



**(Hong Kong Office)**

**ADMINISTRATIVE PANEL DECISION**

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<b>Case No.</b>	<b>HK-1901265</b>
<b>Complainant:</b>	<b>Tim Wosnitza</b>
<b>Respondent:</b>	<b>Domain Robot Ltd.</b>
<b>Disputed Domain Name(s):</b>	<b>&lt;scout69.me&gt;</b>

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**1. The Parties and Contested Domain Name**

The Complainant is Tim Wosnitza, of Zur Ripsbek 3, 22195 Lütjensee, Germany

The Respondent is Domain Robot Ltd, of 132 Nathan Road, Unit 1010, Miramar Tower, Hong Kong.

The domain name at issue is <scout69.me> (the “Domain Name”) registered by the Respondent with INWX GmbH & Co. KG of Prinzessinnenstr. 30, 10969 Berlin, Germany (the “Registrar”).

**2. Procedural History**

The Complainant filed the Complaint with the Asian Domain Name Dispute Resolution Centre (ADNDRC) (Hong Kong Office) on 16 July 2019 and chose to have a sole panelist to handle the dispute. On 24 July 2019, the ADNDRC transmitted by email to the Registrar a request for registrar verification in connection with the Domain Name. On 9 August 2019 a reminder was sent to the Registrar. On 10 August 2019, the Registrar responded to say that it “rejects” the Complaint as the Domain Name pre dates the trade mark upon which the Complainant was relying on and that trade mark was valid only in Germany so that any claim has to be filed in Court.

On 11 October 2019, the Registrar transmitted by email to the ADNDRC its verification response confirming that the Respondent is listed as the registrant and providing the contact details. On 14 October 2019, the ADNDRC notified the Complainant of the deficiencies in the Complaint. On the same day, the Complainant filed a rectified Complaint. On 22 October 2019, the Registrar notified the ADNDRC that one of the trade marks upon which the Complaint is based on is no longer registered. The ADNDRC did not receive any response from the Respondent within 20 calendar days as required under paragraph 5 of the Rules for Domain Name Dispute Resolution Policy (the “Rules”). Accordingly, on 5 November 2019, the ADNDRC informed the parties that no response has been received and it would shortly appoint a single panelist. On the same day, the

Registrar submits the Response from the Respondent. The ADNDRC requests the Registrar to either provide an authorization letter from the Respondent or ask the Respondent to send the Response directly to the ADNDRC. On 16 December 2019, the ADNDRC appointed Karen Fong as sole Panelist in this matter. The Panelist accepted the appointment and has submitted a statement to the ADNDRC that she is able to act independently and impartially between the parties.

### **3. Factual background**

The Complainant claims to own trade mark rights to the mark Scout 69 & Device which comprises the silhouette of a nude woman (the “Mark”). The Mark was filed in Germany under TM No 3020191027760 on 4 March 2019 and the European Union (“EU”) under TM Application No. 17868911 on 6 March 2018. The German mark was registered on 29 March 2019 and opposed on 3 May 2019 and the opposition proceedings are still running. The EU trade mark application is also being opposed and the opposition proceedings are ongoing. The Complainant claims to own and operate the website connected to the domain name <scout69.de>. The website does not appear to be active. The Complainant asserts that it provides identical services to the website connected to the Domain Name.

The Domain Name was registered on 26 December 2015 and it resolves to a website that is a dating site which has explicit adult images and pornographic content (the “Website”).

### **4. Parties’ Contentions**

#### **A. Complainant**

The Complainant’s contentions may be summarized as follows:

The Domain Name is identical or confusingly similar to the Trade Mark, that the Respondent has no rights or legitimate interests with respect to the Domain Name, and that the Domain Name was registered or is being used in bad faith. The Complainant requests transfer of the Domain Name.

#### **B. Respondent**

The Respondent’s purported contentions may be summarized as follows:

The Domain Name was registered in 2008, many years before the Mark was registered in Germany. The Complaint is therefore unfounded.

### **5. Findings**

#### **A. General**

The ICANN Uniform Domain Name Dispute Resolution Policy provides, at Paragraph 4(a), that each of three findings must be made in order for a Complainant to prevail:

- i. Respondent’s domain name is identical or confusingly similar to a trademark or service mark in which Complainant has rights; and

- ii. Respondent has no rights or legitimate interests in respect of the domain name; and
- iii. Respondent's domain name has been registered and is being used in bad faith.

## **B. Preliminary Issue**

As the Response was filed late and it is unclear whether the Respondent authorized the Registrar to file the Response, the Panel does not accept the Response filed. Further, the Panel will not take into account all the other comments made by the Registrar as to the strength of the Complaint as they are irrelevant.

## **C. Identical / Confusingly Similar**

In order to succeed under the first element, the Complainant needs to show that it has rights to a trade mark or service mark which is identical or confusingly similar to the Domain Name. This includes both registered and unregistered rights. Although the Mark is registered in Germany, the German trade mark system provides for opposition of a trade mark application post registration. In this case, the German registration is being opposed and the opposition was pending at the time of the Complaint was filed and is still pending. The EU trade mark application is also pending as it too has been opposed. There has been no evidence submitted that the Complainant has unregistered rights to the Mark.

The fact that a domain name may have been registered before a complainant has acquired trademark rights does not by itself preclude a complainant's standing to file a UDRP case, nor a panel's finding of identity or confusing similarity under the first element. However the rights must exist before the Complaint is filed. (See section 1.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition).

Whilst the Panel is satisfied that the Mark is identical or confusingly similar to the Domain Name, the Complainant has not been able to show that the Mark is one in which he has rights as required under the UDRP.

That being the case, the Complainant has failed in the first UDRP element.

In view of the Panel's finding above, the Panel does not intend to comment further on the second and third elements of the UDRP save to say that the fact that the Domain Name was registered a few years before the applications for the Mark in Germany and EU were made would have made a finding of bad faith an impossibility. The Complaint should not have been filed.

## **6. Decision**

For the foregoing reasons, the Complaint is denied.



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Karen Fong  
Panelist

Dated: 13 January 2020