



WIPO Arbitration and Mediation Center

ADMINISTRATIVE PANEL DECISION

AKG Acoustics GmbH v. Allen G.

Case No. D2001-0533

1. The Parties

Complainant: AKG Acoustics GmbH
Lembockgasse 21-25
1230 Vienna
Austria

Represented by: Sattler & Schanda
Attorneys at Law
Stallburggasse 4
1010 Vienna
Austria

Respondent: Allen G.
P.O. Box 795923
Dallas, TX 75379-5923
USA

2. The Domain Name and Registrar

Domain Name: akg.com

Registrar: Tucows.Com, Inc.

3. Procedural History

The Complaint was brought pursuant to the Uniform Domain Name Dispute Resolution Policy ("Policy"), which was adopted by the Internet Corporation for Assigned Names and Numbers (ICANN) on August 26, 1999, and approved on October 24, 1999, and in accordance with the ICANN Rules for Uniform Domain Name Dispute Resolution Policy ("Rules") as approved on October 24, 1999 as supplemented by the World

Intellectual Property Organization Supplemental Rules for Uniform Domain Name Dispute Resolution Policy in effect as of December 1, 1999 ("Supplemental Rules").

The Complaint was received by WIPO by email on April 11, 2001, and in hardcopy form on April 30, 2001. The Complainant filed an Addition to the Complaint on April 18, 2001. WIPO has verified that the Complaint satisfies the formal requirements of the Policy, the Rules and the Supplemental Rules and that payment was properly made. The Administrative Panel ("the Panel") is satisfied that this is the case.

The Complaint was properly notified in accordance with the Rules, paragraph 2(a). The Registrar has confirmed that akg.com ("the Domain Name") was registered through Tucows Inc. and Allen G. is the current registrant. The Registrar has further confirmed that the Policy is applicable to the Domain Name.

On April 30, 2001, WIPO notified the Respondent of the Complaint in the usual manner and informed the Respondent *inter alia* that the last day for sending its Response to the Complainant and to WIPO was May 19, 2001. No Response was received.

On May 22, 2001, WIPO issued a Notification of Respondent Default. On May 25, 2001, the Respondent sent an email to WIPO claiming to have sent WIPO an email a week earlier requesting an extension of time. WIPO had received nothing and so notified the Respondent, saying that the request would be drawn to the Panel's attention and that it would be up to the Panel to decide whether or not to grant the Respondent's request.

The Panel was properly constituted. The undersigned Panellists submitted Statements of Acceptance and Declarations of Impartiality and Independence.

No further submissions having been received by WIPO, the date scheduled for the issuance of the Panel's Decision was originally June 27, 2001. However, the Panel decided to exercise its discretion in favour of the Respondent and to allow the Respondent until close of business (Geneva time) on Tuesday June 26, 2001, to file a Response. The date for the issuance of the Panel's decision was rescheduled for July 5, 2001.

No Response was received by the Center from the Respondent by its extended due date of June 26, 2001.

The language of this proceeding is English.

4. Factual Background

Inasmuch as the Respondent has failed to respond to the Complaint as required by the Policy and Rules, all the factual representations alleged by the Complainant, being representations which the Panel has no reason to dispute, will be accepted as true and accurate (*see* Talk City Inc. v. Robertson, (WIPO Case No. D2000-0009, February 24, 2000); Eauto, L.L.C. v. EAUTO Parts, (WIPO Case No. D2000-0096, April 9, 2000). For convenience of the reader, factual allegations from the Complaint are reproduced below.

The Complainant is the well-known Austrian-based manufacturer of headphones and microphones. Until March 1997 its name was AKG Akustische u. Kino-Gerate GmbH.

Since then it has traded under its existing corporate name, AKG Acoustics GmbH.

It has traded under or by reference to the name AKG for over 50 years. It is the proprietor of a large number of trademark registrations around the world of marks comprising or incorporating the letters AKG, the earliest dating back to 1948. The US registration for the letters AKG (No. 1,169,107) was registered on September 15, 1981, on a first use in commerce claim dating back to 1954.

On a date prior to July 7, 1999, the Domain Name was registered by one, Wes Perkins. On July 7, 2001, Wes Perkins emailed the Complainant in the following terms:

“Would you be interested in the AKG.COM domain name? If so, make me an offer. I would like to see your organization get this domain name, as I use your products and enjoy them. However, I’ve a couple of other parties interested in the name, and will give them a chance at it if I don’t hear from you.”

The Complainant enquired of Wes Perkins as to the price he was seeking for the Domain Name and Wes Perkins referred the Complainant to the eBay auction site on which the Domain Name had been put up for auction. The Complainant participated in the auction, bidding \$540 for the name, but that bid, while it was the highest bid made, did not meet the reserve price. Following the auction the Complainant was unable to make further contact with Wes Perkins.

On March 7, 2000, the Domain Name was re-registered to the Respondent. The Panel knows nothing of the events leading to the Respondent’s acquisition of the registration. The Complainant approached the Respondent (the Panel does not know the precise nature of the approach).

On June 5, 2000, the Respondent emailed the Complainant in the following terms:

“Hello Mathilde!
Sorry for the delay in getting back to you ... I’ve been out of the office the past two weeks on business. Our board has plans for akg.com, but those have been placed on hold while we pursue two other high-profile projects. I would recommend that we simply lease the name to you for the time being, but since it appears you’re building a brand under “AKG”, that might not make much sense for the long term. Depending on your marketing budget and plans for the akg.com, my board may consider a plan to use some other name. Surprisingly, we’ve been contacted by at least 5 other companies with similar initials who’d like to use akg.com! I look forward to hearing from you
_darren”

Other exchanges followed (see page 11 of the Complaint), but the Complainant has not included any of them in the Complaint.

5. Parties’ Contentions

A. Complainant

The Complainant contends that the Complaint should succeed for the following reasons:

- The Domain Name is identical or confusingly similar to the Complainant's name and registered trademark, AKG.
- The Respondent has no rights or legitimate interests in respect of the Domain Name. The Respondent has never used it. According to the Complainant (there is no evidence of this before the Panel) when the Complainant asked the Respondent "about his intentions and purposes concerning the Domain Name, the Respondent reacted evasively". So far as the Complainant can tell, AKG is not the Respondent's name, he is not known by it or anything like it. He is not a licensee of the Complainant. AKG has no meaning or significance other than as a trademark identifying the Complainant's products and distinguishing them from those of its competitors.
- The Domain Name was registered in bad faith and is being used in bad faith. The Domain Name was registered primarily for the purpose of selling it to the Complainant. In support the Complainant refers to the approach made to the Complainant by the original registrant, Wes Perkins, and to the email quoted above in full from "darren". In relation to the latter, the Complainant says that it is plain that the Respondent is keen to sell at a high price, but is avoiding doing or saying anything which could lead to a bad faith claim under the Policy. The Complainant says that the readiness to sell or lease the Domain Name and the reference to the marketing budget "underlines the Respondent's bad faith". The Complainant also refers to the reference to other interested parties indicating that the Respondent is seeking to drive up the price. The Complainant also says that if the Respondent was really interested in the Domain Name he would have connected it to an active website by now. Again, the Complainant refers to evasive behaviour by the Respondent after the "darren" email, but produces no evidence in support of that claim. The Complainant points out that the consequence of the Respondent holding the Domain Name registration is that the Complainant is obstructed from using the Domain Name for its commercial benefit.

B. Respondent

The Respondent has not responded to the Complaint.

6. Discussion and Findings

General

According to paragraph 4(a) of the Policy, the Complainant must prove that:

- (i) The Domain Name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and
- (ii) The Respondent has no rights or legitimate interest in respect of the Domain Name; and
- (iii) The Domain Name has been registered and is being used in bad faith.

In view of the lack of a Response filed by the Respondent as required under paragraph 5 of the Rules, this proceeding has proceeded by way of default. Hence, under paragraphs 5(e), 14(a) and 15(a) of the Rules, the Panel is directed to decide this administrative proceeding on the basis of the Complainant's undisputed representations. In that regard and apart from judging this proceeding through mere default of the Respondent, the Panel makes the following specific findings.

Identical or confusing similarity

The Complainant's trademark rights in the mark AKG are clear. The Domain Name comprises the letters AKG and the generic <.com> suffix.

The Panel holds that the Domain Name is identical to a trademark in which the Complainant has rights.

Rights or legitimate interest of the Respondent

The Respondent has not disputed the Complainant's claim that the Domain Name is the Complainant's mark and that it identifies the Complainant and no other. The Respondent has made no attempt to demonstrate whether by reference to paragraph 4(c) of the Policy or otherwise that he has rights or legitimate interests in respect of the Domain Name.

The Panel finds that the Respondent has no rights or legitimate interest in respect of the Domain Name.

Bad Faith

While it is clear that the Domain Name was originally registered by the first registrant with a view to selling it to the Complainant, it is not clear why and in what circumstances the Respondent acquired the Domain Name from the original registrant.

The possibilities are that the acquisition of the Domain Name was a good faith arms length purchase, that it was a purchase by a purchaser with the same bad faith intentions as the original registrant or that it was no real transfer, but simply a device to protect the original registrant from the inevitable consequences of his July 7, 1999, email to the Complainant. In the absence of a response, the Panel in its sole discretion under Rule 14(b), negatively infers that the Respondent, whether by actual transfer or sham, obtained the Domain Name in bad faith with a view to selling it to the Complainant.

The Complainant relies upon the June 5, 2000 ('darren') email and the Respondent's subsequent "evasive" behaviour. The email, while suspicious, is not conclusive against the Respondent and the Panel has been concerned by the failure of the Complainant to produce any evidence for the bare assertion that the Respondent's subsequent behaviour has been "evasive". Though the Panel would have found such evidence helpful, the Panel, again in the absence of any Response and under Rule 14(b), negatively infers that the Respondent's conduct here evidences an offer to sell the Domain Name to the Complainant for a sum very likely to be significantly well in excess of the Respondent's (or its predecessor's, Wes Perkin's) documented out of pocket costs directly related to registering the domain name; hence, evidencing bad faith use in contravention of paragraph 4(b)(i) of the Policy

In effect the Panel infers that the transfer from Wes Perkins to the Respondent was not a genuine good faith transfer and that the re-registration of the Domain Name in the name of the Respondent is tainted by the manifest bad faith registration and use of the Domain Name by the original registrant. Nothing that the Respondent is reported to have said or done subsequently has encouraged the Panel to come to a different conclusion.

In all the circumstances, the Panel finds the Complainant's unanswered allegations against the Respondent proved for the purposes of paragraph 4(a)(iii) of the Policy. The Panel finds that the Domain Name was registered in bad faith and is being used in bad faith.

7. Decision

In light of the foregoing findings, namely that: the Domain Name is identical to a trade mark in which the Complainant has rights; the Respondent has no rights or legitimate interests in respect of the Domain Name; and the Domain Name was registered in bad faith and is being used in bad faith, the Complaint succeeds.

The Panel directs that the Domain Name <akg.com> be transferred to the Complainant.

Tony Willoughby
Presiding Panelist

Professor Dr. Thomas Hoeren
Panelist

Peter L. Michaelson
Panelist

Dated: July 2, 2001