

ADMINISTRATIVE PANEL DECISION

Haider Ackermann v. Anne Chapelle, Fashion Principles N.V
Case No. D2023-3195

1. The Parties

The Complainant is Haider Ackermann, France, represented by AVVA, France.

The Respondent is Anne Chapelle, Fashion Principles N.V, Belgium.

2. The Domain Name and Registrar

The disputed domain name <haiderackermann.com> is registered with Key-Systems GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 25, 2023. On July 25, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On July 27, 2023, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 2, 2023. In accordance with the Rules, paragraph 5, the due date for Response was August 22, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 29, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on September 5, 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.

On September 13, 2023, the Panel issued Procedural Order No.1, whereby he invited the Parties to make further submissions. On September 14, 2023, the Complainant filed its submission in response to Procedural Order No.1, while the Respondent did not file any submission.

4. Factual Background

The Complainant is a French designer of ready-to-wear fashion and creator of luxury products including clothing and accessories.

The Complainant is the owner of the following trademark registrations for the sign "HAIDER ACKERMANN" (the "HAIDER ACKERMANN trademark"):

- the International trademark HAIDER ACKERMANN with registration No. 879314, registered on December 23, 2005 for goods and services in International Classes 25, 41 and 42;
- the European Union trademark HAIDER ACKERMANN with registration No. 004826236, registered on May 15, 2007 for goods and services in International Classes 25, 41 and 42; and
- the International trademark HAIDER ACKERMANN with registration No. 1056791, registered on August 23, 2010 for goods and services in International Classes 3, 18, 25 and 42.

The disputed domain name was registered on October 22, 2002. It is currently inactive. According to the archive available at the Wayback Machine, the disputed domain name has previously resolved to a website offering goods bearing the Complainant's HAIDER ACKERMANN trademark.

5. Parties' Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

The Complainant states that the disputed domain name is identical to its HAIDER ACKERMANN trademark and to the Complainant's name, to the exception of the space between "Haider" and "Ackermann".

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it is not affiliated with the Complainant and has not been authorized by the latter to use the HAIDER ACKERMANN trademark. The Complainant notes that the disputed domain name is inactive, implying to Internet users that the HAIDER ACKERMANN trademark is no longer used, which damages the Complainant's image and commercial interests. The Complainant adds that the Respondent has never replied to its cease-and-desist letters.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. According to it, the fact that the Respondent does not operate the disputed domain name shows that it was renewed in 2022 essentially for the purpose of preventing the Complainant from using his HAIDER ACKERMANN trademark in a domain name.

With its submission in response to the Procedural Order No.1 of the Panel, the Complainant made the following statements:

- the Complainant is not certain about the date on which the Respondent has acquired the disputed domain name, and only knows that it was renewed on October 2022 by the Respondent;

- the Respondent is the main shareholder of the Belgian company ATELIER HAIDER ACKERMANN;
- the Complainant was bound with the company ATELIER HAIDER ACKERMANN by an agreement for the provision of services by the Complainant for creating fashion apparels and the right for the company ATELIER HAIDER ACKERMANN to use the name of the Complainant (*i.e.*, “Haider Ackermann”) in the context of selling such fashion apparels;
- the Complainant believes that it is in the context of the creation of the company ATELIER HAIDER ACKERMANN that the Respondent has registered the disputed domain name. However, there has never been any direct agreement between the Complainant and the Respondent;
- during 2020, the company ATELIER HAIDER ACKERMANN stopped paying to the Complainant the remuneration due for the services and the use of the name “Haider Ackermann”;
- the Complainant sent various official notices to the company ATELIER HAIDER ACKERMANN to pay the sums due, but these notices remained without effect, and the Complainant then terminated all agreements with the company ATELIER HAIDER ACKERMANN by an official letter dated October 30, 2020;
- The Company ATELIER HAIDER ACKERMANN was declared bankrupt on November 16, 2021.

According to the Complainant, in view of the above, the Respondent has no right nor legitimate interest to register and use the disputed domain name, and the renewal of the registration of the disputed domain name made by the Respondent in October 2022 was made in bad faith because:

- the Respondent is not the company ATELIER HAIDER ACKERMANN, but a shareholder of such company;
- the agreement between the Complainant and the company ATELIER HAIDER ACKERMANN was terminated at the date of such renewal; and
- the company ATELIER HAIDER ACKERMANN was already bankrupt at the date of such renewal.

B. Respondent

The Respondent did not reply to the Complainant’s contentions in the Complaint and did not make comments on the Complainant’s response to Procedural Order No.1 of the Panel.

6. Discussion and Findings

A. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant’s trademark and the disputed domain name. WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (“[WIPO Overview 3.0](#)”), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in respect of the HAIDER ACKERMANN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the entirety of the HAIDER ACKERMANN trademark is reproduced within the disputed domain name without any other elements. Accordingly, the disputed domain name is identical to the HAIDER ACKERMANN trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Since the Complainant has failed to establish that the disputed domain name was registered in bad faith, there is no need to address the issue of rights and legitimate interests.

C. Registered and Used in Bad Faith

The disputed domain name was registered in 2002, while the Complainant's HAIDER ACKERMANN trademark was first registered in 2005. As noted in section 3.8.1 of the [WIPO Overview 3.0](#), where a respondent registers a domain name before the complainant's trademark rights accrue, panels will not normally find bad faith on the part of the respondent. Merely because a domain name is initially created by a registrant other than the respondent before a complainant's trademark rights accrue does not however mean that a UDRP respondent cannot be found to have registered the domain name in bad faith. Irrespective of the original creation date, if a respondent acquires a domain name after the complainant's trademark rights accrue, the panel will look to the circumstances at the date the UDRP respondent itself acquired the domain name.

The Complainant has not specified the date on which it claims that the Respondent has acquired the disputed domain name.

With Procedural Order No.1, the Panel invited the Complainant to clarify what it claims to be the date on which the Respondent has acquired the disputed domain name, and how such date is relevant to the issues of whether the Respondent has rights and legitimate interests in the disputed domain name and whether it was registered and is being used in bad faith.

In response to Procedural Order No.1, the Complainant stated that it is not certain about the date on which the Respondent has acquired the disputed domain name. The Complainant does not allege that the Respondent has acquired the disputed domain name from a third party at a later date. In view of this statement, the confirmation by the Registrar that the disputed domain name was registered on October 22, 2002, and the lack of any information or allegation that the Respondent has acquired the disputed domain name at a later date, the Panel accepts that the Respondent has itself acquired the disputed domain name on October 22, 2002, when it was originally registered.

As noted in section 3.9 of the [WIPO Overview 3.0](#), irrespective of registrant representations undertaken further to UDRP paragraph 2, panels have found that the mere renewal of a domain name registration by the same registrant is insufficient to support a finding of registration in bad faith. Therefore, the fact that the Respondent has renewed the disputed domain name in 2022 does not amount to a new registration and cannot support a conclusion that the Respondent's conduct at that time (and not in 2002, when the disputed domain name was registered), has to be considered for the purposes of the finding whether the disputed domain name has been registered in bad faith.

In view of the above, the Panel will consider the Respondent's conduct as of October 22, 2002, for the purposes of the findings on the issue of bad faith registration and use of the disputed domain name.

With its response to Procedural Order No.1, the Complainant states that it was party to an agreement with the company ATELIER HAIDER ACKERMANN for the provision of services by the Complainant for creating fashion apparels and the right for the company ATELIER HAIDER ACKERMANN to use the name "Haider Ackermann" of the Complainant in the context of selling such fashion apparels. The Complainant also states that it believes that it is in the context of the creation of the company ATELIER HAIDER ACKERMANN that the Respondent has registered the disputed domain name, although there was no direct agreement between the Complainant and the Respondent.

The Panel has made independent research (see section 4.8 of the [WIPO Overview 3.0](#)) at the Wayback Machine of the archived versions of the website at the disputed domain name, and found that in the period 2012 - 2020 it resolved to a website featuring fashion goods bearing the Complainant's HAIDER

ACKERMANN trademark. This supports the conclusion that the disputed domain name was indeed registered in 2002 in connection with the commercialization of such goods, and, notably, the Complainant does not state that this was illegitimate at the time. Considering the above, there is no basis for a conclusion that the registration in 2002 of the disputed domain name was made in bad faith.

The evidence in the case shows that in 2020 there was a business dispute involving the Complainant and the company which it had licensed to use its HAIDER ACKERMANN trademark, that this company was declared bankrupt in 2021, and that the disputed domain name was renewed in 2022. Whatever the legal qualification of these events, they cannot retroactively affect the qualification of the registration of the disputed domain name in 2002 by the Respondent.

Therefore, based on the available record, the Panel finds that the Complainant has failed to establish that the disputed domain name has been registered in bad faith. Since the Policy contains a cumulative requirement for both registration and use in bad faith to be established, this necessarily means that the third element of the Policy has not been established, and that the Complaint must fail.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: September 22, 2023