

ADMINISTRATIVE PANEL DECISION

TÜV Nord AG v. Hans Muller, Worldtuw

Case No. D2022-4614

1. The Parties

The Complainant is TÜV Nord AG, Germany, represented by TÜV Markenverbund e.V., Germany.

The Respondent is Hans Muller, Worldtuw, Germany.

2. The Domain Name and Registrar

The disputed domain name <worldtuw.com> is registered with Tucows Inc. (the “Registrar”).

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the “Center”) on December 2, 2022. On December 2, 2022, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On December 2, 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 (REDACTED FOR PRIVACY) and contact information in the Complaint. The Center sent an email communication to the Complainant on December 9, 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 the first amended Complaint on December 9, 2022 and the second amended Complaint on December 13, 2022.

The Center verified that the Complaint, together with the first and second amended Complaints, 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 January 3, 2023. In accordance with the Rules, paragraph 5, the due date for Response was January 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent’s default on January 27, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on February 1, 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 a widely known global provider of safety, certification and testing services. Its roots date back to the 19th century.

The Complainant is the owner to the TUV and TÜV trademarks, which are registered in various jurisdictions for already many years. The Complainant *inter alia* owns the German Trademark No. 1005638, for TÜV, registered on July 28, 1980; and the United Kingdom Trademark No. 1317937, for TUV, registered on August 4, 1987, both covering protection, among others, for testing and certification services (Annexes V and VI to the Complaint).

The Respondent is reportedly located in Germany.

The disputed domain name was registered on September 16, 2015.

The disputed domain name resolves to a website appearing to offer audit and certification services, prominently using the sign "TUW" in a stylized manner that creates a look and feel as if the website is operated by the Complainant (Annex VII to the Complaint); it is noted that significant portions of the website are occupied by placeholder text (e.g., stating "Short about us"), in numerous places there are stray spaces or multiple words joined without spaces, many of the internal links resolve to the same page (a list of ISO codes), and that the "Services" tab states "Creation Date : Wednesday, September 24, 2014".

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name.

The Complainant is of the opinion that the disputed domain name is confusingly similar to its TÜV and TUV trademarks.

It further argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

In addition, the Complainant is convinced that the Respondent has registered and is using the disputed domain name in bad faith.

B. Respondent

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

6. Discussion and Findings

According to paragraph 15(a) of the Rules, the Panel shall decide the Complaint in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In accordance with paragraph 4(a) of the Policy, the Complainant must prove that each of the three following elements is satisfied:

- (i) the disputed domain name is identical or confusingly similar to a trademark 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.

Paragraph 4(a) of the Policy states that the Complainant bears the burden of proving that all these requirements are fulfilled, even if the Respondent has not replied to the Complainant's contentions. *Stanworth Development Limited v. E Net Marketing Ltd.*, WIPO Case No. [D2007-1228](#).

However, concerning the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See section 4.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)").

For the evaluation of this case, the Panel has taken note of the [WIPO Overview 3.0](#) and, where appropriate, will decide consistent with the consensus views stated therein.

A. Identical or Confusingly Similar

To begin with, the Panel confirms that the Complainant has satisfied the threshold requirement of having trademark rights in TÜV and TUV.

The Panel further finds that the disputed domain name is confusingly similar to the Complainant's registered trademarks. The Panel notes that the assessment of confusing similarity is between "worldtuw" (as used in the disputed domain name) and the Complainant's trademarks TÜV and TUV. However, in cases where the confusing similarity is not immediately obvious, it may help to also consider the overall circumstances of this case. Section 1.7 of [WIPO Overview 3.0](#) states that "panels have also found that the overall facts and circumstances of a case (including relevant website content) may support a finding of confusing similarity, particularly where it appears that the respondent registered the domain name precisely because it believed that the domain name was confusingly similar to a mark held by the complainant". See also section 1.15 of the [WIPO Overview 3.0](#).

According to undisputed information in the case file, the disputed domain name resolves to a website creating the look and feel of a website operated by the Complainant (Annexes VII to the Complaint) or someone in the same industry. The Panel concludes that the Respondent must have registered the disputed domain name because it believed that it is confusing similar to the Complainant's TÜV and TUV trademarks and that "tuw" is a typo of "tuv".

Therefore, the Panel assesses the disputed domain name as confusingly similar to the Complainant's TÜV and TUV trademarks.

Accordingly, the Panel finds that the Complainant has satisfied the requirement under paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

While the burden of proof remains with the Complainant, the Panel recognizes that this would often result in the impossible task of proving a negative, in particular as the evidence needed to show the Respondent's rights or legitimate interests is primarily within the knowledge of the Respondent. Therefore, the Panel agrees with prior UDRP panels that the Complainant is required to make out a *prima facie* case before the burden of production shifts to the Respondent to show that it has rights or legitimate interests in the disputed domain name to meet the requirements of paragraph 4(a)(ii) of the Policy. *Croatia Airlines d.d. v. Modern Empire Internet Ltd.*, WIPO Case No. [D2003-0455](#).

With its Complaint, the Complainant has provided *prima facie* evidence that the Respondent has no rights or legitimate interests, particularly no license or alike to use the Complainant's TÜV and/or TUV trademarks in a confusingly similar way within the disputed domain name.

In the absence of a Response, the Respondent has failed to demonstrate any of the nonexclusive

circumstances evidencing rights or legitimate interests under the Policy, paragraph 4(c) or provide any other evidence of a right or legitimate interest in the disputed domain name.

There is particularly no doubt that the Respondent was well aware of the Complainant and its TÜV and TUV trademarks before registering and using the disputed domain name. The Panel is convinced that the Respondent deliberately has chosen the disputed domain name to cause confusion with the Complainant and its testing and certification services among Internet users. Particularly, the look and feel of the website linked to the disputed domain name creates the false impression that it appears to be operated by the Complainant or a competitor. The Panel is convinced that the Respondent uses the disputed domain name in order to impersonate the Complainant or at minimum to draw on its reputation, which results in an illicit use that can not confer rights or legitimate interests upon the Respondent, see [WIPO Overview 3.0](#), section 2.13.

Bearing all this in mind, the Panel does also not see any basis for assessing a *bona fide* offering of goods or services by the Respondent.

Consequently, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

In the Panel's view, the Respondent has registered and is using the disputed domain name in bad faith.

The Panel is convinced that the Respondent must have had the Complainant's trademarks in mind when registering the disputed domain name. After having reviewed the Complainant's screenshots of the website linked to the disputed domain name (Annex VII to the Complaint), it is obvious to the Panel that the Respondent deliberately attempted to create a likelihood of confusion among Internet users and/or to freeride on the goodwill of the Complainant's TÜV and TUV trademarks, apparently for commercial gain and/or to disrupt the Complainant's business.

Furthermore, the Panel finds that the Respondent is using the disputed domain name in bad faith. The Panel particularly notes that the disputed domain name resolves to a website creating a look and feel as if the website is operated by the Complainant (Annex VII to the Complaint) or a competitor.

Additionally, the Panel notes that the Respondent failed to submit a response to the Complainant's contentions or to at least rebut any of the Complainant's contentions. The Panel assesses this as an additional indication for bad faith. The Panel is convinced that, if the Respondent had legitimate purposes in registering and using the disputed domain name, it would have responded.

All in all, the Panel cannot conceive of any plausible and legitimate use of the inherently misleading disputed domain name that would be in good faith, except with an authorization of the Complainant.

The Panel therefore concludes that the disputed domain name was registered and is being used in bad faith and that the Complainant consequently has satisfied the third element of the Policy, namely, paragraph 4(a)(iii) 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 <worldtuw.com> be transferred to the Complainant.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: February 15, 2023