Decision for dispute CAC-UDRP-106764

Case number	CAC-UDRP-106764
Time of filing	2024-09-06 09:18:49
Domain names	Galeria-Modehaus.com

Case administrator

Name	Olga Slanařová (Case admin)

Complainant

Organization	GALERIA S.à.r.l. & Co. KG

Complainant representative

Organization	Grünecker Patent und Rechtsanwälte PartG mbB

Respondent

Organization	Galeria Modehaus Ltd.

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 owns inter alia the following trademarks:

German trademark Reg. No. 302019001984 GALERIA, registered on August 20, 2021, for wholesale services in relation to clothing;

German trademark Reg. No. 302021104769 GALERIA (word and device) registered on March 31, 2021, for retail services, mail order services, wholesale services, e-commerce services relating to clothing;

EUTM Reg. No. 002383180 GALERIA registered on October 22, 2013, for services in the field of commerce, namely arranging contracts for the buying and selling of goods and services, including via the Internet, mail order services by catalogue and via the Internet, import and export services.

FACTUAL BACKGROUND

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

For more than 120 years GALERIA has been synonymous for department stores in Germany. Due to its continuous and ubiquitous presence in Germany and its growth, especially in the post-war period, GALERIA is known to the majority of German speaking

consumers. The Complainant has retail shops in all major German cities. These are often in prominent locations, such as the popular Marienplatz in the centre of Munich and the famous Alexanderplatz and Kurfürstendamm in Berlin. The Complainant's company name is also prominently displayed on the outside of the buildings.

This means that virtually everyone visiting one of the larger German cities comes into contact with the Complainant and the GALERIA trademark. In addition, the Complainant has been using GALERIA for more than 120 years, not only as a company name, but also for various goods, especially clothing.

According to these standards GALERIA certainly qualifies as a well-known/famous trademark. The Complainant operates the website at “www.galeria.de”.

The Respondent, allegedly Galeria Modehaus Ltd., was incorporated on August 31, 2023 in Hong Kong with a share Capital of HKD 1000 (~EUR 116). Its Director is Viktor Hanbjol Langensiepen, Cranachstr. 34, 40667 Meerbusch, Germany, who also owns the majority of the shares. On the website to which the disputed domain name resolves, the Respondent lists its company name as “Modehaus Pte. Ltd.” with an address in the United States. The legal form of a “Pte. Ltd.” does not exist in the US, accordingly only a legal entity in Singapore, “MODEHAUS PTE. LTD.”, incorporated on February 19, 2024, can be identified via an online search.

The disputed domain name <galeria-modehaus.com> resolves to a German language website offering clothing for sale. A Trustpilot review on July 30, 2024 (translated from German) reads:

“Minus 10 stars was appropriate

Unfortunately I have to enter a star so that I can give a rating. Actually you should give minus 10 stars.

Clearly, keep your hands off this company. They are based in the USA and have nothing to do with Galeria (Kaufhof). You can only cancel within 24 hours if you have read the small print. So they are circumventing the 14-day period for contract cancellation that applies in the EU. They generally do not respond to inquiries about when the delivery will take place. When ordering, it was stated that the delivery would be immediate. But that is just a "bait". Even when paying with PayPal, refunds become a problem, as others have already rated here.”

PARTIES CONTENTIONS

The Complainant contends that the requirements of the Policy have been met and that the disputed domain name should be transferred to it.

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 the UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 15(a) of the Rules instructs this Panel to "decide a complaint on the basis of the statements and documents submitted in accordance with the Policy, these Rules and any rules and principles of law that it deems applicable."

Paragraph 4(a) of the Policy requires that the Complainant must prove each of the following three elements to obtain an order that a domain name should be cancelled or transferred:

(1) the disputed domain name registered by the Respondent is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

(2) the Respondent has no rights or legitimate interests in respect of the disputed domain name; and

(3) the disputed domain name has been registered and is being used in bad faith.

In view of the Respondent's failure to submit a response, the Panel shall decide this administrative proceeding on the basis of the Complainant's undisputed representations pursuant to paragraphs 5(f), 14(a) and 15(a) of the Rules and draw such inferences as it considers appropriate pursuant to paragraph 14(b) of the Rules. The Panel is entitled to accept all reasonable allegations set forth in a complaint; however, the Panel may deny relief where a complaint contains mere conclusory or unsubstantiated arguments. See WIPO Jurisprudential Overview 3.0 at paragraph 4.3; see also eGalaxy Multimedia Inc. v. ON HOLD By Owner Ready To Expire, FA 157287 (Forum June 26, 2003) (“Because Complainant did not produce clear evidence to support its subjective allegations [. . .] the Panel finds it appropriate to dismiss the Complaint”).

As to the first element, the Complainant has shown that it has rights in the GALERIA mark and that the mark is very well-known. The Panel finds the disputed domain name <galeria-modehaus.com> to be confusingly similar to the Complainant’s trademark GALERIA because it incorporates the mark in its entirety and merely adds a hyphen and the generic word “modehaus” (German for Fashion House), which do nothing to distinguish the domain name from the mark. The inconsequential top-level domain “.com” may be ignored. The Complainant has established this element.

As to the second element, paragraph 4(c) of the Policy sets out three illustrative circumstances as examples which, if established by the Respondent, shall demonstrate rights to or legitimate interests in a disputed domain name for the purposes of paragraph 4(a)(ii) of the Policy, i.e.

(i) before any notice to the Respondent of the dispute, the use by the Respondent of, or demonstrable preparations to use, the domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent (as an individual, business or other organization) has been commonly known by the disputed domain name, even if the Respondent has acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate noncommercial or fair use of the disputed domain name, without intent for commercial gain to misleadingly divert customers or to tarnish the trademark or service mark at issue.

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and is not related in any way to its business. The Complainant asserts that the retail services offered under the disputed domain name are according to the website's imprint not provided by the Respondent, but by a different legal entity, namely “Modehaus Pte. Ltd.” The Respondent is not commonly known by the disputed domain name, not having had permission, consent or authorization to use Galeria as a domain name or use content in relation to clothing and related goods. The Respondent has not used the disputed domain name for a bona fide offering of products or services nor for a legitimate noncommercial or fair purpose. On the contrary, the Respondent offers clothing under the disputed domain name, thus is active in the same business as the Complainant and is directly competing with the Complainant’s web shop at “www.galeria.de”.

The Panel notes that the disputed domain name was registered by the Respondent on July 26, 2023, long after the Complainant has shown that its GALERIA mark had become very well-known. It resolves to a German language website offering men’s and women’s clothing for sale. These circumstances, together with the Complainant’s assertions, are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the disputed domain name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the disputed domain name. See JUUL Labs, Inc. v. Dryx Emerson / KMF Events LTD, FA1906001849706 (Forum July 17, 2019). The Respondent has made no attempt to do so.

The Panel finds that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has established this element.

As to the third element, paragraph 4(b) of the Policy sets out four illustrative circumstances, which, though not exclusive, shall be evidence of the registration and use of the domain name in bad faith for purposes of paragraph 4(a)(iii) of the Policy, including:

(iv) by using the domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s website or location or of a product or service on its website or location.

The circumstances set out above in relation to the second element satisfy the Panel that the Respondent was fully aware of the Complainant's very well-known GALERIA mark when the Respondent registered the disputed domain name and that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's mark as to the source of the Respondent's website and of the products promoted on that website. This demonstrates registration and use in bad faith to attract users for commercial gain under Policy paragraph 4(b)(iv). The Complainant has established this element.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **Galeria-Modehaus.com**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2024-10-07

Publish the Decision