

Decision for dispute CAC-UDRP-105758

Case number	CAC-UDRP-105758
Time of filing	2023-09-01 09:32:26
Domain names	sonic-thehedgehog.com

Case administrator

Name	Olga Dvořáková (Case admin)
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Complainant

Organization	SEGA Corporation
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Complainant representative

Organization	Zacco Sweden AB
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Respondent

Name	Kamryn Dudley
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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 submitted evidence that it is the owner of the following EU trademarks (the "Trademarks").

- Wordmark "SONIC THE HEDGEHOG", registration no. 003904471, registered on November 3, 2005, valid for a list of goods and services in classes 9, 28 and 41.
- Wordmark "SONIC", registration no. 03904448, registered on September 19, 2011, valid for a list of goods and services in classes 9, 28 and 41.
- Figurative mark "SONIC THE HEDGEHOG", registration no. 000076653, registered on April 15, 1998, valid for a list of goods and services in classes 9, 28, 41 and 42.

FACTUAL BACKGROUND

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

The Complainant states that it is a multinational video game and entertainment company. The Complainant asserts to have released the video game "Sonic the Hedgehog" in 1991. The Complainant claims that the game remains as its flagship franchise and one of the best-selling video game franchises today.

The Complainant provided evidence that it is the owner of the Trademarks as referred to above. The Complainant also provided evidence that Sega Europe Ltd. (a company of the Complainant's group of companies) is the owner of the domain name <sonicthehedgehog.com>, created on May 31, 1997.

The disputed domain name <sonic-thehedgehog.com> was registered on May 11, 2023. The Complainant proves that the disputed domain was used by the Respondent but is inactive now.

PARTIES CONTENTIONS

The Complainant's contentions are summarised below.

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.

PRINCIPAL REASONS FOR THE DECISION

1. Confusing similarity

The disputed domain name consists of the Complainant's trademarks "SONIC" and "SONIC THE HEDGEHOG", with the addition of a hyphen between "SONIC" and "THEHEDGEHOG".

According to the Complainant, the only difference between the Trademarks and the disputed domain name is the hyphen. The Complainant argues that this gives potential visitors the impression that the disputed domain name represents the original website for the Complainant's game. The Complainant states that the Respondent exploits the goodwill and the image of the Complainant. Furthermore, the Complainant argues that the gTLD ".com" does not change the overall impression of the designation as being connected to the Trademark(s).

The Panel notes that the disputed domain name incorporates the entirety of the Complainant's "SONIC THE HEDGEHOG" Trademark, with the addition of a hyphen between "SONIC" and "THEHEDGEHOG".

The Panel remarks that Section 1.7 of WIPO Overview 3.0, clearly states that, "*in cases where a domain name contains the whole of a trademark, or where at least one dominant feature of the relevant trademark is recognisable in the domain name, the domain name shall normally be considered confusingly similar to that trademark for the purposes of UDRP status*".

The Panel is of the opinion that the sole addition of the hyphen is not sufficient to prevent a finding of confusing similarity under the first element of paragraph 4(a) of the Policy. The addition of the hyphen does not add meaning or distinctiveness to the disputed domain name.

The gTLD ".online" may be disregarded when considering whether a domain name is confusingly similar to a trademark in which the Complainant has rights. In this regard, section 1.11.1 of WIPO Overview 3.0 clearly states: "*The applicable Top Level Domain ('TLD') in a domain name (e.g., '.com', '.club', '.nyc')* is viewed as a standard registration requirement and as such is disregarded under the first element confusing similarity test.".

For these reasons, the Panel concludes that the disputed domain name is confusingly similar to a trademark in which the Complainant has rights within the meaning of paragraph 4(a)(i) of the Policy.

2. Rights or legitimate interests

As regards paragraph 4(a)(ii) of the Policy, while the overall burden of proof rests with the Complainant, it is commonly accepted that this should not result in an often-impossible task of proving a negative. Therefore, numerous previous Panels have found that the Complainant is required to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once such prima facie case is made, the burden of production shifts to the Respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the disputed domain name. If the Respondent fails to come forward with such appropriate allegations or evidence, the Complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. If the Respondent does come forward with some allegations or evidence of relevant rights or legitimate interests, the panel then must weigh all the evidence, with the burden of proof always remaining on the Complainant.

The Complainant argues that:

- There is no information indicating that the Respondent is known for or trades under or prepares to use a name corresponding to the disputed domain name. The disputed domain name is used to mimic the Respondent and is now inactive.
- The Respondent ("Kamryn Dudley") is not identified in the Whois database as the disputed domain name (sonic-thehedgehog).
- The Respondent is not known by the Complainant. The Respondent is not affiliated with nor authorized by the Complainant. The Respondent does not carry out any activity for nor has any business with the Complainant.
- No license or authorisation was granted to the Respondent to make use of the Complainant's Trademark(s) or to apply for registration of the disputed domain name.
- The Respondent is not an authorized dealer of the Complainant's products or services. There is no business relationship with the Complainant.

The Panel finds that the Respondent does not appear to have any rights or legitimate interests in respect of the disputed domain name from the following facts:

- The disputed domain name includes the entire Trademark of the Complainant. The addition of the hyphen does not add any meaning to the Trademark(s) and does not create any rights or legitimate interests in the disputed domain name.
- There is no evidence that the Respondent is or has been commonly known, by the disputed domain name or by the terms "SONIC THE HEDGHEHOG". The WHOIS information does not provide any information that might indicate any rights of the Respondent to use the terms "SONIC THE HEDGHEHOG" or "SONIC".
- The Complainant's Trademark(s) have been used well before the registration date of the disputed domain name. The disputed domain name was registered on May 11, 2023, whereas the Complainant's Trademarks were registered on respectively November 3, 2005, September 19, 2011, and April 15, 1998.
- The Respondent does not actively use the disputed domain name anymore. Technically, this should not weigh heavily in the analysis since the disputed domain name is of a relatively recent date. However, the Complainant shows that at first the Respondent did use the domain name. During the time of use, the Respondent copied the logos, trademarks, colours, images, text, etc. of the Complainant on the website available via the disputed domain name.
- There is no evidence to show that the Respondent is making a legitimate non-commercial or fair use of the disputed domain name, without intent for commercial gain or to misleadingly divert consumers. On the contrary, it appears that the Respondent is taking

advantage (or at least intends to take advantage) of the Complainant's name and registered Trademark to attract consumers by creating a likelihood of confusion.

- The Respondent does not seem to have any consent or authorisation to use the Trademark or variations thereof and does not seem to be related in any way to the Complainant.
- The Respondent did not show to have any trademark rights or other rights regarding the terms "SONIC THE HEDGEHOG".
- The Respondent did not file an administratively compliant (or any) response. The Respondent did not provide evidence that it has rights or legitimate interests in the disputed domain name (the Respondent could, inter alia, have provided evidence of the factors mentioned in paragraph 4(c) of the Policy, but failed to do so).

In sum, on the balance of probabilities, and in the absence of any evidence to the contrary or any administratively compliant response being put forward by the Respondent, the Panel finds that the Complainant has made a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name.

The Panel concludes that the Respondent does not have rights or legitimate interests in the disputed domain name.

3. Bad faith

The Complainant argues that the Respondent has registered the domain name with full knowledge of the Complainant and its Trademarks, given the fame and value of the Trademarks. The Complainant emphasizes that the Respondent has copied the website of the Complainant to target and deceive consumers into believing that the disputed domain name was operated by the Complainant. The Complainant presumes that the Respondent is intentionally creating a false impression of affiliation with the Complainant or endorsement by the Complainant. The Complaint also mentions that the Respondent included several links on the website available via the disputed domain name and did collect privacy details from visitors searching for the Complainant, presumably in attempt to obtain money or with other illicit intent.

The Panel weighs these arguments and facts as follows:

First, as mentioned already, the disputed domain name reproduces the Complainant's trademark "SONIC THE HEDGEHOG" entirely, with the mere addition of a hyphen between "SONIC" and "THEHEDGEHOG". The addition of the hyphen does not add any meaning to the disputed domain name and does not take away a risk of confusion among the public.

Second, the Complainant's Trademarks predate the registration of the disputed domain name with more than 10 years.

Third, the Complainant's Trademarks are EU trademarks and cover the territory of Estonia, i.e., the Respondent's home country. Moreover, the Complainant has submitted evidence that its Trademarks and the videogame are well known.

Fourth, the Respondent seems to use the disputed domain name for an inactive webpage. Technically, this should not weigh heavily in the analysis since the disputed domain name is of a relatively recent date. However, the Complainant has also shown that the disputed domain name was previously actively used by the Respondent. From the screenshots submitted by the Complainant as evidence, it is clear that the Respondent copied on this website various logos, trademarks, texts, images, etc. of the Complainant. The Respondent also included a contact form on its website to collect personal data. On this contact form, the Respondent used the name/logo "SEGA" and the name "SEGA group". In other words, the Respondent tried to impersonate the Complainant.

It is therefore inconceivable that the Respondent would have come up with a domain name consisting of the terms "SONIC THE HEDGEHOG" without having prior knowledge of the Complainant and its Trademarks and activities. On the balance of probabilities, it is evident that the Respondent had knowledge of the existence of the Complainant and its activities, and of the existence and scope of the Complainant's Trademarks at the time of registration and use of the disputed domain name.

The Respondent did not contest any of the Complainant's arguments and did not provide any explanation concerning its choice for registering and/or using a domain name that includes the Complainant's registered Trademarks in combination with a hyphen.

Given the above, the Panel finds that the disputed domain name is not being used for any bona fide offering of goods or services. The disputed domain name is rather used to mislead internet users who were looking for the Complainant. The Panel is convinced that the Respondent had the Trademark(s) of the Complainant in mind when registering and subsequently using the disputed domain name. The Panel concludes that the disputed domain name is being used for the purpose of misleading Internet users. There is no evidence whatsoever of any bona fide offering of goods.

For all the reasons set out above, the Panel concludes that the disputed domain name was registered and is being used in bad faith within the meaning of paragraph 4(a)(iii) of the Policy.

Accepted

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

- 1. **sonic-thehedgehog.com**: Transferred

PANELLISTS

Name	Bart Van Besien
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DATE OF PANEL DECISION 2023-10-06

Publish the Decision