

ADMINISTRATIVE PANEL DECISION

bett1.de GmbH v. yue yang, jia yin dian zhi
Case No. D2024-3676

1. The Parties

The Complainant is bett1.de GmbH, Germany, represented by JBB Rechtsanwälte Jaschinski Biere Brexl Partnerschaft mbB, Germany.

The Respondent is yue yang, jia yin dian zhi, China.

2. The Domain Name and Registrar

The disputed domain name <bodyguardmatratze.com> (the “Domain Name”) is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on September 11, 2024. On September 11, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On the same date, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the 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 September 11, 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 amended Complaint on September 16, 2024.

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 September 17, 2024. In accordance with the Rules, paragraph 5, the due date for Response was October 7, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on October 9, 2024.

The Center appointed Gregor Vos as the sole panelist in this matter on October 21, 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 mattresses manufacturer active inter alia in Germany and sells mattresses under the trademark BODYGUARD.

The Complainant is the owner of inter alia European Union Trade Mark registration with No. 013879978 for the mark BODYGUARD, registered on July 20, 2015 (the "Trademark").

The Domain Name was registered on April 30, 2024, and at the time of filing the Complaint, it resolved to a website on which the Trademark is prominently depicted and on which the Respondent appears to impersonate the Complainant by mimicking the Complainant's website at "www.bett1.de".

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 Domain Name.

Notably, the Complainant first contends that the Domain Name is confusingly similar to the Trademark, with the mere addition of the generic Top-Level Domain ("gTLD") ".com" and the German word "matratze", which translates to "mattress" in English.

Secondly, the Complainant states that the Respondent has no rights or legitimate interests in the Domain Name. The Respondent is not making a legitimate noncommercial or fair use of the Domain Name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark and is not commonly known by the Domain Name.

Finally, according to the Complainant, the Respondent is using the Domain Name to confuse potential consumers and to mislead Internet users. Also, the Respondent tries to impersonate the Complainant by including the Trademark on the website to which the Domain Name resolves.

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

The entirety of the Trademark is reproduced within the Domain Name. Accordingly, the Domain Name is confusingly similar to the Trademark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms here, the German term “matratze” which translates to “mattress” in English, 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 Domain Name and the 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 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 Domain Name such as those enumerated in the Policy or otherwise.

The composition of the Domain Name carries a risk of implied affiliation, as it reproduces the Trademark added by the word “matratze” (“mattress” in English), which directly refers to the Complainant’s products. [WIPO Overview 3.0](#), section 2.5.1. Further, panels have held that the use of a domain name for illegitimate activity, here claimed impersonation can never confer rights or legitimate interests on a respondent. [WIPO Overview 3.0](#), section 2.13.1.

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.

In the present case the Complainant’s rights to the Trademark predate the registration date of the Domain Name. In light of the fact that the Domain Name resolves to a website on which the Trademark is prominently displayed and on which the Respondent appears to impersonate the Complainant by mimicking the Complainant’s official website, the Panel finds that it is not conceivable that the Respondent chose the Domain Name without knowledge of the Complainant’s activities and its Trademark under which the Complainant is doing business.

The Complainant's evidence shows that the website at the Domain Name claims to be the official website and includes a link to the Complainant's Amazon shop. By using the Domain Name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Trademark. Also, panels have held that the use of a domain name for illegitimate activity, here claimed impersonation constitutes bad faith. [WIPO Overview 3.0](#), section 3.4. Further, the Domain Name incorporates the Trademark with an additional word directly referring to the Complainant's products, and that the Respondent has not put forward any evidence of any conceivable good faith use of the Domain Name support a finding of bad faith.

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 Domain Name <bodyguardmatratze.com> be transferred to the Complainant.

/Gregor Vos/

Gregor Vos

Sole Panelist

Date: October 29, 2024