

ADMINISTRATIVE PANEL DECISION

Heftol Holding GmbH v. Igor Kekshin
Case No. D2024-1991

1. The Parties

The Complainant is Heftol Holding GmbH, Germany, represented by Holland & Knight, LLP, United States of America.

The Respondent is Igor Kekshin, Russian Federation.

2. The Domain Name and Registrar

The disputed domain name <gayheftol.com> is registered with NameCheap, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 13, 2024. On May 14, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 14, 2024, 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 (Respondent Information Hidden by Private Service) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 17, 2024, 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 May 27, 2024.

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 May 30, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 19, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 20, 2024.

The Center appointed Steven A. Maier as the sole panelist in this matter on July 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 is a limited liability company registered in Germany. It is a provider of project development, construction and other real estate services. Its founder is an individual named Guy Heftol.

The Complainant was established in 2017 and has operated a website at “www.heftol.com” since approximately July of that year.

The Complainant does not claim any registered trademark rights, although it filed an application for a Germany registered trademark HEFTOL on February 27, 2024. The Complainant relies on common law rights as further discussed below.

The disputed domain name was registered on August 10, 2023.

The Complainant exhibits evidence that the disputed domain name has resolved to a website headed “Gay Guy Heftol”. The website features a mocked-up photograph of an individual which the Complainant identifies as its founder, referred to above, and includes text commencing “Hi, my name is GUY HEFTOL”. The text continues with content which is abusive of Mr Heftol, including references of a sexual nature and an additional mocked-up photograph. The website goes on to suggest that Mr. Heftol owed the Respondent fees for IT services and that it is therefore offering the website and its (pornographic) content for sale.

5. Parties' Contentions

A. Complainant

The Complainant submits that, as a result of its activities in connection with high quality residential and commercial real estate since 2017, its name and mark HEFTOL has become widely known to consumers and the general public, not only in Germany but around the world. The Complainant exhibits (albeit limited) evidence of its past and ongoing business activities.

The Complainant contends that it has obtained common law rights in the name and mark HEFTOL as a result of the above matters. It further contends that the disputed domain name is confusingly similar to its trademark HEFTOL for the purposes of the Policy, since it incorporates that trademark in its entirety, and the addition of the dictionary term “gay” does not distinguish the disputed domain name from the trademark.

The Complainant submits that the Respondent has no rights or legitimate interests in respect of the disputed domain name. It states that it has never authorized or licensed the Respondent to use its HEFTOL trademark and that the Respondent is making neither bona fide commercial use, nor legitimate noncommercial or fair use, of the disputed domain name. Instead, the Complainant submits that the Respondent has used the disputed domain name to impersonate the Complainant and its founder, to misleadingly attract Internet users to its website, and to tarnish and damage the Complainant's brand.

The Complainant submits that the disputed domain name has been registered and is being used in bad faith. It contends that the disputed domain name incorporates its widely-known HEFTOL trademark and is also a play upon the name of its founder, Guy Heftol. It refers to the sexually-charged content of the Respondent's website, linked to photographs of and references to its founder, in conjunction with an offer to sell the disputed domain name and the website content. The Complainant submits in the circumstances that the Respondent registered the disputed domain name primarily for the purpose of selling it to the Complainant.

The Complainant requests the transfer of the disputed domain name.

B. Respondent

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

6. Discussion and Findings

In order to succeed in the Complaint, the Complainant is required to show that all three of the elements set out under paragraph 4(a) of the Policy are present. Those elements are that:

- (i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 established that it has used the name and mark HEFTOL in commerce since approximately 2017. The Panel finds the mark to be distinctive in nature and finds on the evidence (which is uncontradicted by the Respondent) that it has become recognized as designating the Complainant and its real estate services, particularly in Germany. The Panel therefore finds that the Complainant has common law rights, in the nature of unregistered trademark rights, in the mark HEFTOL.

The disputed domain name incorporates the trademark HEFTOL in full, together with the additional term "gay", which does not prevent the Complainant's trademark from being recognizable within the disputed domain name, or the disputed domain name from being confusingly similar to the Complainant's trademark. The Panel therefore finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

In the view of the Panel, the Complainant's submissions set out above give rise to a prima facie case that the Respondent has no rights or legitimate interests in respect of the disputed domain name. However, the Respondent has failed to file a Response in this proceeding and has not submitted any explanation for its registration and use of the disputed domain name, or evidence of rights or legitimate interests on its part in the disputed domain name, whether in the circumstances contemplated by paragraph 4(c) of the Policy or otherwise.

The Panel finds moreover that the Respondent has used the disputed domain name maliciously to target the Complainant and its founder, which matter cannot give rise to rights or legitimate interests. While the Respondent's website discloses an apparent grievance with the Complainant, the Respondent makes no submission in this regard, and the Panel does not accept in any event that the publication of a website linking the Complainant's founder with salacious and pornographic references can amount to legitimate noncommercial or fair use of the disputed domain name in particular when being done so for some form of commercial retaliation. Indeed, the Respondent's website plainly suggests that the disputed domain name and associated website content are for sale in lieu of monies allegedly owed.

The Panel therefore finds that the Complainant has established the second element in respect of the disputed domain name.

C. Registered and Used in Bad Faith

The Panel finds the mark HEFTOL to be distinctive in nature and to be recognized by the public as designating the Complainant and its services. The disputed domain name incorporates the Complainant's trademark in full, together with the term "gay", which the Panel accepts is intended to create an association between the disputed domain name and the Complainant's founder, Guy Heftol. Considering also the content of the Respondent's website, there can be no doubt that the Respondent registered the disputed domain name with the Complainant's trademark and founder in mind and with the intention of maliciously targeting those parties.

The Panel finds the disputed domain name to be inherently misleading, as inevitably suggesting to Internet users that it has some legitimate association with the Complainant and/or its founder. Furthermore, the Respondent has used the disputed domain name for the purpose of a website which identifies the Complainant's founder and exhibits mocked-up photographs of him, linked to references of a sexual and pornographic nature. The website also indicates that the disputed domain name and website content are somehow for sale. Taking matters as a whole, the Panel infers that that the Respondent registered and has used the disputed domain name in order publicly to embarrass the Complainant and its founder in some sort of retaliation for monies allegedly owed.

The Panel therefore finds, in particular, that the Respondent registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring the registration to the Complainant, who is the owner of a relevant trademark or service mark, for valuable consideration in excess of its documented out-of-pocket costs directly related to the domain name (paragraph 4(b)(i) of the Policy).

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

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 <gayheftol.com> be transferred to the Complainant.

/Steven A. Maier/

Steven A. Maier

Sole Panelist

Date: July 25, 2024