

ADMINISTRATIVE PANEL DECISION

Sennheiser electronic GmbH & Co. KG v. jan jilek
Case No. DAI2024-0040

1. The Parties

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

The Respondent is jan jilek, Croatia.

2. The Domain Name and Registrar

The disputed domain name <sennheiser.ai> is registered with 1API GmbH (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 16, 2024. On May 17, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On May 21, 2024 and June 3, 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 (Domains By Proxy, LLC) and contact information in the Complaint. The Center sent an email communication to the Complainant on June 4, 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 June 4, 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 June 5, 2024. In accordance with the Rules, paragraph 5, the due date for Response was June 25, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 26, 2024.

The Center appointed Richard C.K. van Oerle as the sole panelist in this matter on July 3, 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, Sennheiser electronic GmbH & Co. KG, is a Germany-based company founded in 1945 and specializes in designing and producing a wide variety of audio products. Since its incorporation, the Complainant has expanded its business with more than 2,800 employees and three manufacturing plants in Germany, Ireland, and the United States of America, as well as sales subsidiaries and research laboratories worldwide.

The Complainant holds numerous trademarks for SENNHEISER on a worldwide basis, inter alia:

- European Union Trademark Registration No. 000370122 for SENNHEISER, registered on August 27, 1999;
- International Trademark Registration No. 670839 for SENNHEISER, registered on March 6, 1997, designated for a variety of countries, including in Croatia, where the Respondent is apparently located;
- International Trademark Registration No. 590780 for SENNHEISER and design, registered on August 10, 1992, designated for a variety of countries.

These registrations will hereafter together referred to in singular as the "Trademark".

The Complainant communicates online through various domain names, such as the domain name <sennheiser.com>, registered on April 24, 1996.

The disputed domain name was registered on April 26, 2023. It does not resolve to an active website. The disputed domain name resolved to a domain name selling platform, where interested users can request the sales price for the disputed domain name.

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 <sennheiser.ai> is clearly confusingly similar to the Trademark as it fully incorporates or consists of the Trademark SENNHEISER and combines it with the country code Top-Level-Domain (ccTLD) ".ai" – which is widely used as an abbreviation for "artificial intelligence". This will not, by the relevant public, distinguish the Respondent or the goods and services offered under the disputed domain name from the Complainant. To the contrary: the relevant public might get the impression that the disputed domain name is intended to identify the Complainant and its "AI" technologies.

The Complainant has not found that the Respondent has any registered trademarks or trade names or even 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. In addition, 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.

When registering the disputed domain name, the Respondent was or at least must have been aware of the prior rights of the Complainant in the Trademark, not only because the Complainant is operating its business

since 1945, but also in view of the Trademark which have been registered long before the registration of the disputed domain name.

The disputed domain name currently does not resolve to an active website, rather to a domain name selling platform, where interested users can request the sales price for the disputed domain name. The Respondent (or a broker acting on behalf of the Respondent) has offered the disputed domain name at a sales price of EUR 139,689.34. A sales offer at this price is evidence of bad faith. The Complainant is aware, that a respondent who does engage in the business of selling domain names, as such, does not necessarily act in bad faith. In the case at hand, however, the disputed domain name does not consist of a generic or geographical term, but a distinctive designation, which is a well-known brand all over the world. Hence, it is inconceivable how a lawful, non-infringing use of the domain name, which is identical to the well-known Trademark, would be possible.

The offering the disputed domain name at a price of approximately EUR 140,000 is clear evidence that the Respondent is making an attempt to sell the disputed domain name to the Complainant – and highly exaggerated costs and thus trying to profit from the reputation of the Trademark.

The Complainant requests 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

Paragraph 4(a) of the Policy provides that a complainant must prove each of the following three elements in order to succeed in its Complaint:

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

The burden of proof of each element is borne by the Complainant. The Respondent's default does not by itself mean that the Complainant is deemed to have prevailed. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition, (["WIPO Overview 3.0"](#)), section 4.3.

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

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.

Moreover, the Panel finds that the composition of the disputed domain name carries a high risk of implied affiliation as it effectively impersonates or suggests sponsorship or endorsement by the Complainant. [WIPO Overview 3.0](#), section 2.5.1.

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.

In the present case, the Panel is satisfied that the Respondent must have been aware of the Trademark when it registered the disputed domain name. The Respondent did not reply to the Complainant’s contentions and, therefore, did not refute the Complainant’s contentions.

In the Panel’s view, the fact that the Complainant is well-known internationally, including in the European Union and has been trading since 1945 with the Trademark, registered prior to the date of the disputed domain name, supports the Complainant’s contention that the Respondent would have been aware of the Complainant’s rights at the date of registration of the disputed domain name.

The Panel further notes that the disputed domain name consists of the Trademark and nothing but the Trademark, except for the use of ccTLD “.ai” – which is widely used as an abbreviation for “artificial intelligence” and by which the public might get the impression that the disputed domain name is intended to identify the Complainant and its AI-technologies. This shows a clear targeting and reference to the Complainant.

Section 3.1.4 of the [WIPO Overview 3.0](#) states that “the mere registration of a domain name that is identical or confusingly similar (particularly domain name comprising typos or incorporating the mark plus a descriptive term) to a famous or widely-known trademark by an unaffiliated entity can by itself create a presumption of bad faith”.

The Panel therefore finds that the Respondent registered the disputed domain name in bad faith.

The disputed domain name resolves to a parked page at which it is advertised as being for sale.

As noted above the Complainant's SENNHEISER Trademark is highly distinctive and very well reputed internationally. The Respondent has failed to respond to the Complaint and has used a privacy service to conceal its identity. In the circumstances of such a well reputed mark that has been used internationally for many decades, the Panel finds that it is highly implausible that the Respondent could seek to put the disputed domain name to any good faith use. This is all the more so in circumstances that the disputed domain name resolves to a parked page which advertises it as being for sale for an unspecified price. It appears that the Respondent has most likely registered the disputed domain name with a view to sell it at a profit far in excess of the registration costs.

Since the Complainant has also established that the disputed domain name has been offered to sell for EUR 139,689,34, it is beyond doubt that the use of the disputed domain name is also in bad faith.

Based on the information and the unrefuted evidence provided by the Complainant, the Panel concludes that the disputed domain name is used in 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 disputed domain name <sennheiser.ai> be transferred to the Complainant.

/Richard C.K. van Oerle/

Richard C.K. van Oerle

Sole Panelist

Date: July 11, 2024