

## **ADMINISTRATIVE PANEL DECISION**

documenta und Museum Fridericianum gGmbH v. LIUQINGRU  
Case No. D2022-0389

### **1. The Parties**

The Complainant is documenta und Museum Fridericianum gGmbH, Germany, represented by Klinkert Rechtsanwälte PartGmbH, Germany.

The Respondent is LIUQINGRU, China.

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

The disputed domain name <documenta.xyz> is registered with Sav.com, LLC (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on February 4, 2022. On February 4, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On February 5, 2022, the Registrar transmitted by email to the Center its verification response:

- (a) confirming it is the Registrar for the disputed domain name;
- (b) disclosing registrant and contact information for the disputed domain name which differed from the named Respondent and contact information in the Complaint; and
- (c) confirming that the language of the registration agreement is English.

The Center sent an email communication to the Complainant on February 7, 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 amendment to the Complaint on February 7, 2022.

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 February 9, 2022. In accordance with the Rules, paragraph 5, the due date for Response was March 1, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on March 2, 2022.

The Center appointed Warwick A. Rothnie as the sole panelist in this matter on March 11, 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**

The Complainant is a museum and exhibition "space" located in Germany.

In 1955, Professor Arnold Bode, a painter and academy professor in Kassel, Germany, organized and held a "documenta" exhibition to promote art in the classical modern style. This particular style had been attacked and suppressed in Germany by the National Socialists.

Since 1959, the Complainant has arranged and hosted the "documenta" art exhibition on a five-year cycle. The exhibitions being held over 100 days.

According to information included in the Complaint, there were more than half a million visitors to the "documenta" exhibition in 1992. The number of visitors has increased since then, and there were over 900,000 visitors to the 2012 "documenta" exhibition.

The Complainant is the owner of a number of registered trademarks for DOCUMENTA including:

- (a) German Registered Trademark No. 39929959 which has been registered since 1999 in respect of services in International Class 41;
- (b) European Union Trademark No. 008849796 which has been registered since 2010 for a range of goods and services in International Classes 9, 16 and 41; and
- (c) European Union Trademark No. 016730004 which has been registered since 2017 for a range of services in International Classes 38, 41, 42 and 44.

The next "documenta" exhibition is scheduled to be held from June 18 to September 25, 2022.

The disputed domain name was registered on November 15, 2021.

It resolves to a page in English on the "Dan.com" website where it is offered for sale as a premium domain name. When the Complaint was filed, the asking price was USD 788. Currently, it is offered for sale for USD 988 (for a limited time only).

#### **5. Discussion and Findings**

No response has been filed. The Complaint and Written Notice have been sent, however, to the Respondent at the electronic and physical coordinates confirmed as correct by the Registrar in accordance with paragraph 2(a) of the Rules. The courier attempting delivery of the Written Notice was unable to complete delivery. Bearing in mind the duty of the holder of a domain name to provide and keep up to date correct Whois details, therefore, the Panel finds that the Respondent has been given a fair opportunity to present his or its case.

When a respondent has defaulted, paragraph 14(a) of the Rules requires the Panel to proceed to a decision on the Complaint in the absence of exceptional circumstances. Accordingly, paragraph 15(a) of the Rules requires the Panel to decide the dispute on the basis of the statements and documents that have been submitted and any rules and principles of law deemed applicable.

Paragraph 4(a) of the Policy provides that in order to divest the Respondent of the disputed domain name, the Complainant must demonstrate each of the following:

- (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.

#### **A. Identical or Confusingly Similar**

The first element that the Complainant must establish is that the disputed domain name is identical with, or confusingly similar to, the Complainant's trademark rights.

There are two parts to this inquiry: the Complainant must demonstrate that it has rights in a trademark at the date the Complaint was filed and, if so, the disputed domain name must be shown to be identical or confusingly similar to the trademark.

The Complainant has proven ownership of the registered trademarks for DOCUMENTA identified in section 4 above.

The second stage of this inquiry simply requires a visual and aural comparison of the disputed domain name to the proven trademarks. This test is narrower than and thus different to the question of "likelihood of confusion" under trademark law. Therefore, questions such as the scope of the trademark rights, the geographical location of the respective parties and other considerations that may be relevant to an assessment of infringement under trademark law are not relevant at this stage. Such matters, if relevant, may fall for consideration under the other elements of the Policy. *E.g.* WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ([WIPO Overview 3.0](#)), section 1.7.

In undertaking that comparison, it is permissible in the present circumstances to disregard the Top-Level Domain (TLD) component as a functional aspect of the domain name system. [WIPO Overview 3.0](#), section 1.11.

Disregarding the ".xyz" TLD, the disputed domain name consists of the Complainant's registered trademark only. Accordingly, the Panel finds that the Complainant has established that the disputed domain name is identical with the Complainant's trademark and the requirement under the first limb of the Policy is satisfied.

#### **B. Rights or Legitimate Interests**

The second requirement the Complainant must prove is that the Respondent has no rights or legitimate interests in the disputed domain name.

Paragraph 4(c) of the Policy provides that the following circumstances can be situations in which the Respondent has rights or legitimate interests in a disputed domain name:

- (i) before any notice to [the Respondent] of the dispute, [the Respondent's] use of, or demonstrable preparations to use, the [disputed] domain name or a name corresponding to the [disputed] domain name in connection with a *bona fide* offering of goods or services; or

- (ii) [the Respondent] (as an individual, business, or other organization) has been commonly known by the [disputed] domain name, even if [the Respondent] has acquired no trademark or service mark rights; or
- (iii) [the Respondent] is making a legitimate noncommercial or fair use of the [disputed] domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

These are illustrative only and are not an exhaustive listing of the situations in which a respondent can show rights or legitimate interests in a domain name.

The onus of proving this requirement, like each element, falls on the Complainant. Panels have recognized the difficulties inherent in proving a negative, however, especially in circumstances where much of the relevant information is in, or likely to be in, the possession of the respondent. Accordingly, it is usually sufficient for a complainant to raise a *prima facie* case against the respondent under this head and an evidential burden will shift to the respondent to rebut that *prima facie* case. The ultimate burden of proof, however, remains with the Complainant. See e.g., [WIPO Overview 3.0](#), section 2.1.

The Respondent registered the disputed domain name more than 65 years after the first “documenta” exhibition and well after the Complainant had registered its trademarks.

The Complainant states that it has not authorised the Respondent to use the disputed domain name. Nor is the Respondent affiliated with it.

The disputed domain name is not derived from the Respondent’s name. Nor is there any suggestion of some other name by which the Respondent is commonly known from which the disputed domain name could be derived.

It is not necessarily inconsistent with the Policy to register a domain name and subsequently offer it for sale. See e.g. [WIPO Overview 3.0](#), section 2.1 and 2.10. In the present case, however, the term “documenta” seems to have significance mainly as the name of the Complainant’s art exhibition. The term is similar to the English word “document” but is not an ordinary dictionary word in English or, so far as the Panel is aware, German or Chinese. In any event, the disputed domain name is not being used for any purpose related to some kind of variation on the theme of a dictionary word. See e.g. [WIPO Overview 3.0](#), section 2.10.

These matters, taken together, are sufficient to establish a *prima facie* case under the Policy that the Respondent has no rights or legitimate interests in the disputed domain name. The basis on which the Respondent has adopted the disputed domain name, therefore, calls for explanation. The Respondent, however, has not sought to rebut that *prima facie* case or advance any claimed entitlement. Accordingly, the Panel finds the Complainant has established the second requirement under the Policy also.

### **C. Registered and Used in Bad Faith**

Under the third requirement of the Policy, the Complainant must establish that the disputed domain name has been both registered and used in bad faith by the Respondent. These are conjunctive requirements; both must be satisfied for a successful complaint: see e.g. *Burn World-Wide, Ltd. d/b/a BGT Partners v. Banta Global Turnkey Ltd*, WIPO Case No. [D2010-0470](#).

Generally speaking, a finding that a domain name has been registered and is being used in bad faith requires an inference to be drawn that the respondent in question has registered and is using the disputed domain name to take advantage of its significance as a trademark owned by (usually) the complainant.

As the disputed domain name has resolved directly to the page on “Dan.com” offering it for sale, it can fairly be inferred that the Respondent’s sole purpose in registering the disputed domain name was to re-sell it. There is nothing in the record to suggest any other purpose in registering the disputed domain name.

As has already been noted, it is not necessarily an indicator of bad faith that a holder offers a domain name for sale. See e.g. [WIPO Overview 3.0](#), section 3.1.

In the present case, however, the term “documenta” is not necessarily descriptive. It has significance mainly as the Complainant’s trademark for its well-established and long running exhibition, without any other significance in English or, so far as the Panel is aware in German or Chinese. No alternative and independent reason for its selection by the Respondent is evident to the Panel. The Respondent is offering the disputed domain name for sale for well in excess of the usual costs of registering a domain name in the “.xyz” TLD. It appears therefore that the Respondent registered the disputed domain name to take unfair advantage of its trademark significance. In circumstances where the Respondent has not sought to claim, let alone establish, that he or she has rights or legitimate interests in the disputed domain name, therefore, the Panel finds the Respondent has registered and used it in bad faith.

Accordingly, the Complainant has established all three requirements under the Policy.

## **6. 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 <documenta.xyz> be transferred to the Complainant.

*/Warwick A. Rothnie/*

**Warwick A. Rothnie**

Sole Panelist

Date: March 25, 2022