Decision for dispute CAC-UDRP-100698

Case number	**CAC-UDRP-100698**
Time of filing	**2013-11-15 10:32:45**
Domain names	**babywalz.org**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Versandhaus Walz GmbH**

Complainant representative

Organization	**AC Tischendorf Rechtsanwälte Partnerschaft**

Respondent

Name	**Yoh Lim**

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

Registered trademarks "BABYWALZ" including CTM No. 1069697

FACTUAL BACKGROUND

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

Complainant is a company with its registered office at Bad Waldsee/Germany. Under the trademark "babywalz" the Complainant offers goods in the area of babies and kids and mothers such as clothes, toys, car seats, baby carriages, maternity fashion and so on online as well as in several affiliates. For this reason the Complainant has registered several trademarks "babywalz" with the WIPO, the OHIM and DPMA.

Complainant is the holder of prior rights on the trademark "babywalz" as described above. Complainant is well-known under its famous trademark "babywalz". Respondent has registered the identical domain babywalz.org on January, 18 2013. The "About" sign on the website does not give any hint to the owner of the website, the legal information are missing completely.

Respondent has registered the identical domain babywalz.org by using the well-known and famous trademark "babywalz" of the Complainant without having any rights or legitimate interest in the domain. Complainant is sure that the whois data of the Respondent are misleading respectively. Respondent who is named in the whois data is not the actual owner of the domain. Further, the Respondent is a firm that offers services to protect the privacy of domain owners. Complainant thus believes that the actual owner of the domain uses Respondent to fake its identity so nobody can catch him.

Aspects in this favour are that the website babywalz.org does not disclose any contact details of the owner which is no reputable business behaviour.

The domain name has been registered and is being used in bad faith. According to Article 4 a) iii) of the Uniform Domain Name Dispute Resolution Policy (adopted August 26, 1999) bad faith may be demonstrated where the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.

Respondent is using the domain to disrupt the professional activities of Complainant as the domain babywalz.org is used in a completely unprofessional way with misspellings and grammar errors as can be seen at the disputed domain website babywalz.org. The second clause of the sentence "Alles Gute für Ihr Baby, alles was Sie zu brauchen geben", is false and does not make any sense in German. These errors are found throughout the entire website babywalz.org.

Furthermore, the Respondent uses the domain to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location. The only intention of the domain is to attract Internet users to other online locations, in particular to Amazon. This by using the well known trademark babywalz of the Complainant.

Complainant is owner of a name on which a right is recognised or established by national and/or Community law or a name of a public body as Complainant has registered the trademarks "babywalz". Complainant is restraint in the exercise of its rights of the registered trademarks because of the registration of the disputed domain in bad faith.

Complainant has its registered office in Bad Waldsee/Germany. Therefore, Complainant is a company which has its statutory registered office within the European Community and has after all the right that the domain babywalz.org will be transferred to Complainant.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

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

The SLD of the disputed domain name is identical to the Complainant's registered mark.

The Respondent has not used the disputed domain name or any corresponding name in connection with any bona fide offering of goods or services nor demonstrated preparations to do so, nor used it for any legitimate or non-commercial fair use. Nor is the Respondent commonly known by the disputed domain name or any corresponding name, or licensed to use it, or possessing any other right or legitimate interest in respect of the disputed domain name according to the evidence filed.

The Respondent is using the disputed domain name to locate a web page containing sponsored links to websites of competitors of the Complainant. The Respondent is thereby intentionally attempting to attract Internet users to its web page for commercial gain in the form of click-through commissions by creating a likelihood of confusion with the Complainant's mark as to the source of the Respondent's web page. Paragraph 4(b)(iv) of the UDRP applies.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BABYWALZ.ORG**: Transferred

PANELLISTS

Name	**Jonathan Turner**

DATE OF PANEL DECISION 2014-01-24

Publish the Decision