

.nz Dispute Resolution Service

DRS Reference: 1137

Sixt SE

v

Shen Lin

Key words -

1. Parties

Complainant:

Sixt SE
Franz Weinberger
Zugspitzstraße 1
82049 Pullach
Germany

Represented by: Henry Lauf

Respondent:

Shen Lin
Fu Li Jia Yuan 19 Zhuang 302 Shi
Zhejiang
313000 Huzhou
China

2. Domain Name/s

sixt.nz

3. Procedural history

- 3.1 The Complaint was lodged on 03 December 2015 and Domain Name Commission (DNC), notified the Respondent of the validated Complaint on 04 December 2015. The domain was locked on 03 December 2015, preventing any changes to the record until the conclusion of these proceedings.
- 3.2 The respondent did not file a response.
- 3.3 The Complainant paid Domain Name Commission Limited the appropriate fee on 28 January 2016 for a decision of an Expert, pursuant to Paragraph 9 of the .nz Dispute Resolution Service Policy ("the Policy").
- 3.4 Andrew Brown, the undersigned, ("the Expert") confirmed to the DNC on 03 February 2016 that he knew of no reason why he could not properly accept the invitation to act as expert in this case and that he knew of no matters which ought to be drawn to the attention of the parties, which might appear to call into question his independence and/or impartiality.

4. Factual background

- 4.1 The Complainant is Sixt SE, an international provider of mobility services, in particular vehicle rental and leasing services. The Complainant was founded in 1912 and is present in over 100 countries worldwide.
- 4.2 The Complainant states that it owns more than 200 trade mark registrations for its "Sixt" mark worldwide. In particular, it has provided evidence that it owns New Zealand trade mark no. 602388 for the word mark SIXT in class 39, registered on 4 November 1999. It also owns:
- (a) International registration no. 729641 for SIXT in a logo form in classes 12, 36, 37 and 39, registered on 26 November 1998;
 - (b) European Community trade mark no. 751065 for SIXT in logoform in classes 12, 36 and 39 with a priority date of 18 February 1998;
 - (c) US trade mark no. 4767581 for the word mark SIXT, registered on 12 September 2014 in class 39; and
 - (d) US trade mark no. 2663752 for the logo mark SIXT in class 39, registered from 5 November 1999.
- 4.3 The Complainant also operates a website at the domain name www.sixt.com.
- 4.4 The Respondent is Shen Lin of Huzhou, China. The Domain Name was registered to the Respondent on 12 May 2015.

5. Parties' contentions

a. Complainant

- 5.1 The Complainant states that the Domain Name is identical to its SIXT trade marks. It contends that the Respondent has no rights to or legitimate interests in the Domain Name because he or she is not licensed or authorised to use the SIXT trade mark, and he or she is not an affiliate or distributor of the Complainant and is not authorised to rent or lease vehicles on behalf of the Complainant.
- 5.2 The Complainant contends that the Respondent acted in bad faith when registering the Domain Name. The Respondent is offering the Domain Name for sale at a purchase price of EUR 5,999.00. The Complainant contends this is significantly higher than the registration fees for the Domain Name, and this indicates that it was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain to the Complainant or a competitor of the Complainant, for valuable consideration in excess of out of pocket costs.
- 5.3 The Complainant contends that the registration of the Domain Name is detrimental to its registered trade marks as the Respondent is taking unfair advantage of the reputation of the SIXT trade marks. In addition, the Complaint contends that the Domain Name will mislead consumers, as they will mistakenly believe that the Domain Name is registered to and hosted by the Complainant.
- 5.4 The Complainant seeks transfer of the disputed domain name to it.

b. Respondent

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

6. Discussion and findings

6.1 The Complainant is required to satisfy the Expert on the balance of probabilities that it has met the requirements of paragraph 4 of the Policy namely that:

"4.1.1 The Complainant has Rights in respect of a name or mark which is identical or similar to the Domain Name; and

4.1.2 The Domain Name, in the hands of the Respondent, is an Unfair Registration."

Rights

6.2 The term "Rights" is defined in paragraph 3 of the Policy as follows:

"Rights includes, but is not limited to, rights enforceable under New Zealand law. However a Complainant will be unable to rely on rights in a name or term which is wholly descriptive of the Complainant's business."

6.3 The Complainant has provided evidence that it has registered trade mark rights in the word mark SIXT, enforceable under New Zealand law (as well as rights to the mark in other jurisdictions). The Expert therefore finds that the Complainant has rights in respect of the trade mark SIXT. Although this is not a requirement of the Policy, these Rights were in existence prior to the registration of the disputed domain name.

6.4 The Expert also finds that the disputed domain name sixt.nz is identical to the Complainant's trade mark registration for SIXT. The trade mark SIXT is entirely subsumed within the disputed domain name.

6.5 Accordingly, the Expert finds that paragraph 4.1.1 of the Policy is satisfied in favour of the Complainant.

Unfair Registration

6.6 Unfair Registration is defined in paragraph 3 of the Policy as follows:

"Unfair Registration means a Domain Name which either:

- (i) was registered or otherwise acquired in a manner which, at the time when the registration or acquisition took place, took unfair advantage of or was unfairly detrimental to the Complainant's Rights; or
- (ii) has been, or is likely to be, used in a manner which took unfair advantage of or was unfairly detrimental to the Complainant's Rights."

6.7 Paragraph 5.1 of the Policy provides a non-exhaustive list of factors which may be evidence that the Domain Name is an Unfair Registration as follows (as relevant):

"5.1.1. Circumstances indicating that the Respondent has registered or otherwise acquired the Domain Name primarily:

- (a) for the purposes of selling, renting or otherwise transferring the 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 associated with acquiring or using the Domain Name;

- (b) as a blocking registration against a name or mark in which the Complainant has Rights; or
- (c) for the purpose of unfairly disrupting the business of the Complainant; or

5.1.2. Circumstances demonstrating that the Respondent is using the Domain Name in a way which is likely to confuse, mislead or deceive people or businesses into believing that the Domain Name is registered to, operated or authorised by, or otherwise connected with the Complainant ..."

6.8 The Expert finds that the Domain Name has been registered and used in a manner which takes unfair advantage of the Complainant's Rights per subparagraphs (i) and is detrimental to the Complainant's Rights per (ii) of the definition of Unfair Registration in paragraph 3 of the Policy. The reasons for this finding are:

- (a) The Domain Name is advertised for sale by the Respondent for EUR 5,999. This is a circumstance indicating that the Respondent registered or otherwise acquired the Domain Name for the purpose of selling, renting, or otherwise transferring it to the Complainant or a competitor of the Complainant, for valuable consideration in excess of the Respondent's out of pocket costs associated with the Domain Name. The sale price is well in excess of any out of pocket costs that would have been incurred by the Respondent.
- (b) The Domain Name is likely to confuse or mislead people or businesses into visiting the website displayed at the Domain Name when in fact looking for the Complainant and its New Zealand branch or licensee. This is because the Domain Name is identical to the Complainant's distinctive mark. The suffix .nz in conjunction with the Complainant's distinctive trade mark would lead internet users coming across it into thinking that the domain name belongs to the Complainant or its licensee.

6.9 The Expert also draws adverse inferences from the Respondents' failure to file any response to the Complainant.

6.10 Accordingly, the Expert finds that paragraph 4.1.2 is satisfied in favour of the Complainant.

7. Decision

7.1 For all the foregoing reasons, the Expert orders the transfer of the Domain Name "*sixt.nz*" to the Complainant.

Place of decision Auckland

Date February 2016

Expert Name Andrew Brown QC

Signature

