

Decision for dispute CAC-UDRP-106682

Case number CAC-UDRP-106682

Time of filing 2024-07-12 09:01:16

Domain names stiftung-warentest.net

Case administrator

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

Complainant

Organization Stiftung Warentest

Complainant representative

Organization Lubberger Lehment Rechtsanwälte Partnerschaft mbB

Respondent

Name Sami Kilinc

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 owner of a number of trademark registrations for "STIFTUNG WARENTEST" including the German trademark STIFTUNG WARENTEST with registration No. DPMA 302018031458, registered on 10 January 2020 for services in International Classes 35, 38, 42 and 45 (the "STIFTUNG WARENTEST trademark").

FACTUAL BACKGROUND

The Complainant is a German non-profit consumer organization established in 1964 by the German federal parliament with the aim of helping consumers by providing impartial and objective information on goods and services. Since founded, the Complainant has carried out about 6,500 tests and investigations of almost 2,700 services. The Complainant operates its official website at the domain name <test.de>.

The disputed domain name <stiftung-warentest.net> was registered on 18 June 2024. At the time of filing of the Complaint, it resolved to a website that appeared as an official website of the Complainant and copied the design and many elements of the Complainant's official website, featured the STIFTUNG WARENTEST trademark. The Respondent's website also invited visitors to subscribe to the Complainant's website at www.test.de and included the copyright notice "© Stiftung Warentest. Alle Rechte vorbehalten", identical to the copyright notice on the Complainant's website.

PARTIES CONTENTIONS

COMPLAINANT:

The Complainant submits that the disputed domain name is identical to its STIFTUNG WARENTEST trademark, as it incorporates the trademark in its entirety.

According to the Complainant, the Respondent has no rights or legitimate interests in respect of the disputed domain name, because it has used it to operate a fake website that featured the STIFTUNG WARENTEST trademark and copied content from the Complainant's website, appeared as operated by the Complainant, and directed visitors to submit their personal data. The Complainant points out that it does not operate the website at the disputed domain name and has not licensed the use on this website of its name, brand and copyright-protected texts and pictures, and that the lead story on this website was a "digital euro" that was presented as the "test winner", but it had never actually been tested by the Complainant. According to the Complainant, there are strong indications that the Respondent's website is a phishing website designed to collect data of Internet users for potentially malicious purposes.

The Complainant states that the disputed domain name was registered and is being used in bad faith. It points out that the disputed domain name is identical to its well-known STIFTUNG WARENTEST trademark and resolved to a website that appeared as an official website of the Complainant, which shows that the Respondent must have had knowledge of the Complainant when it registered the disputed domain name in 2024.

RESPONDENT:

The Respondent did not submit a Response in this proceeding.

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

Pursuant to the Policy, paragraph 4(a), a complainant must prove each of the following to justify the transfer of a domain name:

- (i) the domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;
- (ii) the respondent has no rights or legitimate interests in respect of the domain name; and
- (iii) the domain name was registered and is being used in bad faith.

In this case, the Provider has employed the required measures to achieve actual notice of the Complaint to the Respondent, and the Respondent was given a fair opportunity to present its case.

By the Rules, paragraph 5(c)(i), it is expected of a respondent to: “[r]espond specifically to the statements and allegations contained in the complaint and include any and all bases for the Respondent (domain name holder) to retain registration and use of the disputed domain name ...”

In this proceeding, the Respondent has not used the opportunity provided to it under the Rules and has not submitted a substantive Response addressing the contentions of the Complainant and the evidence submitted by it.

Identical or confusingly similar

The Complainant has provided evidence and has thus established its rights in the STIFTUNG WARENTEST trademark.

The Panel notes that a common practice has emerged under the Policy to disregard in appropriate circumstances the general Top-Level Domain (“gTLD”) section of domain names for the purposes of the comparison under the Policy, paragraph 4(a)(i). The Panel sees no reason not to follow the same approach here, so it will disregard the “.net” gTLD section of the disputed domain name.

The disputed domain name reproduces the STIFTUNG WARENTEST trademark entirely with the addition of a hyphen. The addition of this non-distinctive element has a negligible effect on the overall impression made by the disputed domain name.

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the STIFTUNG WARENTEST trademark in which the Complainant has rights.

Rights and legitimate interests

While the overall burden of proof in UDRP proceedings is on the complainant, panels have recognized that proving a respondent lacks rights or legitimate interests in a domain name may result in the often-impossible task of “proving a negative”, requiring information that is often primarily within the knowledge or control of the respondent. As such, where a complainant makes out a prima facie case that the respondent lacks rights or legitimate interests, the burden of production on this element shifts to the respondent to come forward with relevant evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such relevant evidence, the complainant is deemed to have satisfied the second element.

The Complainant contends that the Respondent has no rights or legitimate interests in the disputed domain name, because it has used it for a website that impersonated the Complainant and was allegedly part of a phishing scheme. Thus, the Complainant has established a prima facie case that the Respondent lacks rights or legitimate interests in the disputed domain name. The Respondent has not submitted a Response and has not disputed the Complainant’s prima facie case or provided a plausible explanation for the registration and use of the disputed domain name.

The Panel considers that the circumstances of this case do not support a finding that the Respondent has rights or legitimate interests in it. The disputed domain name fully incorporates the Complainant’s STIFTUNG WARENTEST trademark, which creates a high risk of implied affiliation with the Complainant. This risk is only amplified by the associated website that copied the content of the Complainant’s website and contained no disclaimer for the lack of relationship with the Complainant. As further noted by the Complainant, the Respondent’s website also invited visitors to register by providing their personal data, which creates a risk that such data may be used for improper purposes, and featured a product described as a “test winner”, which product had never been tested by the Complainant. Such conduct cannot give rise to rights or legitimate interests of the Respondent in the disputed domain name.

On this basis, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name.

Bad faith

Paragraph 4(b) of the Policy lists four illustrative alternative circumstances that shall be evidence of the registration and use of a domain name in bad faith by a respondent, namely:

“(i) circumstances indicating that you have registered or you have acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the complainant who is the owner of the trademark or service mark or to a competitor of that complainant, for valuable consideration in excess of your documented out-of-pocket costs directly related to the domain name; or

(ii) you have registered the domain name in order to prevent the owner of the trademark or service mark from reflecting the mark in a corresponding domain name, provided that you have engaged in a pattern of such conduct; or

(iii) you have registered the domain name primarily for the purpose of disrupting the business of a competitor; or

(iv) by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your website or

other online location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of your website or location or of a product or service on your website or location."

The registration of the Complainant's well-known STIFTUNG WARENTEST trademark predates the registration of the disputed domain name, which is confusingly similar to it. The associated website was deceptively designed to appear as belonging to the Complainant and featured as a "test winner" a product that had never been tested by the Complainant, while including no disclaimer for the lack of relationship between the Parties. This leads the Panel to the conclusion that the Respondent has registered and used the disputed domain name targeting the Complainant's STIFTUNG WARENTEST trademark with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's trademark as to the affiliation or endorsement by the Complainant of the Respondent's website and of the products featured there. This satisfies the Panel that the disputed domain name has been registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **stiftung-warentest.net**: Transferred

PANELLISTS

| | |
|------|----------------------|
| Name | Assen Alexiev |
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DATE OF PANEL DECISION **2024-08-05**

Publish the Decision
