Panel Decision for dispute CAC-ADREU-006380

Case number	CAC-ADREU-006380
Time of filing	2013-04-26 17:26:33
Domain names	netto-online.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Netto Marken-Discount AG & Co. KG

Respondent

Organization	FLIESENservice-WIRKOWSKI

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

There are no other proceedings between the parties pending the Panel is aware of.

FACTUAL BACKGROUND

Complainant is a known German company running a store chain with over 4000 shops in Germany. Complainant is the proprietor of several registered trademarks, among them the German trademark registration DE 302010067371 “netto-online” for services in class 35.

Complainant sent a warning letter to Respondent claiming transfer of the domain name based on abusive registration. During the further correspondence, Respondent mentioned EUR 800.000 as a basis for negotiation for the transfer of the domain name.

Complainant instead filed the present ADR proceedings.

The Respondent did not file a response in these proceedings.

A. COMPLAINANT

Complainant claims, inter alia, that the domain name in question is confusingly similar to his marks, a legitimate interest of the Respondent is not available and that the Respondent has been acting in bad faith, since he offered the domain name to the Complainant for EUR 800.000

B. RESPONDENT

The Respondent did not file a response in these proceedings.

DISCUSSION AND FINDINGS

According to Art 21 No. 1 of the Regulation (EC) No. 874/2004 of April 28, 2004, a registered domain name shall be subject to revocation where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

Complainant is the proprietor of several registered trademarks, among them the German trademark registration DE 302010067371 “netto-online” for services in class 35.

This trademark of Complainant and the domain name in question are identical.

Since it is sufficient in accordance with Art 21 of the Regulation (EC) No. 874/2004 of April 28, 2004 if use in bad faith is evidenced, the panel will examine this requirement first.

Art 21 Nr. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004 says:

„Bad faith, within the meaning of point (b) of paragraph 1 may be demonstrated, where:
(a) circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law or to a public body."

The offer of a domain name representing a trademark of a third party to the proprietor of the trademark for a purchase price that is by far super elevated is the standard case of bad faith as numerous panels have decided in the past (see only CAC 05374, Carive, Intesa Sanpaolo S.p.A. ./. ZHENG QINGYING).

Therefore, the panel need not examine whether or not the domain name has been registered by its holder without rights or legitimate interest in the name or has been registered in bad faith.

The Complainant satisfies the eligibility criteria set out in article 4 (2) (b) of Regulation (EC) No 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name NETTO-ONLINE.eu be transferred to the Complainant.

PANELISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2013-04-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: netto-online.eu

II. Country of the Complainant: Germany, country of the Respondent: Germany

III. Date of registration of the domain name: 15 June 2010

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Germany, reg. No. DE 302010067371, filed on 17 November 2010, registered on 18 March 2011 in respect of services in class 35.

V. Response submitted: No.

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. -
2. Why: Since it is sufficient to base the decision on bad faith.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the offer of a domain name representing a trademark of a third party to the proprietor of the trademark for a purchase price that is by far super elevated is the standard case of bad faith as numerous panels have decided.

IX. Other substantial facts the Panel considers relevant:-

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:-

XII. [If transfer to Complainant] Is Complainant eligible? Yes