Panel Decision for dispute CAC-ADREU-008634

Case number	**CAC-ADREU-008634**
Time of filing	**2024-07-10 20:05:46**
Domain names	**cinemaxticket.eu**

Case administrator

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

Complainant

Organization	**CinemaxX Holdings GmbH**

Complainant representative

Organization	**CMS Hasche Sigle Partnerschaft von Rechtsanwälten und Steuerberatern mbB**

Respondent

Name	**Desmond Yen**

FACTUAL BACKGROUND

The Complainant's group of companies operate and manage film theatres and other facilities in the entertainment industry and owns and uses the CINEMAXX trademark for which it holds the following portfolio of trademark registrations:

- German trademark and service mark CINEMAXX, registration number DE 1174717 registered on 5 April 1991, for goods and services in classes 16 and 41;
- German trademark and service mark CINEMAXX, registration number DE 30049561 registered on February 8, 2001 for goods and services in classes 9, 10, 14, 16, 18, 25, 26, 28, 30, 33, 35, 36, 38, 39, 41 42, 43;
- German trademark and service mark CINEMAXX (figurative), registration number DE 302012054484, registered on February 4, 2013 for goods and services in classes 14, 16, 21, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 41 and 43.

The Complainant has an established Internet presence and is the owner of the domain names <cinemaxx.de> and <cinemaxx.com>.

The disputed domain name <cinemaxticket.eu> was registered on March 17, 2024 and resolves to a website that purports to impersonate the Complainant.

There is no information available about the Respondent except for that provided in the Complaint, the Registrar's WhoIs and the information provided by the Registrar in response to the request by the Centre for details of the registration of the disputed domain name in the course of this proceeding.

The evidence shows that the Respondent has engaged in a pattern of registration of domain names that incorporate the Complainant's mark at <www.cinemaxxtickets.de> and <www.cinemaxx-pr.de>.

A. COMPLAINANT

A. COMPLAINANT

The Complainant, which is a member of a group of enterprises that operate and manage film theatres and other facilities in the entertainment industry, claims rights in the CINEMAXX mark established by its ownership of the portfolio of trademark and service mark registrations described above, all of which have been registered prior to the registration of the disputed domain name on 17 March 2024.

The Complainant firstly alleges that the disputed domain name is identical or confusingly similar to the CINEMAXX mark.

In this regard, noting that the disputed domain name is composed of the elements “cinemax” and “ticket” and the Top-Level Domain extension <.eu> the Complainant argues that the absence of the second letter "x" in the element “cinemax”, does not prevent a finding of confusing similarity with the Complainant’s mark and because the difference is so minimal. The Complainant submits that the likelihood of confusion between the signs is immense.

Furthermore, the Complainant contends that the second element “ticket” in the disputed domain name is purely descriptive as it merely describes in very general terms, a product that a customer can purchase.

The Complainant adds that the generic Top Level Domain extension <.eu>, does not have an independent characterising meaning, that it is a component of a general and technical nature, and therefore has no distinctive character.

The Complainant next alleges that the Respondent has no rights or legitimate interests in the disputed domain name or in the name "cinemax".

The Complainant adds that the Respondent has no registered trademark in the disputed domain name and no rights in the disputed domain name based on its use as a company name or any other rights.

Furthermore, the Complainant submits that because it owns a portfolio of German trademark and service mark registrations for the CINEMAXX mark, third parties are prohibited from using the CINEMAXX trademark or a similar sign in the course of trade without authorisation in a way that is likely to cause confusion with the protected trademark.

The Complainant refers to an extract from the German Trademarks Act, (Act on the Protection of Trade Marks and Other Signs (Trade Mark Act -MarkenG) § 4 Origin of trade mark protection) with a translation into the English language, which is exhibited in an annex to the Complaint which confirms that trademark protection arises through registration under the act.

Next the Complainant argues that the disputed domain name was registered and is being used in bad faith.

The Complainant alleges that the Respondent is using the Complainant’s registered trademark CINEMAXX on the website to which the disputed domain name resolves as shown in a screen capture which has been exhibited in an annex to the Complaint.

The Complainant argues that Respondent uses the exact word mark and figurative trademark of the Complainant to give the impression that it is an official website of the company CinemaxX Holdings GmbH.

It is submitted that the Respondent was therefore acting in bad faith when registering the disputed domain name.

The Complainant adds that the ADR Rules paragraph 11(f) provides that for the purposes of Paragraph B11(d)(1)(iii), circumstances including in particular, but not limited to, the following, if found by the Panel to be present, may be evidence of the registration or use of a domain name in bad faith viz (4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent’s website or other online location, by creating a likelihood of confusion with a name in respect of which a right is recognised or established by national and/or European Union law, or it is a name of a public body, with such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent.

The Complainant adds that the Respondent has already tried in several cases to register domain names similar to that of the Complainant in order to attract Internet users to his website.

The Complainant alleges that the Respondent has thereby engaged in a pattern of bad faith registrations of domain names, specifically arguing that the domain name <cinemaxxtickets.de>, was previously registered under the e-mail address desmondyen1121@hotmail.com. To support this allegation in an annex to the Complaint, the Complainant has adduced a copy of an e-mail from the German co-operative DENIC eG, (hereinafter “DENIC”) that operates country code Top-Level Domain (“ccTLD”) <.de> which provides information on the holder of the domain name <cinemaxxtickets.de>, domain holder of the domain. An English translation of the correspondence has been provided.

The Complainant submits that the WHOIS query of EURid shows that the same e-mail address has been used to register the disputed domain name.

The Complainant adds that it took action against the domain registration <cinemaxxtickets.de> and proffers as proof a query result from DENIC dated April 15, 2024, including an English translation confirming that the domain name “cinemaxxtickets.de” has been transferred to CinemaxX Entertainment GmbH & Co. KG. The Complainant submits that it is a partner of CinemaxX Cinema GmbH & Co. KG.

It is submitted that because the e-mail address provided by the registrant of the domain name <cinemaxxtickets.de> was the same as the one used by the Respondent for the disputed domain name registration, it can be assumed that the Respondent has been the

registrant in each case.

The Complainant also refers to an earlier registration of the domain name <cinemaxx-pr.de>. A request for information from DENIC revealed the name "desmond yen" as the registrant. In support of this allegation the Complainant offers as proof a copy of an email from DENIC together with English translation which is exhibited in an annex to the Complaint. The Complainant argues that this also suggests that the Respondent was also the holder of the said domain name registration <cinemaxx-pr.de>.

The Complainant submits that it also took action against the owner of said domain name <cinemaxx-pr.de>. In the course of that proceeding, DENIC requested the registrant of the domain name at issue to nominate an authorised representative for service of the complaint. The registrant failed to do so, and the domain name at issue was transferred to the Complainant. In support of this assertion in an annex to the Complaint, the Complainant has annexed a copy of a domain query result from DENIC dated April 15, 2024, confirming that the domain has been transferred to CinemaxX Entertainment GmbH & Co. KG., including an English translation.

The Complainant argues that this recurring behaviour shows that the Respondent uses the Complainant's name and trademarks to get more clicks on his website by making the smallest changes to the domain names or registrations on different Top-Level Domains.

In further support of its case, in annexes to the Complaint, the Complainant has exhibited

- a screen capture of an extract from the website to which the domain name <cinemaxxtickets.de>;
- a further screen capture of an extract from the website at www.cinemaxx-pr.de; and
- a screen capture of the current website to which the disputed domain name resolves www.cinemaxticket.eu.

The Complainant submits that there is no difference in the appearance of the three websites and submits that it is evident that in all three cases the websites have been held by the Respondent.

B. RESPONDENT

Respondent has not filed a Response in this ADR proceeding

DISCUSSION AND FINDINGS

Article 4 of Regulation (EU) 2019/517 of the European Parliament and of the Council of 19 March 2019 on the implementation and functioning of the .eu top-level domain name and amending and repealing Regulation (EC) No 733/2002 and repealing Commission Regulation (EC) No 874/2004 ("the Regulation"), a domain name may also be revoked, and where necessary subsequently transferred to another party, following an appropriate ADR or judicial procedure, in accordance with the principles and procedures on the functioning of the .eu TLD laid down pursuant to Article 11, where that name is identical or confusingly similar to a name in respect of which a right is established by Union or national law, and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith.

Article 11(d)(1) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules"), the Panel shall issue a decision granting the remedies requested under the ADR Rules in the event that the Complainant proves in an ADR Proceeding where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated, that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union law and;

either

(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) The domain name has been registered or is being used in bad faith.

Identical or Confusingly Similar

Complainant has provided uncontested convincing evidence of its rights in the CINEMAXX mark established by its ownership of the German trademark and service mark registrations described above.

The Complainant's trademark is clearly recognisable as the initial and dominant element within the disputed domain name <cinemaxticket.eu>, notwithstanding the absence of the second letter "x" which would easily be overlooked by the casual observer using the Internet.

The additional element "ticket" is descriptive and has no distinctive character.

Additionally, as the Complainant has argued, it is well established that the gTLD extension <.eu> within the disputed domain name does not prevent a finding of confusing similarity.

For these reasons, the Panel finds that the disputed domain name is confusingly similar to the CINEMAXX trademark and service mark, in respect of which a right of the Complainant is established by the national law of a Member State (Germany) and European Union law.

Therefore, the first condition set forth under Article 4 of the Regulation and Article 11(d)(1)(i) of the ADR Rules is fulfilled.

Rights and Legitimate Interests

There is no evidence that the Respondent has any rights or legitimate interests in the disputed domain name, whereas the Complainant has provided convincing evidence that it has rights in the CINEMAXX trademark and service mark under German Federal law.

In its Complaint, Complainant has made out a prima facie case that the Respondent has no rights legitimate interests in the disputed domain names as set out in Complainant's detailed submissions above.

Panelists appointed under the Regulation have been willing to take account of the approach of the panels established under the Uniform Domain Name Dispute Resolution Policy (UDRP) for many generic Top-Level Domains.

It has been long accepted that because of the difficulty in proving a negative, if a complainant makes out a prima facie case that a respondent has no rights or legitimate interests in the domain name at issue, the burden of production shifts to the respondent to prove its rights or legitimate interests.

In the present Complaint the Respondent has failed to discharge that burden and therefore this Panel must find that Respondent has no rights or legitimate interests in the disputed domain name.

In view of the above, and in the absence of any evidence leading to a different conclusion, the Panel finds that the Respondent does not have rights or legitimate interests in the disputed domain name, and that the condition under Article 4(a) of the Regulation and Article 11(d)(1)(ii) of the ADR Rules is satisfied.

Bad Faith

While the finding of this Panel that the Respondent has no rights or legitimate interests in the disputed domain name is sufficient to allow the Complainant to succeed, there is in addition positive evidence to show that the disputed domain name was registered and is being used in bad faith.

The Complainant has shown that the Respondent is using the disputed domain name to impersonate the Complainant. The screen capture of the website to which the disputed domain name resolves uses the Complainant's CINEMAX mark and very pertinently the Complainant's figurative mark which demonstrates that the Respondent is aware of the Complainant, its goodwill and reputation and is purporting to impersonate the Complainant.

The evidence further shows that the Respondent has engaged in a pattern of registering domain names that are confusingly similar to the CINEMAXX mark. It is clear from the registration details and in particular the contact details used by the registrants in each case that the domain names <cinemaxxtickets.de> and <cinemaxx-pr.de>, which the Complainant has successfully had transferred to its partner corporation in prior administrative proceedings, were held by the Respondent.

Additionally, the websites to which the domain names <cinemaxxtickets.de> and <cinemaxx-pr.de> resolved were identical to the website to which the disputed domain name now resolves.

This Panel finds therefore that on the balance of probabilities, the disputed domain name was registered with the Complainant's mark in mind, with the intention of taking predatory advantage of the Complainant's goodwill and reputation.

Furthermore, the evidence shows that the Respondent is using the confusingly similar domain name to attract and divert Internet traffic intended for the Complainant, to the Respondent's own website to which the disputed domain name resolves. Such use constitutes bad faith for the purposes of the Policy.

Therefore, the Panel finds that the disputed domain name was registered and is being used in bad faith under Article 4(b) of the Regulation and Article 11(d)(1)(iii) of the ADR Rules.

Eligibility Criteria

The Complaint requests the transfer of the disputed domain name to the Complainant. As the Complainant is established in Germany, the Complainant's application satisfies the general eligibility criteria for registration of the disputed domain name set out in Article 3 of the Regulation. Therefore, the Complainant is entitled to request the transfer of the disputed domain name.

Taking all the above into account, the Panel finds that Complainant has established the prerequisites under the Regulation for the transfer of the disputed domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <cinemaxticket.eu> be transferred to the Complainant.

PANELISTS

Name	**James Bridgeman**

DATE OF PANEL DECISION 2024-07-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: cinemaxticket.eu

II. Country of the Complainant: Germany country of the Respondent: Singapore

III. Date of registration of the domain name: 17 March 2024

IV. Rights relied on by the Complainant (B(11)(f) ADR Rules) on which the Panel based its decision:

- German trademark and service mark CINEMAXX, registration number DE 1174717 registered on 5 April 1991, for goods and services in classes 16 and 41
- German trademark and service mark CINEMAXX, registration number DE 30049561 registered on February 8, 2001 for goods and services in classes 9, 10, 14, 16, 18, 25, 26, 28, 30, 33, 35, 36, 38, 39, 41 42, 43.
- German trademark and service mark CINEMAXX (figurative), registration number DE 302012054484, registered on February 4, 2013 for goods and services in classes 14, 16, 21, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 41 and 43.

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainant

VII. Rights or legitimate interests of the Respondent (B(11)(f) ADR Rules):
1. Yes
2. Why: The Respondent has no registered trademark in the disputed domain name and no rights in the disputed domain name based on its use as a company name or any other rights. Furthermore, the Complainant submits that because it owns a portfolio of German trademark and service mark registrations for the CINEMAXX mark, third parties are prohibited from using the CINEMAXX trademark or a similar sign in the course of trade without authorisation in a way that is likely to cause confusion with the protected trademark.

VIII. Bad faith of the Respondent (B(11)(e) ADR Rules):
1. Yes
2. Why: The Respondent is using the disputed domain name to resolve to a website that makes unauthorised use of the Complainant's registered word mark and figurative mark to impersonate the Complainant; and the Respondent has engaged in a pattern of registering domain names that incorporate the Complainant's trademark.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: None of particular note.

XII. Is Complainant eligible? Yes