Decision for dispute CAC-UDRP-103348

Case number	**CAC-UDRP-103348**
Time of filing	**2020-10-20 09:53:30**
Domain names	**xxx-lutz.com**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	**XXXLutz Marken GmbH**

Complainant representative

Organization	**Grünecker Patent und Rechtsanwälte PartG mbB**

Respondent

Organization	**DomDoo Domainholding**

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, registered owner of the following trademarks containing a word element "XXX LUTZ":
- XXXLutz (word), German National Trademark, filing date August 30, 2005, registration date November 17, 2005, trademark no. 305512056, registered for goods and services in classes 12, 14, 35, 37, and 43;

- XXXLutz (figurative), EU Trademark, filing date April 13, 2004, registration date June 29, 2005, application no. 003765658, registered for goods in classes 11, 18, 19, 24, 25, 26, 28, and 35;

- XXXLutz (figurative), EU Trademark, filing date March 13, 2000, registration date April 16, 2003, application no. 001553999, registered for goods in classes 16, 20, 21, and 27;

besides other national and international trademarks consisting of the " XXX LUTZ " denomination.
(collectively referred to as "Complainant's trademarks").

The Complainant also owns numerous domain names under various TLDs consisting of the "XXX LUTZ" denomination or incorporating the same.

FACTUAL BACKGROUND

COMPLAINANT:

The Complainant, XXXLutz Marken GmbH, is the intellectual property holding company of the XXXLutz Group. Since the early 2000s, the XXXLutz Group has been one of Europe's largest retailers of furniture and related home accessories with more than 25,700 employees and an annual turnover of over EUR 5.1 billion. It operates more than 320 furniture stores, most of them in Germany, Austria, Switzerland, the Czech Republic, Slovakia and Sweden under its highly well-known XXXLutz brand.

DISPUTED DOMAIN NAME:

The disputed domain name <xxx-lutz.com> was registered on 27 October 2008 and is held by the Respondent.

The domain name website (i.e. website to which the disputed domain name resolves) is automatically redirected to an URL <777livecams.com> hosting a website with a pornographic content.
The Complainant seeks transfer of the disputed domain name to the Complainant.

PARTIES CONTENTIONS

The Parties' contentions are the following:

COMPLAINANT:

CONFUSING SIMILARITY

- The Complainant states that the disputed domain name is confusingly similar to Complainant's trademarks as the disputed domain name contains the Complainant's trademarks in its entirety.

- Neither the addition of the generic Top-Level Domains (gTLD) ".com" nor the hyphen "-" add any distinctiveness to the disputed domain name.

NO RIGHTS OR LEGITIMATE INTERESTS

- The Respondent has not been commonly known by the disputed domain name. Neither the Complainant has authorized, permitted or licensed the Respondent to use its 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 so as to have acquired rights to or legitimate interests in it.

- Even though the "XXX" component of the disputed domain name may indicate that the domain name website is designated for erotic or adult content, the second element "LUTZ" still creates false impression among internet users that an affiliation between the disputed domain name and the Complainant (or his trademarks or business) exists.

- The Complainant refers to previous domain name decisions in which panels have recognized that no rights or legitimate interests derive from use of another's trademark to divert Internet users to pornographic websites.

BAD-FAITH REGISTRATION AND USE

- Seniority of Complainant's trademarks predates the disputed domain name registration and such trademarks are well-known in relevant business and consumer 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.
- The Complainant also contends that the Respondent by registering and using the disputed domain name has intentionally

attempted to attract Internet users by creating a deliberate likelihood of confusion with the Complainant's Trademarks for the sole purpose of generating traffic on the domain name website.

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;
- Excerpts on the disputed domain name from WHOIS database;
- Screenshots of the disputed domain name website.

RESPONDENT:

The Respondent has not provided any response to the complaint.

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

RIGHTS

The disputed domain name and the Complainant’s trademarks are identical.

For sake of clarity, incorporation of a hyphen “-” into the disputed domain name does not prevent the Panel from finding the disputed domain name and Complainant's trademarks to be identical. Because a space cannot be included in a domain name, a hyphen ("-") customarily replaces a space between two-word elements therein.

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 confusing similarity test, as it is a necessary technical requirement of registration.

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

NO RIGHTS OR LEGITIMATE INTERESTS

Based on general Internet search, the Respondent is not commonly known by the disputed domain name.

Moreover, use of the disputed domain name in connection with pornographic content does not establish legitimate use thereof. Even though the "XXX" component of the disputed domain name may indicate that the domain name website is designated for erotic or adult content, the second element of the disputed domain name ("LUTZ") still creates false impression among internet users that an affiliation between the disputed domain name and the Complainant (or his trademarks or business) exists.

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 Panel finds it grounded that the Respondent registered and used the disputed domain name in bad faith, namely to attract, for commercial gain, Internet users to the disputed domain name website by creating a likelihood of confusion with the Complainant's trademarks to the source, sponsorship, affiliation, or endorsement of the disputed domain name website.

For the reasons described above and since the Respondent failed to provide any explanation in this regard, 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 (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. **XXX-LUTZ.COM**: Transferred

PANELLISTS

Name	**JUDr. Jiří Čermák**

DATE OF PANEL DECISION 2020-11-19

Publish the Decision