

ADMINISTRATIVE PANEL DECISION

ETHENEA Independent Investors S.A. v. Klaudia S Berg Case No. D2022-0893

1. The Parties

The Complainant is ETHENEA Independent Investors S.A., Luxembourg, represented by Trierpatent, Germany.

The Respondent is Klaudia S Berg, Germany.

2. The Domain Name and Registrar

The disputed domain name <ethenea-de.com> is registered with GoDaddy.com, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on March 15, 2022. On March 15, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On March 16, 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 and contact information in the Complaint. The Center sent an email communication to the Complainant on March 17, 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 March 17, 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 March 30, 2022. In accordance with the Rules, paragraph 5, the due date for Response was April 19, 2022. The Respondent did not submit any formal response. Accordingly, the Center notified the Parties that it would proceed to panel appointment on April 21, 2022.

The Center appointed Anne-Virginie La Spada as the sole panelist in this matter on May 9, 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 company based in Luxembourg active in the field of financial services.

Among other registrations, the Complainant owns the following trademark registrations:

- European Union trademark registration for ETHENEA No. 010411965, registered on March 20, 2012, in classes 16 and 36, and
- European Union trademark registration for ETHENEA & design No. 018528840, registered on November 26, 2021, in classes 16 and 36.

The Complainant has also registered the domain name <ethenea.com> in 2010.

The disputed domain name <ethenea-de.com> was registered on November 25, 2021.

The disputed domain name resolved to a website reproducing the Complainant's official website in its German version.

On January 25, 2022, the Complainant contacted the Registrar and asked that the "domain be shut down". At the time of filing of the Complaint, the disputed domain name redirected to a parking page hosted by the Registrar.

5. Parties' Contentions

A. Complainant

According to the Complainant, the disputed domain name is confusingly similar to its trademark ETHENEA as it identically reproduces its trademark with the mere addition of the geographically descriptive term "-de", pointing towards the country code Top-Level-Domain ("ccTLD") ".de".

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name for the following reasons: (i) the Respondent is not commonly known by the disputed domain name; (ii) the disputed domain name was being used to mislead consumers into believing that the Respondent's website was the official German website of the Complainant, which confirms that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name; (iii) the Respondent was using the Complainant's trademarks, copyrighted content and personal staff information with no authorization which is further evidence of its absence of rights or legitimate interests in the disputed domain name.

Finally, the Complainant contends that the Respondent has used and registered the disputed domain name in bad faith. According to the Complainant, the disputed domain name was being intentionally used to host a website that conveys the misleading impression that it is the official German website of the Complainant. This demonstrates, in the Complainant's eyes, an intention to mislead visitors into thinking that services offered under the disputed domain name are services offered by the Complainant.

B. Respondent

The Respondent did not submit a formal response, but sent the following informal communication to the Center on March 30, 2022, stating: "Hi, I deleted the website content when there was a complaint about the domain name and I wasn't doing this job. now you can delete the domain name from my account. The

disputed domain name should be canceled and I don't want to be disturbed again, I'm trying to answer you with my sick state".

6. Discussion and Findings

According to paragraph 4(a) of the Policy, a complainant must assert and prove each of the following:

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

A. Identical or Confusingly Similar

The disputed domain name reproduces in its entirety the Complainant's trademark ETHENEA, with the addition of the term "-de", which may easily be recognized as a country code referring to Germany.

The addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) to a domain name where the relevant trademark is recognizable within the disputed domain name does not prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.8).

In the present case, the trademark ETHENEA is clearly recognizable in the disputed domain name. The mere addition of the term "-de" does not change the overall impression produced by the disputed domain name and does not prevent a finding of confusing similarity between the disputed domain name and the Complainant's trademark.

UDRP panels also accept that a TLD, such as ".com", should be disregarded when assessing whether a domain name is identical or confusing similar to a trademark (see section 1.11 of the [WIPO Overview 3.0](#)).

The Panel finds accordingly that the Complainant has successfully established the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Respondent has failed to file a formal response.

Based on the information submitted by the Complainant, the Respondent does not appear to have rights or legitimate interests in respect of the disputed domain name, nor has the Complainant granted to the Respondent an authorization to use the disputed domain name. Moreover, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

The Respondent does not appear to have operated any *bona fide* or legitimate business under the disputed domain name and is not making a noncommercial or fair use of the disputed domain name. Instead, the disputed domain name redirected to an active website purporting to be the official German website of the Complainant, which in the Panel's view demonstrates an obvious attempt on the part of the Respondent to mislead Internet users seeking the Complainant's services and website.

Finally, the Respondent did not file a formal response to the Complaint. The Panel may draw from the lack of a Response the inferences that it considers appropriate, according to the Rules, paragraph 14(b). The

Panel finds that the Complainant has established a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name.

Accordingly, the Panel finds that the Complainant has made a *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name, which has not been rebutted by the Respondent.

Therefore, the Complainant has satisfied the condition set out in paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

The Respondent used the disputed domain name in connection with an active website purporting to be the official German website of the Complainant. There is no doubt accordingly that the Respondent was aware of the Complainant's trademark at the time of registration of the disputed domain name. The Panel therefore accepts that the disputed domain name was registered in bad faith.

The use of the disputed domain name by the Respondent was apt to mislead Internet users into believing that the website at issue was the official website of the Complainant, and that they could contact the Complainant by means of the contact form available on the website.

Under these circumstances, the Panel considers it likely that the Respondent intended to use the disputed domain name as a support for a potential fraudulent scheme, namely to impersonate the Complainant and extract personal or financial data from Internet users visiting his website. Previous UDRP panels have founds that such behavior amounts to use of a domain name in bad faith (see *Marriott International, Inc., Marriott Worldwide Corporation and The Ritz-Carlton Hotel Company, LLC v. Van C Bethancourt Jr., Andre Williams*, WIPO Case No. [D2018-2428](#) and *Accor v. Sangho Heo, Contact Privacy Inc.*, WIPO Case No. [D2014-1471](#)).

By using the disputed domain name in such manner, the Respondent intentionally attempted to attract, for the purposes of commercial gain, Internet users to his or her website by creating a likelihood of confusion with the Complainant's mark as to the source and affiliation of this website. Such behaviour constitutes use in bad faith under paragraph 4(b)(iv) of the Policy.

For the reasons set out above, the Panel finds that the Respondent has registered and used the disputed domain name in bad faith, and that the Complainant has satisfied the condition set forth in 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 disputed domain name, <ethenea-de.com>, be transferred to the Complainant.

/Anne-Virginie La Spada/

Anne-Virginie La Spada

Sole Panelist

Date: May 23, 2022