

PANEL DECISION

Harper-Laïs Bütün v. Sven Echternach, EWBCD GmbH
Case No. DEU2024-0015

1. The Parties

The Complainant is Harper-Laïs Bütün, Netherlands (Kingdom of the).

The Respondent is Sven Echternach, EWBCD GmbH, Germany.

2. The Domain Name, Registry and Registrar

The Registry of the disputed domain name <dusktilldawn.eu> is the European Registry for Internet Domains ("EURid" or the "Registry"). The Registrar of the disputed domain name is Realtime Register B.V.

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on May 21, 2024. On May 22, 2024, the Center transmitted by email to the Registry a request for registrar verification in connection with the disputed domain name. On May 27, 2024, 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 May 29, 2024. In accordance with the ADR Rules, paragraph B(3)(a), the due date for Response was June 18, 2024. The Response was filed with the Center on June 18, 2024. In response to a notification by the Center that the Response was administratively deficient, the Respondent filed an amended Response on June 28, 2024.

The Center verified that the Response together with the amended Response satisfied the formal requirements of the ADR Rules and the Supplemental Rules.

The Center appointed Andrew D. S. Lothian as the sole panelist in this matter on July 8, 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 ADR Rules, paragraph B(5).

4. Factual Background

Little is known regarding the Complainant, which appears to be a private individual that operates a business under the name of “Archer Athleisure” and has an address in Elsloo, Netherlands (Kingdom of the).

The Complainant is the owner of Benelux Registered Trademark Number 1439915 for the word mark DUSK TILL DAWN, registered on July 10, 2021 in Class 25 (Lingerie; Nightwear; Corsets; Bras; Robes; Briefs [underwear]; Negligees; Thongs; Swimwear).

The Respondent is a German limited liability company, together with its representative, as named in the Registry’s verification for the disputed domain name. The Respondent states that it has been providing IT services for about five years. The Respondent company has an address in Frankfurt am Main, Germany.

The disputed domain name was registered on February 4, 2023. According to a screenshot provided by the Respondent, the website associated with the disputed domain name is a single page site headed “ABOUT Dusk Till Dawn”. The site goes on: “We are one of the pioneers in 24/7 support services, with a focus of providing excellent service `after hours` - which means from `dusk till dawn`. This includes responding to customer requests by email or telephone, solving IT questions, performing travel bookings - all conducted highly professionally by our excellent English speaking agents. Contact EWBCD now for more details: [role-based email address]@ewbcd.com”. At the bottom of the page is the hyperlink “a service of EWBCD.COM”. Said hyperlink points to “www.ewbcd.com”.

The Complainant produces a screenshot of a page at aftermarket domain name reseller site “www.sedo.com” on which the disputed domain name is offered for sale in the sum of EUR 999.

On April 25, 2024, the Complainant sent an email to the registrant contact email address associated with the disputed domain name. The email stated inter alia that the Complainant was “the trademark owner” and wished to discuss transferring ownership of the disputed domain name “in grounds of trademark infringement and cybersquatting”. On April 29, 2024, the Complainant followed up its previous email with a further email in similar terms. It is not clear whether the Respondent replied to either of these emails, although the Complainant states that its attempts to contact the Respondent did not achieve a positive outcome.

The Respondent produces in evidence a definition from a dictionary of idioms of the phrase “(from) dusk till dawn”, itself redirected from “dusk till dawn”. The definition provided is: “Throughout the night; from the time the sun sets to the time the sun rises”. Three examples of idiomatic usage are also provided along with the definition, namely: “She sat with the sick child from dusk till dawn to make sure his fever did not get any worse,” “We’ll have to drive dusk to dawn if we want to get there on time,” and, “At first, I hated working from dusk till dawn, but now I love the night shift”.

5. Parties’ Contentions

A. Complainant

The Complainant’s contentions are extremely brief and may be repeated largely verbatim:

The disputed domain name is identical to the Complainant’s registered trademark and has been registered with exactly the same name. The disputed domain name has been offered for sale, so the Respondent is not commonly known thereby. The Respondent is [the Registrar].

The Complainant is the holder of the trademark. The intention of selling the disputed domain name can be established. It is offered on a marketplace for domain names which includes a brokerage service to assist in negotiations. The disputed domain name was registered on February 4, 2023, and is still not published.

The Complainant attempted to contact the Respondent without a positive outcome.

B. Respondent

The Respondent's contentions may be summarized as follows:

The Complaint should be denied.

The term "Dusktilldawn" is a dictionary term and widely recognized expression that is not exclusive to any other party. The Complainant's Benelux trademark is restricted to that territory and specific to clothing. The Respondent operates in the IT industry and does not sell or promote clothing or related products.

A search in the European Union Intellectual Property Office database for the term "dusktilldawn" without spaces yields no results. With spaces, multiple results are yielded, including a filing by the Complainant dated May 1, 2024 that has not yet been registered. The Complainant's trademark is not well known in Germany and the Respondent had never previously heard of it. There is no likelihood of confusion between the Complainant's trademark and the Respondent's use of the disputed domain name.

The Respondent has been offering IT services for over five years, longer than the existence of the Complainant's Benelux mark. The Respondent registered the phrase to use it for IT services including 24/7 service tasks during night hours, describing the nature of the services offered. The Respondent's act of offering the disputed domain name for sale does not indicate bad faith nor negate the Respondent's legitimate interests. It is a common practice for businesses in general to explore the option of selling domain names as part of their business strategy, including when considering rebranding or restructuring. Until completion of the Respondent's service offering and official launch of the website, selling the disputed domain name was considered a legitimate business option.

A previous case under the ADR Rules has recognized that offering a domain name for sale does not necessarily constitute bad faith if the domain name was not originally registered for the purpose of selling it to the trademark holder.

None of the provisions of the ADR Rules, paragraph B(11)(f) apply to the circumstances of the case.

The Complainant's emails were unclear and misleading, did not specify the Complainant's full company details or clarify the relationship between the Complainant and the trademark.

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 interest 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 demonstrated to the Panel's satisfaction that it possesses rights in a name that is recognized or established by national law of a Member State and/or European Union law, in that the Complainant's DUSK TILL DAWN trademark, as more particularly described in the factual background section above, is a Benelux registered trademark.

When the disputed domain name is compared to the Complainant's trademark, it may be seen that the mark is alphanumerically identical to the Second-Level Domain of the disputed domain name. The Respondent notes that there are spaces in the mark and not in the disputed domain name but this is of no significance for present purposes, notably because spaces are not permissible in domain names for technical reasons, and in any event, the mark remains recognizable in the disputed domain name even though the spaces are absent. The ".eu" Top-Level Domain is likewise typically disregarded for the purposes of the comparison with the Complainant's mark on the basis that it is a technical requirement for registration.

On the basis of the comparison described above, the Panel finds that the disputed domain name is identical to the Complainant's DUSK TILL DAWN trademark in which the Complainant has rights, 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

The ADR Rules, paragraph B(11)(d)(1)(ii) requires the Complainant to demonstrate (as an alternative to paragraph B(11)(d)(1)(iii)) that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the disputed domain name.

The ADR Rules, paragraph B(11)(e) sets out a non-exhaustive list of circumstances that if found by the Panel to be proved shall demonstrate the Respondent's rights to or legitimate interests in the disputed domain name, namely:

- (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 legitimate and non-commercial 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.

Here, the Complainant's case focuses upon the fact that the disputed domain name has been offered for sale and is identical to the Complainant's trademark. The Respondent's case is in two parts. First, it replies that it has registered a widely used phrase in order to offer 24/7 services descriptive of said phrase. Secondly, it asserts that it has offered the disputed domain name for sale as an alternative to developing its services, submitting that it is entitled to do this because the disputed domain name consists of a common phrase and was not registered with the Complainant in mind.

The Panel is not satisfied on the very limited evidence before it that the Respondent has made demonstrable preparation to use the disputed domain name within the meaning of the ADR Rules in connection with an offering of services as it contends. The sole evidence of such preparation is the single page website associated with the disputed domain name. While this might be an example of such preparation, it might equally be pretextual. There is no information available regarding when this page was published, i.e., whether it was published before or after the Respondent first heard from the Complainant, and the page itself does not suggest any substantive investment in website development which would displace its potentially pretextual nature. The Respondent has provided no other supporting evidence of the sort typically put forward by way of demonstrable preparation, such as, for example, genuine (non-pretextual) business plans or the creation of promotional materials such as advertising, letterhead, or business cards.¹ Nor is there any

¹See the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("[WIPO Overview 3.0](#)"), section 2.2. Given the substantive similarities between the ADR Rules and the Uniform Domain Name Dispute Resolution Policy ("UDRP"), the Panel finds UDRP precedent and the [WIPO Overview 3.0](#) to be relevant to this case. On this topic, see, for example, *Natixis v. BARBAOUAT ROBERT*, WIPO Case No. [DEU2023-0002](#) and *Mermet S.A.S. v. Didier Mermet*, WIPO Case No. [DEU2024-0001](#).

evidence before the Panel that the Respondent company has previously engaged in similar business activities which (for example) it may have proposed to rebrand by way of the descriptive phrase in the disputed domain name. The Respondent merely states that it has been offering corresponding IT services for over five years but does not evidence this in any way.

Consequently, the Panel does not find the first limb of the Respondent's case to be persuasive, albeit that the Panel does acknowledge that the disputed domain name would be descriptive of the services which the Respondent asserts that it provides and therefore attractive for such purposes. That is not the end of the matter, however, as the Respondent separately maintains that it is entitled to offer the disputed domain name for sale in and of itself as a legitimate business activity, given that it contains a commonly used phrase, and likewise on the basis that the Respondent was unaware of and had no intent to target the Complainant or its trademark thereby. On a basic level however, this proposition undercuts the proposition that the disputed domain name was registered for an active IT business.

The Panel accepts that the disputed domain name contains a commonly used phrase. In these circumstances, unless there is evidence before the Panel that the Respondent is likely to have been aware of the Complainant's trademark when it registered the disputed domain name, it would not be reasonable to infer that the disputed domain name was registered with the Complainant's rights in mind. Here, the Complainant has failed to provide any evidence that would allow the Panel to infer such knowledge or awareness on the Respondent's part. The Complainant provides no information as to how its mark is used, to what extent, and in what territories. All that the Panel knows is that it is registered in the Benelux Trademark Register in connection with clothing.

The registration of a domain name for the purpose of sale on the open market may give rise to legitimate interests in that domain name on the part of the registrant (see: *Banca Monte dei Paschi di Siena S.p.A. v. Domain Manager, Evolution Media e.U.*, WIPO Case No. [DEU2024-0004](#)). The present domain name represents a common phrase which is capable of lending itself to a variety of different uses and does not appear, directly or indirectly, to be targeting the Complainant or its rights. There is no evidence before the Panel suggesting that such phrase exclusively or even predominantly denotes the Complainant, even in a limited geographic area, or otherwise that the disputed domain name was offered for sale in order to capitalize on the Complainant's trademark rights.

In all of these circumstances, and despite some inconsistency in the Respondent's proffered motives, the Panel finds that the Complainant has not established that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the disputed domain name and consequently that the Complainant has not carried its burden in respect of the ADR Rules, paragraph B(11)(d)(1)(ii).

C. Registered or Used in Bad Faith

As an alternative to proving that the disputed domain name was registered without rights or legitimate interests, the ADR Rules, paragraph B(11)(d)(1)(iii) provides that the Complainant shall prove that the disputed domain name has been registered or is being used in bad faith.

The ADR Rules, paragraph B(11)(f) provides a nonexclusive list of circumstances that may constitute evidence of the registration or use of a domain name in bad faith, namely:

(1) Circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or European Union law, or to a public body; or

(2) The domain name has been registered in order to prevent the holder of a name in respect of which a right is recognized or established by national and/or European Union law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration;

or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or European Union law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

(3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other online location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or European Union law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered.

In the present case, the Panel's approach as outlined in the preceding section of this Decision may equally be applied to the present question of registration or use in bad faith. While the disputed domain name has been offered for sale, there is no evidence before the Panel tending to suggest that the Respondent's plan was to sell it to the holder of a name, in respect of which a right is recognized or established by national and/or European Union law, or to a public body. On the contrary, the disputed domain name contains a widely used phrase that could be applied to many different uses including, as the Respondent contends, overnight services, such that it might be of interest to a variety of potential purchasers. Importantly, there is nothing on the present record which would allow the Panel to make a reasonable inference that the Complainant was the target of the Respondent's general offer for sale of the disputed domain name. The requisite elements of knowledge and intent to target have not been made out by the Complainant here.

In these circumstances, the Panel finds that the Complainant has failed to prove that the disputed domain name has been registered or is being used in bad faith and consequently that the Complainant has not carried its burden in respect of the ADR Rules, paragraph B(11)(d)(1)(iii).

7. Decision

For the foregoing reasons, the Complaint is denied.

/Andrew D. S. Lothian/

Andrew D. S. Lothian

Sole Panelist

Date: July 22, 2024