

ADMINISTRATIVE PANEL DECISION

Mederer GmbH v. Tyrone mac, Amazing moon rocks
Case No. D2023-4658

1. The Parties

The Complainant is Mederer GmbH, Germany, represented by MSA IP - Milojevic Sekulic & Associates, Associates, Serbia.

The Respondent is Tyrone mac, Amazing moon rocks, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <trolligmbhaco.com> is registered with NameSilo, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 9, 2023. On November 10, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 10, 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 (See PrivacyGuardian.org) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 13, 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 November 15, 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 November 27, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 17, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on December 19, 2023.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 11, 2024. 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 was founded in 1948 as a family business. It is a German manufacturer of confectionery products such as fruit gums, foam sugar, licorice, and marshmallows. The Complainant launched its TROLLI brand in 1975, with which it is currently present on the markets of more than 80 countries around the world. The Complainant's group of companies includes the affiliated company Trolli GmbH.

The Complainant is the owner of the International trademark TROLLI with registration No. 889953, registered on February 23, 2006, for goods in International Classes 5, 29, and 30 (the "TROLLI trademark").

The Complainant is also the owner of the domain name <trolli.de>, which resolves to its official website.

The disputed domain name was registered on September 2, 2022. It resolves to the website of a company identified as "Trolli GmbH", which trades with various raw materials and products such as firewood products, animal skins and other organs, and animal food.

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 confusingly similar to its TROLLI trademark, because it incorporates the trademark in its entirety with the addition of the abbreviation "gmbh" and the sequence "aco". The Complainant notes that "gmbh" is the abbreviation for the German legal term "Gesellschaft mit beschränkter Haftung" - a type of company similar to limited liability companies in other countries. According to the Complainant, the addition of "gmbh" to the TROLLI trademark directly refers to the Complainant's affiliate, Trolli GmbH, and creates a likelihood of confusion among ordinary Internet users that the disputed domain name relates to the Complainant or its affiliate. The Complainant notes that the sequence "aco" in the disputed domain name has no specific meaning in either English or German, but given that it is used after the term "gmbh" within the disputed domain name, it may be understood as indicating "& Co", using the letter "a" instead of the ampersand symbol, taking into account that "& Co" is commonly used in the names of German companies to indicate the legal form of partnership in which the general partner is a limited liability company ("GmbH"). The Complainant maintains that the TROLLI trademark is easily recognizable within the disputed domain name, and the addition of the terms "gmbh" and "aco" to it does not preclude a finding of confusing similarity.

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 TROLLI trademark or to register any domain name incorporating the same trademark. The Complainant submits that the Respondent is not commonly known by the names "Trolli" or "Trolli GmbH" and has no trademark registrations for TROLLI. The Complainant adds that the Respondent's address as provided by the Registrar is incorrect because it refers to the Disneyland Park in Los Angeles, California, while the zip code provided refers to the city of Phoenix, Arizona, and the telephone number provided refers to the state of Idaho.

The Complainant submits that the disputed domain name resolves to a website of a company that trades with various raw materials under the purported name "Trolli GmbH". The address of this company is the same as the registered seat of the Complainant and of its affiliate Trolli GmbH. The website also lists as the Sales Manager of the alleged company a person who is in fact an employee of the Complainant's affiliate Trolli GmbH. The Complainant also points out that mail exchange (MX) servers have been configured for the disputed domain name, so that there is a risk that Internet users who receive email from email addresses under the disputed domain name may assume that they are communicating directly with the Complainant's affiliate Trolli GmbH and may be tricked into disclosing their personal data and sensitive information. Indeed, a Croatian company informed the Complainant that it was planning to conclude a business deal with the entity controlling the website at the disputed domain name, believing that it was dealing with the Complainant. The company asked the Complainant to confirm whether the business offer that it had received from the contact at the disputed domain name was in fact related to the Complainant. According to the Complainant, the above shows that the Respondent is using the disputed domain name to impersonate the Complainant and its affiliate company Trolli GmbH in order to gain commercial benefit, which does not represent a legitimate non-commercial or fair use of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. The Complainant submits that its TROLLI trademark has been used globally for almost 50 years, and the Respondent targeted the Complainant when registering the disputed domain name many years later in order to make a commercial gain and to disrupt the Complainant's activity. According to the Complainant, the Respondent's actions demonstrate that the registration of the disputed domain name was made primarily with intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's TROLLI trademark as to the source, sponsorship, affiliation, or endorsement of its website and of the products or service offered on its website.

The Complainant notes that, prior to initiating this proceeding, it took steps to minimize the risk of potential abuse and sent several takedown notices to various hosting service providers for the disputed domain name. Although the related website was temporarily suspended, it became active again and remained active as of the date of the filing of the Complaint. As a result, the Complainant had to initiate UDRP proceedings against the Respondent in order to obtain the transfer of the disputed domain name.

B. Respondent

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

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.

The Complainant has shown rights in respect of the TROLLI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the TROLLI trademark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the TROLLI trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms (here, “gmbh” and “aco”) may bear on assessment of the second and third elements, the Panel finds the addition of such terms does not prevent a finding of confusing similarity between the disputed domain name and the TROLLI trademark for the purposes of the Policy.

[WIPO Overview 3.0](#), section 1.8.

The Panel therefore finds the first element of the Policy has been established.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name.

Although the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the difficult task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, 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 domain name (although the burden of proof always remains on the complainant). If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element. [WIPO Overview 3.0](#), section 2.1.

Having reviewed the available record, the Panel finds the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not rebutted the Complainant’s *prima facie* showing and has not come forward with any relevant evidence demonstrating rights or legitimate interests in the disputed domain name such as those enumerated in the Policy or otherwise.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation of the Complainant and its affiliate) can never confer rights or legitimate interests on a respondent.

[WIPO Overview 3.0](#), section 2.13.1.

As noted by the Complainant, “gmbh” is common abbreviation for a German limited liability company, and “aco” can be understood as meaning “& Co”. Moreover, the combination of the TROLLI trademark and the abbreviation “gmbh” coincides with the name of the Complainant’s affiliate Trolli GmbH, which makes it confusingly similar not only to that trademark, but also to the company name of the Complainant’s affiliate Trolli GmbH. The associated website describes a company with the same name - Trolli GmbH, and states that “TROLLI GMBH is a manufacturing, trading a exporting company based in Germany with a warehouse in Turkey with customers satisfaction been our top priority.” The website indicates the address in Germany of the Complainant and its affiliate and provides a contact email address configured at the disputed domain name. It appears unlikely that another company, unrelated to the Complainant, but having the same name and address as the Complainant’s affiliate, may actually exist in Germany. The Complainant has provided evidence that a third party has received a commercial offer from the company described on the Respondent’s website, where the name of the sender matched the name of a person who is an employee of the Complainant’s affiliate, Trolli GmbH. The Respondent has not submitted a Response and has not provided any explanation for its actions or denied the statements and evidence provided by the Complainant.

Taking the above into account, the Panel concludes that it is more likely than not that the Respondent has attempted to impersonate the Complainant and its affiliate with the aim to expand its business for commercial gain. Such actions cannot give rise to rights or legitimate interests in the disputed domain name.

Therefore, the Panel finds that the second element of the Policy has been established.

C. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

Paragraph 4(b) of the Policy sets out a list of non-exhaustive circumstances that may indicate that a domain name was registered and used in bad faith, but other circumstances may be relevant in assessing whether a respondent's registration and use of a domain name is in bad faith. [WIPO Overview 3.0](#), section 3.2.1.

Panels have held that the use of a domain name for illegal activity (here, claimed impersonation) constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Having reviewed the record, the Panel finds the Respondent's registration and use of the disputed domain name constitutes bad faith under the Policy.

As discussed in the section on rights and legitimate interests, it is more likely than not that the Respondent has attempted to impersonate the Complainant and its affiliate Trolli GmbH by registering and using the disputed domain name for a website describing the business of a company, unrelated to the Complainant, that is unlikely to exist in Germany. The Complainant has submitted evidence that an email address at the disputed domain name has been used to send commercial offers to third parties which also impersonate the Complainant's affiliate. As also pointed out by the Complainant, the Respondent's contact details appear to be misleading, as they mix elements referring to three different states in the United States. The Respondent has not provided any plausible explanation of its actions and has not denied the above. The above supports a conclusion that the disputed domain name was registered and is being used in bad faith.

Therefore, the Panel finds that the Complainant has 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 name <trolligmbhaco.com> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: January 19, 2024