

Decision for dispute CAC-UDRP-103971

Case number CAC-UDRP-103971

Time of filing 2021-08-16 10:59:27

Domain names skoda.live

Case administrator

Organization Denisa Bilík (CAC) (Case admin)

Complainant

Organization ŠKODA AUTO a.s.

Complainant representative

Name JUDr. Jiří Čermák advokát

Respondent

Organization Cynapsis Interactive GmbH

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner or applicant of several trademarks for the name ŠKODA, among which the following:

- ŠKODA international registration No. 197564D of 24 December 1956, for goods in classes 7 and 12;
 - ŠKODA international registration No. 991107 of 15 October 2008, for goods and services in classes 12 and 35 and 36;
 - ŠKODA international registration No. 1265214 of 4 May 2015, for goods in class 4;
 - ŠKODA, combined EUTM application No. 017991862, claiming a priority date of 30 May 2018, covering goods and services in classes 9, 12, 36, 37, 38, and 39; and
 - ŠKODA, combined EUTM application No. 017874242, claiming a priority date of 21 September 2017, covering goods and services in classes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, and 45.
-

FACTUAL BACKGROUND

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

The Complainant is an automobile manufacturer in the Czech Republic operating on the market for more than 120 years. It has been one of the most important Czech company and, the largest Czech exporter at the same time. In 1991, the Complainant became part of the German concern Volkswagen.

The Complainant's distinctive sign ŠKODA, which was established in 1928 and registered as a trademark in 1929 for the first time, has been in use as a company name as well as a designation of the company's branded automobiles which are successfully exported abroad.

No information is known about the Respondent who acquired the disputed domain name <skoda.live> on 21 May, 2019.

The disputed domain name is not currently used in connection with any goods or services and does not resolve to any active webpage.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar

The Complainant argues that the disputed domain name <skoda.live> and the Complainant's registered trademarks ŠKODA are confusingly similar. Particularly, the Complainant contends that the disputed domain name <skoda.live> and its trademarks ŠKODA are identical given that:

(i) the first word element only differs in the initial letter "Š" which could be due to the fact that the domain name system does not support use of the names written with the Czech diacritics; and

(ii) the applicable top-level suffix ".live" must be disregarded under the similarity test as its function is merely technical and as such does not prevent the likelihood of confusion.

No rights or legitimate interests

The Complainant argues that there is no evidence at all that the Respondent is commonly known by the disputed domain name or a name corresponding to the disputed domain name, nor that the Respondent has ever offered any goods or services under the disputed domain name, nor has making any businesses with the Complainant. Moreover, the Complainant states that the Respondent has not been licensed or authorized in other way to use the Complainant's trademarks nor to apply for or use any domain name incorporating such trademarks.

Registered and used in bad faith

As far as bad faith registration and use is concerned, the Complainant states that the overall evaluation of all factual elements leads to the conclusion that the Respondent choose to acquire and use the disputed domain name to create intentionally a confusion with the Complainant's distinctive sing ŠKODA to monetize on the redirection of internet traffic to third party websites, which is a prima facie case of non-legitimate registration and use.

The Complainant points out particularly the high similarity between its trademarks and the disputed domain name, the fact that its brand ŠKODA has a long international tradition and was registered as a trademark a way before the disputed domain name was registered.

RESPONDENT:

The Respondent did not respond 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

Paragraph 15 of the Rules states that the Panel decides 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 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 draws such inferences therefrom as appropriate.

In the present case, the Respondent has not submitted any Response and consequently has not contested any of the contentions made by the Complainant.

The Panel proceeds therefore to decide only on the basis of the Complainant's factual statements and the documentary evidences provided in support of them.

1.

The Panel finds that the disputed domain name <skoda.live> fully reproduces the Complainant's registered trademarks "ŠKODA" taking into consideration that the domain name system does not support use of the Czech diacritics.

As far as the additional word element ".live" is concerned, the Panel shares the Complainant's argument in the sense that this particle has rather technical function and does not outweigh the overall similar impression <skoda.live> and škoda leave.

Accordingly, the Panel considers that the disputed domain name and the Complainant's previously registered trademarks are confusingly similar and infers that paragraph 4(a)(i) of the Policy is satisfied.

2. According to the Complainant's contentions and evidences submitted within this proceeding, which were not disputed, the Respondent does not appear to be in any way related to the Complainant's business, does not act as the agent of the Complainant nor is currently known and has never been known as "ŠKODA" or "SKODA", or any combination of this name.

Furthermore, the disputed domain name <skoda-live> has not been associated with any Complainant's business activity and rather appears to be registered with the intention of attracting Internet users. Therefore, the Respondent does not appear to have a legitimate interest in the disputed domain name.

Consequently, and in the absence of a Response, the Panel finds that the Respondent has no rights or legitimate interests in the disputed domain name, so that the requirements of paragraph 4(a)(ii) of the Policy are met.

3. Moreover, given the widespread presence of the Complainant's trademarks and the fact that they are fully reproduced by the disputed domain name, the Panel finds that the Complainant intended to free ride on the reputation of Complainant's trademarks.

In other words, in the absence of sufficient evidence to the contrary and rebuttal from the Respondent, the Panel infers that by choosing to make use of the domain name which is almost identical to Complainant's trademarks and by intending to exploit, for commercial gain, Internet users destined for Complainant, the Respondent's activity is indicative of registration and use of the disputed domain name in bad faith.

Accordingly, the Panel finds that the Complainant has satisfied 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. SKODA.LIVE: Transferred

PANELLISTS

| | |
|------|-----------------------------|
| Name | JUDr. Hana Císlerová, LL.M. |
|------|-----------------------------|

DATE OF PANEL DECISION 2021-09-15

Publish the Decision