

## **ADMINISTRATIVE PANEL DECISION**

Sennheiser electronic GmbH & Co. KG v. Allyriane Avare  
Case No. D2024-2002

### **1. The Parties**

The Complainant is Sennheiser electronic GmbH & Co. KG, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is Allyriane Avare, United States of America ("US").

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

The disputed domain name <sennheiser-eushop.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 May 14, 2024. On May 15, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 15, 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 (Redacted for Privacy, PrivacyGuardian.org llc) and contact information in the Complaint. The Center sent an email communication to the Complainant on May 20, 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 28, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 17, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on June 18, 2024.

The Center appointed Alfred Meijboom as the sole panelist in this matter on June 24, 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 family business of audio products which was founded in 1945. The Complainant has more than 2,800 employees and three different manufacturing plants in Germany, Ireland, and the US, as well as sales subsidiaries and research laboratories worldwide.

The Complainant is owner of registered SENNHEISER trademarks, including:

- International trademark with registration number 670839, registered on March 6, 1997, for goods in class 9, designating, inter alia, Austria, the Benelux, France, Hungary, Italy, Poland, Portugal, Romania, Russia and Switzerland;
- European Union trademark with registration number 000370122, registered on August 27, 1999, for goods in classes 9, 10 and 16; and
- European Union trademark with registration number 001594308, registered on August 21, 2001, for goods and services in classes 3, 9, 18, 21, 25, 28, 38, 41 and 42.

(the “SENNHEISER Mark”)

Further, the Complainant is the owner of a large number of domain names incorporating the SENNHEISER Mark, e.g. <sennheiser.com>, <sennheiser.net>, and <sennheisershop.com> and it promotes its products and services in particular on its website at “www.sennheiser.com”.

The disputed domain name was registered on April 16, 2024. The disputed domain name resolved to a website which displays the SENNHEISER Mark and logo and purportedly offered the Complainant’s products for sale against heavily discounted prices without any disclaimer of the lack of relationship between the Complainant and the Respondent.

#### **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 is confusingly similar to the SENNHEISER Mark as it fully incorporates the SENNHEISER Mark and combines it with a geographical term “eu” and the descriptive term “shop”. This will not, by the relevant public, distinguish the Respondent or the goods and services offered under the disputed domain name from the Complainant.

The Complainant alleges that it has not found that the Respondent has any registered trademarks, trade names or personal names corresponding to the designation “Sennheiser” or the disputed domain name. The name of the Respondent is in no way related to the term “Sennheiser”. Further, no license or authorization of any other kind has been given by the Complainant to the Respondent to use the designation “Sennheiser” or the disputed domain name. Furthermore, the Complainant alleges that the disputed domain name resolves to a fake web shop which offers the Complainant’s products at very high discounts and which provides false or incomplete information.

According to the Complainant the disputed domain name was registered in bad faith because the SENNHEISER Mark has been used for decades before the registration of the disputed domain name, and

the disputed domain name was used for a fake web shop using the SENNHEISER Mark and allegedly offering the Complainant's products for sale. The Complainant further alleges that the Respondent also uses the disputed domain name in bad faith because the disputed domain name is being used to attract Internet users to the Respondent's website by creating a likelihood of confusion with the SENNHEISER Mark as to the source or sponsorship or affiliation or endorsement of the Respondent's website or the products or services offered on the Respondent's website, and the Respondent is trying to exploit the reputation and prestige of the famous mark SENNHEISER Mark in order to promote its own fake products.

## **B. Respondent**

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

## **6. Discussion and Findings**

The Respondent did not file a response. However, as set out in section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), the Respondent's default does not automatically result in a decision in favor of the Complainant. The Complainant must still establish each of the three elements required by paragraph 4(a) of the Policy. Although the Panel may draw appropriate inferences from the Respondent's default, paragraph 4 of the Policy requires the Complainant to support its assertions with actual evidence in order to succeed in these proceedings. Paragraph 14(b) of the Rules provides that, in the absence of exceptional circumstances, the Panel shall draw such inferences, as it considers appropriate from a failure of a party to comply with a provision or requirement of the Rules. The Panel finds that in this case there are no such exceptional circumstances.

Under the Policy, the Complainant must prove that:

- the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- the Respondent has no rights or legitimate interests in respect of the disputed domain name; and
- the disputed domain name has been registered and is being used in bad faith.

### **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 3.0](#), section 1.7.

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 entirety of the SENNHEISER Mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the SENNHEISER Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms and element, in this case of "-eushop", 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 SENNHEISER Mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

Consequently, 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 Complainant alleges that the disputed domain name resolved to a fake website. Based on the record, the Respondent would be purporting to be an official retailer of the Complainant by using the SENNHEISER Mark together with the geographical abbreviation for European Union and the generic term “shop”. Absent an explanation from the Respondent to the contrary, the Panel infers from the high discounts on the products on the website to which the disputed domain name resolves that it is indeed likely that the disputed domain name resolved to an impersonating web store designed to mislead Internet users into believing that the website to which the disputed domain name resolved is related to official or endorsed distributors of the Complainant, while possibly offering counterfeit products for sale. Panels have held that the use of a domain name for illegal activity (here, impersonation/passing off) can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

Consequently, 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.

In the present case, the Panel notes that the SENNHEISER Mark was registered several decades before the registration of the disputed domain name, that the SENNHEISER Mark enjoys a reputation (e.g., *Sennheiser electronic GmbH & Co. KG v. Registration Private, Privacy Protect, LLC / Nguyen Thi Lien*, WIPO Case No. [D2022-0464](#); *Sennheiser electronic GmbH & Co. KG v. Jesse Pinkman*, WIPO Case No. [D2023-4399](#)), and that the disputed domain name was used to resolve to a web shop displaying the SENNHEISER Mark and logo purportedly offering for sale the Complainant’s products for discounted prices without any disclaimer of the lack of relationship between the Complainant and the Respondent, from which the Panel infers that it is likely that the Respondent targeted the SENNHEISER Mark when it registered the disputed domain name. [WIPO Overview 3.0](#), section 3.2.2.

Panels have held that the use of a domain name for illegal activity, as in this case impersonation/passing off and the offering for sale of possible counterfeit products, 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.

The Panel therefore 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 <sennheiser-eushop.com> be transferred to the Complainant.

*/Alfred Meijboom/*

**Alfred Meijboom**

Sole Panelist

Date: July 1, 2024