Legitimate Interests**

Under paragraph 4(a)(ii) of the Policy, Complainant must make at least a *prima facie* showing that Respondent possesses no rights or legitimate interests in the disputed domain name. See [WIPO Overview 3.0](#), section 2.1. Once Complainant makes such a *prima facie* showing, the burden of production shifts to Respondent, though the burden of proof always remains on Complainant. If Respondent fails to come forward with evidence showing rights or legitimate interests, Complainant will have sustained its burden under the second element of the UDRP.

Paragraph 4(c) of the Policy lists the ways that Respondent may demonstrate rights or legitimate interests in the disputed domain name:

- (i) before any notice of the dispute, 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) Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if it has acquired no trademark or service mark rights; or
- (iii) 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.

Here, Complainant has alleged that Respondent has no rights or legitimate interests in the disputed domain name. Respondent has failed to come forward with any evidence showing rights or legitimate interests. Respondent has not submitted any arguments or evidence to rebut Complainant’s contention that Respondent is not an assignee or licensee of Complainant and that Respondent has no other business relationship with Complainant. Complainant has contended that Respondent is not commonly known by the disputed domain name and that there is no evidence that Respondent has established trademark rights in the disputed domain name. Respondent has not provided any evidence or arguments to demonstrate that it has such rights.

The disputed domain name currently redirects to a website claiming to offer not only Deutz engines and parts for sale, but also products of well-known third parties that directly compete with Complainant. The webpage does not only sell Complainant’s trademarked goods or services and in the context of this

proceeding does not constitute a *bona fide* offering of goods or services, see [WIPO Overview 3.0](#), section 2.8.

Moreover, the nature of the disputed domain name, incorporating Complainant's long-standing Mark with descriptive terms suggesting information will be provided about the Complainant, carries a risk of implied affiliation. See [WIPO Overview 3.0](#), section 2.5.1.

Accordingly, the Panel finds that Respondent does not have any rights or legitimate interests in the disputed domain name.

### **C. Registered and Used in Bad Faith**

Bad faith is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. Paragraph 4(b) of the Policy provides that any one of the following non-exclusive scenarios constitutes evidence of a respondent's bad faith:

- (i) circumstances indicating that the respondent has registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of the respondent's documented out-of-pocket costs directly related to the domain name; or
- (ii) the respondent has 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) the respondent has registered the domain name primarily for the purpose of disrupting the business of a competitor; or
- (iv) by using the domain name, the respondent has intentionally attempted 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 the respondent's website or location.

Here, Respondent's actions align with 4(b)(iv) of the Policy. The disputed domain name contains the entirety of the DEUTZ mark, with the addition of the descriptive words "all" and "about" to the Mark. Due to the well-known nature of Complainant's brand, evidenced by its numerous global trademark registrations for DEUTZ, along with the unauthorized use of the Mark in the disputed domain name, and in conjunction with the content on Respondent's website explicitly identifying Complainant, Respondent was undoubtedly aware of Complainant and the Mark when it registered the disputed domain name. Further, the use of the disputed domain name to redirect Internet users to Respondent's website, which offers Complainant-branded engines and engine parts for sale, as well as those of competitors of Complainant, can only serve to create a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent's website for commercial gain. Respondent's use of the Mark in the disputed domain name in connection with the redirection to Respondent's website clearly evidences bad faith on the part of Respondent in the registration and use of the disputed domain name.

This Panel therefore finds that Respondent acted in bad faith by its registration and use of the disputed domain name, intentionally creating a likelihood of confusion as to the source, sponsorship, affiliation, or endorsement of Respondent's website with the purpose of attracting Internet users for commercial gain as per paragraph 4(b)(iv) 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, <callaboutdeutz.com>, be transferred to Complainant.

*/Brian J. Winterfeldt/*

**Brian J. Winterfeldt**

Sole Panelist

Date: September 7, 2022