

PANEL DECISION

Schwarz Dienstleistung KG v. Cornelia Vtelensky
Case No. DEU2023-0030

1. The Parties

The Complainant is Schwarz Dienstleistung KG, Germany, represented by HK2 Rechtsanwälte, Germany.

The Respondent is Cornelia Vtelensky, Germany.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <gruppeschwarz.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Registrar.eu.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on July 25, 2023. On July 25, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On July 26, 2023, the Registry 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 (Unknown) and contact information in the Complaint. The Center sent an email communication to the Complainant on the same day, providing the registrant and contact information disclosed by the Registry, and inviting the Complainant to submit an amendment to the Complaint. The Complainant filed an amendment to the Complaint on July 31, 2023.

The Center verified that the Complaint together with the amendment to the Complaint satisfied the formal requirements of the .eu Alternative Dispute Resolution Rules (the "ADR Rules") and the World Intellectual Property Organization Supplemental Rules for .eu Alternative Dispute Resolution Rules (the "Supplemental Rules").

In accordance with the ADR Rules, Paragraph B(2), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on August 3, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was August 23, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on August 24, 2023.

The Center appointed Kaya Köklü as the sole panelist in this matter on August 25, 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 ADR Rules, Paragraph B(5).

4. Factual Background

The Complainant is part of the Schwarz Gruppe with its registered seat in Germany. It is a large retail company with about 575,000 employees in 32 countries (Annex 4 to the Complaint).

The Complainant *inter alia* owns the trademark SCHWARZ and SCHWARZ GRUPPE. Among others, they are the registered owners of the European Union Trademark Registrations No. 010499648, registered on May 14, 2012, for SCHWARZ, and No. 013359013, registered on March 23, 2015, for SCHWARZ GRUPPE, both providing protection for a large number of services (Annex 5 to the Complaint).

The Complainant further owns and operates its website at “www.gruppe.schwarz”.

The Respondent is reportedly an individual located in Germany, whereas its true identity remains unclear due to seemingly false and incomplete contact information (Annex 11 to the Amended Complaint).

The disputed domain name was registered on July 4, 2023.

As evidenced by the Complainant, the disputed domain name redirects users to the official website of the Complainant (Annexes 6 and 7 to the Complaint).

As evidenced by the Complainant, the disputed domain name has been used for sending out phishing emails to third parties and business partners of the Complainant pretending that these emails have been sent by a company representative of the Complainant (Annexes 8, 9 and 10 to the Complaint).

5. Parties' Contentions

A. Complainant

The Complainant requests the transfer of the disputed domain name and contends that it has satisfied each of the elements required under the ADR Rules.

B. Respondent

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

6. Discussion and Findings

In terms of the ADR Rules, Paragraph B11(d)(1), the Complainant is required to demonstrate that:

- (i) The disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or European Union law and; either
- (ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
- (iii) The domain name has been registered or is being used in bad faith.

Considering the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy (“UDRP”), the Panel refers to the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition (“[WIPO Overview 3.0](#)”), where appropriate, and will decide consistent with the consensus views captured therein.

As regards the uncontested information provided by the Complainant, the Panel may, where relevant, accept the provided reasonable factual allegations in the Complaint as true. See [WIPO Overview 3.0](#), section 4.3.

A. Identical or Confusingly Similar to a name in respect of which a right or rights are recognized or established by national law of a Member State and/or European Union law

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. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the Complainant has shown rights in the SCHWARZ and SCHWARZ GRUPPE trademarks by virtue of various trademark registrations. See [WIPO Overview 3.0](#), section 1.2.1.

The Panel further finds the entirety of the SCHWARZ and SCHWARZ GRUPPE marks are reproduced within the disputed domain name, as regards the SCHWARZ GRUPPE trademark just in different order.

Accordingly, the disputed domain name is confusingly similar to the Complainant’s SCHWARZ and SCHWARZ GRUPPE trademarks for the purposes of the ADR Rules. See [WIPO Overview 3.0](#), section 1.7.

Based on the available record, the Panel finds the first element of the ADR Rules, paragraph B(11)(d)(1)(i), has been established.

B. Rights or Legitimate Interests

As the Panel finds that the Complainant has made out its case of registration or use in bad faith in accordance with the ADR Rules, paragraph B(11)(d)(1)(iii), as discussed below, and as this paragraph is expressed as an alternative to making a case that the Respondent has no rights or legitimate interests in the disputed domain name, in accordance with the ADR Rules, paragraph B(11)(d)(1)(ii), the Panel does not see a necessity to further examine the presence of this particular element.

However, in light of the case record and just for completeness, the Panel finds that the Complainant has made a *prima facie* case that the Respondent lacks rights or legitimate interests in the disputed domain name, particularly by stating that it has not authorized, licensed or otherwise provided its consent to the Respondent to use the SCHWARZ and/or SCHWARZ GRUPPE trademarks within the disputed domain name.

In the absence of any submission from the Respondent, the Panel finds the second element, paragraph B(11)(d)(1)(ii), has been established.

C. Registered or Used in Bad Faith

The Panel notes that for the purposes of ADR Rules, paragraph B(11)(f) 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. Other circumstances may be relevant as well in assessing whether a respondent’s registration and use of a domain name is in bad faith. See [WIPO Overview 3.0](#), section 3.2.1.

The Panel is convinced that the Respondent must have had the Complainant and its trademarks in mind when registering the disputed domain name.

Furthermore, the disputed domain name has been used by the Respondent to mislead third parties in a false belief that emails sent from the disputed domain name originate from the Complainant, apparently for fraudulent purposes (Annexes 8, 9 and 10 to the Complaint). The use of the disputed domain name to send fraudulent emails impersonating an employee of the Complainant is a *per se* illegitimate activity that can never confer rights or legitimate interests on a respondent, and moreover such behaviour is manifestly considered evidence of bad faith.

The Panel also notes that the Respondent has seemingly provided false or at least incomplete contact information when registering the disputed domain name since the couriers sent by the Center seem to have been undelivered, which is in view of the Panel an additional indication of bad faith.

Based on the available record, the Panel finds the element of bad faith registration or use according to the ADR Rules, paragraph B(11)(d)(iii), has been established.

7. Decision

For the foregoing reasons, in accordance with paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <gruppeschwarz.eu> be transferred to the Complainant¹.

/Kaya Köklü/

Kaya Köklü

Sole Panelist

Date: September 8, 2023

¹ (i) The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, as defined in Paragraph A(1) of the ADR Rules.

(ii) The Panel notes that the Complainant is an undertaking that is established in Germany, and that it thereby satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.