

ADMINISTRATIVE PANEL DECISION

Avendus Capital Private Limited v. Anuj Bansal
Case No. D2022-3860

1. The Parties

The Complainant is Avendus Capital Private Limited, India, represented by Khaitan & Co., India.

The Respondent is Anuj Bansal, India.

2. The Domain Name and Registrar

The disputed domain name <svendus.com> is registered with PDR Ltd. d/b/a PublicDomainRegistry.com (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 14, 2022. On October 14, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On October 15, 2022, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and its 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 November 1, 2022. In accordance with the Rules, paragraph 5, the due date for Response was November 21, 2022.

On November 10, 2022, the Respondent sent an email communication to the Center indicating that he had received the Center's written communication and requesting to have a copy of the Complaint sent to him at a different email address. Upon the Respondent's request, on November 16, 2022, the Center extended the due date for response to November 25, 2022 pursuant to paragraph 5(b) of the Rules. The Response was filed with the Center on November 24, 2022. On December 5, 2022, the Complainant submitted a Supplemental Filing. On December 14, 2022, the Respondent also submitted a Supplemental Filing.

The Center appointed Shwetasree Majumder as the sole panelist in this matter on December 14, 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 provides financial services under its mark AVENDUS. The Complainant's word mark AVENDUS is registered in India since December 10, 2019 (registration number 4373675) and its AVENDUS figurative mark since July 14, 2017 (*inter alia*, registration number 3591857). These Indian registrations are in several classes. The Complainant states that it owns the domain name <avendus.com> which was registered on October 30, 2000. The Complainant's website for business activities is "www.avendus.com"

The disputed domain name was registered on January 9, 2021 and the related webpage (Annex I of the Complaint) shows that the Respondent offers business advisory and consultancy services. The Respondent is one of the directors of the company Svendus Capital Limited, which is seen to be incorporated in April 26, 2005 as per Annex D of the Response. The mark SVENDUS is registered under Indian registration number 4801457 since December 30, 2020 in class 35 in the name of [...], who is a director of the company Svendus Capital Limited. The Complainant has filed a cancellation action against Indian registration number 4801457 on February 17, 2022. The cancellation proceedings are pending adjudication at the Indian trademark office.

5. Parties' Contentions

A. Complainant

The Complainant claims to be a leading provider of financial services and offers customized solutions in the areas of asset management, credit solutions, investment banking and wealth management under its mark AVENDUS. The Complainant claims to be using the mark AVENDUS which is a coined mark with no dictionary meaning since 2001; it also claims that it is a well-known mark. The Complainant claims that its services are widely promoted and that the Complainant has received various awards and accolades. The Complainant has filed Annex F in support of these claims.

The Complainant states the disputed domain name is an obvious misspelling of the Complainant's mark AVENDUS, where the letter "a" from the Complainant's mark is replaced with the letter "s". According to the Complainant, this is an intentional misspelling given that the letters "a" and "s" appear next to each other in the commonly used QWERTY keyboard. These minor differences are not capable of dispelling the confusing similarity between the disputed domain name and the Complainant's mark. The Complainant argues that the disputed domain name is confusingly similar to the Complainant's mark.

The Complainant argues that the Respondent is diverting Internet users who mistakenly type "svendus". The disputed domain name is only being used for communicating a false impression regarding the nexus/association between the Complainant and the Respondent to the public and trade. The Respondent has adopted the disputed domain name with the purpose of engaging in services similar to those of the Complainant and there is no legitimate interest that it has in the disputed domain name.

The Complainant argues that the Respondent has registered the disputed domain name in bad faith. The Complainant contends that the Respondent ought to have been aware of the Complainant's well-known mark and its goodwill and reputation; especially when the Respondent too is from India. The Complainant states that it is inconceivable that the Respondent was not aware of the Complainant's mark at the time of registration of the disputed domain name. The Complainant has argued that the disputed domain name is registered in an attempt to attract, for commercial gain, Internet users, by creating a likelihood of confusion with the Complainant's Mark as to the source, sponsorship, affiliation or endorsement of the Respondent's website and services.

The Complainant has alleged that registration and use of the disputed domain name constitutes trade mark infringement and dilution of the Complainant's well-known mark AVENDUS and also amounts to the tort of passing off.

B. Respondent

It is the Respondent's case that adoption and use of the mark SVENDUS is *bona fide* and there has been no conflict in the market since its adoption. Respondent claims to have conceived the word SVENDUS on advice of his astrologer and that it is a meaningless word. The letter "s" has been picked from the first name of Respondent's wife and "7" being the lucky number the mark is made to sound like seven. The mark SVENDUS also contains seven letters. Respondent claims that resemblance with any other trade mark is a mere co-incidence.

The Respondent has contended that Complainant's allegations regarding confusing similarity between the disputed domain name and its mark are baseless. The Respondent states that the mark SVENDUS is visually, structurally, and phonetically different from AVENDUS. Arguing that the services and areas of business are different, the Respondent has listed around 20 services and consultancy areas which are not offered by the Complainant under its mark AVENDUS. There is no likelihood of confusion or possibility of confusion, deception among the consumers and trade according to the Respondent. The Respondent has compared the two marks (as below) as they have been used on the respective websites of the parties.



The Respondent has sought to rebut the Complainant's contentions in respect of the second UDRP element. The Respondent states SVENDUS is a registered trademark in the name of the Respondent's wife [...]. The Respondent is running a business under its registered company Svendus Capital Limited. Annex D to the Response is an extract from the official website of Indian Ministry of Corporate Affairs. Annex D shows that Svendus Capital Limited was incorporated on April 26, 2005. It also shows that the Respondent and his wife are directors in this company. By virtue of its trademark registration, a duly registered company and common law rights in its well-established brand SVENDUS in India, the Respondent asserts to have legitimate interests in the disputed domain name.

The Respondent contends that the disputed domain name has been registered in good faith. The Respondent has refuted Complainant's claim that the disputed domain name was registered in an intentional attempt to attract for commercial gain, Internet users to the Respondent's website or other on-line location, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of the Respondent's website or location or of a product or service on the Respondent's website or location.

6. Discussion and Findings

Paragraph 4(a) of the Policy provides that in order to divest a respondent of a disputed domain name, a complainant must demonstrate 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 respect of the disputed domain name; and
- (iii) the disputed 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. Supplemental Filings

Neither the Rules nor the Supplemental Rules make provision for supplemental filings, except at the request of the panel (see Rules, paragraph 12). Paragraph 10 of the Rules enjoins the panel to conduct the proceeding “with due expedition”. Therefore, UDRP panels are typically reluctant to countenance delay through additional rounds of pleading and normally accept supplemental filings only to consider material new evidence or provide a fair opportunity to respond to arguments that could not reasonably have been anticipated. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), paragraph 4.7, and cases cited therein.

The Complainant’s Supplemental Filing offers rebuttal to the Respondent’s arguments that the Complainant’s mark AVENDUS is dissimilar and its reliance on the trademark registration for SVENDUS and its company name registration. Neither of these arguments was unforeseeable, especially considering that one round of pleadings has been completed between the parties in the ongoing cancellation proceedings at the Indian trademarks office. Similarly, the Respondent’s Supplemental Filing merely repeats the arguments which have already been set out in the Response regarding the registration of the SVENDUS trademark in the name of the Respondent’s wife who is also a director of Svendus Capital Limited. Hence, the Panel finds it unnecessary to take into consideration the Parties’ Supplemental Filings.

B. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires the Complainant to show that the disputed domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights.

The Complainant has successfully proved that it has trademark rights in its mark AVENDUS. The Complainant has several Indian trademark registrations for the mark AVENDUS which predate the registration of the disputed domain name.

The test under the first element of UDRP typically involves a side-by-side comparison of the domain name and the textual components of the relevant trademark to assess whether the mark is recognizable within the disputed domain name. The [WIPO Overview 3.0](#), section 1.7, provides the consensus view of UDRP panels: “While each case is judged on its own merits, in cases where a domain name incorporates the entirety of a trademark, or where at least a dominant feature of the relevant mark is recognizable in the domain name, the domain name will normally be considered confusingly similar to that mark for purposes of UDRP standing”.

The Panel is of the view that the Complainant’s mark AVENDUS is recognizable in the disputed domain name, being the same except for one letter, which happens to also be the adjacent letter on the keyboard. The Panel moreover categorically disagrees with the Respondent’s suggestion that the mark SVENDUS (and by extension the disputed domain name) is visually, structurally, and phonetically different from AVENDUS; they are by each measure very similar. The generic Top-Level Domain (“gTLD”) “.com” is generally disregarded for the purposes of comparison under this element.

In view of the above-mentioned findings, the Panel concludes that the disputed domain name is confusingly similar to the Complainant’s mark AVENDUS and that the requirement of paragraph 4(a)(i) of the Policy stands satisfied.

C. Rights or Legitimate Interests

In light of the Panel’s finding below it is unnecessary for the Panel to address the topic of the Respondent’s rights or legitimate interests under the second UDRP element.

D. Registered and Used in Bad Faith

Under the third element of UDRP, the Complainant’s case rests on its allegation that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of

confusion with the Complainant's mark AVENDUS.

Complainant has stated that the Respondent ought to have been aware of the Complainant's well-known mark and hence registration of the disputed domain name which is identical or confusingly similar to that mark is in bad faith.

The [WIPO Overview 3.0](#), section 3.1.4, provides that mere registration of a domain name that is identical or confusingly similar (particularly domain names comprising typos) to a famous or widely-known trademark can by itself create a presumption of bad faith. But the Complainant cannot take advantage of the presumption of bad faith since the Complainant has failed to prove to the Panel that its mark AVENDUS is a well-known mark. Annex F of the Complaint, which are third party news articles, also fails to establish the fame and reputation of the mark AVENDUS.

Accordingly to [WIPO Overview 3.0](#), section 3.1.4, panels have found the following types of evidence to support a finding that a respondent has registered a domain name to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the complainant's mark: (i) actual confusion, (ii) seeking to cause confusion (including by technical means beyond the domain name itself) for the respondent's commercial benefit, even if unsuccessful, (iii) the lack of a respondent's own rights to or legitimate interests in a domain name, (iv) redirecting the domain name to a different respondent-owned website, even where such website contains a disclaimer, (v) redirecting the domain name to the complainant's (or a competitor's) website, and (vi) absence of any conceivable good faith use. In the present case, the Complainant has not put forth any of the aforementioned types of evidence to establish the Respondent's bad faith.

Further, [WIPO Overview 3.0](#), section 3.2.1 assists the panels by giving additional bad faith consideration factors. None of these factors exists in the present case to support a bad faith finding under the third element of UDRP.

The Panel observes that some services offered by the Respondent on its website "www.svendus.com" are indeed overlapping with the Complainant's financial and wealth management services under its mark AVENDUS. However, the Panel is unwilling to treat this as a sole decisive factor for a bad faith finding; especially considering that the Respondent appears to have incorporated the company Svendus Capital Limited back in the year 2005 and the above-mentioned cancellation proceedings date from 2022.

In view of the above, the Complainant has failed to satisfy the third element of UDRP that the Respondent has registered and used the disputed domain name in bad faith. But the Panel is not inclined to determine the Complaint on the merits. This is because, the above recitation makes it clear that – as it stands today on the facts before the Panel – this is not a clear cybersquatting case. There are potentially wider trademark (registration, infringement, dilution and passing off) issues which have been placed before the Panel in the present case. These issues, are not suited for resolution under the Policy (see, for example, the observations of the UDRP panels in *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. [D2000-1470](#); *Kurt Garmaker d/b/a "Repetition Miniature Schnauzers" v. Hilde Haakensen, Axcium Design*, WIPO Case No. [D2015-0993](#); and *IL Makiage Cosmetics (2013) Ltd. v. Mark Rumpler / Mordechai Rumpler / Domains By Proxy, LLC*, WIPO Case No. [D2015-2311](#)).

In these circumstances, the request for a determination on the merits of the Complaint must be rejected. In reaching this conclusion, although the Panel notes that the Respondent (and its affiliate) faces a cancellation action on its trademark registration number 4801457, the Panel takes no position on the merits of any wider dispute between the Parties. The Complainant remains free to seek remedies in other fora and the Panel notes for completeness that the present finding is confined to the Policy and that it does not seek to influence any such subsequent proceedings, should they be raised. If the facts between the Parties change, for example depending on the outcome of the cancellation proceedings, there may be grounds for refiling a case under the Policy at a later date.

7. Decision

For the foregoing reasons, the Complaint is denied.

/Shwetasree Majumder/

Shwetasree Majumder

Sole Panelist

Date: December 31, 2022