

## **ADMINISTRATIVE PANEL DECISION**

smava GmbH v. Marcos MARCUS, High  
Case No. D2022-2227

### **1. The Parties**

The Complainant is smava GmbH, Germany, represented internally.

The Respondent is Marcos MARCUS, High, Benin.

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

The disputed domain name <smavaservice.com> is registered with NameWeb BVBA (the “Registrar”).

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 10, 2022. On June 20, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 21, 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 July 5, 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 July 8, 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 July 14, 2022. In accordance with the Rules, paragraph 5, the due date for Response was August 3, 2022. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on August 4, 2022.

The Center appointed Johan Sjöbeck as the sole panelist in this matter on August 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 has submitted evidence that it is the owner of a number of trademark registrations including the following:

German trademark registration for SMAVA (word) with registration number DE 30562188, application date October 21, 2005 and registration date December 22, 2005.

German trademark registration for SMAVA (fig.) with registration number DE 302013008339, application date December 3, 2013 and registration date February 4, 2014.

European Union TM trademark registration for SMAVA (fig.) with registration number 018190752 and application date January 30, 2020 and registration date May 22, 2020.

The disputed domain name <smavaservice.com> was registered by the Respondent on June 6, 2020 and it was resolving to a website advertising financial services that was stating that SMAVA SERVICE S.A. was a subsidiary of the SMAVA Group.

The disputed domain name currently resolves to an inactive page.

#### 5. Parties' Contentions

##### A. Complainant

The Complainant claims that it is one of the largest online comparison portals for private instalment loans in Germany. Since 2006, the Complainant operates under the business name SMAVA via the website "www.smava.de".

The disputed domain name <smavaservice.com> incorporates the trademark SMAVA entirely. On the website to which the disputed domain name has previously resolved, the Respondent advertised financial services using symbols that are completely or at least partially similar to the trademarks of the Complainant. Furthermore, on the website to which the disputed domain name resolved, the Respondent falsely stated that the Respondent is a subsidiary of the SMAVA Group from Germany. Therefore, there is reason to believe that the Respondent registered and used the disputed domain name to mislead Internet users about a connection to the Complainant and the Complainant's trademark. The Complainant contacted the domain reseller Obambu SARL on December 14 and 23, 2020 demanding that the Respondent's website should be shut down. The Complainant also sent a cease and desist letter to the Respondent on January 27, 2021. After the legal warnings elicited no response, the Complainant filed a lawsuit against the domain reseller at the District Court of Hamburg. On March 17, 2022 the court ruled that the domain reseller must refrain from providing access to the website to which the disputed domain name <smavaservice.com> resolves. Since then, the domain reseller has blocked the website so that it can no longer be accessed.

The Respondent has no rights or legitimate interests in the disputed domain name. The Complainant has exclusive rights in the SMAVA trademarks and has not granted any license, permission, or authorization to the Respondent to register or use the disputed domain name which incorporates the trademark. The Respondent has not been commonly known by the domain name. There is no evidence of the Respondent's use of, or demonstrable 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.

The disputed domain name was registered and used by the Respondent in bad faith. Incorporating the SMAVA trademark in the disputed domain name and on the website gives the impression that it is a domain name belonging to the Complainant. As mentioned above, the Respondent has been using symbols that are similar to the Complainant's trademarks for advertising of financial services on the website and has falsely stated that the Respondent is a subsidiary of the Complainant. The website was available in several

languages, including German. Thus, the Respondent's website was also aimed at German customers. In conclusion, this indicates that by using the domain name, the Respondent intentionally attempted, for commercial gain, to attract Internet users to the Respondent's website by creating a likelihood of confusion with the trademarks of the Complainant.

## **B. Respondent**

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

## **6. Discussion and Findings**

According to paragraph 4(a) of the Policy, the Complainant must prove 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 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 Complainant is, according to the submitted evidence, the owner of the registered trademark SMAVA. The disputed domain name <smavaservice.com> incorporates the SMAVA trademark in its entirety with the addition of the common and descriptive term "service". In the present case, the Complainant's trademark is readily recognizable in the disputed domain name and the addition of the term "service" to the trademark in the disputed domain name does prevent a finding a confusing similarity.

Having the above in mind, the Panel concludes that the disputed domain name <smavaservice.com> is confusingly similar to the Complainant's trademark SMAVA and that the Complainant has proven the requirement under paragraph 4(a)(i) of the Policy.

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

The Complainant must show that the Respondent has no rights or legitimate interests with respect to the disputed domain name. The Respondent may establish rights or legitimate interests in the disputed domain name by demonstrating in accordance with paragraph 4(c) of the Policy any of the following:

- (i) the Respondent uses or has made 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 prior to the dispute; or
- (ii) the Respondent is commonly known by the disputed domain name, even if the Respondent has not acquired any trademark 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.

The Complainant's trademark registrations for SMAVA predate the Respondent's registration of the disputed domain name <smavaservice.com>. The Complainant has not licensed, approved or in any way consented to the Respondent's registration and use of the trademark in the disputed domain name.

The Complainant has submitted evidence demonstrating that the Respondent used the disputed domain name <smavaservice.com> to provide information to the public stating that the Respondent is a subsidiary of

the Complainant. According to the Complainant, the information provided by the Respondent regarding the association is false. There is no evidence in the case file indicating that the Respondent has used or made any preparations to use the disputed domain name in connection with a *bona fide* offering of goods or services prior to the dispute.

Furthermore, there is no evidence indicating that the Respondent intends to make a legitimate, noncommercial or fair use of the disputed domain name without intent for commercial gain to misleadingly divert Internet users or to tarnish the trademark.

Although given the opportunity, the Respondent has not rebutted the Complainant's *prima facie* case as the Respondent did not file any Response. The Respondent has not submitted any evidence indicating that it is the owner of any trademark or that it is commonly known by the disputed domain name.

The Respondent has failed to invoke any circumstances, which could demonstrate, pursuant to paragraph 4(c) of the Policy or otherwise, any rights or legitimate interests in respect of the disputed domain name. Thus, there is no evidence in the case that refutes the Complainant's submissions, and the Panel concludes that the Complainant has also proven the requirement under paragraph 4(a)(ii) of the Policy.

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

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

- (i) circumstances indicating the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the disputed 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 disputed domain name; or
- (ii) circumstances indicating that the disputed domain name was registered in order to prevent the owner of a trademark from reflecting the mark in a corresponding disputed domain name, provided there is a pattern of such conduct; or
- (iii) circumstances indicating that the disputed domain name was registered primarily for the purpose of disrupting the business of a competitor; or
- (iv) circumstances indicating that the disputed domain name has intentionally been used in an attempted to attract, for commercial gain, Internet users to the Respondent's website or other online location, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of the website or location or of a product or service on that website or location.

As mentioned above, the Complainant has submitted evidence demonstrating that the Respondent used the disputed domain name, which is confusingly similar to the Complainant's trademark, to publish incorrect information stating that the Respondent is a subsidiary of the Complainant. This indicates that the Respondent registered the disputed domain name with the Complainant business and trademark in mind. The Complainant's first trademark registration for SMAVA predates the Respondent's registration of the disputed domain name <smavaservice.com> by almost 15 years. The nature of the disputed domain name, which incorporates the SMAVA trademark in its entirety, carries a risk of implied affiliation with the Complainant. Thus, the evidence in the case indicates that the Respondent has been using the disputed domain name in order to create a likelihood of confusion with the Complainant's trademark SMAVA as to the source, sponsorship or affiliation and there is a risk that internet users may falsely believe that the Respondent is affiliated with the Complainant due to the Respondent's registration and use of the disputed domain name.

According to the submitted evidence by the Complainant, the Complainant sent a cease-and-desist letter to the Respondent on January 27, 2021 but the Respondent did not reply. The Complainant then filed a lawsuit against the service provider and as a result, the website to which the disputed domain name resolved, was

suspended and is no longer accessible.

Thus, the evidence in the case before the Panel indicates that the disputed domain name has intentionally been used in an attempt to attract, for commercial gain, Internet users to the Respondent's website by creating a likelihood of confusion with the Complainant's trademark SMAVA as to the source, sponsorship, affiliation, or endorsement of the website or of a product or service on the website.

In the absence of any evidence to the contrary, the Panel is persuaded on the balance of probabilities that the Respondent registered and used the disputed domain name with the Complainant's trademark and business in mind. The fact that the Respondent has not bothered to respond to the Complainant's contentions is another factor to weigh in the balance. There is no evidence in the case file that refutes the Complainant's submissions.

The Panel concludes that the Complainant has proved the requirements under paragraph 4(b) of the Policy and that the disputed domain name <smavaservice.com> has been registered and used in bad faith.

## **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 <smavaservice.com> to be transferred to the Complainant.

*/Johan Sjöbeck/*

**Johan Sjöbeck**

Sole Panelist

Date: August 21, 2022