

Decision for dispute CAC-UDRP-103956

Case number	CAC-UDRP-103956
Time of filing	2021-08-03 09:15:56
Domain names	highsnobietygatezero.com

Case administrator

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

Organization	Titel Media GmbH
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Complainant representative

Organization	Lubberger Lehment
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Respondent

Name	DOMAIN ADMINISTRATOR
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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 proprietor of a number of marks, including the German mark 'HIGHSNOBIETY GATEZERO' (registration number 3020200216214, dated 5 October 2020, in a number of classes, including bags (16), clothing (25) and retail services (25), and the German mark 'HIGHSNOBIETY' (registration number 302016000502, dated 31 January 2016, in classes including electronic publications (9) and consumer information services (35). These marks are, at the time of the commencement of proceedings, reflected in international registrations under the Madrid system (1575987 and 1306247 respectively), designated in multiple jurisdictions, and (on the basis of the material supplied by the Complainant) valid or under review in other systems e.g. as EU trade marks.

FACTUAL BACKGROUND

The Complainant, a company (GmbH) with its seat in Berlin, Germany, publishes a website and print magazine (with an international audience), and has an associated portfolio of social media accounts, covering issues in fashion, art, music and culture; it also will in the near future (within the calendar year 2021) operate a retail store in Zurich, Switzerland, under the name 'HIGHSNOBIETY GATEZERO'.

The Respondent 'DOMAIN ADMINISTRATOR', whose identity and status is unclear, has supplied an address in the Cayman Islands, took control of the disputed domain name on 25 May 2021 (the name itself was registered on 1 April 2021).

PARTIES CONTENTIONS

No administrative compliant response has been filed. The Provider is unaware of whether written notice was received by the Respondent, although one e-mail sent to the Respondent was successfully relayed. The Respondent never accessed the online platform.

The Complainant contends that the requirements of the Policy have been met and asks that the disputed domain name be transferred to it. It sets out relevant evidence in a number of Annexes 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).

Disregarding the TLD .com, in accordance with the usual practice under the Policy, the disputed domain name is identical to one of the Complainant's marks (HIGHSNOBIETY GATEZERO), and indeed incorporates in full the Complainant's shorter mark 'HIGHSNOBIETY'.

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).

The Respondent has not participated in these proceedings, and so does not provide the Panel with information that would respond to the prima facie case of the absence of rights or legitimate interests put forward by the Complainant. The Panel notes the Complainant's uncontradicted contention that it has not authorised the Respondent to use its mark in any way. Moreover, there is nothing further available to the Panel (e.g. web content appearing under the disputed domain name) that would give rise to any plausible assumptions regarding relevant rights or legitimate interests; the website as it stands is simply a general offer to sell, for \$990 (approx: €850). The Panel notes that some aspects of the disputed domain name may carry a number of meanings, but accepts in the present case that there is no realistic or reasonable basis for assuming anything regarding the use of this name, identical to the Complainant's mark, by a Respondent, who used a proxy service to register said name, and has not presented in its registration a clear account of its identity or legal status, and who has neither published any content on the Web nor offered an explanation to the Panel.

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).

The Complainant suggests that the Panel should determine this case in light of the provisions of paragraph 4(b)(i) (registration primarily to sell the domain name to a Complainant or its competitor for valuable consideration in excess of the Respondent's costs related to the domain name) or 4(b)(ii) (registration in order to prevent the owner of the mark from reflecting the mark in a corresponding domain name, where there is a pattern of such conduct) of the Policy.

The Complainant has included a partial quotation of paragraph 4(b)(ii), which omits the phrase 'provided that [the Respondent] has engaged in a pattern of such conduct'. As such, the Complainant has not addressed this requirement either by argument or evidence, and the Panel must apply the full paragraph and not a selective quotation thereof. There is no basis for a finding of a pattern of conduct in the present case.

The Panel however acknowledges the need to look at the dispute in the round, applying the advice in the WIPO Jurisprudential Overview, version 3.0, para 3.1, that where a Complainant may not be able to demonstrate the literal or verbatim application of paragraph 4(b), evidence demonstrating that a respondent seeks to take unfair advantage of, abuse, or otherwise engage in

behaviour detrimental to the complainant's trademark would also satisfy the Complainant's burden. The Panel can accept that the Respondent would have been aware of the Complainant and its marks when it first registered the disputed domain name, and may be engaged in 'passive holding' of the disputed domain name. The Panel notes that the Complainant has supplied examples of publicity regarding the launch of the Highsnobiety Gatezero retail store, dated June and July 2021 (that is, very briefly post-dating the registration of the disputed domain name in April 2021 and the acquisition of control of the said name by the present Respondent in May 2021), but that the specific mark associated with this store pre-dates the disputed domain name - and, of course, the Complaint's core activities and associated mark are long established and of a suitably high profile to be likely to be known to the Respondent.

The Panel does further accept, in light of the Complaint and the above findings, the clear and uncontested relevance of paragraph 4(b)(i), placing particular weight on the complete incorporation of the disputed domain, the clear offer of sale, the distinctiveness of the relevant marks, and the likelihood that the Respondent would have been aware of the Complainant, its marks, and its planned activities at the time of registration and in its continuing efforts to sell the disputed domain name.

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

In the absence of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name. On the other hand, it is clear that the Complainant has rights in respect of the trade mark HIGHSNOBIETY GATEZERO, to which the disputed domain name is identical. It is likely, in light of the use of the disputed domain name by the Respondent (especially the offer for sale at a valuable price above costs) that the Respondent would have been aware of the Complainant and its marks and activities. The Panel can find for these reasons that the disputed domain name was registered and is being used in bad faith, and that the Respondent, through its failure to participate, has not pointed to any rights, legitimate interests, or the absence of bad faith registration or use. The requirements for the acceptance of a Complaint under paragraph 4 of the Policy have therefore been met, and the Panel ordered that the disputed domain name be transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **HIGHSNOBIETYGATEZERO.COM**: Transferred

PANELLISTS

Name	Dr Daithi Mac Sithigh
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DATE OF PANEL DECISION 2021-09-19

Publish the Decision