Decision for dispute CAC-UDRP-102213

Case number	CAC-UDRP-102213
Time of filing	2018-11-05 09:29:28
Domain names	BadHeilBrunner.ltd

Case administrator

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

Complainant

Organization	Bad Heilbrunner Naturheilmittel GmbH & Co. KG

Complainant representative

Organization	Grünecker Patent- und Rechtsanwälte PartG mbB

Respondent

Name	Ayed Alotaibi

OTHER LEGAL PROCEEDINGS

None that the Panel has been made aware of.

IDENTIFICATION OF RIGHTS

The Complainant has supplied evidence that it is the owner of the following trade mark:

- European Union Trade Mark BAD HEILBRUNNER, registration number 000232975, registered on 22 May 1998 in connection with goods and services in International Classes 3, 5 and 30.

FACTUAL BACKGROUND

The Complainant is a German company that provides over-the-counter medicines and health products, including dietary supplements and specialty teas. Its teas are available in Germany, the Czech Republic and Slovakia.

The Respondent is an individual apparently based in Saudi Arabia. Little information is known about the Respondent, as incomplete contact information was provided in the WhoIs information for the disputed domain name, and the Respondent has not been active in this proceeding.

The disputed domain name was registered on 24 October 2018 through a privacy protection service. On 25 October 2018 the Complainant received a report from Instagram stating that an e-mail address incorporating the disputed domain name was

used to contact Instagram in a fraudulent attempt to obtain the Complainant's Instagram Username. The e-mail purported to originate from the Complainant's legal counsel, alleging that the Complainant's official Instagram account was in fact operated by a third party who was unrelated to the Complainant. The e-mail listed the Complainant's physical address and its legal counsel's telephone number, together with the above mentioned e-mail address as the legal counsel's contact e-mail address. At that time, the disputed domain name redirected Internet users to the Complainant's official website at "www.bad-heilbrunner.de". On 26 October 2018, the Complainant's legal counsel wrote to the concerned registrar, alerting the registrar to the fact that the disputed domain name had been used in connection with a fraudulent e-mail scheme and requesting deletion of the disputed domain name but the registrar did not reply.

The Complainant amended the Complaint following the disclosure of the underlying registrant's contact details.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The Complainant asserts that it holds trade mark rights in the BAD HEILBRUNNER trade mark, as evidenced in the Identification of Rights section above. The Complainant asserts that the disputed domain name is identical to its BAD HEILBRUNNER trade mark.

No rights or legitimate interests

The Complainant asserts that the Respondent (i) is not commonly known by the disputed domain name, (ii) has not been authorised by the Complainant to use the trade mark BAD HEILBRUNNER and (iii) has no affiliation or connection with the Complainant, its business, goods or services. As such, the Complainant asserts that the Respondent has no rights or legitimate interests in the disputed domain name.

Registered and used in bad faith

The Complainant notes that immediately following its registration, the disputed domain name was used to generate an e-mail address, which was then used to impersonate the Complainant's legal counsel in a fraudulent attempt to have the Complainant's Instagram Username transferred to the Respondent. The Complainant asserts that the disputed domain name may also be used for other fraudulent purposes. The Complainant asserts that the generic Top-Level Domain ("gTLD") .LTD increases the likelihood that Internet users may be misled into thinking that the disputed domain name is an official domain name of the Complainant. In light of the foregoing, the Complainant asserts that the disputed domain name was registered and used in bad faith.

RESPONDENT:

No response was filed.

RIGHTS

The Complainant has shown, to the satisfaction of the Panel, 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).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has shown, to the satisfaction of the Panel, that the Respondent has 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 shown, to the satisfaction of the Panel, 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).

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 and in accordance with the Policy, the Rules and any rules and principles of law deemed applicable.

In the case of default, paragraph 14(b) of the Rules 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 appropriate.

In this case the Respondent has not submitted a Response and consequently has not contested any of the contentions made by the Complainant. The Panel will therefore proceed 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.

Pursuant to paragraph 4(a) of the Policy, the Complainant is required to prove each of the following:

(i) the disputed domain name is identical or confusingly similar to a trade mark or service mark in which Complainant has rights; and

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

(iii) the disputed 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 of its European Union Trade Mark BAD HEILBRUNNER, the Panel accepts that the Complainant has rights in the BAD HEILBRUNNER trade mark for the purposes of the Policy.

The Panel finds that the disputed domain name is identical to the Complainant's BAD HEILBRUNNER trade mark, as it incorporates the Complainant's trade mark in its entirety without addition or alteration. The addition of the gTLD .LTD is disregarded, as it is a technical requirement of registration, and would not otherwise impact the Panel's assessment under this element.

The Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(i) of the Policy.

B. Rights or Legitimate Interests

The Panel has considered the evidence put forward by the Complainant and is of the view that the Complainant demonstrated that the Respondent has no rights or legitimate interests in the disputed domain name.

The disputed domain name has been used in connection with a fraudulent email scheme in an attempt to obtain the Complainant's official Instagram Username by impersonating the Complainant's legal counsel. As noted by prior UDRP panels, the use of a domain name for illegal activity, e.g., unauthorized account access or impersonation, can never give rise to rights or legitimate interests on the part of a respondent. See Moncler S.p.A. v. Cimpress Schweiz GmbH, WIPO Case No.

D2018-0992.

The Respondent has not submitted a Response to assert rights or legitimate interests in the disputed domain name. Furthermore, there is no evidence before the Panel to suggest that any of the circumstances that might demonstrate the Respondent's rights or legitimate interests in the disputed domain name, as set out in paragraph 4(c) of the Policy, would apply.

Accordingly, the Panel finds that the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

C. Registered and Used in Bad Faith

Based on the evidence adduced by the Complainant, the Panel finds that the Respondent registered and used the disputed domain name in bad faith.

The Respondent clearly had the Complainant in mind when registering the disputed domain name. The disputed domain name reproduces the Complainant's trade mark in its entirety, and was used immediately after its registration in an attempt to impersonate the Complainant's legal counsel. In this regard, the Panel notes that in the Respondent's attempt to fraudulently obtain the Complainant's Instagram Username, the Respondent listed the Complainant's physical address and its legal counsel's phone number in Instagram's trade mark report form, demonstrating the Respondent's detailed knowledge of the Complainant. The Panel accepts the Complainant's contention that the redirection of the disputed domain name to the Complainant's official website was an attempt to give further credibility to the Respondent in the furtherance of his fraudulent e-mail scheme.

The Panel further finds that the Respondent's failure to come forward with any Response in this proceeding, his use of a privacy protection service to hide his identity, and the Respondent's failure to provide complete or accurate contact information in the WhoIs records for the underlying registrant of the disputed domain name, all further evidence the Respondent's bad faith.

In light of the above, the Panel finds that the Complainant has satisfied the requirements 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. **BADHEILBRUNNER.LTD**: Transferred

PANELLISTS

Name	**Jane Seager**

DATE OF PANEL DECISION 2018-12-17

Publish the Decision