

ADMINISTRATIVE PANEL DECISION

Sellwerk GmbH & Co. KG v. Anonymize, Inc.
Case No. D2024-2269

1. The Parties

The Complainant is Sellwerk GmbH & Co. KG, Germany, represented by &Partners Widegreen Flötotto Brenken Partnerschaft von Rechtsanwälten mbB, Germany.

The Respondent is Anonymize, Inc., United States of America.

2. The Domain Name and Registrar

The disputed domain name <teamsellwerk.com> is registered with Epik LLC (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on June 3, 2024. On June 5, 2024, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On June 5 and June 12, 2024, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that 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 June 14, 2024. In accordance with the Rules, paragraph 5, the due date for Response was July 4, 2024. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on July 9, 2024.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 16, 2024. 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 German entity that operates a consulting agency for digital marketing strategies, providing social media support, search engine optimization, reputation management, and related services to small and medium-sized businesses. It refers to itself on its website as “Team Sellwerk”.

The Complainant owns a variety of figurative and word trademarks for the mark SELLWERK including, for example, German Registered Trademark Number 302015034966 for the word mark SELLWERK, registered on May 26, 2015 in Classes 9, 16, 35, 38, 41, 42, and 45.

The disputed domain name was registered on March 22, 2024. Little is known of the Respondent, whose identity appears to be known to, but has not been revealed by, the Registrar. According to a screenshot (and accompanying translation) of the website associated with the disputed domain name, prepared by the Complainant on May 31, 2024, the content of the website is largely text-based and contains material that is critical of the Complainant’s business and of its shareholders.

5. Parties’ Contentions

A. Complainant

The Complainant contends that it has satisfied each of the elements required under the Policy for a transfer of the disputed domain name.

Notably, the Complainant contends that the addition of the word “team” to the Complainant’s mark in the disputed domain name is used by the Complainant in its own campaigns and does not create a distinctive character of its own for the disputed domain name.

The Complainant submits that there is no basis upon which the Respondent could claim any rights or legitimate interests in the disputed domain name, adding that this has been used to damage the Complainant’s mark, and that the Respondent has no commercial interest of its own. The Complainant notes that the website content associated with the disputed domain name is merely intended to deter potential customers and business partners of the Complainant. The Complainant suggests that the Respondent may be a competitor of the Complainant which hopes to gain an advantage by damaging the Complainant’s reputation.

The Complainant asserts that the disputed domain name was registered and is being used in bad faith, submitting that the associated website only contains defamatory statements about the Complainant. The Complainant states that the Respondent refers to the Complainant as a “spammer” and “scammer”, claiming false acts such as the false reporting of bad reviews that do not exist, and describing the Complainant’s business practices as a “rip-off” and “fraud”.

The Complainant submits that the Respondent’s content also violates the personal rights of the Complainant’s shareholders by untruthfully claiming that they are part of a criminal organization. The Complainant indicates that many of the Respondent’s statements are made in inverted commas to disguise them as quotations, although these are made up by the author. The Complainant concludes that the registration and use of the disputed domain name constitutes bad faith, whether or not the Respondent is engaging in a personal feud or is a competitor of the Complainant, adding that it has filed a criminal complaint with the Berlin public prosecutor’s office.

B. Respondent

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

6. Discussion and Findings

A. Preliminary Matter: Identity of Respondent

This case represents a fresh example of the Registrar being aware of the Respondent's identity but refusing to disclose this. Upon receipt of the Center's request for respondent verification, the Registrar replied *inter alia*, "The registrant of the domain is a client of Epik and is utilizing Anonymize as a private proxy. Anonymize a Whois proxy service provider [*sic*], which this domain is currently using. Thus, the current registrant is: Anonymize, Inc."

As this Panel noted in *Sütaş Süt Ürünleri Anonim Şirketi v. Privacy Administrator, Anonymize, Inc. / Independent Digital Artists*, WIPO Case No. [D2022-0615](#), a case involving Epik, Inc. (which given its use of identical wording in response to the request for registrar verification, appears to be the Registrar's predecessor in interest), Appendix E to the ICANN Temporary Specification for gTLD Registration Data ("Temporary Specification") requires a registrar to provide the UDRP provider with the full registration data for the specified domain name(s) upon the UDRP provider notifying the registrar of the existence of a complaint. This Panel went on to note that, if the Registrar is aware of the underlying customer data at the point of registrar verification, no discretion is reserved to it to withhold this information from the UDRP provider.

Since that previous case, another panel under the Policy has been equally critical of the Registrar's practice not to disclose such underlying customer data, and indeed, found that the respondent's reliance upon the related privacy service to conceal its identity supported a finding of bad faith (see: *uBreakiFix, Co. v. Anonymize, Inc.*, WIPO Case No. [D2024-0786](#)). The Panel notes in passing that if the Registrar continues to engage in this practice, it risks those of its customers which rely on its privacy service being found in bad faith on a similar basis to that described in the previous case. That said, the Panel in the present case does not rely upon this in its finding of registration and use in bad faith as outlined below.

The Panel requests that the Center share this decision with ICANN so that it may consider whether it wishes to take any action in the context of the Registrar's contractual compliance.

The Rules define the respondent as "the holder of a domain name registration against which a complaint is initiated". As the Registrar notes, the present holder is Anonymize, Inc. The Panel proceeds on the basis that this entity is the Respondent and is acting in full knowledge of the implications as a proxy for the underlying registrant, if any exists.

B. Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves 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 Complainant has shown rights in respect of a trademark or service mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.7.

Although the addition of other terms, here, "team" may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. [WIPO Overview 3.0](#), section 1.8.

The Panel finds the first element of the Policy has been established.

C. Rights or Legitimate Interests

Paragraph 4(c) of the Policy provides a list of circumstances in which the Respondent may demonstrate rights or legitimate interests in a disputed domain name. In the present case, the focus is on paragraph 4(c)(iii) of the Policy because the Respondent has evidently used the disputed domain name to publish material which is critical of the Complainant. To support fair use in terms of this paragraph of the Policy, a respondent's criticism must be genuine and noncommercial, and may not be primarily a pretext for cybersquatting, commercial activity, or tarnishment. [WIPO Overview 3.0](#), section 2.6.1.

In the present case, there is no overt commercial use apparent from the screenshot of the website associated with the disputed domain name. It is more difficult for the Panel to assess whether the criticism is genuine (in the sense of being "genuinely intended" rather than "truthful" or "accurate"). It is of some significance that the Complainant has asserted that the material on the website concerned is false and defamatory of both the Complainant and its shareholders as the Respondent has chosen to remain silent in the face of such submission. While the Policy imposes no obligation upon a respondent to defend content that is critical of a complainant, it is reasonable to assume that if such critical content was genuinely intended, the author would seek to justify it or otherwise explain its position on the basis, for example, of typical freedom of speech arguments. The Complainant has speculated that the Respondent may be a competitor of the Complainant and, again, the Respondent has not sought to address this particular submission.

Panels under the Policy tend to find that a general right to legitimate criticism does not necessarily extend to registering or using a domain name which is identical to a trademark; even where such a domain name is used in relation to genuine noncommercial free speech, panels tend to find that this creates an impermissible risk of user confusion through impersonation. [WIPO Overview 3.0](#), section 2.6.2. Where the domain name is not identical to the complainant's trademark, but it comprises the mark plus a derogatory term (e.g., <trademarksucks.tld>), panels tend to find that the respondent has a legitimate interest in using the trademark as part of the domain name of a criticism site if such use is prima facie noncommercial, genuinely fair, and not misleading or false. [WIPO Overview 3.0](#), section 2.6.3.

Here, while the disputed domain name is not identical to the trademark, the only difference is the addition of the prefix "team". The Complainant produces evidence showing that the term "Team Sellwerk", notably in the social media hashtag "#teamsellwerk" is used by the Complainant in campaigns and on social media. For example, the Complainant's website states "WERDE TEIL VOM #TEAMSELLWERK" (machine translated by the Panel as "BECOME PART OF #TEAMSELLWERK"). The Panel considers that the selection of the term in the disputed domain name is intended to impersonate the Complainant rather than to signal (as in the case of a mark plus a derogatory or informational term) that Internet users will find material critical of the Complainant at the website associated with the disputed domain name. In these circumstances, the disputed domain name falls foul of the impersonation test (see also *Dover Downs Gaming & Entertainment, Inc. v. Domains By Proxy, LLC / Harold Carter Jr, Purlin Pal LLC*, WIPO Case No. [D2019-0633](#) ("*Dover Downs*"). The disputed domain name suggests an affiliation with, or authorization by the Complainant, given that it adopts a term along with the Complainant's mark that is used by the Complainant to describe itself on social media. The Panel views this as giving rise to an impermissible risk of user confusion.

The approach to criticism cases outlined in *Dover Downs* has been further developed by some panels under the Policy to encompass a more holistic test, wherein the "impersonation test" sets the scene for the consideration of other factors (see, for example, *Gun Safety Action Fund, Inc. v. Contact Privacy Inc. Customer 1249561463 / Steve Coffman*, WIPO Case No. [D2022-0473](#)). The factors typically noted are: (i) the genuineness and nature of the criticism or commentary, (ii) the possible pretextual nature of the respondent's website, (iii) the commercial or noncommercial aspects of the respondent's website, (iv) the nature of the domain name itself potentially including any additional terms or plays on words, (v) the use of disclaimers, and (vi) other factors that could inform whether a respondent is using the disputed domain for bona fide noncommercial criticism concerning a complainant or to take advantage of a complainant's mark in a bad faith or abusive way for the benefit of the respondent.

As regards factor (i), the Panel has already noted that there is no information available from the Respondent tending to support the fact that the criticism put forward on the website associated with the disputed domain name is genuine. All that the Panel has to go on is the critical material itself, coupled with the Complainant's submissions regarding its defamatory nature. As regards factor (ii), the Panel has not identified anything on the present record that would suggest that the disputed domain name is a pretext for cybersquatting as such. As regards factor (iii), the Panel has already noted that there is nothing obviously commercial in the Respondent's website. As regards factor (iv), the Panel has already noted that the disputed domain name appears to have been chosen to match a phrase used by the Complainant in its marketing campaign and on social media. This indicates to the Panel that the Respondent has intentionally cloaked itself in the Complainant's identity. As regards factor (v), there does not appear to be any disclaimer on the website concerned. Finally, due in large part to the fact that the Respondent has not participated in the administrative proceeding, there are no other factors that can inform whether the Respondent is using the disputed domain name for bona fide noncommercial criticism.

The present Panel does not consider it strictly necessary to apply the more holistic approach described above, albeit that it appreciates the nuance that it brings to the impersonation test where relevant. The Panel also considers that the impersonation test is capable of being a reasonable basis on its own, in appropriate cases, to determine whether a given domain name falls within the requirements of paragraph 4(c)(iii) of the Policy, or at least that such test can and should be a gating question central to the issue to be resolved. The Panel nevertheless considers that the holistic test adds useful criteria which a panel may review in more nuanced cases.

Returning to the present matter, the Panel has doubts concerning the genuineness of the criticism in this case, particularly as it has not heard anything from the Respondent in support of the website concerned. Furthermore, the Panel considers that the Respondent has deliberately adopted a term used by the Complainant to refer to itself in its online marketing, and that this term in no way signals that an Internet user could expect to find criticism at the associated online location. On the contrary, the composition of the disputed domain name suggests sponsorship and endorsement by the mark owner,¹ whereby users who may have no desire to view the critical content and are merely looking for an official site of the Complainant may be drawn in by this deception. The Panel does not regard such use as "fair use" within the meaning of the Policy.

The Panel notes for completeness that the Respondent is not prevented from expressing its criticisms of the Complainant under an alternative domain name that does not impersonate the Complainant, for example, one that signals that an Internet user visiting the associated site can expect to find criticism of the Complainant at that location.

The Panel finds the second element of the Policy has been established.

D. Registered and Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

In the present case, the Panel is of the view that the question of registration and use in bad faith follows the terms of the second element assessment.

As indicated above, the Panel considers that the composition of the disputed domain name, being the word "team" coupled with the Complainant's mark, effectively impersonates the Complainant, even though it is not an exact match of the Complainant's mark on its own (i.e., <trademark.tld>). The Panel's opinion is that the

¹ It could reasonably be argued that the composition "team + mark" amounts to an impersonation of the mark owner, whether the expression has already been used by the mark owner itself (as here) or not, simply because without any further qualification it calls to mind the mark owner and its "team", i.e., it and its employees.

disputed domain name was selected with knowledge of the Complainant's rights and with intent to target these in order to deceive Internet users unfairly that the disputed domain name represents an official domain name of the Complainant – notably copying an existing use by the Complainant on social media so as to obtain a wider audience. In the Panel's view, the registration and use of the disputed domain name with such intent cannot be regarded as being in good faith.

The Panel finds that the Complainant has established the third element 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 <teamsellwerk.com> be transferred to the Complainant.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: July 30, 2024