

ADMINISTRATIVE PANEL DECISION

Rolf Benz AG & Co. KG v. mesut erdogan
Case No. D2024-4380

1. The Parties

The Complainant is Rolf Benz AG & Co. KG, Germany, represented by Weber & Sauberschwarz, Germany.

The Respondent is mesut erdogan, Türkiye.

2. The Domain Name and Registrar

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

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 24, 2024. On October 25, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On October 26, 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 (Super Privacy Service LTD c/o Dynadot) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 28, 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 October 30, 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 October 31, 2024. In accordance with the Rules, paragraph 5, the due date for Response was November 20, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on November 21, 2024.

The Center appointed Michael D. Cover as the sole panelist in this matter on November 26, 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 manufacturer of high quality furniture in Germany for over 60 years and is known in Germany and elsewhere for its design and premium quality as “Made in Germany”. The Complainant’s range started out with upholstered furniture and now comprises a large number of pieces of furniture, such as tables, chairs, beds carpets and the like.

The Complainant was established in 1964 and has developed from that point to the present day, as set out at the Complainant’s website at www.rolf-benz.com and also as set out at Annex 3 to the Complaint.

The Complainant is the proprietor of the following registered trademarks:

European Union Trademark No. 000254227 ROLF BENZ dated May 2, 1996 in International Classes 20, 24 and 27

European Union Trademark No. 001208107 ROLF BENZ dated June 16, 1999 in International Classes 11, 20 and 27.

European Union Trademark No. 019026942 CREATION BY ROLF BENZ dated May 14, 2024 in International Class 20.

The Disputed Domain Name resolves to what is generally referred to as a “parking website” that offers the Disputed Domain for sale.

All that is known of the Respondent is that they are Mesut Erdogan, Turkiye.

The Disputed Domain Name was registered on May 14, 2024.

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.

Identical or Confusingly Similar

Notably, the Complainant contends that the ROLF BENZ trademark is used for all the goods and services covered by the registrations of that trademark.

The Complainant then submits that the Complainant’s trademark CREATION BY ROLF BENZ is fully adopted, as the Complainant puts it, by the Disputed Domain Name and that there is therefore identity between that trademark of the Complainant and the Disputed Domain Name. The Complainant continues that its ROLF BENZ trademarks are completely incorporated into the Disputed Domain Name and that UDRP Panels have consistently held that disputed domain names were identical or confusingly similar to a trademark for the purposes of the Policy, “when the domain names include the trademark or a confusingly similar approximation, regardless of the other terms in the domain name” and cites the case of *Wal-mart Stores, Inc. v Richard MacLeod d/b/a For Sale*, WIPO Case No. [D2000-0662](#) in support. The Complainant

submits that the only difference between the ROLF BENZ trademarks and the Disputed Domain Name is the term “creation by”, which only describes that the items originate from Rolf Benz. The Complainant then submits that this addition does not suffice to counteract the similarity between the Disputed Domain Name and the Complainant’s ROLF BENZ trademarks.

The Complainant concludes that the Disputed Domain Name is also identical to the Complainant’s trademark “creation BY ROLF BENZ” and confusingly similar to the Complainant’s ROLF BENZ trademarks and, hence, the first condition of paragraph 4(a) of the Policy is fulfilled.

Rights or Legitimate Interests

The Complainant submits that there are no circumstances present which would indicate a right or legitimate interest of the Respondent with regard to the Disputed Domain Name. The Complainant notes that Paragraph 4 (c) of the Policy non-exhaustively lists three circumstances that demonstrate a right or legitimate interest in the Disputed Domain Name and lists these out.

The Complainant submits that none of these clearly apply in the current circumstances and notes that the Complainant has not authorized, licensed or permitted the Respondent to register or use the Disputed Domain Name or to use its CREATION BY ROLF BENZ or ROLF BENZ trademarks. The Complainant sets out that it has prior rights in the ROLF BENZ trademarks, which precede the Respondent’s registration of the Disputed Domain Name.

The Complainant continues that it has therefore established a *prime facie* case that the Respondent has no rights or legitimate interests in the Disputed Domain Name and that thereby the burden of production shifts to the Respondent to produce evidence demonstrating rights or legitimate interests in respect of the Disputed Domain Name.

The Complainant notes that the website to which the Disputed Domain Name resolves is in fact devoid of content and that, when you enter the Disputed Domain Name, you are immediately redirected to a page of the provider that offers the Disputed Domain Name for sale.

The Complainant concludes that the Respondent does not have any rights or legitimate interests in the Disputed Domain Name and hence the second condition of Paragraph 4 (a) of the Policy is fulfilled.

Registered and Used in Bad Faith

The Respondent submits that bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant’s trademark.

First, notes the Complainant, it has to be stated that the Complainant applied for the identical trademark CREATION BY ROLF BENZ on the same date on which the Disputed Domain Name was registered, respectively on May 14, 2024. The Complainant notes that it is common practice at the European Patent and Trademark Office that trademark applications are already visible on the online database “eSearch” only a few hours after filing with the Office.

The Complainant submits that the Respondent had the opportunity to register the Disputed Domain Name solely with the intention of selling the Disputed Domain Name to the Complainant and never had any intention to use the Disputed Domain Name. The Complainant notes that the Respondent registered the Disputed Domain Name and is now offering it for sale for USD 2,850.00 and that the Disputed Domain Name redirects you to the Registrar’s website, where the Disputed Domain Name is offered for sale.

The Remedy requested by the Complainant

The Complainant requests that the Panel appointed in this administrative proceeding decide that the Disputed Domain Name be transferred to the Complainant.

B. Respondent

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

6. Discussion and Findings

The Complainant must establish on the balance of probabilities that the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; that the Respondent has no rights or legitimate interests in the Disputed Domain Name; and that 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 of WIPO Panel Views on Selected UDRP Questions, Third Edition, ("[WIPO Overview 3.0](#)"), section 1.7.

The Complainant has shown registered rights in respect of its trademarks CREATION BY ROLF BENZ and ROLF BENZ for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark CREATION BY ROLF BENZ and also the trademark ROLF BENZ is reproduced within the Disputed Domain Name. Accordingly, the Disputed Domain Name is identical or confusingly similar to the trademarks for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

It is also well-established in UDRP jurisprudence to ignore the applicable generic Top-Level-Domain ("gTLD"), when it does not form part of the relevant trademark for comparison purposes. The addition of the gTLD, in this case ".com", is a standing requirement and is to be disregarded when considering identity or confusing similarity.

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 disputed 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.

In particular, the Respondent has not demonstrated that, before any notice to the Respondent of the dispute use or demonstrable preparations to use the Disputed Domain Name in connection with a bona fide offering of goods or services; or that the Respondent has been commonly known by the Disputed Domain Name; or that the Respondent was making legitimate noncommercial use or fair use of the Disputed Domain Name, without intent, for commercial gain, to misleadingly divert consumers or to tarnish the trademark at issue.

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. These include, under evidence of registration and use in bad faith, that there are circumstances indicating that the Disputed Domain Name has been registered for the purpose of selling it to a complainant for valuable consideration in excess of documented out of pocket costs directly relating to the Disputed Domain Name. The payment asked, of USD 2,850.00 falls squarely into that category.

In the present case, the Panel notes that the Disputed Domain Name resolves to a website which offers the Disputed Domain Name for sale, and it therefore follows that the Disputed Domain Name has been registered and is being used in bad faith. The coincidence in the registration of the date of registration of the Disputed Domain Name and the Complainant's CREATION BY ROLF BENZ trademark further amplifies this point, where the Respondent likely anticipated the Complainant's potential interest and that such domain name would be valuable for the Complainant.

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 <creationbyrolfbenz.com> be transferred to the Complainant.

/Michael D. Cover/

Michael D. Cover

Sole Panelist

Date: December 2, 2024