

ADMINISTRATIVE PANEL DECISION

Agfa-Gevaert N.V. v. Chen Xiansheng, chenxiansheng
Case No. D2022-3998

1. The Parties

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

The Respondent is Chen Xiansheng, chenxiansheng, Singapore.

2. The Domain Name and Registrar

The disputed domain name <agfahospital.com> (“Domain Name”) is registered with Atak Domain Hosting Internet ve Bilgi Teknolojileri Limited Sirketi d/b/a Atak Teknoloji (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 25, 2022. On October 26, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On October 27, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent (Domain Administrator, Registrant of agfahospital.com) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 27, 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 October 28, 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 October 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2022.

The Center appointed Olga Zalomiy as the sole panelist in this matter on November 28, 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 develops, produces and distributes analog and digital imaging systems and IT solutions, mainly for the printing industry and the healthcare sector. The Complainant owns several trademark registrations in the AGFA mark, such as:

- The European Union registration No. 003353463 for the word AGFA registered on January 24, 2005;
- The European Union registration No. 008133167 for the word and design mark AGFA registered on February 17, 2010;
- The European Union registration No. 009440801 for the word mark AGFA registered on March 20, 2011;
- The European Union registration No. 016044059 for the word and design mark AGFA HEALTHCARE registered on March 22, 2017.

The Respondent registered the Domain Name on August 13, 2022. The Domain Name directs users to a website in Chinese displaying pornographic content.

5. Parties' Contentions

A. Complainant

The Complainant's contentions can be summarized as follows:

The Complainant is a Belgium company that is involved in the photographic sector, medical imaging and medical software sector. The Complainant alleges that it owns several AGFA trademark registrations. The Complainant claims that the Domain Name is confusingly similar to its AGFA and AGFA HEALTHCARE trademarks because the AGFA trademark is recognizable within the Domain Name. The Complainant argues that because the Domain Name incorporates the AGFA trademark in its entirety, the addition of the descriptive word "hospital" in the Domain Name, increases risk of confusing similarity given the Complainant's involvement in the healthcare industry. The Complainant requests that the generic Top-Level Domain ("gTLD") ".com" in the Domain Name does not detract from the confusing similarity test as a standard registration requirement.

The Complainant alleges that the Respondent lacks rights or legitimate interests in the Domain Name for the following reasons: (i) the Respondent has not been commonly known by the Domain Name; (ii) the Respondent has not received any license from the Complainant to use the AGFA trademark in the Domain Name; (iii) The Respondent is using the Domain Name in connection with a website in Chinese that features pornographic content tarnishing the Complainant's trademark.

The Complainant contends that the Respondent both registered and is using the Domain Name in bad faith. The Complainant alleges that its earliest AGFA trademark registration predates the registration date of the Domain Name. The Complainant argues that its trademark is well known, so the Respondent must have been aware of the Complainant's mark when it registered the Domain Name. The Complainant argues that the registration of the Domain Name containing the Complainant's well known trademark is *per se* evidence of bad faith, especially where, as here, addition of the descriptive word "hospital", refers to the Complainant's activities. The Complainant asserts that the Respondent is using the Domain Name in bad faith. The Complainant asserts that the Respondent's use of the Domain Name to display pornographic content is in bad faith. The Complainant alleges that the Respondent has selected its well known trademark AGFA to

draw the impression that it is affiliated with the Respondent, or endorsed by it, which demonstrates the Respondent's bad faith. The Complainant argues that such use of its trademark can create customer confusion or dilution of the mark.

B. Respondent

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

6. Discussion and Findings

Pursuant to paragraph 4(a) of the UDRP, to succeed in this proceeding, the Complainant must prove each of the following elements with respect to the Domain Name:

- (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 in respect of the Domain Name; and
- (iii) the Domain Name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the UDRP, the Complainant must prove that the Domain Name is identical or confusingly similar to the trademark or service mark in which the Complainant has rights.

The submitted evidence shows that the Complainant owns several trademark registrations for the AGFA trademark. Pursuant to section 1.2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), this satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case.

"Where the relevant trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element." Section 1.8, [WIPO Overview 3.0](#). It is well-established that the applicable gTLD should be disregarded under the confusingly similarity test as a standard registration requirement. Section 1.11.1, [WIPO Overview 3.0](#).

The Domain Name consists of the Complainant's AGFA trademark, the word "hospital" and the gTLD ".com". Because the Complainant's AGFA trademark is recognizable within the Domain Name, the addition of the word "hospital" does not prevent a finding of confusing similarity. The gTLD ".com" is disregarded as a standard registration requirement. Therefore, the Domain Name is confusingly similar to the Complainant's AGFA trademark.

The Complainant has satisfied the first element of the UDRP.

B. Rights or Legitimate Interests

To succeed under the second UDRP element, the Complainant must make out a *prima facie* case in respect of the lack of rights or legitimate interests of the Respondent.

To demonstrate rights or legitimate interests in a domain name, non-exclusive respondent defenses under the UDRP, paragraph 4(c) include the following:

(i) before any notice of the dispute, the respondent's use of, or 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

(ii) the respondent (as an individual, business, or other organization) has been commonly known by the domain name, even if the respondent has acquired no trademark or service mark rights; or

(iii) the respondent is making a 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.

The evidence on file shows that the Complainant has not licensed or permitted the Respondent to use the Complainant's AGFA trademark in domain names, or for any other purpose. There is no evidence that the Respondent has ever been commonly known by the Domain Name. There is no evidence that the Respondent is making a legitimate noncommercial or fair use of the Domain Name. The Respondent is not using the Domain Name in connection with a *bona fide* offering of goods or services because the Domain Name directs to a website that displays pornographic content. Even assuming that the Respondent had been engaged in legitimate business activities related to the marketing and promotion of lawful adult content, there is no apparent or legitimate reason for the Respondent's selection of a domain name comprised of the well-known AGFA trademark plus a term ("hospital") in the Complainant's industry, for a website displaying pornographic content.

The Panel finds that the Complainant has made out the *prima facie* case and the burden of producing evidence demonstrating it has rights or legitimate interests in the Domain Name has shifted to the Respondent. Section 2.1, [WIPO Overview 3.0](#). Since the Respondent failed to present any rebutting evidence, the Complainant is deemed to have satisfied the second element of the UDRP.

C. Registered and Used in Bad Faith

Pursuant to paragraph 4(a)(iii) of the Policy, the Complainant must prove that the Domain Name was registered and is being used in bad faith.

The UDRP establishes that, for purposes of paragraph 4(a)(iii), "bad faith" registration and use of a domain name can be established by a showing of circumstances indicating that the respondent is using the domain name to intentionally attempt to attract, for commercial gain, Internet users to the respondent's website or other online location, by creating a likelihood of confusion with the complainant's mark as to 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. See Policy, paragraph 4(b)(iv).

The Domain Name directs to a website featuring a variety of sexually explicit images. Therefore, it is likely, that the Respondent is using the Domain Name to intentionally attract, for commercial gain, Internet users to its website, by creating likelihood of confusion with the Complainant's mark. See *Red Bull GmbH v. Whois Agent, Domain Protection Services, Inc. / esco escortlar, escort sitesi*, WIPO Case No. [D2017-1639](#) (finding the respondent's use of the domain for a pornographic website constituted "a strong indication of bad faith registration and use," because it showed respondent's main purpose was "to create a likelihood of confusion among customers and/or to tarnish the Complainant's RED BULL trademark for commercial gain or any other illegitimate benefit"); *Bank of Jerusalem Ltd. v. Shek Cheung Chung*, WIPO Case No. [D2017-1153](#) (finding bad faith where the domain resolved to a website "at which adult content and links to websites at which pornographic content [was] being offered, tarnishing Complainant and its trademark, and for which Respondent [was] likely receiving commercial gain").

The following circumstances further support finding of the Respondent's bad faith registration and use of the Domain Name: 1) the Complainant's trademark is well-known and the Complainant's earliest trademark registrations for the AGFA trademarks predate the Domain Name's registration; 2) the Respondent's failure to submit a response in this case or to provide any evidence of good faith registration and use; 3) the Respondent's use of the Domain Name for a Chinese website featuring pornographic content, which makes

any good faith use of the Domain Name implausible; and, 4) the addition of a term in the Complainant's industry to the relevant mark in the Domain Name.

Based on the above, the Complainant has satisfied the third element of the UDRP.

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 Domain Name, <agfahospital.com> be transferred to the Complainant.

/Olga Zalomiy/

Olga Zalomiy

Sole Panelist

Date: December 12, 2022