

## **ADMINISTRATIVE PANEL DECISION**

Sphere v. Maxim Filippov  
Case No. DEU2022-0023

### **1. The Parties**

The Complainant is Sphere, France, represented by IPSILON, France.

The Respondent is Maxim Filippov, Norway.

### **2. The Domain Name, Registry and Registrar**

The Registry of the disputed domain name <sphere-papier.eu> is the European Registry for Internet Domains (“EURid” or the “Registry”). The Registrar of the disputed domain name is TLD Registrar Solutions Ltd.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on July 12, 2022. On July 12, 2022, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On July 14, 2022, the Registry 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on July 21, 2022 providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amended Complaint on July 25, 2022.

The Center verified that the Complaint, together with the amended Complaint, satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the “ADR Rules”) and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the “Supplemental Rules”).

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on July 26, 2022. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was September 7, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on September 15, 2022.

The Center appointed Edoardo Fano as the sole panelist in this matter on September 21, 2022. 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 ADR Rules, Paragraph B(5).

The language of the proceeding is English, being the language of the Registration Agreement, as per Paragraph A(3)(a) of the ADR Rules.

#### **4. Factual Background**

The Complainant is Sphere, a French company operating in the field of household packaging and owning several trademark registrations for SPHERE, among which the following ones:

- European Union Trade Mark Registration No. 004933875 for SPHERE, registered on September 13, 2011;
- International Trademark Registration No. 901751 for SPHERE, registered on March 8, 2006.

The Complainant operates also on the Internet, owning the domain names <sphere.eu>, as its official website, and <sphere-papier.fr> and <spherepapier.eu>, as the website of its subsidiary Sphere Papier.

The Complainant provided evidence in support of the above.

The disputed domain name was registered by the Respondent on May 14, 2022, and it resolves to a website with adult oriented and sexually explicit content.

Before being registered by the Respondent, the disputed domain name belonged to the Complainant, until it was not renewed and shortly after it was registered by the Respondent.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant states that the disputed domain name is confusingly similar to its trademark SPHERE, as the disputed domain name entirely incorporates the Complainant's trademark with the addition of the term "papier" (meaning "paper" in French), closely connected to the Complainant's business and activity.

Moreover, the Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name since it has not been authorized by the Complainant to register the disputed domain name or to use its trademark within the disputed domain name, nor is the Respondent commonly known by the disputed domain name. The Complainant asserts the Respondent is not making either a *bona fide* offering of goods or services or a legitimate noncommercial or fair use of the disputed domain name: the disputed domain name resolves to an active website containing advertising as well as pornographic content, tarnishing the Complainant's reputation.

The Complainant submits that the Respondent has registered the disputed domain name in bad faith, since the Complainant's trademark SPHERE is distinctive and enjoys reputation. Therefore, the Respondent targeted the Complainant's trademark at the time of registration of the disputed domain name and it is using it as a website with pornographic and adult content to intentionally attract, for commercial gain, Internet users. The Complainant contends that the use of the disputed domain name is tarnishing the Complainant's trademark and qualifies as bad faith registration and use.

## B. Respondent

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

## 6. Discussion and Findings

As stated in paragraph A(1) of the ADR Rules "[the] ADR Rules are applicable to domain name disputes where the domain name has been registered under the .eu Top Level Domain".

In order to succeed in its Complaint, the Complainant is required under Paragraph B(11)(d)(1) of the ADR Rules to demonstrate the following:

(i) that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national law of a Member State and/or European Union law; and either

(ii) that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the name; or

(iii) that the disputed domain name has been registered or is being used in bad faith.

### **(i) Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law**

The Panel finds that the Complainant is the owner of the European Union Trade Mark SPHERE and that the disputed domain name is confusingly similar to the trademark SPHERE.

Regarding the addition of the term "papier" (meaning "paper" in French), the Panel notes that it is now well established that the addition of terms or letters to a trademark in a domain name does not prevent a finding of confusing similarity between the domain name and the trademark (see, e.g., *Aventis Pharma SA., Aventis Pharma Deutschland GmbH v. Jonathan Valicenti*, WIPO Case No. [D2005-0037](#); *Red Bull GmbH v. Chai Larbthanasub*, WIPO Case No. [D2003-0709](#); *America Online, Inc. v. Dolphin@Heart*, WIPO Case No. [D2000-0713](#)).<sup>1</sup> The addition of the term "papier" does not therefore prevent the disputed domain name from being confusingly similar to the Complainant's trademark.

It is well established in decisions under the ADR Rules that the country-code Top-Level Domain ("ccTLD") ".eu" is typically ignored when assessing the similarity between a trademark and a domain name.

The Panel finds that the Complainant has therefore met its burden of proving that the disputed domain name is confusingly similar to the Complainant's trademark, pursuant to Paragraph B(11)(d)(1)(i) of the ADR Rules.

### **(ii) Rights or Legitimate Interests**

The Complainant has established a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name. It asserts that it has no relationship or association with the Respondent, and has not authorized the Respondent to use or register in a domain name the SPHERE trademark, that the Respondent is not commonly known by the disputed domain name and is not using it in connection with the offering of goods or services, or making a legitimate noncommercial or fair use of it. The disputed domain name is used for an adult website containing pornographic material.

The *prima facie* case presented by the Complainant is enough to shift the burden of production to the Respondent to demonstrate that it has rights or legitimate interests in the disputed domain name. However,

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<sup>1</sup> Considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel also refers to UDRP cases, where appropriate.

the Respondent has not presented any evidence of any rights or legitimate interests it may have in the disputed domain name, and the Panel is unable to establish any such rights or legitimate interests on the basis of the evidence in front of it.

The Panel could not find any evidence by referring to the examples listed in Paragraph B(11)(e) of the ADR Rules that:

- (i) prior to commencing this proceeding the Respondent has used the disputed domain name in connection with the offering of goods or services or has made demonstrable preparations to do so; or that
- (ii) the Respondent as an undertaking, organization or natural person has been commonly known by the disputed domain name; or that
- (iii) the Respondent is making a legitimate and noncommercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

On the contrary, the use of the disputed domain name for a pornographic website is very likely to harm the reputation of the Complainant's registered trademark.

The Panel therefore finds that Paragraph B(11)(d)(1)(ii) of the ADR Rules has been satisfied.

### **(iii) Registered or Used in Bad Faith**

According to Article 21(1) of the Regulation and Paragraph B(11)(d)(1) of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are alternative requirements. The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and therefore there is no need to consider also the bad faith element.

In any case, the Panel finds that the use of the disputed domain name as described above is an evidence of bad faith registration and use, pursuant to Paragraph B(11)(d)(1)(iii) of the ADR Rules.

## **7. Decision**

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <sphere-papier.eu> be transferred to the Complainant.<sup>2</sup>

*/Edoardo Fano/*

**Edoardo Fano**

Sole Panelist

Date: October 18, 2022

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<sup>2</sup> As the Complainant Sphere is located in France, a Member State of the European Union, it satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of Regulation (EU) 2019/517. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.