

ADMINISTRATIVE PANEL DECISION

Knorr-Bremse AG v. Pablo Daniel Corvalan, Teka food
Case No. D2023-2976

1. The Parties

The Complainant is Knorr-Bremse AG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is Pablo Daniel Corvalan, Teka food Germany.

2. The Domain Name and Registrar

The disputed domain name <knorr-bramse.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 12, 2023. On July 12, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 13, 2023, 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 (GDPR Masked) and contact information in the Complaint. The Center sent an email communication to the Complainant on July 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 amendment to the Complaint on August 7, 2023.

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 the Respondent of the Complaint, and the proceedings commenced on August 10, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 30, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 31, 2023.

The Center appointed Torsten Bettinger as the sole panelist in this matter on September 13, 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 a developer and manufacturer of braking systems for rail and commercial vehicles and was founded in Berlin in 1905 by Mr. Georg Knorr. The Complainant is one of the world's leading developers and manufacturers of braking systems, with over 19,000 employees and businesses in over 90 locations in 27 countries throughout the world.

The Complainant owns several international trademark registrations for KNORR-BREMSE, including International Registration No. 726778 which was registered on October 20, 1999, and is designated in numerous countries worldwide and more than 80 domain names incorporating the Complainant's mark including <knorr-bremse.com>.

The disputed domain name was registered on April 27, 2023. The disputed domain name does not resolve to an active website.

5. Parties' Contentions

A. Complainant

The Complainant submits that the KNORR-BREMSE mark consists of the surname Knorr of its founder combined with the term "bremse" which means "brake" in English, emphasizing the Complainant's main field of developing braking systems.

With regard to the requirement of identity or confusing similarity between the trademark and the disputed domain name pursuant to paragraph 4(a)(i) of the Policy, the Complainant argues that:

- the designations Knorr-Bremse and the disputed domain name <knorr-bramse.com> are almost identical as the only difference is that the letter "a" has been changed and replaced by the letter "b" in the word Bremse;
- the domain name consists of a "classical" typo or misspelling of the mark;
- this difference is not sufficient to distinguish the Respondent or the goods and services offered under the disputed domain name from the Complainant.

With regards to the Respondent having no rights or legitimate interests in the disputed domain name, the Complainant submits that:

- the Complainant has not found that the Respondent has any registered trademarks or trade names or even personal names corresponding to the designation Knorr- Bremse or the disputed domain name <knorr-bramse.com>;
- no license or authorization of any other kind has been granted by the Complainant to the Respondent to use the Complainant's trademark in the disputed domain name <knorr-bramse.com>.

Finally, with regards to the disputed domain name having been registered and being used in bad faith, the Complainant argues that:

- when registering the disputed domain name, Respondent acted intentionally, at least he should have known about the prior rights of the Complainant in the trademark KNORR-BREMSE;

- the Complainant is a well-known German manufacturer of brakes, doing business in this field for more than 100 years and therefore the Respondent, who is based in Germany, was aware of Complainant's business and marks;
- the use of a domain name consisting of a misspelling or typo of the Complainant's mark is, as such, an indication of bad faith because Internet users will be misled as to the source and affiliation of any content making use of the disputed domain name (websites, emails) and will therefore, falsely, assume that the goods and services offered under the disputed domain name originate from the Complainant.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy states that the Complainant must prove each of the three following elements:

- (i) the disputed 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 disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

A. Identical or Confusingly Similar

The Complainant has demonstrated that it owns multiple trademark registrations for the mark KNORR-BREMSE prior to the registration of the disputed domain name on April 27, 2023.

It is well-established that the test of identity or confusing similarity under the Policy is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the trademark is used or other marketing and use factors usually considered in trademark infringement cases. (See sections 1.1.2 and 1.7 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

As set forth in section 1.7 of the [WIPO Overview 3.0](#): "in cases where a domain name incorporates the entirety of a trademark [...] the domain name will normally be considered confusingly similar to that mark." (See, e.g., *Oki Data Americas, Inc. v. ASD, Inc.*, WIPO Case No. [D2001-0903](#) ("the fact that a domain name wholly incorporates a complainant's registered mark is sufficient to establish identity or confusing similarity for purposes of the Policy").

In this case, the disputed domain is identical to the Complainant's KNORR-BREMSE trademark except for the letter "a" instead of the letter "e" in the word Bremse which refers to Complainant's business of developing braking systems. The replacement of the vowel "e" by the vowel "a" does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark. This replacement should be considered as typosquatting according to WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.9, which states that: "A domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element."

Finally, it is well accepted in past UDRP decisions that the generic Top Level Domain (“gTLD”) “.com”, such as (e.g., “.com”, “.club”, “.nyc”, “.tech” etc.), is typically not to be taken into account when assessing the issue of identity and confusing similarity, except in certain cases where the applicable gTLD may itself form part of the relevant trademark (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel therefore concludes that the disputed domain name is confusingly similar to the Complainant’s KNORR-BREMSE trademark in which the Complainant has exclusive rights.

B. Rights or Legitimate Interests

Pursuant to paragraph 4(c) of the Policy, a respondent may establish its rights or legitimate interests in the domain name, among other circumstances, by showing any of the following elements:

“(i) before any notice to you [the Respondent] of the dispute, your 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) you [the Respondent] (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you [the Respondent] are 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 Complainant stated that it had not been able to establish that the Respondent had any registered trademarks or trade names or even personal names corresponding to the designation Knorr- Bremse or the disputed domain name <knorr-bramse.com> and that it had never granted the Respondent a license or other authorization to use the domain name <knorr-bramse.com>.

These assertions and evidence are sufficient to establish a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the disputed domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. See section 2.1 of the [WIPO Overview 3.0](#).

The Respondent chose not to contest the Complainant’s allegations and has failed to come forward with any evidence to refute the Complainant’s *prima facie* showing that the Respondent lacks rights or legitimate interests. The Panel therefore accepts these allegations as undisputed facts.

From the record in this case, it may be found that the disputed domain name does not resolve to an active website, and there is no other evidence to support the assumption that the Respondent has used the disputed domain name in connection with a *bona fide* offering of goods or services or a legitimate noncommercial or fair use.

The Panel therefore concludes that the Respondent lacks rights and legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Paragraph 4(b) of the Policy provides four, non-exclusive, circumstances that, if found by the Panel to be present, shall be evidence of the registration and use of the disputed domain name in bad faith:

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

The Complainant holds multiple trademark registrations for the KNORR-BREMSE mark in various jurisdictions that predate the registration of the disputed domain name.

Given that the Complainant's KNORR-BREMSE marks are well-known in many countries worldwide, and in particular in Germany where the Respondent appears to be located, it is likely that the Respondent did not coincidentally register the disputed domain name but had knowledge of the Complainant's rights in the KNORR-BREMSE marks when registering the disputed domain name.

In fact, as the disputed domain is virtually identical to the Complainant's trademark KNORR-BREMSE both in appearance and in pronunciation it appears likely that the Respondent registered the disputed domain name with the intent to divert Internet traffic to the domain name holder's address as Internet users frequently misspell or mistype search terms and domain names in the regular course of browsing the web, making the practice profitable for registrants who seek to benefit from misdirected traffic.

The fact that there is no evidence that the disputed domain name has not yet been actively used does not prevent a finding of bad faith use.

Although the circumstances listed in paragraph 4(b) are all phrased in terms of affirmative actions by the Respondent, it is by now well accepted that the passive holding of a domain name, in certain circumstances, can constitute bad faith use under the Policy. (See, e.g., *Teachers Insurance and Annuity Association of America v. Wreaks Communications Group*, WIPO Case No. [D2006-0483](#); *Telstra Corporation Limited v. Nuclear Marshmallows*, WIPO Case No. [D2000-0003](#); see also [WIPO Overview 3.0](#), section 3.3.)

While panels will look at the totality of the circumstances in each case, factors that have been considered relevant in applying the passive holding doctrine include:

- (i) the degree of distinctiveness or reputation of the complainant's mark;
- (ii) the failure of the respondent to submit a response or to provide any evidence of actual or contemplated good-faith use; and
- (iii) the implausibility of any good faith use to which the domain name may be put.

The circumstances of the present case are sufficiently similar to those present in *Telstra* to establish bad faith passive holding of the disputed domain name.

Based on the record in this proceeding, the Panel is satisfied that the Complainant's KNORR-BREMSE mark is distinctive and well-known in many countries, in particular in Germany where the Respondent appears to be located.

Given that the Complainant's KNORR-BREMSE mark is solely connected with the Complainant and does not have any generic or descriptive meaning, the disputed domain name is also not susceptible to be used in a good faith generic or descriptive sense.

Furthermore, the Respondent has not replied to the Complaint nor provided any evidence of actual or contemplated good faith use of the disputed domain name.

The Panel therefore finds that the circumstances, as described above, show that the Respondent registration and passive holding of the disputed domain name equals a bad faith registration and use of the disputed domain name and therefore the Complainant also established the third element 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, <knorr-bramse.com> be transferred to the Complainant.

/Torsten Bettinger/

Torsten Bettinger

Sole Panelist

Date: September 27, 2023