

ADMINISTRATIVE PANEL DECISION

KTM AG v. Jurgen Neeme
Case No. DME2023-0005

1. The Parties

The Complainant is KTM AG, Austria, represented by Zivko Mijatovic & Partners, Serbia.

The Respondent is Jurgen Neeme, Estonia.

2. The Domain Name and Registrar

The disputed domain name <ktm.me> is registered with Dynadot, LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on April 5, 2023. On April 5, 2023, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 5, 2023, 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 (Not known) and contact information in the Complaint. The Center sent an email communication to the Complainant on April 6, 2023, 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 April 7, 2023.

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 April 20, 2023. In accordance with the Rules, paragraph 5, the due date for Response was May 10, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on May 12, 2023.

The Center appointed W. Scott Blackmer as the sole panelist in this matter on May 24, 2023. 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 an Austrian multinational motorcycle, bicycle, and sports car manufacturing company headquartered in Mattighofen, Austria. Founded in 1934 and established with affiliates in Europe, India, and North America, the Complainant reported revenues of over EUR 1 billion in 2015 with sales under KTM and other brands. The Complainant operates <ktm.com>.

The KTM word mark is registered as International Trademark Numbers 870029 (registered on July 27, 2005) and 924147 (registered on April 2, 2007), both with designations for numerous countries.

The Registrar reports that the disputed domain name was created on August 18, 2016, and is registered to the Respondent Jurgen Neeme, who listed an email address in place of an organization and showed a postal address in Estonia. The disputed domain name resolves to a landing page advertising the disputed domain name for sale for USD 4,930 and featuring pay-per-click ("PPC") advertising links to unrelated third parties, including, at times, those selling products competing with those sold by the Complainant, such as e-bikes.

5. Parties' Contentions

A. Complainant

The Complainant states that the disputed domain name is identical to its registered KTM word mark and that the Respondent has neither permission to use the mark nor evident rights or legitimate interests in the disputed domain name. The Respondent does not have a corresponding name and has not used the disputed domain name for a website of its own but only to allow others to advertise their products, including competing products.

The Complainant infers that the Respondent was aware of the Complainant's mark and targeted it in bad faith because the mark is well known and long-established, the Respondent advertised the disputed domain name for sale for a high price, and the PPC links included advertising for products competing with the Complainants'.

B. Respondent

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

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a domain name, a complainant must demonstrate each of the following: (i) the 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 domain name; and (iii) the domain name has been registered and is being used in bad faith. Under paragraph 15(a) of the Rules, "[a] Panel shall decide a complaint on the basis of the statements and documents submitted and in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable".

A. Identical or Confusingly Similar

The first element of a UDRP complaint "functions primarily as a standing requirement" and entails "a reasoned but relatively straightforward comparison between the complainant's trademark and the disputed domain name". WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 1.7.

The disputed domain name is identical to the Complainant's registered KTM word mark. As usual, the addition of the Top-Level Domain ".me" may be disregarded as a standard registration requirement (see *id.* section 1.11.1).

The Panel concludes that the Complainant has established the first element of the Complaint.

B. Rights or Legitimate Interests

Paragraph 4(c) of the Policy gives non-exclusive examples of instances in which a respondent may establish rights or legitimate interests in a domain name, by demonstrating any of the following:

- (i) before any notice to it of the dispute, 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; or
- (ii) the respondent has been commonly known by the domain name, even if it has acquired no trademark or service mark rights; or
- (iii) the respondent is making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.

Because a respondent in a UDRP proceeding is in the best position to assert rights or legitimate interests in a domain name, it is well established that after a complainant makes a *prima facie* case, the burden of production on this element shifts to the respondent to come forward with relevant evidence of its rights or legitimate interests in the domain name. See [WIPO Overview 3.0](#), section 2.1.

The Complainant has demonstrated trademark rights and observed that the Respondent is not known by a corresponding name, while merely offering the disputed domain name for sale and allowing it to be used for third-party PPC advertising. This establishes a *prima facie* case, and the Respondent has not come forward with evidence of rights or legitimate interests in the disputed domain name.

The Panel finds, therefore, that the Respondent has failed to meet its burden of production and concludes that the Complainant prevails on the second element of the Complaint.

C. Registered and Used in Bad Faith

The Policy, paragraph 4(b), furnishes a non-exhaustive list of circumstances that "shall be evidence of the registration and use of a domain name in bad faith", including the following:

"(iv) by using the domain name, you [respondent] have intentionally attempted to attract, for commercial gain, Internet users to your [respondent's] web site or other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your [respondent's] website or location or of a product or service on your website or location."

This proceeding on its face presents a likely instance of such intentional misdirection for commercial gain. The Complainant argues persuasively that its KTM mark is well known in Europe and globally after nearly 90 years of use. The Complainant has a broad Internet presence, and uses the domain name <ktm.com> for its main website. The PPC links to competing products may have been produced by an algorithm, and the relatively high price that the Respondent quoted for the disputed domain name may be attributable in part to the intrinsic value of three-letter domain names. But the fact remains that the Complainant's brand is well established, and this is likely why the Respondent chose this particular disputed domain name. The Respondent has not come forward to offer an alternative explanation.

Moreover, the Panel notes that Mr. Neeme was the Respondent in previous UDRP proceedings such as, *Facebook, Inc., Instagram, LLC, WhatsApp Inc., Facebook Technologies, LLC v. Jurgen Neeme, hello@thedomain.io and Jay Neeme*, WIPO Case No. [D2019-1582](#); *Facebook, Inc. and Instagram, LLC and WhatsApp Inc. v. Jay Neeme, Domain Administrator, PrivacyGuardian.org, Jurgen Neeme, hello@thedomain.io*, WIPO Case No. [D2020-0403](#); and *Verizon Trademark Services LLC v. Juergen Neeme, TheDomain.io*, WIPO Case No. [D2018-1125](#). In these cases, UDRP panels ordered the transfer of multiple domain names after finding that the Respondent registered confusingly similar domain names and parked them with PPC advertising links or attempted to sell them for amounts substantially in excess of out-of-pocket costs. Thus, there is evidence of a pattern of practice consistent with the Respondent's conduct in this proceeding, supporting the inference of bad faith in this instance.

The Panel finds bad faith in the registration and use of the disputed domain name on this record and concludes that the Complainant has established the third element of the Complaint.

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 <ktm.me> be transferred to the Complainant.

/W. Scott Blackmer/

W. Scott Blackmer

Sole Panelist

Date: June 1, 2023