Decision for dispute CAC-UDRP-106506

Case number	**CAC-UDRP-106506**
Time of filing	**2024-05-09 09:22:37**
Domain names	**GrafWerkzeug.com, VerkaufGraf.com**

Case administrator

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

Complainant

Organization	**Otto Graf GmbH**

Complainant representative

Organization	**Grünecker Patent und Rechtsanwälte PartG mbB**

Respondents

Name	**Lu Qiusheng**
Name	**Ye Xiuping**

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 names.

IDENTIFICATION OF RIGHTS

The Complainant is the owner of various trademark registrations for “GRAF”, including the following:

- Germany trademark registration no. 2072850 for GRAF (stylized), registered on 12 September 1992;

- European Union trademark registration no. 006171292 for GRAF (stylized), registered on 6 August 2007;

- United States trademark registration no. 85331857 for GRAF, registered on 26 May 2011;

- China trademark registration no. 13403968 for GRAF, registered on 22 October 2023.

The Complainants primary domain name is <graf.info>.

The disputed domain names were registered on:

<grafwerkzeug.com>, 27 January 2024;

<verkaufgraf.com>, 27 January 2024.

Currently, the disputed domain names resolve to webpages mimicking the Complainant’s website, displaying the Complainant’s GRAF trademark, and offering goods competing with the Complainant’s own products at a discount.

FACTUAL BACKGROUND

Complainant is one of the leading vendors in the field of rainwater utilisation systems in Germany. Founded in 1962, Complainant's products also include the "Carat", "Platin" and "Herkules" rainwater tanks or water pumps as the "Jet 700", which Complainant sells very successfully in Germany and more than 80 countries across the globe, including via specialist retailers and online.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed domain names are 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 names (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

CONSOLIDATION REQUEST

The Panel notes that the Complaint has been brought by one complainant against two respondents.

Having considered all circumstances of the case, the Panel has decided that it would be fair and equitable to all parties to allow the consolidation of proceedings as:

- both disputed domain names were registered on the same day;

- both disputed domain names utilise the same Registrar and privacy service;

- both Respondents’ e-mail addresses are from the same e-mail domain; and

- both disputed domain names are highly similar and have similar offerings and prices.

LANGUAGE OF THE PROCEEDINGS

The language of the registration agreement is Chinese.

The Complainant has requested that the language of proceedings by English.

Having considered all circumstances of the case, the Panel has decided that it would be fair and equitable to all parties to have the language of the proceedings be English.

- English is the language of the CAC.
- The content of both disputed domain names is available in German, while the registration agreement is in Chinese, which is an indication that the Respondents operate in the International market, and understand either English or German.
- The Respondent did not object to the request for the change of language,

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

A. Identical or Confusingly Similar

Paragraph 4(a)(i) of the Policy requires a complainant to show that a domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights.

A registered trademark provides a clear indication that the rights in the mark shown on the trademark certificate belong to its respective owner. The Complainant has provided evidence that it owns the trademark registration of the GRAF mark.

In this case, the disputed domain names contain the entirety of the Complainant's GRAF trademark with the addition of (1) the suffix "Werkzeug", and (2) the prefix "Verkauf", which translate to "tool" and "sale", respectively, and are also names of Complainant's products. It is well-established that where the relevant trademark is recognizable within the disputed domain names, the addition of other terms (whether descriptive, geographical, pejorative, meaningless, or otherwise) would not prevent a finding of confusing similarity under the first element. The nature of such additional term(s) may however bear on assessment of the second and third elements. (see WIPO Overview 3.0, section 1.8).

In addition, the disputed domain names comprise the Complainant's GRAF trademark and the generic Top-Level Domain ("gTLD") ".com". It is well established that the addition of a gTLD ".com" does not avoid confusing similarity between the Complainant's trademark and the disputed domain name (see WIPO Overview 3.0, section 1.11.1).

Consequently, the Panel finds that the Complainant has shown that the disputed domain names are identical to a trademark in which the Complainant has rights.

B. Rights or Legitimate Interests

Once the complainant establishes a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name, the burden of production shifts to the respondent to show that it has rights or legitimate interests in respect to the disputed domain name (see WIPO Overview 3.0, section 2.1).

In the present case, the Complainant has demonstrated prima facie that the Respondent lacks rights or legitimate interests in respect of the disputed domain names and the Respondent has failed to assert any such rights or legitimate interests.

The Complainant has provided evidence that it owns trademark registrations of the GRAF mark long before the date that the disputed domain name was registered and that it is not licensed or otherwise authorised the Respondent to use the Complainant's trademark.

The Complainant also provided evidence that the Respondent is not commonly known by the disputed domain names. See WIPO Overview 3.0, section 2.3. The Complainant has not consented to the use of its GRAF trademark, in the disputed domain names.

It is noted that the disputed domain names resolve to webpages mimicking the design and content of the Complainant's official website, and offering for sale, goods bearing or sold under the GRAF trademark at steep discounts of over 80%. The websites also imply a direct association to the Complainant and its GRAF marks and provides no disclaimer as to the lack thereof. The websites also do not identify the person operating the website and their relationship to the Complainant or lack thereof. Further, the Respondent did not submit a Response in the present case and did not provide any explanation or evidence to show rights or legitimate interests in the disputed domain names which would be sufficient to rebut the Complainant's prima facie case.

Accordingly, the Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain names.

C. Registered and Used in Bad Faith

The Complainant must also show that the respondent registered and is using the disputed domain name in bad faith (see Policy, paragraph 4(a)(iii)). Paragraph 4(b) of the Policy provides circumstances that may evidence bad faith under paragraph 4(a)(iii) of the Policy.

The Complainant provided evidence that the disputed domain names resolve to webpages that mimic the Complainant's own official website, containing the Complainant's GRAF mark, with no disclaimers distancing ownership from the Complainant. Further, the Respondent is offering goods bearing, or sold under the Complainant's GRAF trademark for sale at steep discounts. This is an indication that the goods sold are likely counterfeit goods, and the Respondent likely acquired the disputed domain names to specifically target the Complainant. This is evidence of bad faith registration and use of the disputed domain names.

Further, the Complainant has submitted evidence which shows that the Respondent registered the disputed domain names long after the Complainant registered the GRAF trademark. Given that the GRAF mark is highly distinctive, it is unlikely that the Respondent was not aware of the Complainant prior to the registration of the disputed domain names. In view of the evidence presented to the Panel, the Panel finds that it is highly likely that the Respondent was aware of the Complainant and its GRAF trademark at the time of registering the disputed domain names and specifically targeted the Complainant for an unknown reason.

The Respondents failed to submit responses and did not provide any explanation for registering the disputed domain names nor evidence of good-faith use.

The Panel also notes that the Respondents did not fulfil the test purchase conducted by the Complainant, which is an indication cyber-crime and of bad faith.

Accordingly, given the particular circumstances of this case, the Panel draws the inference that the disputed domain names were registered and are being used in bad faith.

Accordingly, having regard to the circumstances of this particular case, the Panel finds that the Complainant has met its burden under 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. **GrafWerkzeug.com**: Transferred
2. **VerkaufGraf.com**: Transferred

PANELLISTS

Name	**Jonathan Agmon**

DATE OF PANEL DECISION 2024-06-25

Publish the Decision