Decision for dispute CAC-UDRP-107064

Case number	CAC-UDRP-107064
Time of filing	2024-11-19 09:26:46
Domain names	vogue-escorts.com

Case administrator

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

Complainant

Organization	Advance Magazine Publishers Inc.

Complainant representative

Organization	Stobbs IP

Respondent

Organization	Enterprise UK Management Limited

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 the following trademark registrations, including the following:

- United States trademark VOGUE Reg. No: 103770 registered on April 13, 1915, in class 16;
- European Union trademark VOGUE Reg. No: 000183756 registered on May 28, 2014, in classes 9, 16, 25, 41.

The Complainant is also the owner of several domain names related to its VOGUE trademark, including, among others, <vogue.com>, <vogue.co.uk>, and <vogue.de>.

FACTUAL BACKGROUND

The Complainant, Advance Magazine Publishers Inc., is one of the world’s most successful magazine publishers.

Through its unincorporated division, The Condé Nast Publications Inc., the Complainant publishes renowned magazines such as Vogue, Glamour, The New Yorker, Vanity Fair, and GQ. The Complainant's magazines have a significant internet presence and operate several popular websites that incorporate content from many of its magazines. Vogue, launched in 1892, is widely considered the world’s leading fashion and style magazine for women. The publication is accessible both in physical print and digital formats in many territories around the globe, where it is recognized as the foremost voice in fashion and style.

The Complainant owns hundreds of trademark registrations for the mark VOGUE worldwide, not only in connection with magazines and online publications but also a wide range of goods and services, ranging from clothing to entertainment services.

Vogue Germany is the Complainant's edition of Vogue magazine catering to the German public. It is the Complainant's third international edition, first published in 1928 and relaunched in 1979. Vogue Germany is also offered to internet users online at the domain name <vogue.de>, which has been used as a website promoting the Complainant's official offerings specific to the region since 2006.

The disputed domain name was registered on August 3, 2016, and resolves to a website offering escort services in various German cities.

PARTIES CONTENTIONS

The Complainant

The Complainant asserts that all the elements enumerated in paragraph 4(a) of the Policy and the corresponding provisions in the Rules have been satisfied. Specifically, the Complainant contends the following:

- The disputed domain name is confusingly similar to the Complainant's registered trademarks, including the well-known VOGUE The addition of the descriptor "escourt," suffixed to the Complainant's mark with a hyphen ("-"), does not negate a finding of confusing similarity. The term "vogue" remains the dominant element of the disputed domain name, leading to consumer confusion and creating a mistaken belief that the domain is associated with the Complainant. Furthermore, the inclusion of the generic Top-Level Domain (gTLD) ".com" is a standard registration requirement and should be disregarded in the analysis.
- The Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant has not authorized the Respondent to use its mark, and there is no relationship or license between the Complainant and the Respondent. The Respondent has not been commonly known by the disputed domain name and has not used it in connection with a bona fide offering of goods or services. Instead, the disputed domain name resolves to a website offering escort services in various German cities. Between March 2017 and May 2019, these services were promoted under the name "Vogue Escort". Additionally, the website featured a section titled "Manager Magazine", which promoted its escort services through online posts and publications focusing on themes such as lifestyle news, luxury sports, fashion, and travel. The use of the disputed domain name, encompassing a famous name or mark, to promote a website offering adult content or services of a sexual nature cannot be considered bona fide.
- The disputed domain name was registered and is being used in bad faith. The Respondent had actual knowledge of the Complainant's brand and registered the disputed domain name decades after the Complainant established its rights to the VOGUE trademark. This registration was made to exploit the Complainant's goodwill and reputation. By using the disputed domain name, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website or other online locations by creating a likelihood of confusion with the Complainant's mark regarding the source, sponsorship, affiliation, or endorsement of the website or the services promoted therein.

The Complainant requires the disputed domain name to be transferred.

The Respondent

The Respondent did not reply to the Complainant's contentions.

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

The burden for the Complainant under paragraph 4(a) of the Policy is to prove:

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

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

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

The Panel will further analyze the potential concurrence of the above circumstances.

Moreover, the Panel has taken note of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0") and, where appropriate, will decide consistent with the consensus views captured therein.

Identical or Confusingly Similar

It is well accepted that the first element functions primarily as a standing requirement. The standing (or threshold) test for confusing similarity involves a reasoned but relatively straightforward comparison between the Complainant's trademark and the disputed domain name.

Based on the evidence submitted by the Complainant, the Panel finds that the Complainant has shown rights in respect of its VOGUE mark for the purposes of the Policy. WIPO Overview 3.0, section 1.2.1.

The entirety of the mark is reproduced within the disputed domain name. Accordingly, the disputed domain name is confusingly similar to the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.7. Although the addition of other terms, here "escourt", may bear on assessment of the second and third elements, the Panel finds the addition of such term does not prevent a finding of confusing similarity between the disputed domain name and the mark for the purposes of the Policy. WIPO Overview 3.0, section 1.8.

The Complainant's trademark VOGUE is widely recognized and has been registered in numerous jurisdictions. The addition of the term "escourt" does not sufficiently distinguish the disputed domain name from the Complainant's trademark. Therefore, the disputed domain name is confusingly similar to the Complainant's trademark VOGUE.

The Panel further notes that the gTLD ".com" is required only for technical reasons and is generally ignored for the purposes of comparison of the Complainant's mark to the disputed domain name. WIPO Overview 3.0, section 1.11.1.

For all of the above-mentioned reasons, the Panel is of the view that the disputed domain name is confusingly similar to the Complainant's mark, which means that the requirement of paragraph 4(a)(i) of the Policy is satisfied.

Rights or Legitimate Interests

Under paragraph 4(a)(ii) of the Policy, the Complainant has the burden of establishing that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

It is well established that, as it is put in WIPO Overview 3.0, section 2.1, while the overall burden of proof in the proceedings is on the complainant, 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. Therefore, the Panel agrees with prior UDRP panels that the complainant is required to make out a prima facie case before the burden of production on this element shifts to the respondent to show that it has rights or legitimate interests in the disputed domain name.

The Complainant has made out a prima facie case showing that the Respondent has no rights or legitimate interests in the disputed domain name, notably by demonstrating rights in the VOGUE trademark, which precede the Respondent's registration of the disputed domain name for decades, and confirming that the Respondent is neither affiliated with, nor has it been licensed or permitted to use the Complainant's VOGUE trademark or any domain names incorporating the VOGUE trademark.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, and taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel concludes that the Respondent has no trademark rights related to the disputed domain name.

The case file provides no indication of any legitimate or bona fide use of the disputed domain name that could establish the Respondent's rights or interests in it. The disputed domain name directs users to a website promoting escort services in various German cities. While offering escort services or adult content may be lawful and, in some instances, represent a legitimate business activity, doing so under a domain name that incorporates another party's trademark is unquestionably improper. Such misuse not only infringes on the rights of the trademark owner but also risks causing consumer confusion or diluting the trademark's reputation – outcomes that trademark laws are specifically designed to prevent.

The Panel therefore is of the opinion that it is highly unlikely the Respondent was unaware of the Vogue brand or the Complainant's trademark rights. The Complainant's global reputation and commercial presence, particularly in Germany – where the Respondent appears to be operating – make it evident that the Respondent registered and used the disputed domain name with full knowledge of the Complainant's trademark and its significance.

Bearing in mind that the Panel has not found evidence that the Respondent has been commonly known by the disputed domain name, and that the Complainant has not licensed, authorized, or permitted the Respondent to register the disputed domain name incorporating the Complainant's mark, taking into account that the Respondent is not sponsored by or legitimately affiliated with the Complainant in any way, the Panel found that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

With the evidence on file, the Panel therefore concludes that the Respondent has no rights or legitimate interests in the disputed domain name and that, accordingly, the Complainant has satisfied the requirements of paragraph 4(a)(ii) of the Policy.

Registered or Used in Bad Faith

The Panel notes that, for the purposes of paragraph 4(a)(iii) of the Policy, paragraph 4(b) of the Policy establishes circumstances, in particular, but without limitation, that, if found by the Panel to be present, shall be evidence of the registration and use of a domain name in bad faith.

The Complainant's VOGUE mark was used and registered by the Complainant decades before the time of the disputed domain name registration. The Panel also draws attention that that Vogue Germany (first published in 1928, and relaunched in 1979), as well as the website www.vogue.de (in operation since 2006), also notably pre-dates the Respondent's registration and use at the disputed domain name.

This leads the Panel to conclude that the only reason that the Respondent registered the disputed domain name was to take advantage of the Complainant's goodwill accrued in their Vogue brand name to date and make use of reputation for the Respondent's own commercial benefit. Such intention is further reinforced by the fact that the Respondent, between the years 2017 and 2019 had prominently advertised its escort services as "Vogue Escort", further promoting its offering through a designated lifestyle and luxury news section titled "Manager Magazine" (the term "magazine", being inherently associated with the Complainant's business and synonymous with their Vogue brand).

On this basis, it is highly inconceivable that the Respondent had no prior knowledge of the Complainant or their Vogue brand at the time of registering the disputed domain name and has clearly done so with the Complainant in mind.

As regards use, as previously discussed the disputed domain name is being used to promote escort services. The use of the Complainant's well-known trademark to display content of a sexual nature, which may tarnish the mark's reputation, constitutes bad faith. Even if internet users eventually realize that the website they are directed to via the disputed domain name is not affiliated with the Complainant or its Vogue brand, the Respondent would already have gained their attention. This diversion benefits the Respondent by increasing traffic to their website, regardless of whether the redirected users engage further with the services offered on the site.

Previous panels have consistently held that using a well-known trademark to display sexually explicit content, especially where such use risks tarnishing the trademark's reputation, is in itself evidence of bad faith use on the part of the Respondent (see IN WHITE LLC v. clpik-studio.com Pawel Tykwinski, CAC-UDRP-100899).

Further, the Respondent has not participated in these proceedings and has failed to rebut the Complainant's contentions and to provide any evidence of actual or contemplated good-faith use of the disputed domain name.

All the above circumstances confirm the Respondent's bad faith in the disputed domain name under the Policy. Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith under paragraph 4(b)(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. **vogue-escorts.com**: Transferred

PANELLISTS

Name	Ganna Prokhorova

DATE OF PANEL DECISION 2024-12-28

Publish the Decision