

ADMINISTRATIVE PANEL DECISION

Drägerwerk AG & Co. KGaA v. WhoisSecure / Black Roses Case No. D2022-1874

1. The Parties

The Complainant is Drägerwerk AG & Co. KGaA, Germany, represented by Bardehle Pagenberg Partnerschaft mbB, Germany.

The Respondent is WhoisSecure, United States of America / Black Roses, United States of America.

2. The Domain Name and Registrar

The disputed domain name <dreagerwerk.com> (the “Disputed Domain Name”) is registered with OwnRegistrar, Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on May 24, 2022. On May 25, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the Disputed Domain Name. On May 26, 2022, 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 May 29, 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 May 30, 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 May 31, 2022. In accordance with the Rules, paragraph 5, the due date for Response was June 20, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on June 21, 2022.

The Center appointed Gabriela Kennedy as the sole panelist in this matter on June 29, 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 was founded in 1889 in Lübeck, Germany, and is an international medical and safety technology company which supplies respiration and protection equipment, gas detection and analysis systems, and non-invasive patient monitoring technologies. It has over 14,500 employees globally and is present in over 190 countries, with sales and service subsidiaries in nearly 50 countries.

The Complainant is the owner of several trademark registrations for the DRÄGER and/or DRAEGER (without the German “Umlaut” Ä) mark(s) including, *inter alia*, International Trademark Registration Numbers 1332205, 1357586, and 1369347 for DRAEGER, all registered on December 8, 2016 (the “Complainant’s Trademark”). The Complainant is also the owner of the domain names <draeger.com>, <drägerwerk.com>, <draegerwerkgroup.com>, <draeger.us>, and <drager.us>. The Complainant has thus obtained an exclusive right to the Complainant’s Trademark through extensive use.

The Disputed Domain Name was registered on January 3, 2022, and currently (and at filing of the Complaint) redirects to the Complainant’s official website at “www.draeger.com”.

5. Parties’ Contentions

A. Complainant

The Complainant’s primary contentions can be summarized as follows:

(a) The Disputed Domain Name is confusingly similar to the Complainant’s Trademark as well as the Complainant’s domain name <drägerwerk.com> by virtue of it being an intentional misspelling of the Complainant’s Trademark. The misspelling is insufficient to distinguish the Disputed Domain Name from the goods and services offered under the Complainant’s Trademark and domain names.

(b) The Respondent does not have any rights or legitimate interests in the Disputed Domain Name. The Complainant has never licensed, authorized or given permission to the Respondent, who is not associated with the Complainant in any way, to use the Complainant’s Trademark or to register the Disputed Domain Name. There is also no evidence of 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, nor a legitimate noncommercial or fair use of the Complainant’s Trademark.

(c) The Respondent’s registration of the Disputed Domain Name which is confusingly similar to the Complainant’s Trademark is in itself an act of bad faith by someone with no legal connection to the Complainant’s business. When registering the Disputed Domain Name, the Respondent was, or must have been aware of the Complainant’s Trademark, which predates the registration of the Disputed Domain Name. In addition, the Respondent’s use of the Disputed Domain Name which consists of a misspelling or typo of the Complainant’s Trademark is an indication of bad faith. The Disputed Domain Name currently redirects to the Complainant’s official website, though there are active mail exchanger (“MX”) records available for the Disputed Domain Name, suggesting that the Disputed Domain Name is used for email communication. This method is commonly adopted in spam or phishing attacks where the registrant attempts to impersonate the rights holder by registering a domain name highly similar to the rights holder’s marks which redirects to the rights holder’s official website. The Respondent’s intention was to create the false impression that the Disputed Domain Name or any communication using the Disputed Domain Name as an email address originates from the Complainant, which demonstrates the Respondent’s bad faith.

B. Respondent

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

6. Discussion and Findings

Under paragraph 4(a) of the Policy, the Complainant is required to prove each of the following three elements:

- (i) the Disputed Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;
- (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 by the Respondent in bad faith.

A. Identical or Confusingly Similar

The Panel accepts that the Complainant has rights in the Complainant's Trademark, based on its various trademark registrations listed above in Section 4. The Complainant's Trademark is also incorporated in the Complainant's domain names such as <draeger.com>, <draegerwerkgroup.com>, and <draeger.us>.

The Disputed Domain Name incorporates the Complainant's Trademark with the intentional misspelling of "draeger" as "dreager". Pursuant to section 1.9 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), a domain name which consists of a common, obvious, or intentional misspelling of a trademark is considered by panels to be confusingly similar to the relevant mark for purposes of the first element. Here, the Disputed Domain Name contains sufficiently recognizable aspects of the Complainant's Trademark.

As such, the Panel finds that the Disputed Domain Name is confusingly similar to the Complainant's Trademark, and accordingly, paragraph 4(a)(i) of the Policy is satisfied.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case in respect of the lack of rights or legitimate interests of a respondent in a domain name, the respondent then carries the burden of demonstrating that it has rights or legitimate interests in the domain name. Where the respondent fails to do so, a complainant is deemed to have satisfied paragraph 4(a)(ii) of the Policy. See section 2.1 of the [WIPO Overview 3.0](#).

The Panel accepts that the Complainant has not authorized the Respondent to use the Complainant's Trademark, and there is no relationship between the Complainant and the Respondent which would otherwise entitle the Respondent to use the Complainant's Trademark. Accordingly, the Panel is of the view that a *prima facie* case has been established by the Complainant and it is for the Respondent to show rights or legitimate interests in the Disputed Domain Name.

The Respondent did not submit a Response. The fact that the Respondent did not submit a formal Response does not automatically result in a decision in favor of the Complainant. However, the Respondent's failure to file a Response may result in the Panel drawing appropriate inferences from such default. The Panel may also accept all reasonable and supported allegations and inferences flowing from the Complainant as true (see *Entertainment Shopping AG v. Nischal Soni, Sonik Technologies*, WIPO Case No. [D2009-1437](#); and *Charles Jourdan Holding AG v. AAIM*, WIPO Case No. [D2000-0403](#)).

Pursuant to paragraph 4(c) of the Policy, the Respondent may establish rights or legitimate interests in the Disputed Domain Name by demonstrating any of the following:

(i) before any notice to him 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 was in connection with a *bona fide* offering of goods or services;

(ii) the Respondent has been commonly known by the Disputed Domain Name, even if he 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.

There is no evidence to suggest that the Respondent's use of, or demonstrable preparations to use the Disputed Domain Name or a name corresponding to the Disputed Domain Name was in connection with a *bona fide* offering of goods or services. There is also no evidence to suggest that the Respondent is making a legitimate noncommercial or fair use of the Disputed Domain Name, noting in particular that the Complainant's Trademark would not likely be adopted by the Respondent other than for the purpose of creating an impression that the Disputed Domain Name or any communication using the Disputed Domain Name is associated with or originates from the Complainant or otherwise taking unfair advantage of the goodwill of the Complainant's Trademarks. In this regard, the Panel also notes that the typosquatting nature of the Disputed Domain Name itself highlights Respondent's intention to confuse Internet users unaware of the inversed letters, which cannot constitute fair use.

In addition, no evidence has been provided to prove that the Respondent has trademark rights corresponding to the Disputed Domain Name, or that the Respondent has become known by the Disputed Domain Name.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name, and the Complainant has satisfied paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

UDRP panels have consistently found that the mere registration of a domain name that is confusingly similar to a widely-known trademark by an unaffiliated entity can already by itself create a presumption of bad faith. See section 3.1.4 of the [WIPO Overview 3.0](#).

After reviewing the supporting evidence submitted by the Complainant, the Panel agrees with the Complainant that the Complainant's Trademark appears to be well known. A quick Internet search conducted by the Panel shows that the top search results returned for the keyword "draeger" are the Complainant's websites and third party websites providing information relating to the Complainant's medical and safety technology business. Therefore, taking this into consideration together with the fact that the Disputed Domain Name incorporates an intentional misspelling of the Complainant's Trademark, the Respondent must have been aware of the Complainant and the rights in the Complainant's Trademark when registering the Disputed Domain Name.

In addition, the Panel finds that the following factors further support a finding that the Disputed Domain Name was registered and is being used by the Respondent in bad faith:

(i) The Respondent failed to provide any evidence of any actual or contemplated good faith use by it of the Disputed Domain Name; and

(ii) It is difficult to conceive of any plausible use of the Disputed Domain Name that would amount to good faith registration and use, given that the Disputed Domain Name contains an intentional misspelling of the Complainant's Trademark. The fact that there are active MX records available for the Disputed Domain Name while the Disputed Domain Name resolves to the Complainant's official website indicates a strong likelihood that the registration and use of the Disputed Domain Name is to allow the Respondent to engage

in future phishing or other fraudulent activities (see *Callaway Golf Company v. Withheld for Privacy Purposes, Privacy service provided by Withheld for Privacy ehf / Anthony Fulce, Callaway Golf*, WIPO Case No. [D2021-1165](#)).

(iii) While the Disputed Domain Name currently redirects to the Complainant's website, the Respondent's retention of control of the Disputed Domain Name presents a real or an implied ongoing threat to the Complainant.

In the circumstances, the Panel finds that the Respondent registered and has been using the Disputed Domain Name in bad faith, and paragraph 4(a)(iii) of the Policy has been satisfied.

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, <dreagerwerk.com>, be transferred to the Complainant.

/Gabriela Kennedy/

Gabriela Kennedy

Sole Panelist

Date: July 13, 2022