

ADMINISTRATIVE PANEL DECISION

AGFA-GEVAERT N.V. v. Kka, kka

Case No. D2023-2295

1. The Parties

The Complainant is AGFA-GEVAERT N.V., Belgium, represented by Novagraaf Belgium NV/SA, Belgium.

The Respondent is Kka, kka, Viet Nam.

2. The Domain Names and Registrars

The disputed domain names <agfa11.com>, <agfa22.com>, <agfa33.com>, <agfa44.com>, <agfa55.com>, <agfa66.com>, <agfa77.com>, <agfa88.com> and <agfa99.com> are registered with Hong Kong Juming Network Technology Co., Ltd (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 26, 2023. On the same day, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain names. On May 30, 2023, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the disputed domain names which differed from the named Respondent (Redacted for privacy) and contact information in the Complaint.

The Center sent an email communication to the Complainant on May 31, 2023 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 May 31, 2023.

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 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was June 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 23, 2023.

The Center appointed Federica Togo as the sole panelist in this matter on June 28, 2023. 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 the registered owner of several trademarks for AGFA, e.g. European Union Trade Mark registration no. No. 003353463 AGFA (word) registered on January 24, 2005 for goods and services in classes 1, 2, 7, 9, 10 and 42.

The disputed domain names were registered on March 8, 2023 and resolve to inactive webpages.

5. Parties' Contentions

A. Complainant

It results from the Complainant's allegations that the Complainant is active in the photographic sector, medical imaging, and medical software sector since many years and has activities all over the world.

The Complainant contends that it enjoys a worldwide reputation and it was formerly very well known as a player in the photography sector, namely as a manufacturer of cameras and film.

The Complainant uses various domain names containing the term "agfa".

The Complainant further contends that the disputed domain names are confusingly similar to the Complainant's earlier trademarks, as they are constituted entirely of the Complainant's trademark AGFA, followed by seemingly arbitrary numerals "11", "22", "33", "44", "55", "66", "77", "88" and "99" respectively. Furthermore, the addition of the gTLD ".com" to the disputed domain names does not avoid confusing similarity.

The Complainant further contends that the Respondent has no rights or legitimate interests in the disputed domain names. According to the Complainant, the Respondent has not been commonly known by the name "agfa". The Complainant has not licensed or otherwise authorized the Respondent to use its trademark or any domain name including the trademark AGFA.

Finally, the Complainant contends that the disputed domain names were registered and are being used in bad faith. Since the trademark AGFA is so famous, the Respondent could not ignore the preexistence of the Complainant's trademark rights and it must have been fully aware of it when selecting the disputed domain names.

B. Respondent

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

6. Discussion and Findings

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable". Paragraph 4(a) of the Policy requires a complainant to prove each of the following three elements in order to obtain an order that the disputed domain name be transferred or cancelled:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

- (ii) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The Panel will therefore proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied.

A. Identical or Confusingly Similar

Pursuant to paragraph 4(a)(i) of the Policy, the Complainant must establish rights in a trademark or service mark and secondly establish that the disputed domain names are identical or confusingly similar to a trademark in which the Complainant has rights.

It results from the evidence provided, that the Complainant is the owner of various trademark registrations for AGFA as indicated in the Factual Background of this Decision.

Prior UDRP panels have found that a disputed domain name is confusingly similar to a complainant's trademark where the disputed domain name incorporates the complainant's trademark in its entirety (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)") at section 1.7.

This Panel shares this view and notes that the Complainant's registered trademark AGFA is fully included in the disputed domain names, followed by the numerals "11", "22", "33", "44", "55", "66", "77", "88" and "99" respectively. Furthermore, it is the view of this Panel that the addition of the numerals in the disputed domain names cannot prevent a finding of confusing similarity between the disputed domain names and the Complainant's trademark AGFA since the Complainant's trademark is clearly recognizable in the disputed domain names (see [WIPO Overview 3.0](#) at section 1.8).

Finally, the gTLD ".com" of the disputed domain names may be disregarded under the first element confusing similarity test as it is viewed as a standard registration requirement (see [WIPO Overview 3.0](#) at section 1.11.1).

In the light of the above, the Panel finds that the disputed domain names are confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(a)(ii) of the Policy, the Complainant must secondly establish that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

Paragraph 4(c) of the Policy contains a non-exhaustive list of circumstances which, if found by the Panel to be proved, shall demonstrate the Respondent's rights or legitimate interests to the disputed domain name. In the Panel's view, based on the undisputed allegations stated above, the Complainant has made a *prima facie* case that none of these circumstances are found in the case at hand and, therefore, that the Respondent lacks rights or legitimate interests in the disputed domain names.

According to the Complaint, which has remained unchallenged, the Complainant has no relationship in any way with the Respondent and did, in particular, not authorize the Respondent's use of the trademark AGFA, e.g. by registering the disputed domain names comprising the said trademark entirely.

Furthermore, the Panel notes that there is no evidence showing that the Respondent might be commonly known by the disputed domain names in the sense of paragraph 4(c)(ii) of the Policy.

Moreover, the Panel notes that the disputed domain names contain the Complainant's registered and well-known trademark AGFA (see *Agfa-Gevaert N.V. v. Domain Administrator, See PrivacyGuardian.org / Yang*

Huai Yi, Chang Sha Bo Huan Wang Luo Ke Ji You Xian Gong Si, WIPO Case No. [D2019-1495](#); *AGFA-GEVAERT N.V. v. Hu Bing Yi*, WIPO Case No. [D2019-0927](#)), and that more likely than not, the trademark AGFA is not a trademark that one would legitimately adopt as a domain name unless to suggest an affiliation with the Complainant. The Panel finds it most likely that the Respondent selected the disputed domain names with the intention to take advantage of the Complainant's reputation by registering domain names fully containing the Complainant's trademark with the intent to attract Internet users for commercial gain.

It is acknowledged that once the Panel finds a *prima facie* case is made by a complainant, the burden of production under the second element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name (see [WIPO Overview 3.0](#) at section 2.1). Since the Respondent in the case at hand failed to come forward with any allegations or evidence, this Panel finds, in the circumstances of this case, that the Respondent has no rights or legitimate interests in the disputed domain names.

The Panel finds that the Complainant has therefore satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

According to paragraph 4(a)(iii) of the Policy, the Complainant must thirdly establish that the disputed domain names have been registered and are being used in bad faith. The Policy indicates that certain circumstances specified in paragraph 4(b) of the Policy may, "in particular but without limitation", be evidence of the disputed domain name's registration and use in bad faith.

The Panel shares the view of other UDRP panels (see above) and finds that the Complainant's trademark AGFA is well-known. Therefore, this Panel has no doubt that the Respondent positively knew or should have known that the disputed domain names consisted of the Complainant's trademark when registered the disputed domain names. Registration of the disputed domain names in awareness of the reputed AGFA mark and in the absence of rights or legitimate interests in this case amounts to registration in bad faith, see [WIPO Overview 3.0](#), section 3.1.4.

The disputed domain names do not resolve to active websites. In this regard, the Panel notes that the passive holding does not preclude a finding of bad faith (see *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#)). In fact, the further circumstances surrounding the disputed domain names' registration and use confirm the findings that the Respondent has registered and is using the disputed domain names in bad faith: (1) the Complainant's trademark AGFA is well-known; (2) the Respondent failed to submit a formal response or to provide any evidence of actual or contemplated good-faith use; and (3) the implausibility of any good faith use to which the disputed domain names may be put (see [WIPO Overview 3.0](#) at section 3.3).

In the light of the above, the Panel finds that the disputed domain names have been registered and are used in bad faith pursuant to 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 names, <agfa11.com>, <agfa22.com>, <agfa33.com>, <agfa44.com>, <agfa55.com>, <agfa66.com>, <agfa77.com>, <agfa88.com> and <agfa99.com> be transferred to the Complainant.

/Federica Togo/

Federica Togo

Sole Panelist

Date: July 12, 2023