

## **ADMINISTRATIVE PANEL DECISION**

Düker GmbH v. NameSilo, LLC, Domain Administrator  
Case No. D2023-4885

### **1. The Parties**

The Complainant is Düker GmbH, Germany, represented by PLANIT // LEGAL Rechtsanwaltsgesellschaft mbH, Germany.

The Respondent is NameSilo, LLC, Domain Administrator, United States of America ("United States").

### **2. The Domain Name and Registrar**

The disputed domain name <dueker.xyz> 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 23, 2023. On November 23, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 23, 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 (PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on November 24, 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 day.

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 December 6, 2023. In accordance with the Rules, paragraph 5, the due date for Response was December 26, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on December 27, 2023.

The Center appointed Wilson Pinheiro Jabur as the sole panelist in this matter on January 5, 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 is a German company founded in 2002 in the planning, construction and operations sector with sustainable premium solutions, high-quality products and individual service., The Complainant's official website is available at the domain name <dueker.de>.

The Complainant is the owner of the following trademark registrations:

- European Union trademark registration No. 000666446, for the word and device mark DÜKER, registered on March 12, 1999, successively renewed, in classes 6, 7, 11, 19, 20 and 40;
- European Union trademark registration No. 018270085, for the word and device mark DÜKER, registered on November 18, 2020, in classes 6 and 40; and
- European Union trademark registration No. 018494556, for the word and device mark DÜKER, registered on October 30, 2021, in classes 6, 11, 37, 40 and 42.

The disputed domain name was registered on September 17, 2023, and presently when attempting to access it alert messages are displayed by different browsers informing that the website has been reported as containing malware and being a dangerous site.

#### 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.

Notably, the Complainant contends that the disputed domain name has been used in connection with cyberattacks on the Complainant as well as it has been flagged as a fraudulent website by different browsers.

Moreover, the Complainant submits that the disputed domain name is identical to its DÜKER trademark used and registered since 1997 (considering the international spelling equivalent of the German original word) as well as its tradename, registered since 2002.

As to the Respondent's lack of rights or legitimate interests in respect of the disputed domain name, the Complainant contends that the Respondent, as a provider of Privacy Protection Services, clearly would have no legitimate interest in the disputed domain name; also there being no evidence that the unknown third party with who registered the disputed domain name has any legitimate interest in the disputed domain name, there being no evidence of any *bona fide* offering of goods or services under the disputed domain name. In addition to that, the Respondent is not commonly known by the disputed domain name.

As to the registration of the disputed domain name in bad faith, the Complainant asserts that the cyberattack perpetrated using the disputed domain name against the Complainant as well as the fraud warnings displayed by browsers when attempting to access the disputed domain name are clear indication of registration and use of the disputed domain name in bad faith.

##### B. Respondent

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

## 6. Discussion and Findings

Paragraph 4(a) of the Policy sets forth three requirements, which have to be met for this Panel to order the transfer of the disputed domain name to the Complainant:

- (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.

The Complainant must prove in this administrative proceeding that each of the aforesaid three elements is present in order to obtain the transfer of the disputed domain name.

### 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 a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The Panel finds the mark is recognizable within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy considering the international spelling associated with the Complainant's trademark. [WIPO Overview 3.0](#), section 1.14.

Based on the available record, the Panel 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 (phishing, distributing malware, unauthorized account access/hacking, impersonation/passing off, or other types of fraud) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Based on the available record, the Panel finds 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.

This case presents the following circumstances which indicate under the balance of probabilities bad faith registration and use of the disputed domain name:

- a) the composition of the disputed domain name reproducing the Complainant's trademark and tradename (previous UDRP panels have consistently found that the mere registration of a domain name that is identical or confusingly similar to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith. See [WIPO Overview 3.0](#), section 3.1.4);
- b) the Respondent has provided no evidence whatsoever of any actual or contemplated good faith use by it of the disputed domain name; and
- c) the Respondent's choice to retain a privacy protection service.

Based on the available record, 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, <dueker.xyz>, be transferred to the Complainant.

*/Wilson Pinheiro Jabur/*

**Wilson Pinheiro Jabur**

Sole Panelist

Date: January 18, 2024