

Decision for dispute CAC-UDRP-100211

Case number	CAC-UDRP-100211
Time of filing	2010-12-09 11:53:01
Domain names	halleschekrankenversicherung.com

Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	HALLESCHE Krankenversicherung aG
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Complainant representative

Organization	FPS Rechtsanwälte & Notare
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Respondent

Organization	Bizbuddy
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OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant owns the following trademark registrations in the term HALLESCHEKRANKENVERSICHERUNG:

IR trademark 802905, CTM 003114659 and German National trademark 30254398.

The trademarks are all figurative trademarks featuring a logo with the relevant letters underneath.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The Complainant's business is located in Germany and was founded there in 1934. It provides insurance services and owns various trademark rights as listed above. The Complainant owns domain names such as hallesche-krankenversicherung.com and halleschekrankenversicherung.de.

The Respondent is located in New Zealand and registered the domain name on 16 September 2010.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complaint reads as follows (exact wording as supplied by the Complainant set out below):

Complainant's business is located in Germany and was founded there in 1934. Complainant owns domain names such as hallesche-krankenversicherung.com, halleschekrankenversicherung.de and others, which are in use for Complainant. In 2009, the complainant has provided insurance service to more than 500,000 clients. Complainant owns the following well-known IR, CTM and National trademark registrations with earlier priority which are identical or at least highly similar to the domain name registration at hand:

IR Trademark 802905 (Priority: 14-03-2003); please see Annex I

CTM 003114659 (Priority: 24-03-2003); please see Annex II

German National trademark 30254398 (Priority: 5-11-2002); please see Annex III

All trademarks are registered in class 35 for the services "adversising and business management, arranging and concluding commercial transactions by commercial agents and brokers for others" and in class 36 for "insurance and financial affairs, monetary affairs and real estate affairs" (see Annex I-III).

Respondent is located in New Zealand and has registered the domain name in a foreign language (here: in German language). The domain name is identical or at least highly similar to the registered trademarks of Complainant. Respondent is currently holding more than 400 domain name registrations and is obviously in the business of domain name trading (please see Annex IV).

Complainant has not given its consent or a licence to Respondent on basis of which Respondent could legally have the rights to register the trademark in question as a domain name.

It is highly unlikely that Respondent has registered the domain name "by mere coincidence" since the domain name is spelled in a language that is foreign to him and since the foreign domain name is identical or at least highly similar to Complainant's registered and well-known trademarks as well as to Complainant's business name

There is no inconceivable legitimate use of the domain name for Respondent. The domain name is identical or at least highly similar to Complainant well-known trademarks and is spelled in German language. There is simply no possible legitimate use for the domain name other than a use for the Complainant (see WIPO Case No. D2000-0028, Cellular One Group v. Paul Brien – cellularonechina.com; WIPO Case No. D2000-1074, Sony Kabushiki Kaisha v. sony.net – sony.net). It would be impossible for Respondent to use the domain name as the name of any business, product or service for which it would be commercially useful without violating Complainant's rights.

Further, Respondent is acting in bad faith as laid out in para. 4b (iv) UDRP because he is currently providing links in German language to the commercial websites of direct competitors of Complainant in the German insurance market such as Allianz Versicherung (www.allianz.de) and BIG direkt Versicherung (www.big-direkt.de). For proof, please see Annex V-VII. It has been decided in many cases that providing links to competitors or third parties is a proof of bad faith (see WIPO Case No. D2000-0038, The Channel Tunnel Group Ltd. v John Powell – euro-tunnel.com; WIPO Case No. D2001-0843, Dixons Group Plc v. Mr. Abu Abdullaah – dixons-online.net; WIPO Case No. D2001-1319, Edmunds.com v. Ultimate Search, Inc. – edmund.com; WIPO Case No. D2000-1768, Netwizards, Inc. v. Spectrum Enterprises – netwizard.net; WIPO Case No. D2000-0037, Zwack Unicum Ltd v. Duna – zwackunicum.com; NAF Case No. FA0011000095940, Oly Holigan, L. P. v. Private – michealholligan.com; NAF Case No. FA0009000095648, Marriott International, Inc. v. Kyznetsov – marriottrewards.com). The links provided by Respondent link directly to competitors of Complainant or to third parties. In the links provided, the text of the links clearly offers services which are being compared to the Complainant's services, such as "Pay less insurance fees now" (please see Annex V-VII). Furthermore, in Marriott International, Inc. v. Kyznetsov, it has been decided that a Respondent cannot contend that he is

using the domain name in connection with a fair noncommercial venture it links to a commercial website. It is then presumed that a registrant receives some sort of compensation as a result of such conduct.

Complainant must have had knowledge of Complainant and its trademarks because the current content of www.halleschekrankenversicherung.com includes an embedded Youtube-Video which shows a TV commercial from Complainant and makes text references to Complainant (please see Annex VIII).

In addition to the above grounds, Respondent is clearly acting in bad faith due to the fact that he is currently holding more than 400 domains and clearly is in the business of selling domain names (please see above Annex IV)

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i) of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Complainant has, to the satisfaction of the Panel, shown the domain name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15 of the Rules states that the Panel shall decide a Complaint on the basis of the statements and documents submitted, in accordance with the Policy, the Rules and any rules and principles of law that it deems applicable.

In the case of default by a Party, Rule 14 states that if a Party, in the absence of exceptional circumstances, does not comply with a provision of, or requirement under, the Rules, the Panel shall draw such inferences therefrom as it considers appropriate. In this case the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant. The Panel is therefore obliged to make its decision on the basis of the factual statements contained in the Complaint and the documents made available by the Complainant to support its contentions.

Paragraph 4(a) of the Policy directs that Complainant must prove each of the following:

(i) the domain name registered by Respondent is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

(ii) the Respondent has no rights or legitimate interests in the domain name; and

(iii) the domain name has been registered and is being used in bad faith.

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant, the Panel finds that the Complainant has trademark rights in the term HALLESCHEKRANKENVERSICHERUNG.

The Panel considers that, as previously held in numerous Panel decisions, the generic top level domain suffix .com is without legal significance and has no effect on the issue of similarity. Neither does the fact that the trademark is partly in upper case letters whilst the domain name is only in lower case.

In addition, the fact that the trademark features a logo is not significant in this case because the Panel is satisfied that the textual element of the trademark is the dominant part.

On the basis of these considerations, the Panel finds that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

The second element that the Complainant must prove is that the Respondent has no rights or legitimate interests in respect of the disputed domain name (Policy, paragraph 4(a)(ii)).

The Policy (paragraph 4(c)) sets out various ways in which a Respondent may demonstrate rights or legitimate interests in the domain name, as follows:

“Any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate your rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to you of the dispute, your use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) you (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) you are making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.”

The Panel has considered the evidence put forward by the Complainant and considers that the Complainant has presented a clear prima facie showing of the Respondent's lack of rights or legitimate interest in the disputed domain name. As a result of its default, the Respondent has failed to rebut that showing.

In particular the Panel is of the view that redirecting internet users to a website offering various hyperlinks linking to services that are competitive with the Complainant's services using a domain name that is confusingly similar to the Complainant's trademark cannot be considered to be a bona fide offering of goods or services within the meaning of paragraph 4(c)(i) of the Policy referred to above. Nor can such use be said to be a legitimate non-commercial or fair use of the domain name within the meaning of paragraph 4(c)(iii), as, in the Panel's opinion, the Respondent is undoubtedly earning revenue via “click-through” links and pop-up advertisements.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

The third element that the Complainant must prove is that the disputed domain name has been registered and is being used in

bad faith (Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy sets out various circumstances which may be treated by the Panel as evidence of the registration and use of a domain name in bad faith, as follows:

“For the purposes of Paragraph 4(a)(iii), the following circumstances, in particular but without limitation, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith:

(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your website or location or of a product or service on your website or location.”

On the basis of the evidence put forward by the Complainant, the Panel is satisfied that the Respondent's conduct falls within paragraph 4(b)(iv) of the Policy. By using the disputed domain name, 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 trademark as to the source, sponsorship, affiliation, or endorsement of its website or of a product or service on its website.

It is also clear that the Respondent had the Complainant in mind when the domain name was registered, given that the Complainant has trade marks dating back to 2002 and registration of the domain name took place on 16 September 2010. In this regard it is also worth noting that the domain name is very distinctive, especially given the fact that it is in German and the Respondent is based in New Zealand.

The Panel therefore concludes that the Complainant has succeeded in proving that the disputed domain name has been registered and is being used in bad faith. It should be noted, however, that simply holding and selling large numbers of domain names is not an indication of bad faith in itself. Other factors are required, as outlined above.

For all the foregoing reasons, in accordance with paragraphs 4(i) of the Policy and 15 of the Rules, the Panel orders that the domain name HALLESCHEKRANKENVERSICHERUNG.COM be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. **HALLESCHEKRANKENVERSICHERUNG.COM**: Transferred

PANELLISTS

Name	Jane Seager
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DATE OF PANEL DECISION 2011-01-14
