Decision for dispute CAC-UDRP-101707

Case number	CAC-UDRP-101707
Time of filing	2017-10-10 13:10:10
Domain names	dokmorris.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	DocMorris N.V.

Complainant representative

Name	Philipp Brauns

Respondent

Name	Allison Russell

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided related to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the licensee of DocMorris Holding GmbH (previously Apotheke DocMorris Holding GmbH) with regard to the following trademarks, for all the goods and services registered under these trademarks and especially in connection with distributing pharmaceuticals to customers over the internet:

- German national trademark “DocMorris” (word), application number 304396729, registration number 30439672, applied for on July 13, 2004, and registered on December 9, 2004, for goods and services in classes 3, 5, 9, 35, 38, 42

- community trademark “DocMorris” (figurative), application number 005623608, registration number M01096727, applied for on December 29, 2006, and registered on February 11, 2008, for goods and services in classes 3, 5, 9, 16, 35, 38, 41, 42, 44

- community trademark “DocMorris” (figurative) application number 006047955, registration number M01097287, applied for on December 26, 2006, and registered on July 18, 2008, for goods and services in classes 3, 5, 9, 16, 35, 38, 41, 42, 44, and

- community trademark “DocMorris” (figurative), application number 006047971, registration number M01097311, applied

for on December 26, 2006, and registered on July 14, 2008, for goods and services in classes 3, 5, 9, 16, 35, 38, 41, 42, 44.

FACTUAL BACKGROUND

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

The Complainant is a limited liability company based in the Netherlands. The Complainant operates a licensed pharmacy in the Netherlands offering medicines to its customers, both from its own premises and online under the name "DocMorris". For its online sales to German customers, the Complainant uses in particular the domain name www.docmorris.de. The Complainant sells various types of drugs, including prescription drugs, and including erectile dysfunction treatment medicines such as Viagra.

The disputed domain name was created on 24 November 2016.

Under the disputed domain name, the Respondent:

- targets customers in Germany,

- in the German language, using explicit (adult) advertising content,

- uses the Complainant´s word and figurative mark “DocMorris” for offering prescription medicines without the need to send a prescription (the Complainant doubts whether these medicines offered for sale have a marketing authorisation for pharmaceuticals),

- targets sales for erectile dysfunction treatment medications.

By clicking on one of the offerings on www.dokmorris.com, the customer is directed to a webshop named “Doktor Potenzmittel” (“Doctor impotence treatment”) at the domain www.eupotenzshop.online.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

I. The domain name is
a. confusingly similar to the protected mark
The manner in which the domain name is confusingly similar to the protected mark: i. Misspelling/Typosquatting;
ii. Phonetically similar; iii. Optical similarity

II. The Respondent does not have any rights or legitimate interest in the domain name. Categories of issues involved:
a. Adult content;
b. Misspelling/Typosquatting

III. The domain name has been registered and is being used in bad faith. Categories of issues involved:
a. Cumulative requirement:
b. Misspelling/Typosquatting
c. Other commercial gain
d. Adult content

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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

1. Language of the proceedings

The Panel accepts the language of proceeding request based on a combination of the following factors:

The Respondent registered the disputed domain name using an English-language name (“Allison Russell”), and contact details in the United States (an address in Chicago and a US telephone number). Considering that the Respondent has used this name and these contact details for the registration of the disputed domain name, it is unlikely that the Respondent is not familiar with the English language. The disputed domain name is in Latin script rather than Cyrillic script or the Russian alphabet. In addition, the Panel notes that the Respondent has registered the disputed domain name under the Top Level domain name “.com” which is applicable to a broader audience than merely Russia. The Panel also determines that the Respondent has been given a fair chance to object to the use of the English language through the various notifications sent to him. Finally, the Panel determines that the Complainant, a Dutch company, would be unfairly disadvantaged by being forced to translate the procedural documents in the Russian language.

In conclusion, in conformity with the Panel's discretionary power under paragraph 11 (a) of the UDRP Rules, and for the combination of reasons mentioned above, the Panel accepts the language of proceeding request submitted by the Complainant and determines that the proceeding can be conducted in English rather than Russian.

2. Substantive elements

A. Identical or confusingly similar

The disputed domain name 'dokmorris.com' consists of the registered word and figurative DocMorris marks (for which the Complainant has been granted license rights), save that the letter 'c' has been substituted with the letter 'k'. There is also the addition of the '.com' suffix, which may be disregarded when it comes to considering whether a domain name is confusingly similar to a trade mark in which the Complainant has rights.

As a result, given the distinctiveness of the DocMorris marks and the minor change to the spelling of the disputed domain name, the Panel concludes that the disputed domain name is confusingly similar to a trade mark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

B. Rights or legitimate interests

The Respondent did not file an administratively compliant (or any) response. In the circumstances, the Panel finds from the facts put forward that:

The Respondent does not appear to have any trade marks rights or legitimate interests associated with the DocMorris trademarks or with the words "dokmorris", "dok", or "Morris" (either separately or in combination).

There is no evidence that the Respondent is commonly known by the DocMorris trademarks, and the Respondent does not seem to have any consent to use the DocMorris trademarks.

There is no evidence to show the Respondent may have used the disputed domain name for any bona fide offering of goods or services of its own. There are sponsored links on the Respondent's website attached to the disputed domain name. These links redirect users to another website where the competing products are being sold (in particular pharmaceutical products treating erectile dysfunction such as Viagra). This is not a bona fide offering of goods and services under 4(c)(i) of the Policy and it is not a legitimate non-commercial or fair use under 4(c)(iii) of the Policy.

Also, the Respondent published the DocMorris figurative trademark on the website available via the disputed domain name. From the facts submitted, it seems that the Respondent did not obtain any authorisation to do so.

Finally, the website available via the disputed domain name contains an explicit pornographic (or at least adult content) picture, advertising the product Cialis.

On the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Respondent does not have any rights or legitimate interests in the disputed domain name within the meaning of paragraph 4(a)(ii)of the Policy.

C. Bad faith registration and use

The Panel notes that the DocMorris trademarks in which the Complainant has rights predate the registration of the disputed domain name.

The DocMorris trademarks in which the Complainant has rights cover the geographical area that the Respondent is targeting with the disputed domain name (the website available via the disputed domain name is drafted in the German language, and redirects to another website in the German language explicitly targeting a German public).

The Complainant submitted evidence that the term "DocMorris" can claim a great level of notoriety, at least among the German Public. This is not disputed by the Respondent.

In the absence of any evidence to the contrary (or any administratively compliant response) being put forward by the Respondent, the Panel believes from the facts in this case that the Respondent had the DocMorris trademarks in mind when registering and subsequently using the disputed domain name. The Panel believes that this is a typical case of typosquatting whereby the Respondent reflected a registered trademark in a domain name, while only substituting one letter ('c') by another letter ('k').

The Respondent is using the figurative DocMorris trademark (in which the Complainant has rights) on the website available through the disputed domain name, thus adding confusion among the public as regards the identity of the person(s) offering these services.

The Panel also notes that the website available via the disputed domain name contains a prominent pornographic (or adult content) image, which is being used as an advertisement for an erectile dysfunction treatment medication (a product that is also being sold by the Complainant).

The Respondent is promoting products that compete with the business of the Complainant through the disputed domain name. The website linked to the disputed domain name appears to be an online shop, offering products for sale that are similar to the products sold by the Complainant (i.e., pharmaceutical products, in particular erectile dysfunction medicines).

From these facts, the Panel determines that the Respondent uses the disputed domain name to disrupt the business of the Complainant and to intentionally attract, for commercial gain, internet users to its own website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation or endorsement of its website.

There is no indication before the Panel that the Respondent has been authorised or licensed by the Complainant or the trademark owner (a company affiliated to the Complainant) to use the DocMorris trademarks in the Respondent's domain name or on its website, let alone to sell competing products or counterfeit products. The Panel further notes that the Respondent did not file any response and thus did not object to any of the contentions made by the Complainant.

In light of these facts, combined with the international business presence of the Complainant, it is highly unlikely that the Respondent would not have been aware of the unlawful character of the disputed domain name at the time of its registration and use.

For all of the reasons set out above, the Panel determines that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **DOKMORRIS.COM**:

PANELLISTS

Name	**Bart Van Besien**

DATE OF PANEL DECISION 2017-11-22

Publish the Decision