

## **PANEL DECISION**

**Best-Hall Oy v. SM FAME-HALL Marta Dobrowolska**  
**Case No. DEU2023-0039**

### **1. The Parties**

The Complainant is Best-Hall Oy, Finland, represented by Kolster Oy Ab, Finland.

The Respondent is SM FAME-HALL Marta Dobrowolska, Poland.

### **2. The Domain Name, Registry and Registrar**

The Registry of the disputed domain name <best-hall.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Key-Systems GmbH.

### **3. Procedural History**

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on October 3, 2023. On October 4, 2023, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On October 5, 2023, the Registry 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 .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 October 5, 2023. In accordance with the ADR Rules, Paragraph B(3), the due date for Response was October 25, 2023. The Respondent did not submit any response. Accordingly, the Center notified the Respondent's default on October 26, 2023.

The Center appointed Mihaela Maravela as the sole panelist in this matter on October 26, 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**

According to information in the Complaint, the Complainant is an operating building construction and building materials company, established in 1975 and headquartered in Finland. The Complainant provides plastic and other fabric-covered steel and non-metallic halls, building materials and related services for e.g., sports and industrial purposes to customers around the world.

The Complainant is the owner of various registered trademarks that include BEST HALL, including the following:

- the BEST-HALL trademark, registered in Poland under no. R.122278 as of July 17, 2000 for the classes 6 and 19;
- the European Union Trade Mark BEST-HALL SPACE TO GROW, registered under no. 018646992 as of June 4, 2022 for the classes 6 and 19; and
- the European Union Trade Mark BH BEST-HALL, registered under no. 001862788 as of October 22, 2001, for the classes 6 and 19.

The Complainant has registered the domain name <besthall.com> since 1998 and it uses it to advertise its products and services.

The disputed domain name was registered on May 19, 2022 and does not resolve to an active website.

#### **5. Parties' Contentions**

##### **A. Complainant**

The Complainant argues that the disputed domain name is identical to its BEST-HALL trademark and also that the disputed domain name is confusingly similar to the Complainant's European Union trademarks, since the disputed domain name incorporates BEST-HALL in its entirety.

As regards the second element, the Complainant argues that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Previously, the Respondent has used the brand name BEST-HALL as its company name and in its products in Poland, but without any trademarks, thus potentially infringing the Complainant's registered trademarks. After being contacted by the Complainant in March 2023, the Respondent has changed its brand name to "fame-hall" and to the Complainant's understanding removed any potentially infringing brand names from its marketing and products.

With respect to the third element, the Complainant argues that there is no indication that the disputed domain name is in active use, as the webpage for the disputed domain name is blank. On one hand, the circumstances show no indication that the disputed domain name is connected to any legitimate use or rights by the Respondent. On the other hand, the disputed domain name's registration by the Respondent will potentially cause substantial harm and disruption to the Complainant's marketing efforts in Europe.

##### **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 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 interests in the name; or

(iii) The domain name has been registered or is being used in bad faith.

**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**

The Complainant has submitted evidence of its rights for registered trademarks that consist of or include BEST-HALL in the European Union and other jurisdictions. For the purposes of the present proceeding, the Panel holds that the trademark registrations indicated above satisfy the requirement of having a right recognized by the national law of a Member State and/or European Union law.

The disputed domain name is identical to the Complainant's trademark BEST-HALL. The .eu Top-Level Domain is typically disregarded for the purposes of the comparison with the Complainant's trademarks on the basis that it is a mere technical requirement for registration.

The Panel therefore finds that the disputed domain name is identical to the Complainant's trademarks, as required by the ADR Rules, Paragraph B(11)(d)(1)(i), and that the Complainant has carried its burden in this respect.

**B. Rights or Legitimate Interests**

Paragraph B(11)(e) of the ADR Rules provides that the following circumstances, without limitation, demonstrate a respondent's rights or legitimate interests to a domain name for purposes of Paragraph B(11)(d)(1)(ii):

(1) prior to any notice of the dispute, the respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or European Union law;

(3) the respondent is making a legitimate and noncommercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or European Union law.

Where a complainant makes out a *prima facie* case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

In the present case, the Complainant has proved that it holds rights over the trademark BEST-HALL and claims that the Respondent has no legitimate reason to use the disputed domain name. There is no evidence in the case file of any legitimate use by the Respondent. Also, there is no evidence indicating that the Respondent is commonly known by the disputed domain name.

By not submitting a Response, the Respondent has failed to invoke any circumstances which could demonstrate any rights or legitimate interests in the disputed domain name. Furthermore, the Panel notes that the composition of the disputed domain name carries a high risk of implied affiliation with the Complainant.

Accordingly, in the absence of any evidence to support a possible basis on which the Respondent may have rights or legitimate interests in respect of the disputed domain name, the Panel accepts the Complainant's un rebutted *prima facie* case that the Respondent has no rights or legitimate interests in the disputed domain name and that the Complainant has satisfied the condition set out at Paragraph B(11)(d)(1)(ii) of the ADR Rules.

### **C. Registered or Used in Bad Faith**

According to Paragraph B(11)(d)(1) of the ADR Rules (ii) lack of rights or legitimate interests and (iii) registration or use in bad faith are alternative requirements. The Panel finds that the Respondent lacks rights or legitimate interests in the disputed domain name and therefore there is no need to consider also the bad faith element. However, the Panel will briefly address the third element.

The Panel finds that passive holding of the disputed domain name does not in the circumstances of this case prevent a finding of bad faith. There is no evidence in the record of a legitimate use of the disputed domain name. According to un rebutted information in the Complaint, the Complainant's trademark has been used for a long period of time. The Respondent has registered the disputed domain name that is identical to the Complainant's trademark. Moreover, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions, and the Panel considers that there is not any plausible good faith use to which the disputed domain name may be put. Based on the evidence and circumstances of this case, the Panel finds that the Respondent's passive holding of the disputed domain name does not prevent a finding of registration or use in bad faith.

## **7. Decision**

For the foregoing reasons, in accordance with Paragraph B(11) of the ADR Rules, the Panel orders that the disputed domain name <best-hall.eu> be transferred to the Complainant<sup>1</sup>.

*/Mihaela Maravela/*

**Mihaela Maravela**

Sole Panelist

Date: November 9, 2023

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<sup>1</sup> (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 Complainant is a company incorporated in Finland, which satisfies the general eligibility criteria for registration set out in Article 3 of Regulation (EU) 2019/517.