

ADMINISTRATIVE PANEL DECISION

Klubb Group v. Domain Admin, Whoisprotection.cc / Zheng Bo Deng,
Dengzheng Bo
Case No. D2022-0129

1. The Parties

The Complainant is Klubb Group, France, represented by Philippe Marchiset, France.

The Respondent is Domain Admin, Whoisprotection.cc, Malaysia / Zheng Bo Deng, Dengzheng Bo, China.

2. The Domain Name and Registrar

The disputed domain name <comilev.com> (the “Domain Name”) 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 January 14, 2022. On January 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On January 15, 2022, the Registrar transmitted by email to the Center its verification response disclosing registrant and contact information for the Domain Name which differed from the named Respondent and contact information in the Complaint. The Center sent an email communication to the Complainant on January 18, 2022, 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 January 19, 2022.

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 January 20, 2022. In accordance with the Rules, paragraph 5, the due date for Response was February 9, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on February 10, 2022.

The Center appointed Piotr Nowaczyk as the sole panelist in this matter on February 15, 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 Rules, paragraph 7.

4. Factual Background

Klubb Group, formerly known as Gelev, is a French company focused on the production and commercialization of aerial platforms.

In 2017, the Complainant acquired all the immaterial assets of Comilev – a French company producing vehicle mounted lifting equipment. The assets acquired by the Complainant included the French trademark  No. 3978532 registered on January 24, 2013.

The Domain Name was historically owned and managed by Comilev. However, the registration of the Domain Name by Comilev expired and was not renewed due to the insolvency process.

The Domain Name was registered on September 14, 2021.

On December 14, 2021, the Complainant sent a cease and desist letter with respect to the Domain Name. However, the Complainant has not received any response to date.

As of the date of filing the Complainant, the Domain Name resolved to a website presenting pornographic content. As of the date of this Decision, the Domain Name resolves to an inactive website.

5. Parties' Contentions

A. Complainant

The Complainant requests that the Domain Name be transferred to the Complainant. According to the Complainant, each of the three elements specified in paragraph 4(a) of the Policy are satisfied in the present case.

First, the Complainant submits that the Domain Name is identical or confusingly similar to the COMILEV trademark registrations of the Complainant.

Second, the Complainant argues that the Respondent has neither rights nor legitimate interests in the Domain Name.

Third, the Complainant submits that the Domain Name was registered and is being used in bad faith.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy places a burden on the Complainant to prove the presence of three separate elements, which can be summarized as follows:

- (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 the disputed domain name; and
- (iii) the disputed domain name has been registered and is being used in bad faith.

The requested remedy may only be granted if the above criteria are met.

At the outset, the Panel notes that the applicable standard of proof in UDRP cases is the “balance of probabilities” or “preponderance of the evidence”. See section 4.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”).

A. Identical or Confusingly Similar

The first element that the Complainant must establish is that the Domain Name is identical or confusingly similar to the Complainant’s trademark rights.

The Complainant holds valid COMILEV trademark registration, which precede the registration of the Domain Name.

The Domain Name incorporates the Complainant’s COMILEV trademark in its entirety. As numerous UDRP panels have held, incorporating a trademark in its entirety is sufficient to establish that a domain name is identical or confusingly similar to a registered trademark (see *PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a EMS)*, WIPO Case No. [D2003-0696](#)).

The Top-Level Domain “.com” in the Domain Name is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test. See [WIPO Overview 3.0](#), section 1.11.1.

Given the above, the Panel finds that the Domain Name is confusingly similar to the Complainant’s trademark. Thus, the Complainant has proved the requirements under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the Domain Name.

The Respondent may establish a right or legitimate interest in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (a) it has made preparations to use the domain name or a name corresponding to the domain name in connection with a *bona fide* offering of goods or services prior to the dispute; or
- (b) it is commonly known by the domain name, even if it has not acquired any trademark rights; or
- (c) it intends to make a legitimate, noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark.

Although given the opportunity, the Respondent has not submitted any evidence indicating that any of the circumstances foreseen in paragraph 4(c) of the Policy are present in this case.

On the contrary, it results from the evidence in the record that there is the Complainant’s COMILEV trademark registration, which predates the Respondent’s registration of the Domain Name. There is no evidence in the case that the Complainant has licensed or otherwise permitted the Respondent to use the

COMILEV trademark or to register the Domain Name incorporating this trademark. There is also no evidence to suggest that the Respondent has been commonly known by the Domain Name.

Moreover, it results from the evidence in the record that the Respondent does not make use of the Domain Name in connection with a *bona fide* offering of goods or services, as well as it does not make a legitimate, noncommercial or fair use of the Domain Name without intent for commercial gain.

As of the date of filing the Complainant, the Domain Name resolved to the website presenting pornographic content. Such use of the Domain Name does not qualify as a legitimate, noncommercial or fair use. Moreover, considering the identical replication of the Complainant's COMILEV trademark without modification, the Domain Name carries a high risk of implied affiliation to the Complainant, contrary to the fact. See [WIPO Overview 3.0](#), section 2.5.1.

Given the above, the Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy, any rights or legitimate interests in respect of the Domain Name. Thus, there is no evidence in the case file that refutes the Complainant's submissions. The Panel concludes that the Complainant has also proved the requirement under paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The third requirement the Complainant must prove is that the Domain Name has been registered and is being used in bad faith.

Bad faith under the UDRP is broadly understood to occur where a respondent takes unfair advantage of or otherwise abuses a complainant's mark. See [WIPO Overview 3.0](#), section 3.1.

Under paragraph 4(b) of the Policy, evidence of bad faith registration and use include without limitation:

- (i) circumstances indicating the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the owner of a trademark or to a competitor of the trademark owner, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name; or
- (ii) circumstances indicating that the domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding domain name, provided it is a pattern of such conduct; or
- (iii) circumstances indicating that the domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to a website or other on-line location, by creating a likelihood of confusion with a trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on a website or location.

As indicated above, the Complainant's rights in the COMILEV trademark predate the registration of the Domain Name. Also, it has been proven to the Panel's satisfaction that the Complainant's COMILEV trademark is unique to the Complainant. Historically, the Domain Name was owned and managed by the Comilev company acquired subsequently by the Complainant. Due to the insolvency proceedings, the Domain Name was not renewed by the Comilev company. The Panel accepts that the Respondent registered the Domain Name in its name to benefit from the existing traffic associated with the Domain Name.

Moreover, the Domain Name is being used in bad faith by the Respondent to present pornographic content. Such use of the Domain Name risks damage to the Complainant's reputation.

In addition, there was no reply to the cease-and-desist letter sent by the Complainant to the publicly-available information listed in the Registrar's Whois and the Respondent engaged the use of a privacy service for purposes of masking its details. All these circumstances constitute further evidence of bad faith.

In sum, the Panel accepts that the Respondent is using the Domain Name in an attempt to attract, for commercial gain, Internet users to the website by creating a likelihood of confusion with the COMILEV trademark as to the source, sponsorship, affiliation, or endorsement of the website or the products offered on this Website by the Respondent.

For the reasons discussed above, the Panel finds that the Complainant has proved the requirements under paragraph 4(a)(iii) 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 Domain Name <comilev.com> be transferred to the Complainant.

/Piotr Nowaczyk/

Piotr Nowaczyk

Sole Panelist

Date: March 1, 2022