

ADMINISTRATIVE PANEL DECISION

A.T.U Auto-Teile-Unger Handels GmbH & Co. KG v. he huanghui
Case No. D2023-4990

1. The Parties

The Complainant is A.T.U Auto-Teile-Unger Handels GmbH & Co. KG, France, represented by Nameshield, France.

The Respondent is he huanghui, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <atusale.shop> is registered with Dynadot Inc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on November 30, 2023. On November 30, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On November 30, 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 (Redacted for Privacy) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 6, 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 date.

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 15, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 8, 2024.

The Center appointed Assen Alexiev as the sole panelist in this matter on January 25, 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.

On February 8, 2024, the Panel issued Administrative Panel Procedural Order No.1, whereby the Panel invited the Complainant to clarify its factual allegations as to the use of the disputed domain name, to explain the relevance of these factual allegations to the dispute, and to confirm if the Annex 5 to the Complaint is indeed the screen capture related to the website at the disputed domain name. On the same day, the Complainant submitted an amended Annex 5 to the Complaint. The Respondent did not make any comments on the amended Annex 5 submitted by the Complainant within the time limit fixed in Administrative Panel Procedural Order No.1.

4. Factual Background

The Complainant is a German company that trades in motor vehicle accessories, car spare parts and tires, and operates motor vehicle workshops. In 2016, the Complainant became part of the French Mobivia Group.

The Complainant is the owner of the following trademark registrations of the sign ATU (the "ATU Trademark"):

– the International trademark ATU (word) with registration No. 714865, registered on February 22, 1999 for goods and services in International Classes 8, 9, 18, 21, 24 and 25; and

- the International trademark ATU (combined) with registration No. 1382387, registered on June 19, 2017 for goods and services in International Classes 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 14, 17, 18, 22, 24, 25, 27, 28, 35, 37, 39, and 40.

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

The disputed domain name was registered on November 16, 2023. At the time of issuance of the present decision, Internet browsers display a warning message when access to it is attempted. The evidence submitted by the Complainant shows that at the time of filing of the Complaint, the disputed domain name resolved to a website that displayed the Complainant's ATU Trademark, looked similar to the Complainant's website, and offered similar and competing products to those of the Complainant.

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 ATU Trademark, because it includes the trademark in its entirety, and the addition of the word "sale" is not sufficient to escape the finding of confusing similarity to the ATU Trademark.

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 does not have any business with it. The Complainant adds that it has not authorized the Respondent to use the ATU Trademark or apply for registration of the disputed domain name.

The Complainant contends that the disputed domain name was registered and is being used in bad faith. It submits that the disputed domain name redirects to an imitation of the Complainant's website with the reproduction of ATU logo. According to the Complainant, the Respondent has registered and used the disputed domain name with knowledge of the Complainant's trademark. The Complainant points out that the disputed domain name redirects to an online store which competed with the products offered by the Complainant. The Complainant contends that the Respondent has thus intentionally attempted to attract, for

commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's ATU Trademark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or of the products or services offered on the Respondent's website.

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 ATU Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

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

Although the addition of other terms (here, "sale") may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the ATU Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

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.

The disputed domain name is confusingly similar to the ATU Trademark, which is the only distinctive element in it. It also contains the dictionary word “sale” and is registered in the “.shop” generic Top-Level Domain. The combination of “atu”, “sale”, and “shop” makes the disputed domain name to appear as an ATU Internet shop related or affiliated to the Complainant. This impression is strengthened by the fact that, according to the undisputed evidence in the case, it has resolved to a website that copied the ATU Trademark and logo of the Complainant and offered for sale goods similar to and competing with the goods offered by the Complainant, without including any disclaimer for the lack of relationship with the Complainant. The Respondent has not disputed the evidence in the case and has not provided any plausible explanation of its actions.

Taking all the above into consideration, the Panel concludes that it is more likely than not that the Respondent has targeted the Complainant with the registration and use of the disputed domain name in order to exploit the popularity of the ATU Trademark to confuse Internet users that the associated website is affiliated to the Complainant in an alleged offer of similar and competing goods for the Respondent’s presumed commercial gain. Such activity cannot give rise to rights or legitimate interests in the disputed domain name regardless of whether the disputed domain name actually offered for sale such goods or is merely a phishing campaign by the Respondent to collect unsuspecting Internet users’ information.

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.

As already discussed, the disputed domain name is confusingly similar to the ATU Trademark and contains the elements “sale” and “shop”, which makes it appear as an Internet shop affiliated to the Complainant. The undisputed evidence shows that it has been used for a website that displayed the ATU Trademark and associated logo and seemingly offered for sale goods similar to and in competition with the goods offered by the Complainant. This makes it clear that the Respondent is well aware of the Complainant and its business conducted under the ATU Trademark. Taken together, this supports a conclusion that by registering and using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the associated website by creating a likelihood of confusion with the Complainant’s ATU Trademark as to the affiliation with or endorsement by the Complainant of the goods offered through the Respondent’s website. This supports a finding of bad faith registration and use of the disputed domain name under paragraph 4(b)(iv) of the Policy. The fact that the disputed domain name is currently inactive or blocked does not affect the above conclusion.

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 <atusale.shop> be transferred to the Complainant.

/Assen Alexiev/

Assen Alexiev

Sole Panelist

Date: February 22, 2024