Decision for dispute CAC-UDRP-101731

Case number	**CAC-UDRP-101731**
Time of filing	**2017-10-26 13:30:16**
Domain names	**cinemaxx24.com**

Case administrator

Name	**Aneta Jelenová (Case admin)**

Complainant

Organization	**CinemaxX Holdings GmbH**

Complainant representative

Organization	**Lubberger Lehment**

Respondent

Organization	**Whois Privacy Corp.**

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is, inter alia, a registered owner of the following trademarks containing a word element "CINEMAXX”:

(i) CINEMAXX (word), International (WIPO) Trademark, registration no. 778651, priority date 08. 02. 2001, registration date 20. 06. 2001, registered for goods and services in classes 7, 9, 11, 14, 16, 18, 25, 26, 28, 30, 33, 35, 36, 38, 39, 41 and 42,

(ii) CINEMAXX (word), German national trademark, registration no. 39960005, file no. 399600051, priority date 28. 09. 1999, registration date 30. 12. 1999, registered for goods and services in classes 9 and 28,

and

(iii) CINEMAXX (word), German national trademark, registration no. 30049561, file no. 300495617, priority date 04 .07. 2000, registration date 08. 02. 2001, registered for goods and services in classes 9, 10, 14, 16, 18, 25, 26, 28, 30, 33, 35, 36, 38, 39, 41, 42, and 43,

besides other national (e.g. German) trademarks consisting of the "CINEMAXX" denomination (collectively referred to as

"Complainant's trademarks").

In addition, Complainant’s company name consist of the denomination “CinemaxX”, which forms the distinctive part of its company (business) name.

FACTUAL BACKGROUND

The Complainant (CinemaxX Holdings GmbH) is a leading opeator of a cinema chain in Germany under the brand name „CINEMAXX“ (currently consisting of 33 movie centres with 289 screens and roundabout 73,000 seats) and also operates several cinemas under this name in other countries.

The disputed domain name <cinemaxx24.com> was registered on 13. 06. 2017 and is held by the Respondent.

The Respondent operated on the domain name website (i.e. website available under internet address containing the disputed domain name) at least for some time a scam website apparently targeting German speaking public and misleading them about origin and content of the website, with an objective to fraudulently collect subscription fees from website visitors. For these purposes, the domain name website (together with the disputed domain name used) was designed in a style and appearance to create a confusion that it is somehow associated with the official website of the Complainant and/or its business.

The domain name website was also featured in an article on www.watchlist-internet.at warning customers about the subscription trap thereon.

The Complainant seeks transfer of the disputed domain name to Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

The Complainant states that:

- The disputed domain name contains the “CINEMAXX” word element of Complainant's trademarks in its entirety and it is thus almost identical (i.e. confusingly similar) to Complainant’s trademarks.

- The addition of the generic term “24“ adds no distinctiveness to the disputed domain name.

Thus, according to the Complainant the confusing similarity between Complainant’s trademarks and the disputed domain name is clearly established.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant states that:

- The Respondent has not been commonly known by the disputed domain name.

- The Complainant has not authorized, permitted or licensed the Respondent to use Complainant’s trademarks in any manner. The Respondent has no connection or affiliation with the Complainant whatsoever. On this record, Respondent has not been commonly known by the disputed domain name.

- Furthermore, the domain name website has been used for scamming purposes which implies that there was no Respondent’s intention to use the domain name for legitimate purposes.

BAD FAITH REGISTRATION AND USE

The Complainant states that:

- Seniority of the Complainant's trademarks predates the disputed domain name registration and such trademarks are well known in relevant business circles. The Respondent can be considered to be aware of the Complainant's trademark when registering the domain name due to well-known character thereof, which should have been checked by the Respondent by performing a simple internet search.

- The disputed domain (at least for some time of its existence) was used to free ride on Complainant’s trademarks by misleading the public about origin of the services offered on the domain name website and establishing likelihood of confusion with the Complainant and its business.

- The domain name website served as a subscription trap for its customers. People were fraudulently tricked into a very expensive long-time subscription with no or very little value to them.

- It is well-founded that registration of the disputed domain name that is confusingly similar to the Complainant’s trademarks which enjoys strong reputation, plus other facts, such as above described use of the disputed domain name, are sufficient to establish bad faith under the 4(a)(iii) of the Policy.

- The Complainant refers to previous domain name decisions contending that registering a domain name incorporating trademarks that enjoy high level of notoriety and well-known character constitute prima facie registration in bad faith.

The Complainant presents the following evidence which has been assessed by the Panel:

- Information about the Complainant and its business;
- Excerpts from various trademark databases regarding Complainant's trademarks and copies of certificates of registration of such trademarks;
- Screenshots of the disputed domain name website (evidencing its similarity to Complainant’s website);
- Screenshots of Complainant’s official website;
- A copy of the article from the online magazine www.watchlist-internet.at describing a fraudulent nature of the domain name website

RESPONDENT:

The Respondent has not provided any response to the complaint.

RIGHTS

The Panel concluded that the disputed domain name is confusingly similar to trademarks in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

For details, see "Principal Reasons for the Decision".

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.

For details, see "Principal Reasons for the Decision".

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.

For details, see "Principal Reasons for the Decision".

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

RIGHTS

Since the domain name and the Complainant's trademarks are not identical, the key element investigated and considered by the Panel is whether the disputed domain name consisting of a term "CINEMAXX" accompanied by a suffix "24" is confusingly similar to the Complainant's trademarks.

The threshold test for confusing similarity under the UDRP involves a comparison between the trademark and the domain name itself to determine likelihood of Internet user confusion. In order to satisfy this test, the relevant trademark would generally need to be recognizable as such within the domain name. An addition of common, dictionary, generic, or other descriptive terms is typically insufficient to prevent threshold Internet user confusion. Confusing similarity test under the UDRP typically involves a straightforward visual and aural comparison of the trademark with the domain name.

Applying the principles described above, the Panel contends that incorporation of a dominant "CINEMAXX" element of Complainant's trademarks (which standalone enjoy high level of distinctiveness) into the disputed domain name constitutes confusing similarity between Complainant's trademarks and such domain name. Addition of a non-distinctive element - suffix "24" - to the "CINEMAXX" denomination cannot prevent the association in the eyes of internet consumers between the disputed domain name and the Complainant's trademarks and thus the likelihood of confusion still exists.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity and confusing similarity tests as it is a necessary technical requirement of registration.

Therefore, since the Panel has decided that there is confusing similarity in this case, it also concludes that the Complainant has satisfied paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant's assertions that the Respondent is not commonly known by the disputed domain name and is not affiliated with nor authorised by the Complainant are sufficient to constitute a prima facie showing of absence of rights or legitimate interest in the disputed domain name on the part of the Respondent.

Given the fact, that (i) the Respondent decided to use the domain name which includes Complainant's trademarks to promote services identical to those of offered by the Complainant and (ii) in the absence of the Respondent's response, the Panel concludes that there is no indication that the domain name was intended to be used in connection with a bona fide offering of goods or services as required by the Policy.

Consequently, the evidentiary burden shifts to the Respondent to show by concrete evidence that it does have rights or legitimate interests in that name. However, the Respondent failed to provide any information and evidence that it has relevant 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 proven that the Respondent has used (at least for some time) the disputed domain name for promotion, sale and offer of services for which the Complainant's trademarks are registered, likely with intention to free-ride on reputation and goodwill of such trademarks and Complainant's business.

Since there is only a remote chance that the Respondent has registered such complex domain name just by a chance and without having a knowledge about the existence of the Complainant's rights and business, the Panel contends, on the balance of probabilities, that the above discussed similarity (between the disputed domain name and Complainant's trademarks) has been established by the Respondent on a purpose and in bad faith.

In addition, the Panel finds it as proven that the domain name website was used for fraudulent or at least unfair business activities of the Respondent.

For the reasons described above, since (i) there is only a remote chance that the Respondent has registered the disputed domain name just by a chance and without having a knowledge about the existence of the Complainant's rights and business (ii) the use of the disputed domain name was registered and used with intention to free-ride on reputation and goodwill of Complainant's trademarks, the Panel contends, on the balance of probabilities, that the disputed domain name has been registered and is being used by the Respondent in bad faith.

Thus, the Panel has taken a view that 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.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CINEMAXX24.COM**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

DATE OF PANEL DECISION 2017-12-08

Publish the Decision