Panel Decision for dispute CAC-ADREU-006041

Case number	CAC-ADREU-006041
Time of filing	2011-09-29 23:28:17
Domain names	WSBK.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	

Respondent

Organization	Applebeach Ltd

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an Italian company Infront Motor Sport Licence S.r.l. which is organizing sport events. One of such events is Superbike World Championship (also known as SBK, World Superbike, or WSBK). Complainant is the registered owner of the CTM trademark No. 004616413 for WSBK since 2005. As a result of the exclusive and extensive use, Complainant's trademark "WSBK" has acquired a significant goodwill and is well known in Europe and all over the world. The Respondent is a Gibraltarian company Applebeach Ltd, represented by Mr. Sian Wood who registered <wsbk.eu> domain name on May 1, 2007. Complainant sent a warning letter to Respondent on November 3, 2010 but the Respondent didn't reply. It also failed to provide the response in this ADR proceeding.

A. COMPLAINANT

The Complainant states that the disputed domain name is identical to the trademark "WSBK" registered and used by the Complainant. Moreover, it is very similar to the main trademark of the Complainant: SBK. Therefore, the domain name consists entirely of the distinctive terms "SBK"and / or "WSBK", apart from the top level domain ".eu".

As regards the domain name holder's right or legitimate interest in respect to the disputed domain name, Complainant refers to Art 21 (1) (a) and Art 21 (2) of the Regulation (EC) No. 874/2004 and finds no holder's right or legitimate interest in respect of the disputed domain name.

The Complainant provided evidence that the acronym WSBK is obviously connected with the Complainant's trademarks and it is not a word a trader would legitimately choose unless seeking to create an impression of an association with the Complainant. Respondent uses the domain name to divert Internet users to websites of third parties offering products and services connected to motorbikes and vehicles. These products are similar to the Complainant's services and products. Complainant suggests that the current visible use of the disputed domain name is self evident that it is a web parking particularly focused on motor events and products. The said web parking service offers domain name holders to earn pay-per-click-revenues for redirecting Internet users to third parties' websites and thus capitalizing on the Complainant's mark. The intention of use of this domain name is commercial as it solely is aimed at gaining profit out of the pay-per-click-revenues.

The latter activity also corresponds to bad faith of the Respondent. It is important to note that the Respondent has already been engaged in cybersquatting activities (see earlier .eu ADR case No. 04458 in respect of domain names <HULLUTPAIVAT.EU> and <GALNADAGAR.EU>.

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

B. RESPONDENT

No response was provided.

DISCUSSION AND FINDINGS

1. Trademark status

The Complainant Infront Motor Sport Licence S.r.l. has fully evidenced that it owns a CTM trademark WSBK (No. 004616413) since 27/09/2005 (date of filing). It has registered this trademark on 10/11/2006. The trademark's validity does not raise any doubts to the Panel. The same is attributed to the exclusive and extensive use of this trademark. Though Complainant is better known with it's other trademark "SBK", the acronym "WSBK" (where "W" stands for "World") is used more than enough to associate it with the owner and it's services in organizing World Super Bike Championship events.

2. Identity/Similarity of the disputed domain name

It is obvious that the disputed second level domain name <wsbk> is identical to the CTM trademark WSBK. The top level domain <.eu>, which is attached to <wsbk>, does not create any distinctiveness of the disputed domain name. The issue of possible confusing similarity of the domain name <wsbk.eu> to the trademark "SBK" is not important in this case, as Panel has already found the disputed domain name <wsbk.eu> is identical to CTM trademark WSBK. This finding alone is enough for the purposes of Art 21 (1) of the Regulation (EC) No. 874/2004.

3. Respondent's lack of rights or legitimate interests in the name

The Panel considers that the Complainant sufficiently presented and proved Respondent's lack of rights or legitimate interests in the disputed domain name.

The Panel fully agree with the Complainant's contentions that: (a) there is no indication that the Respondent, prior to any notice of an alternative dispute resolution procedure, has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparations to do so, Art 21 (2) (a) of the Regulation (EC) No. 874/2004; (b) the Respondent uses the domain name to divert Internet users to website in the main languages including Italian which contains various links to websites of third parties offering products and services connected to motorbikes and vehicles; (c) the Respondent himself provides no goods or services but solely uses the domain name to gain profit out of the advertisement links to websites of third parties; (d) the domain name holder neither bears the name "WSBK" nor does he have any other right with respect to the domain name; (e) the Respondent is not making a legitimate non-commercial or fair use of the domain name in accordance with Art 21 (2) (c) of the Regulation (EC) No. 874/2004.

In the Panel decision ADR 2035 (WAREMA) the Panel stated: "Furthermore, the Panel holds that although the burden of proof lies with the Complainants, the existence of a right or legitimate interest is difficult to prove since the relevant facts lie mostly in the sphere of the holder. Hence, the Panel holds that it is sufficient that the Complainants contend that the obvious facts do not demonstrate a right or legitimate interest of the Respondent in the Domain Name. The onus then shifts to the Respondent to produce factual evidence for a right or legitimate interest". This approach shall be followed in the current case too. The Complainant complied with the stated requirements and the Respondent didn't file a Response which means that the Complainant's contentions were not disputed by the Respondent.

4. Respondent's bad faith

If the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized (Art 21 (3) (d) of the Regulation (EC) 874/2004) than we have the Respondent's bad faith. This conduct alone is enough to find the existence of bad faith. The Complainant fully evidenced that the Respondent uses the domain name solely for the purpose of earning click-through revenues from the diverted traffic by redirecting Internet users and potential customers of the Complainant to the parking-website containing the advertisement links to the Complainant's competitors, although the Internet users and potential customers expect to be directed to the Complainant's website having sought for the domain name being identical with the Complainant's trademark.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name WSBK be transferred to the Complainant.

PANELISTS

Name	**Dr. Darius Sauliunas**

DATE OF PANEL DECISION 2011-09-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is an Italian company which registered and used the CTM trademark WSBK since 2005.The Respondent is a Gibraltarian company which registered <wsbk.eu> domain name on May 1, 2007. No response was filed in this case. The Panel found that the disputed domain name <wsbk> is identical to the the CTM trademark WSBK. The Respondent didn't demonstrate any rights or legitimate interests in the name WSBK. As the Respondent uses the domain name solely for the purpose of earning click-through revenues from the diverted traffic by redirecting Internet users and potential customers of the Complainant to the parking-website containing the advertisement links to the Complainant's competitors, the Panel found it as the evidence of bad faith according to Art 21 (3) (d) of the Regulation (EC) 874/2004 and ordered the domain name be transferred to the Complainant.