

ADMINISTRATIVE PANEL DECISION

Kampmann GmbH v. Powernation ApS

Case No. D2014-0677

1. The Parties

The Complainant is Kampmann GmbH of Germany, represented by Kopp und Partner, Germany.

The Respondent is Powernation ApS of Denmark.

2. The Domain Name and Registrar

The disputed domain name <kampmann.com> is registered with TierraNet d/b/a DomainDiscover (the "Registrar").

3. Procedural History

The Complaint was filed with the WIPO Arbitration and Mediation Center (the "Center") on April 24, 2014. On April 24, 2014, the Center transmitted by email to the Registrar a request for registrar verification in connection with the disputed domain name. On April 24, 2014, the Registrar transmitted by email to the Center its verification response confirming that the Respondent is listed as the registrant and providing the contact details.

The Center verified that the Complaint satisfied the formal requirements of the Uniform Domain Name Dispute Resolution Policy (the "Policy" or "UDRP"), the Rules for Uniform Domain Name Dispute Resolution Policy (the "Rules"), and the WIPO Supplemental Rules for Uniform Domain Name Dispute Resolution Policy (the "Supplemental Rules").

In accordance with the Rules, paragraphs 2(a) and 4(a), the Center formally notified the Respondent of the Complaint, and the proceedings commenced on May 2, 2014. In accordance with the Rules, paragraph 5(a), the due date for Response was May 22, 2014. The Response was filed with the Center on May 22, 2014.

The Center appointed Petter Rindforth as the sole panelist in this matter on May 28, 2014. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence, as required by the Center to ensure compliance with the Rules, paragraph 7.

The Panel shall issue its Decision based on the Complaint, the Response, the Policy, the Rules and the

Supplemental Rules. The case before the Panel was conducted in English language, which is the language of the Registration Agreement for the disputed domain name as confirmed by the Registrar.

4. Factual Background

The Complainant, a constructor and distributor of air conditioning technology systems, is the owner of the following trademark registrations:

- German national trademark registration No. 39402912 KAMPMANN (fig in red and blue), registered on October 26, 1995, for goods in International Classes 5, 6, 7, 11, 20 and 27.
- United Kingdom national trademark registration No. UK00002003722 KAMPMANN (fig), registered on March 1, 1996, for goods in International Class 11.
- Community Trademark registration No. 003054566 KAMPMANN (fig), registered on February 2, 2013, for goods in International Classes 5, 6, 11 and 27.
- German national trademark registration No. 302011019915 "KAMPMANN. Genau mein Klima." (word), registered on May 26, 2011, for goods in International Classes 5, 6, 7, 9, 11 and 20.
- Community Trademark registration No. 009898453 "KAMPMANN. Genau mein Klima." (word), registered on September 23, 2011, for goods in International Classes 5, 6, 9 and 11.
- International Registration No. 1102788 "KAMPMANN. Genau mein Klima." (word), registered on June 24, 2011, for goods in International Classes 6, 9, and 11.
- International Registration No. 1145241 KAMPMANN (word), filed on November 5, 2012, for goods in International Classes 6, 9, 11 and 27.

The disputed domain name was created on October 17, 1996.

5. Parties' Contentions

A. Complainant

The Complainant describes itself as one of the biggest manufacturers of air conditioning systems in Europe, with 16 international offices in 45 countries. The Complainant's products are used in well-known buildings in Germany, the Russian Federation, Switzerland, Ukraine, Austria, Ireland and many more. The trademark KAMPMANN was first used by the Complainant's founder, Heinrich Kampmann, in 1972.

The Complainant states that the disputed domain name contains the distinctive element of the Complainant's trademarks, as well as the family name of the business founder.

The Complainant further states that the Respondent has no rights or legitimate interests in respect of <kampmann.com>. Neither the Respondent's business nor the director of the Respondent has any correlations to the name Kampmann. The Respondent has never offered any services or products under <kampmann.com>, and the Complainant concludes that the Respondent has no plans to do so.

The word "Kampmann" has no individual meaning in Danish or English, thereby not either giving the Respondent any comprehensible and legitimate own interest in <kampmann.com>.

According to the Complainant, the disputed domain name was registered and is being used in bad faith. The circumstance indicates that the Respondent registered <kampmann.com> primarily for the purpose of selling, renting, or otherwise transferring the disputed domain name to the Complainant, or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket costs directly related to <kampmann.com>.

The Respondent is keeping many other domain names as well (more than 140), only registered just for the purpose of selling or renting them. This is shown by the Respondent's own web site, stating that the

Respondent's main business is registration and commercialization of Internet domains, giving other companies the opportunity to present themselves under these domain names. The Complainant notes that some of the Respondent's domain names are used for active web sites with company information related to each domain name, whereas others such as <cafeguide.dk> does not contain any information and therefore obviously used only as a placeholder.

The disputed domain name is not linked to an individual web site, but linked directly to the homepage of the Respondent's web site.

The Complainant concludes that the Respondent registered <kampmann.com> in knowledge of the Complainant and the Complainant's registered trademarks, as the disputed domain name was registered only a few months after the Complainant has registered its first national and international trademarks including the name KAMPMANN. At that time, the Complainant had already used the KAMPMANN trademark for 24 years, and was a growing and international active and well known company.

Since then, for more than 17 years, the Respondent took no further action to develop a reasonable and independent web site under <kampmann.com>. The Complainant argues that the Respondent virtually waited for the opportunity to sell the disputed domain name to the Complainant sooner or later.

The Complainant notes that the Respondent has several statements on the Respondent's main website, stating that the Respondent's domain names are not for sale. The Complainant states that this is just an attempt to protect the Respondent and justify the registration of an unreasonable number of domain names without any legitimate interest other than selling or renting them. The Complainant here refer to the fact that the Complainant contacted the Respondent on October 22, 2013 asking if the Respondent was willing to sell <kampmann.com>, and the Respondent replied that it would be taken into consideration if the buyer had an interesting price proposal. After further contact, the Respondent offered to sell <kampmann.com> for EUR10,000, and after receiving a counter offer of EUR3,000, abruptly ended the communication with an e-mail signed by the Respondent.

The Complainant requests that the Panel issue a decision that the disputed domain name be transferred to the Complainant.

B. Respondent

The Respondent argues that the Respondent is a proper and legal company, which primary business area is development of business solutions related to retail industries: flowershops, galleries, pharmacies, etc., using websites connected to domain names such as <apotek.dk>, <flowers.dk>, <galleri.dk> and <blomster.com>.

The Respondent states that in 1997 it registered a number of domain names to offer e-mail and web service solutions for people with surnames such as Nielsen, Olsen, Kampmann (with more than 300 persons holding this surname in Denmark), Rosentoft and Lublin. Some of these domain names, including <kampmann.com>, are used as a free service for the Respondent's closest friends and all private persons with the respective surnames. Currently, however, the e-mail and web services are under construction, and changing the services from hosted e-mail and hosted web service to forwarded e-mail and web services.

The Respondent points out that none of these web- and e-mail services are conflicting with the goods covered by the Complainant's trademarks, and the Respondent has no business related to the business of the Complainant. The Respondent further points out that the Complainant has no trademark rights in Denmark and no business going on in Denmark.

The Respondent states that the Respondent has rights and legitimate interests in <kampmann.com>.

The Respondent has not been informed earlier by the Complainant, nor had the Respondent any knowledge of the existence of the Complainant before this dispute.

The Respondent questions the Complainant's argument that <kampmann.com> is registered and used in bad faith, pointing out that the Respondent has not sold a domain name since 2000, and had no knowledge of the Complainant in 1996.

Kampmann is a surname that has been used in Denmark and by Danish citizens for more than 200 years before the Complainant started to use the name. The Respondent refers to well-known Danish persons with the surname Kampmann, such as the former Danish Prime Minister.

The reason why the Respondent has, since 2012, stated on its main web site that the domain names are not for sale, is that several persons are trying to argue that the Respondent is selling domain names.

The Complainant contacted the Respondent initially on January 15, 2004, trying to buy the disputed domain name. The reason why the Respondent finally replied with a specific offer was primary to stop the ongoing proposals from the Complainant.

According to the Complainant, the e-mail service on <kampmann.com> was put on hold in the autumn of 2013, due to a massive spam problem to the e-mail accounts.

6. Discussion and Findings

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

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

A. Identical or Confusingly Similar

The Complainant is the owner of the KAMPMANN trademark, registered in Germany, the United Kingdom of Great Britain and Northern Ireland, the European Union (EU), and internationally.

The relevant part of the disputed domain name is "kampmann", as it is well established in previous UDRP cases that the added top-level domain – being a required element of every domain name – is irrelevant when assessing whether or not a mark is identical or confusingly similar.

As the disputed domain name consists of the Complainant's trademark KAMPMANN, the Panel finds that <kampmann.com> is identical to the Complainant's registered trademark KAMPMANN.

B. Rights or Legitimate Interests

Once a complainant establishes a *prima facie* case of the second element of the Policy, the burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating that it does have rights or legitimate interests pursuant to paragraph 4(a)(ii) of the Policy. See WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), paragraph 2.1.

The Respondent is not an authorized agent or licensee of the Complainant's products or services and has no other permission to apply for any domain name incorporating the trade mark KAMPMANN.

The Respondent states that the disputed domain name is used as a free e-mail and web service for all private persons with Kampmann as a surname, however these services are now under construction. The Panel notes that the Respondent has not provided any clear evidence of such previous use, and the only identification of use is the Complaint's screenshot showing that <kampmann.com> is linked directly to the Respondent's main homepage.

The Panel therefore has to conclude that the disputed domain name is not used for, or linked to, an individual web site, but linked directly to the homepage of the Respondent's web site, and thereby in fact used to advertise the Respondent's services in general, rather than being used for individuals with the surname Kampmann.

The Respondent states that Kampmann is an old Danish surname, used in Denmark and by Danish citizens for more than 200 years. However, the mere registration of a domain name, even one that is comprised of a confirmed dictionary word or general surname, may not of itself confer rights or legitimate interests in the domain name. Normally, in order to find rights or legitimate interests in a domain name based on the generic or dictionary meaning of a word or phrase contained therein, the domain name would need to be genuinely used or at least demonstrably intended for such use in connection with the relied-upon meaning. (See *Compart AG v. Compart.com v. Vertical Axis, Inc.*, WIPO Case No. D2009-0462).

In this case, the disputed domain name has been registered for almost 18 years, without any clear evidence of active and genuine use – other than linked to the Respondent's main web site – or even preparations of use by the Respondent.

Altogether, the Panel cannot draw any conclusion other than that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered and Used in Bad Faith

To successfully prove the requirement under Paragraph 4(a)(iii) of the Policy, the Complainant must prove that the registration and use of the disputed domain name are in bad faith.

As to registration in bad faith, the Panel notes that the Complainant is a German-based company, and the Respondent is based in neighbouring Denmark. However, as shown by the Complainant, at the time of the registration of the disputed domain name, the Complainant had only two national trademark registrations, one in Germany and one in the United Kingdom. The Complainant has not shown any use of trademark KAMPMAN in Denmark at the time of the registration of the disputed domain name, and has not sufficiently proved that the use and knowledge of KAMPMANN in Germany and the United Kingdom had spread over to Denmark at the time of the registration of the disputed domain name.

The Complainant has not stated any use of the company or trademark KAMPMAN in Denmark, at least not at the time of the registration of the disputed domain name.

The first registration of the KAMPMANN word mark covering Denmark, is the Community Trademark registration No. 009898453, registered on September 23, 2011, almost 15 years after the Respondent's registration of <kampmann.com>.

As stated by the Respondent, the word "Kampmann" seems to be more well-known in Denmark, the home country of the Respondent, as a common and historical surname. The Panel notes that "Kampmann" is also the surname of the founder of the Complainant.

Thus the Panel concludes that the Complainant has failed to prove that the disputed domain name was registered in bad faith.

As to use in bad faith, the Panel is not convinced by the Respondent's arguments related to the use of <kampmann.com>. The disputed domain name seems to have been used only to direct to the Respondent's main home page, informing of the Respondent's services in general. This is however not *per se* bad faith use.

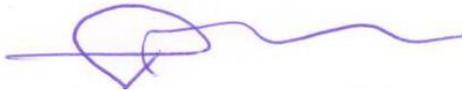
The Panel is neither convinced by the Complainant's arguments that the Respondent's offer to sell <kampmann.com> for EUR10,000 shows bad faith use in this case. As the Respondent has shown, the Complainant is the one that has contacted the Respondent in this respect, and continuously for a long time.

A domain name holder is, in such situation, free to reply to the interested buyer with a specific price that is suitable for the Respondent.

Therefore, the Panel herewith concludes that the Complainant has also failed to prove that the disputed domain name is being used in bad faith.

7. Decision

For the foregoing reasons, the Complaint is denied.

A handwritten signature in purple ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Petter Rindforth
Sole Panelist
Date: June 11, 2014