

ADMINISTRATIVE PANEL DECISION

Tüv Nord AG v. surbeer kumar
Case No. DAE2022-0006

1. The Parties

The Complainant is Tüv Nord AG, Germany, represented by TÜV Markenverbund e.V., Germany.

The Respondent is surbeer kumar, United Arab Emirates.

2. The Domain Name and Registrar

The disputed domain name <tuvme.ae> is registered with AE Domain Administration (.aeDA).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 5, 2022. On December 5, 2022, the Center transmitted by email to AE Domain Administration (.aeDA) a request for registrant verification in connection with the disputed domain name. On December 6, 2022, AE Domain Administration (.aeDA) transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details. The Complainant filed an amended Complaint on December 13, 2022.

The Center verified that the Complaint together with the amended Complaint satisfied the formal requirements of the UAE Domain Name Dispute Resolution Policy for – UAE DRP approved by .aeDA (the “Policy”), the Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Rules”), and the Supplemental Rules for UAE Domain Name Dispute Resolution Policy – UAE DRP (the “Supplemental Rules”).

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on December 15, 2022. In accordance with the Rules, paragraph 5(a), the due date for Response was January 4, 2023. The Respondent did not submit any Response. Accordingly, the Center notified the Respondent’s default on January 5, 2023.

The Center appointed Reyes Campello Estebanz as the sole panelist in this matter on January 11, 2023. 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, headquartered in Hannover, Germany, is a global provider of safety, certification and testing services. The Complainant offers such services under the TUV and TÜV marks, and other trademarks including the term “tùv”, such as TÜV NORD. Per the Complaint, the Complainant was founded as a group of associations in the 1860s, being each association responsible for a particular geographical area. Today there are six companies in the Complainant’s group in charge of different geographical areas, namely TÜV SÜD, TÜV Rheinland, TÜV NORD, TÜV AUSTRIA, TÜV Saarland and TÜV Thüringen.

The Complainant owns various trademark registrations for its TUV and TÜV brands, including:

- German Trademark Registration No. 1005638, TÜV, registered on July 28, 1980, in classes 41 and 42;
- United Kingdom Trademark Registration No. 1317937, TUV, registered on March 15, 1991, in class 42;
- Bahrain Trademark Registration No. SM937, TÜV, registered on May 30, 2001; and
- Saudi Arabia Trademark Registration No. 142107805, TÜV, registered on June 22, 2003, in class 42, (collectively referred to as the “TUV marks”, or the “TÜV mark” and the “TUV mark” respectively).

Prior decisions under the Policy have recognized the well-known character of the Complainant’s TUV marks within the sector of safety, certification and testing services.¹

The Complainant and its group of companies further owns various domain names corresponding to its trademarks, including <tuv.com> (registered on May 20, 1994), which resolves to its corporate website.

The disputed domain name was registered on April 19, 2022, and it currently resolves to an error message that indicates “403 Forbidden. Access to this resource on the server is denied!.” According to the evidence provided by the Complainant, the disputed domain name resolved to a website in English language that included the terms “TUV MIDDLE EAST” and a triangle logo at its heading. This website allegedly offered various services and solutions in the field of cybersecurity, various IT and safety services. The provider of this website identified itself as “TUV MIDDLE EAST” including, as its contact details, a PO box address in Dubai and a telephone number with the United Arab Emirates country code (+971).

5. Parties’ Contentions

A. Complainant

Key contentions of the Complaint may be summarized as follows:

The disputed domain name is confusingly similar to the Complainant’s trademarks, and it is used in relation to identical services as the ones provided by the Complainant. The disputed domain name incorporates the TUV mark adding the letters “me”, which are a geographical indication for the Middle East.

The Respondent has no rights or legitimate interests in respect of the disputed domain name. There is no evidence that the disputed domain name is used in connection with a *bona fide* offering of goods and services. The Respondent has no authorization to use the TUV marks, there is not affiliation between the Parties or between the Respondent and any of the Complainant’s group companies, the Respondent used a privacy service, and it is not commonly known by the disputed domain name.

¹ See, e.g., *TÜV NORD AG v. TUV International*, WIPO Case No. [D2015-0622](#).

The disputed domain name has been registered and is being used in bad faith. The TÜV marks and the Complainant's group companies are world famous with regard to safety, testing and certification services.² In the Middle East, the Complainant's group companies have numerous trademark registrations. The Respondent's intention was to transfer the Complainant's group high reputation towards its own verification and certification services, targeting the TÜV marks to attract Internet users to its website, and generating the false impression of a connection to the Complainant and its groups of companies. The disputed domain name and the Respondent's website are designed to lead visitors to believe that the services advertised are offered by one of the companies belonging to the Complainant's group, or by their subsidiaries, including the logo of TÜV Rheinland at its heading. This illegitimate use of the disputed domain name is causing damage to the Complainant's reputation, and is disrupting its business. Besides losing business, the Complainant has no control over the quality of the services being offered from this fake website, and therefore its goodwill and reputation is vulnerable.

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

The Complaint complies with all formal requirements and no deficiency has been observed according to the Policy, the Rules and the Supplemental Rules. The Complainant has made the relevant assertions as required by the Policy and the dispute is properly within the scope of the Policy. The Panel has authority to decide the dispute examining the three elements in paragraph 4(a) of the Policy, taking into consideration all of the relevant evidence, annexed material and allegations, and performing some limited independent research under the general powers of the Panel articulated, *inter alia*, in paragraph 10 of the Rules.

Noting the substantive similarities between the Policy and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel will refer to prior UDRP cases and doctrine, as well as to applicable sections of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), where appropriate.

A. Identical or Confusingly Similar

The Complainant indisputably has rights in the registered trademarks TÜV and TUV, both by virtue of its trademark registrations and as a result of its continuous use of these trademarks over a century.

The disputed domain name incorporates the TUV mark in its entirety (and the TÜV mark excluding the umlaut over the vowel "u"), followed by the letters "me", which do not avoid a finding of confusing similarity. The TUV marks are recognizable in the disputed domain name, and the country code Top-Level-Domain ("ccTLD") for the United Arab Emirates ".ae" is a technical requirement, generally disregarded for the purpose of the analysis of the confusing similarity under the Policy. See sections 1.7, 1.8, and 1.11.1, [WIPO Overview 3.0](#).

It is to be noted that previous panels have considered that the mere absence of an umlaut in a domain name, which is a symbol incapable of representation in non-internationalized or ASCII domain names, does not prevent the confusing similarity between the relevant mark and the domain name. See, in particular, *Gudrun Sjødén Design Aktiebolag v. Domain Admin, Private Registrations Aktien Gesellschaft / PrivacyProtect.org*, WIPO Case No. [D2012-1903](#), *Süddeutscher Verlag GmbH, Süddeutsche Zeitung GmbH, and Süddeutsche Zeitung Digitale Medien GmbH v. Iakov Shultz*, WIPO Case No. [DME2022-0020](#), and

² Their extensive reputation in Europe is shown, for example, in a survey provided by the Complainant.

Dürr Aktiengesellschaft v. Rob Monster, Digital Town, Inc., WIPO Case No. [D2018-0757](#).³

Accordingly, this Panel finds that the disputed domain name is confusingly similar to the Complainant's TUV marks, and the first element of the Policy under paragraph 4(a)(i) has been satisfied.

B. Rights or Legitimate Interests

Although the Complainant bears the ultimate burden of establishing all three elements of paragraph 4(a) of the Policy, prior decisions under the Policy as well as under the UDRP have recognized that this could result in the often impossible task of proving a negative, requiring information that is primarily if not exclusively within respondent's knowledge. Thus, the consensus view is that paragraph 4(c) of the Policy shifts to respondent the burden of production to come forward with relevant evidence of rights or legitimate interests in the disputed domain name, once complainant has made a *prima facie* case that respondent lacks rights or legitimate interests.

The applicable standard of proof in UDRP cases is the "balance of probabilities" or "preponderance of the evidence", being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Complainant's *prima facie* assertions and evidence effectively shift the burden to the Respondent of producing evidence of rights or legitimate interests in the disputed domain name in order to rebut Complainant's *prima facie* case, and the Respondent has not replied to the Complainant's contentions.

A core factor in assessing fair use of the disputed domain name is that it does not falsely suggest affiliation with the Complainant's trademarks. See section 2.5, [WIPO Overview 3.0](#). The disputed domain name incorporates the TUV mark in its entirety and the TÜV mark excluding its umlaut, adding an element (the letters "me") that refers to the geographical area of the Middle East, which may also point to the Complainant and its group of companies, as a new or existing company referring to this area. Therefore, the Panel considers that the disputed domain name creates the impression that it refers to the Complainant's official website for Middle East, or the site for this area of one of its affiliated companies or subsidiaries, suggesting sponsorship or endorsement by the Complainant with a risk of implied affiliation.

Furthermore, the Panel, under its general powers and following the Complainant's request, has further consulted the Complainant's website at "www.tuv.com", noting that the logo used in this website, consisting of a stylized triangle open at its bottom in light blue color, was almost identically reproduced at the heading of the Respondent's website. The logo included at the Respondent's website, according to the evidence provided by the Complainant, consisted of an identical triangle open at its bottom, in white lines over a light blue color background. Additionally, the Panel notes that the Respondent's website prominently includes the TUV mark and imitates the general design and appearance or look and feel of the Complainant's corporate site at "www.tuv.com", using the same combination of colors (white and blue), the same composition, and similar images.

The Panel further notes that the website linked to the disputed domain name was allegedly offering the same or similar type of services provided by the Complainant and its group of companies, as it offered various IT, testing and certification services.

Furthermore, the Panel notes that the evidence provided by the Complainant indicates that the website that was linked to the disputed domain name identified its provider as "Tuv Middle East." However, no other evidence in the record suggests that the Respondent owns any company or any trademark including the terms "tuv middle east." In this respect, the Panel, under its general powers, has further consulted the

³ *Dürr Aktiengesellschaft v. Rob Monster, Digital Town, Inc.*, *supra*, indicates, "The umlaut, which is a typographical symbol used in words in the German language to indicate a different vowel characteristic, and which is a component of the Complainant's DÜRR trade mark, is of no significance in assessing the degree of similarity between the Complainant's DÜRR trade mark and the first and second disputed domain names, because it is not technically possible to represent the umlaut within ASCII domain names."

Global Brand Database, finding no trademark registration or application for the terms “tuv middle east.”

All these circumstances lead the Panel to consider that the Respondent’s past use of the disputed domain name cannot be considered a *bona fide* offering of goods under the Policy.

It is further remarkable that the website that was linked to the disputed domain name has apparently been blocked or disconnected. Therefore, the Respondent’s reaction to the Complaint has apparently been to stop in the use of the disputed domain name.

All the above-mentioned circumstances lead the Panel to conclude that the Respondent lacks of any rights or legitimate interests in the disputed domain name. Accordingly, the second element of the Policy under paragraph 4(a)(ii) has been established.

C. Registered or is Being Used in Bad Faith

The Policy, paragraph 4(a)(iii), requires that the Complainant establish that the disputed domain name has been registered or is being used in bad faith.

The applicable standard of proof is, likewise, the “balance of probabilities” or “preponderance of the evidence”, being the Panel prepared to draw certain inferences in light of the particular facts and circumstances of the case. See section 4.2, [WIPO Overview 3.0](#).

The Panel considers that all cumulative circumstances of this case point to bad faith registration and use of the disputed domain name.

The TUV marks are reputed within their sector and are internationally used, including in the Middle East where the Respondent is located according to the Registrar verification and the content of the website that was linked to the disputed domain name. In this respect, the Panel, under its general powers, has consulted the Complainant’s website at “www.tuv.com” corroborating that the Complainant and its group operates in this area.

The disputed domain name incorporates the TUV mark in its entirety (and an altered TÜV mark, without the umlaut), followed by an element (“me”) that is the common abbreviation of Middle East, which may contribute to generate a risk of confusion or implied association. The disputed domain name creates a false impression of an affiliation to the Complainant or one of its associated companies or its subsidiaries.

Additionally, the website that was linked to the disputed domain name prominently included the TUV mark as well as an almost identical logo to the Complainant’s triangle logo, at its heading, and reproduced the combination of colors of the Complainant’s corporate website, with a very similar general appearance or look and feel.

It is further remarkable that the Respondent has not offered any explanation of any rights or legitimate interests in the disputed domain name and has not come forward to deny the Complainant’s assertions of bad faith, choosing not to reply to the Complaint. The Respondent’s reaction to the Complaint has apparently been to stop in the use of the disputed domain name, blocking or disconnecting the site that was linked to the disputed domain name according to the evidence provided by the Complainant.

Therefore, on the balance of probabilities, taking into consideration all cumulative circumstances of this case, the Panel considers that the disputed domain name was registered targeting the Complainant and its trademarks with the intention of obtaining a free ride on the Complainant’s established reputation in the field of testing and certification services. The disputed domain name was registered and is used seeking to mislead Internet users to believe that there is a connection between the disputed domain name and the Complainant, one of its associated companies or subsidiaries, to increase the traffic of the Respondent’s site for a commercial gain, which constitutes bad faith under the Policy.

It is to be noted that in cases where the overall circumstances of the case point to the Respondent's bad faith, as occurs in this case, the current non-use of the disputed domain name does not prevent a finding of bad faith under the doctrine of passive holding. See section 3.3, [WIPO Overview 3.0](#).

All of the above-mentioned circumstances lead the Panel to conclude that the disputed domain name was registered and is being used in bad faith. Accordingly, the Panel concludes that the Complainant has met its burden of establishing that the Respondent registered and is using the disputed domain name in bad faith under the third element of the Policy.

7. Decision

For the foregoing reasons, in accordance with paragraphs 6(i) of the Policy and 15 of the Rules, the Panel orders that the disputed domain name <tuvme.ae> be transferred to the Complainant.

/Reyes Campello Estebanz/

Reyes Campello Estebanz

Panelist

Date: January 25, 2023