

EXPERT DECISION

BAL DU MOULIN ROUGE v. Domain Privacy Trustee SA / V. F. Case No. DCH2024-0003

1. The Parties

The Claimant is Bal du Moulin Rouge, France, represented by Casalonga Avocats, France.

The Respondent is Domain Privacy Trustee SA / V. F., Switzerland.

2. The Domain Name

The dispute concerns the domain name <salonmoulinrouge.ch>.

3. Procedural History

The Request was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 29, 2024. On May 2, 2024, the Center transmitted by email to SWITCH, the “.ch” and “.li” registry, a request for verification in connection with the disputed domain name. On May 3, 2024, SWITCH transmitted by email to the Center its verification response confirming that the Respondent (Domain Privacy Trustee SA) is listed as the holder of the domain name and providing the relevant contact details. On May 23, 2024, the Registrar Infomaniak Network SA sent an email to the Center disclosing underlying registrant and contact information for the disputed domain name, which differed from the named Respondent (Domain Privacy Trustee SA) and contact information in the Request. The Center sent an email communication to the Claimant on May 24, 2024, providing the registrant and contact information disclosed by the Registrar, and inviting the Claimant to submit an amendment to the Request. The Claimant filed an amended Request on May 28, 2024.

The Center verified that the Request together with the amended Request satisfied the formal requirements of the Rules of procedure for dispute resolution procedures for “.ch” and “.li” domain names (the “Rules of Procedure”), adopted by SWITCH, on January 1, 2020.

In accordance with the Rules of Procedure, paragraph 14, the Center formally notified the Respondent of the Request, and the Dispute resolution procedure commenced on May 29, 2024. In accordance with the Rules of Procedure, paragraph 15(a), the due date for Response was June 18, 2024.

The Respondent has neither filed a formal Response nor expressed his readiness to participate in a Conciliation in accordance with paragraph 15(d) of the Rules of Procedure.

On June 26, 2024, the Center notified the Claimant accordingly, who on July 1, 2024, made an application for the continuation of the Dispute resolution proceedings in accordance with paragraph 19 of the Rules of Procedure and paid the required fees.

On July 10, 2024, the Center appointed Tobias Zuberbühler as Expert in this case. The Expert finds that he was properly appointed. In accordance with Rules of Procedure, paragraph 4, the Expert has declared his independence of the parties.

4. Factual Background

The Claimant, Bal du Moulin Rouge, is known worldwide under the name “Moulin Rouge”, the spiritual birthplace of the modern form of can-can dance and one of the famous tourist attractions of Paris.

The Claimant has used its famous French trademark MOULIN ROUGE since 1889 and is the owner of numerous MOULIN ROUGE trademarks worldwide, including the International trademark registration No. 1074312 (designating, inter alia, Switzerland) registered on December 1, 2010 for products and services in various different classes.

The Respondent registered the disputed domain name on January 9, 2020. The disputed domain name resolves to a website promoting sexual services and pornographic content.

5. Parties' Contentions

A. The Claimant

The Claimant alleges that the Respondent has been using the MOULIN ROUGE trademark and logo on its website and, by adding the common word “salon”, will increase the confusing similarity by falsely suggesting that the Respondent is linked to the Claimant.

Therefore, the Claimant contends that the Respondent has clearly violated (i) the Claimant's rights in a distinctive sign under Article 2 and Article 3(1)(d) of the Swiss Unfair Competition Act.

B. The Respondent

The Center received an informal email communication in French on June 26, 2024. However, the Respondent has not formally replied to the Claimant's contentions.

Pursuant to paragraph 23 of the Rules of Procedure, the Expert shall decide on the request on the basis of the case file.

6. Discussion and Findings

According to paragraph 24 of the Rules of Procedure, the Expert shall grant the Request if the allocation or use of the disputed domain name constitutes a clear infringement of a right in a distinctive sign which the Claimants own under the laws of Switzerland.

Paragraph 24(d) of the Rules of Procedure specifies that such clear infringement of an intellectual property right exists when:

- both the existence and the infringement of the claimed right in a distinctive sign clearly result from the wording of the law or from an acknowledged interpretation of the law and from the presented facts and are proven by the evidence submitted; and

- the Respondent has not conclusively pleaded and proven any relevant grounds for defense; and
- the infringement of the right justifies the transfer or revocation of the disputed domain name, depending on the remedy requested in the request.

A. The Claimant has a right in a distinctive sign under the laws of Switzerland

As outlined above, the Claimant owns various Swiss and international trademark registrations for its MOULIN ROUGE trademarks.

Due to the use of its MOULIN ROUGE trademark in business transactions, the Claimant can also invoke the unfair use of its protected sign under the Unfair Competition Act.

Thus, the Expert holds that the Claimant has established rights in a distinctive sign in Switzerland.

B. The allocation or use of the disputed domain name constitutes a clear infringement of a right in a distinctive sign which the Claimant owns under the laws of Switzerland

The owner of a trademark has the exclusive right to use the trademark to designate the goods and/or services for which it is registered. In particular, the trademark owner may prohibit others from using a sign that is similar to its trademark and is used for the same or similar goods, so that a likelihood of confusion arises (Art. 13(1) and (2) in conjunction with Art. 3(1)(c) of the Swiss Trademark Act).

The disputed domain name comprises the Claimant's MOULIN ROUGE trademark, with the addition of the word "salon". The website associated with the disputed domain name has been promoting sexual services and pornographic content.

Such commercial use creates a likelihood of confusion between the disputed domain name and the Claimant's trademark, resulting in an infringement of the Claimant's trademark rights in accordance with Article 3(1)(c) in connection with Article 13(2)(b) of the Swiss Trademark Act as well as a violation of Article 2 and Article 3(1)(d) of the Swiss Unfair Competition Act.

The Respondent has not provided any reasonable explanation why it registered the disputed domain name and, to the Expert's best knowledge, no such grounds can be seen. Further, the Claimant claims that it did not find any information on any trademark for "SALON MOULIN ROUGE" filed or registered in the Respondent's name, to which the Respondent did not object.

The Expert finds that the Request is well founded and that the Respondent's infringements of the Claimant's rights justify a transfer of the disputed domain name in accordance with paragraph 24(d)(iii) of the Rules of Procedure.

7. Expert Decision

For the above reasons, in accordance with paragraph 24 of the Rules of Procedure, the Expert orders that the disputed domain name <salonmoulinrouge.ch> be transferred to the Claimant.

Tobias Zuberbühler

Expert

Dated: July 24, 2024