

Decision for dispute CAC-UDRP-104108

Case number	CAC-UDRP-104108
Time of filing	2021-11-01 11:22:42
Domain names	championsleaguefinaleexperience.com

Case administrator

Organization	Denisa Bilík (CAC) (Case admin)
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Complainant

Organization	Union des Associations Européennes de Football (UEFA)
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Complainant representative

Organization	Stobbs IP Ltd
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Respondent

Organization	Dennis Schreiner / ABSOLUT Sport GmbH
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OTHER LEGAL PROCEEDINGS

The Respondent informed the Panel on 25 March 2022 - after the notification of his default - of a writ of summons that he submitted on that same 25 March 2022 to the District Court of Munich and which relates to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of several trademarks consisting of or containing the terms CHAMPIONS LEAGUE in several classes and in numerous countries all over the world. Reference is particularly made to the (verbal) US American trademark registration n°5430429 CHAMPIONS LEAGUE (filing date: 30 January 2017; registration date: 27 March 2018) for goods and services in classes 9, 12, 16, 18, 25, 28, 32, 36, 38.

FACTUAL BACKGROUND

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

1. The Complainant is the governing body of European football and the umbrella organisation for 55 national associations. It organizes the UEFA Champions League, one of the most prestigious football tournaments in the world and the most prestigious club competition in European football, played by the national league champions (and, for some nations, one or more runners-up) of their national associations.
2. It results from the registrar verification that the current Registrant registered the disputed domain name on 10 August 2018.

The language of the registration agreement is German.

3. According to the undisputed evidence provided by the Complainant, the disputed domain name resolves to a commercial website which advertises packages for football events related to said Champions League organised by the Complainant, namely the Champions League Final intended to be hosted in Turkey at the Atatürk Olympic Stadium in May 2020.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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:

In particular, the Panel notes that the written notice of the Complaint was successfully delivered to the Respondent's e-mail address dennis.schreiner@absolut-sport.com on 5 November 2021. Nevertheless, no administratively compliant response has been submitted within the given term ending on 25 November 2021. Therefore, the ADR Center notified the parties on 26 November 2021 of the Respondent's default and proceeded to the appointment of the Panel.

In the following, the Parties agreed to suspend the proceedings first until 19 January 2022 and subsequently until 18 February 2022 and 22 March 2022, due to settlement negotiations. On 16 March 2022 the Complainant asked the ADR Center to resume proceedings and proceed to a decision. All this correspondence was submitted in English language.

Subsequently, the Parties exchanged several nonstandard communications (again in English language):

- On 21 March 2022 the Respondent informed the ADR Center that he intends to bring an action against the Complainant before ordinary courts in Germany.
 - On 22 March 2022 the Complainant requested the ADR Center to proceed with a final decision.
 - On 23 March 2022 the Respondent reserved all rights to assert any claims against the Czech Arbitration Court in the event that the Czech Arbitration Court will file a decision.
 - On 25 March 2022 the Respondent submitted a copy of a German language writ of summons that he filed on that same day with the District Court in Munich. No translation in English was provided.
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PRINCIPAL REASONS FOR THE DECISION

1. Language

In accordance with paragraph 11 of the UDRP Rules, the Panel orders that the language of the proceedings shall be English.

In accordance with paragraph 11(a) of the UDRP Rules, unless otherwise agreed by the Parties, or specified otherwise in the

Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise, having regard to the circumstances of the administrative proceeding. In the case at hand, the Panel has not been made aware of any agreement between the parties pertaining to the language of the proceedings. Furthermore, it is undisputed that the language of the registration agreement regarding the disputed domain name is German.

In accordance with the general powers attributed to the Panel under paragraph 10(a), (b) and (c) of the UDRP Rules, the Panel shall ensure on the one hand side that the Parties are treated with equality and that each Party is given a fair opportunity to present its case. On the other hand, the Panel shall ensure that the administrative proceeding takes place with due expedition.

In the present case, the Panel is satisfied that the Respondent has more than an adequate knowledge of the English language so that proceeding in English is fair and equal. This conclusion is based on the following undisputed facts:

- the language of the disputed domain name is English;
- the content of the website to which the disputed domain name resolves is also in English and
- the Respondent's entire correspondence with the ADR Center is in English.

In addition, the Panel notes that requesting a translation of the Complaint will cause undue delay of these proceedings and therefore be inequitable for both parties and contrary to the obligation to proceed with these proceedings with due expedition.

2. Unsolicited supplemental filings

Paragraph 12 of the UDRP Rules expressly provides that it is for the panel to request, in its sole discretion, any further statements or documents from the parties it may deem necessary to decide the case. Unsolicited supplemental filings - as filed by the Parties in the present case - are generally discouraged, unless specifically requested by the panel. A panel is under no obligation to accept it as part of the case file. Paragraph 10 of the UDRP Rules rather vests the panel with the authority to determine the admissibility, relevance, materiality and weight of the evidence, and also to conduct the proceedings with due expedition.

In the case at hand, the Panel notes that none of the Parties clearly explained why it was unable to provide the information contained in its respective unsolicited supplemental filings in its regular complaint or response (e.g., owing to some "exceptional" circumstance). This is particularly true for the Respondent, who did not file any administratively compliant response and who basically referred in its supplemental filings to a civil action (not presented in the language of the proceedings) initiated against the Complainant before the District Court of Munich only on 25 March 2022, and therefore several months after his default.

As a consequence, the Panel is inclined not to accept the Parties' unsolicited supplemental filings. However, no final decision on this point is needed, since the Panel considers these unsolicited supplemental filings as substantially irrelevant to the case.

3. Authority to take a decision

The Respondent seems to be of the opinion that the Czech Arbitration Court has no power to take a decision in the case at hand and that the present UDRP proceeding must be terminated or at least suspended due to the civil action started before a national German Court after these proceedings had been initiated and after the term for the Respondent to file his response expired.

It is true that by design, the UDRP system preserves Parties' court options before, during, and after a UDRP proceeding; as indicated by UDRP paragraph 4(k), the UDRP does not bar either Party from seeking judicial recourse. However, paragraph 18(a) of the UDRP Rules gives the Panel discretion to suspend, terminate, or continue a UDRP proceeding where the disputed domain name is also the subject of other pending legal proceedings.

In the case at hand, the civil action filed in Germany seeks a court statement confirming that the Complainant in the present UDRP proceedings has no right to get the disputed domain name transferred. This request is justified with the Respondent's invitation to the Complainant to specify why it believes to have such a right to the disputed domain name. No substantial

evidence or plausible argument justifying a right/legitimate interest of the Respondent or actual/contemplated good faith use is brought forward. Therefore, no reason or evidence has been presented, why it would be inappropriate for the Panel to provide its decision in the present case.

Consequently, and in accordance with paragraph 18(a) of the UDRP Rules, the Panel will continue the UDRP proceeding.

4. Confusing similarity

The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark, paragraph 4(a)(i) of the UDRP Policy.

The Complainant's registered verbal trademark CHAMPIONS LEAGUE is identically included in and placed at the beginning of the disputed domain name. It is acknowledged that where a trademark is recognizable within the disputed domain name, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) do not prevent a finding of confusing similarity under the first element (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition - "WIPO Jurisprudential Overview 3.0", at section 1.8).

This trademark is validly registered in the US Federal Registry and it is acknowledged that this prima facie satisfies the threshold requirement of having trademark rights for purposes of standing to file a UDRP case (WIPO Jurisprudential Overview 3.0, section 1.2.1). In particular, it does not fall within the Panel's power to make any assessment on the validity of this trademark.

It is the view of this Panel that the combination of the trademark CHAMPIONS LEAGUE with the additional terms "FINAL" and "EXPERIENCE" does not avoid the confusing similarity between the disputed domain name and the Complainant's trademark. These additional terms are a rather descriptive and direct reference to the Complainant's CHAMPIONS LEAGUE competition, in particular the experience connected to the CHAMPIONS LEAGUE Final match.

5. No rights or legitimate interests

In the absence of any Response, or any other information from the Respondent indicating the contrary, the Panel further holds that the Complainant successfully presented its prima facie case, and that the Respondent has no rights or legitimate interests in respect of the disputed domain name pursuant to paragraph 4(a)(ii) of the Policy.

In particular, the Panel notes that there is no evidence in the record that could lead the Panel to conclude that the Respondent might be commonly known by the disputed domain name in the sense of paragraph 4(c)(ii) of the Policy. In addition, it results from the Complainant's uncontested evidence that the Respondent has no connection or affiliation with the Complainant who has not granted the Respondent any license or consent, express or implied, to use the Complainant's trademark in domain names or in any other manner. Furthermore, use of the disputed domain name for webpages with commercial content excludes any non-commercial use in the sense of paragraph 4(c)(iii) of the Policy from the outset. Finally, said use for commercial web content does - in the Panel's view - not represent a bona fide offering (pursuant to paragraph 4(c)(i) of the Policy). This use rather capitalizes on the reputation and goodwill of the Complainant's marks.

6. Bad faith

Finally, the Panel finds that the disputed domain name has also been registered and is being used in bad faith.

It is the view of this Panel that the Respondent has registered the disputed domain name, which fully includes the Complainant's (older) trademark, namely CHAMPIONS LEAGUE in order to intentionally attempt to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with the Complainant's mark as to the source, sponsorship, affiliation, or endorsement of his web site (par. 4(b)(iv) of the Policy). The Panel has no doubt that the Respondent was aware of the trademark when he registered the disputed domain name, since the latter identically includes the trademark and the content of the website refers to the competition organized and promoted by the Complainant under its trademark CHAMPIONS LEAGUE

since years.

Finally, the Panel also considered the following additional relevant factors for its assessment of bad faith: (i) the failure of the Respondent to provide any evidence of actual or contemplated good faith use, and (ii) the Respondent originally hiding his identity behind a privacy shield.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

- 1. **CHAMPIONSLEAGUEFINALEXPERIENCE.COM**: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION	2022-04-01
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Publish the Decision