

ADMINISTRATIVE PANEL DECISION

Sennheiser electronic GmbH & Co. KG v. Tony Miller
Case No. D2024-4416

1. The Parties

The Complainant is Sennheiser electronic GmbH & Co. KG, Germany, represented by Bettinger Rechtsanwälte, Germany.

The Respondent is Tony Miller, United States of America (“United States”).

2. The Domain Name and Registrar

The disputed domain name <sennheiserstore.shop> is registered with Web Commerce Communications Limited dba WebNic.cc (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on October 28, 2024. On October 29, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 30, 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 (Domain Admin, Whoisprotection.cc) and contact information in the Complaint. The Center sent an email communication to the Complainant on October 30, 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 October 30, 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 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 22, 2024.

The Center appointed Alan L. Limbury as the sole panelist in this matter on November 27, 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

Founded in 1945 as “Laboratorium Wennebostel” by Mr. Fritz Sennheiser, the Complainant, Sennheiser electronic GmbH & Co. KG, is an international company with more than 2,800 employees and manufacturing plants in Germany, Ireland, and the United States (Albuquerque, New Mexico), as well as sales subsidiaries and research laboratories worldwide, including a research and development facility and a store in San Francisco. The company specializes in the design and production of a broad variety of premium audio products, including microphones, headphones, wireless technologies, monitor systems, telephone accessories, aviation and office headsets, and all-round audio solutions.

The Complainant has numerous trademark registrations for SENNHEISER in many jurisdictions, including European Union Trade Mark No. 000370122, registered on August 27, 1999 for goods in classes 9, 10 and 16. The Complainant is also the registrant of several domain names which incorporate the mark, including <sennheiser.com>, registered on April 24, 1996 and used for a website promoting its products and services; <sennheisershop.com>, registered on December 2, 2008; and <sennheiser.shop>, registered on September 1, 2016.

The disputed domain name was registered on September 27, 2024. It resolves to a website appearing to offer for sale the Complainant’s SENNHEISER branded products at heavily discounted prices. There is no disclaimer of any relationship between the Complainant and the Respondent. No information is available under the links “About Us”, “Contact Us”, “Shipping & Returns”, and “Privacy Policy”.

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 its SENNHEISER mark and that the Respondent has no rights or legitimate interests in respect of the disputed domain name, which was registered and is being used in bad faith.

As to legitimacy, the Complainant says the Respondent is not a licensee of the Complainant and is not affiliated with the Complainant in any way. There is no evidence to suggest that the Respondent is commonly known by the disputed domain name and the Complainant has not granted any authorization for the Respondent to make use of its SENNHEISER trademark in a domain name or otherwise. The Respondent is not using the disputed domain name in connection with any bona fide offering of goods or services. The Respondent’s website is a fake website purporting to be an official retailer of the Complainant and designed to mislead Internet users into believing that the website is related to official or endorsed distributors of the Complainant, while possibly offering counterfeit products for sale. The nature of the disputed domain name itself carries a risk of implied affiliation with the Complainant, and therefore cannot give rise to a claim of legitimate noncommercial or fair use.

As to bad faith, the Complainant says the disputed domain name contains the Complainant’s trademark in its entirety together with the descriptive term “store”. It is therefore evident that the Respondent was aware of the Complainant and targeted the Complainant’s SENNHEISER trademark when registering the disputed domain name. The Respondent’s use of the disputed domain name disrupts the Complainant’s business

and is aimed at taking advantage of the Complainant's reputation and the Complainant's mark to misleadingly attract Internet users to the Respondent's website. The lack of disclaimer on the Respondent's website to clarify the Respondent's relationship (or lack thereof) with the Complainant adds to the confusion caused by the disputed domain name and constitutes additional evidence of the Respondent's bad faith conduct.

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

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

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

The ".shop" generic top-level domain ("gTLD") may be ignored under this element. See, for example, *Rollerblade, Inc. v. Chris McCrady*, WIPO Case No. [D2000-0429](#).

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. In particular, the Respondent's use of the disputed domain name without a disclaimer of any relationship with the Complainant does not satisfy the requirements of the test set out in *Oki Data Americas, Inc. v. ASD, Inc.*, D2001-0903.

Panels have held that the use of a domain name for impersonation/passing off, or other types of fraud, 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, including:

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on its website or location.

As to registration, the Panel notes that the Respondent registered the disputed domain name many years after the Complainant registered its SENNHEISER trademark and opened its facilities in the United States, where the Respondent is located. The website to which the disputed domain name resolves prominently displays the Complainant's mark and purports to offer the Complainant's products for sale. There is no disclaimer of any association with the Complainant. These circumstances satisfy the Panel that the Respondent was fully aware of the Complainant's mark when registering the disputed domain name and did so in bad faith with intent to impersonate the Complainant.

As to use, the Panel is satisfied that 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 Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website and of the goods promoted on that website. This demonstrates registration and use in bad faith to attract users for commercial gain under paragraph 4(b)(iv) of the Policy.

Further, Panels have held that the use of a domain name for impersonation/passing off, or other types of fraud, 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 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 <sennheiserstore.shop> be transferred to the Complainant.

/Alan L. Limbury/

Alan L. Limbury

Sole Panelist

Date: December 4, 2024.