Decision for dispute CAC-ADREU-006387

Case number	**CAC-ADREU-006387**
Time of filing	**2013-03-07 11:11:52**
Domain names	**<www.juicyads.eu>**

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	**Jaromir Wippler**

OTHER LEGAL PROCEEDINGS

N/A

FACTUAL BACKGROUND

Through its website, located at <juicyads.com>, Complainant Tiger Media, Inc. (“TMI”) seated in Ireland provides advertising services to its clients on various adult entertainment websites. The Complainant is fully eligible for the requested remedy, i.e. the transfer of the disputed domain name to itself. The Respondent, an individual Jaromir Wippler from the Czech Republic, registered the disputed domain name <juicyads.eu> in November 2011.

A. COMPLAINANT

The Complainant argues in its Complaint that the disputed domain name (i) is identical with its protected brand (JUICYADS), (ii) was registered without any rights or legitimate interest in the name and (iii) is being used in bad faith.

1. Identicality of the disputed domain name

The Complainant argues that the disputed domain name is identical to its brand JUICYADS, under which the Complainant undertakes its business within the EU for a number of years and which, in addition, is also protected in the USA as a service mark.

2. Registration without rights or legitimate interest

The Complainant argues that there is no indication whatsoever which could prove Respondent’s legitimate interests in the disputed domain name. The name of the Respondent does not in any way correspond to the domain name.

According to the Complainant, there is no indication on the Internet or otherwise that the Respondent holds any trademark or trade name that correspond to the disputed domain name or that the Respondent is commonly known by the domain name, or that the Respondent has used the domain name or a name corresponding to it in connection with the offering of goods or

services, or made any demonstrable preparations to do so.

Furthermore the Complainant argues that there is no indication on the Internet or otherwise that the Respondent is making a legitimate and non-commercial or fair use of the disputed domain name.

3. Respondent‘s bad faith

According to the Complainant, Respondent’s website located at <juicyads.eu> purports to offer services identical to those offered by Complainant. In fact, Respondent’s webpage purports to originate from and be operated by Complainant TMI. Pursuant to the Regulation (EC) No. 733/2002, Regulation (EC) No. 874/2004, ADR Rules and ADR Supplemental Rules, Respondent’s use of the entirety of Complainant’s JUICYADS mark for the purported provision of identical, or confusingly similar, services constitutes bad faith, particularly since Respondent set up his website to fool consumers into believing that the site is operated by Complainant TMI. Moreover, the sale of competitive goods and services also constitutes evidence of bad faith.

The Complainant further mentions that it tried to communicate with the Respondent before filing the Complaint but without success.

B. RESPONDENT

The Respondent states in his Response that he registered the domain name because it was available. The Respondent wonders why the Complainant did not register the disputed domain name. He further states that he did not receive any communication from the Complainant and that if he would have received it he would have transferred the disputed domain name free of charge to the Complainant.

DISCUSSION AND FINDINGS

1. Respondent‘s lack of rights or legitimate interests and/or his bad faith

The Panel agrees that the disputed domain name is identical with the Complainant's protected brand. Then the Panel considered whether the Complainant sufficiently presented and proved Respondent‘s lack of rights or legitimate interests and/or his bad faith.

In Panel decision ADR 2035 (WAREMA) the Panel stated in relation to demonstrating a right or legitimate interest in the disputed domain name according to Art. 21(2)(a) and (b) of the Regulation EC/874/2004: “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”.

The Panel agrees with this approach. The Complainant complied with the stated requirements. The Respondent in his Response only stated that the domain name was available and thus he registered it. The Complainant has demonstrated its long-term rights to the brand identical to the disputed domain name which is protected within EU. The fact that the disputed domain name was registered by the Respondent does not by itself create rights or legitimate interest for the Respondent in relation to the protected brand controlled by the Complainant. The Panel agrees with the Complainant that the Respondent does not have any rights or legitimate interest in the name.

Regarding Respondent‘s bad faith, the Complainant referred to a passing-off of the Respondent and his pattern of conduct, demonstrated by Respondent registering domain names identical or confusingly similar to brands owned by other entities than Respondent. The Panel agrees with these arguments. Respondent has been evidently operating a website under the disputed domain name that is designed to appear as though it is operated by the Complainant for commercial gain. This is clearly evidence of bad faith. The Panel also agrees with the Complainant that the Respondent must have been aware of Complainant’s use of the JUICYADS mark when he registered the domain name. When the disputed domain name was

registered in 2011, Complainant TMI had been using the JUICYADS mark for over five (5) years. In addition, the way how the Respondent has been using the disputed domain name, i.e. for passing off as the Complainant, proves that the Respondent has been aware of the Complainant's brand when registering the domain name and did so on purpose in order to unfairly benefit from the reputation of the Complainant's brand. Finally, as mentioned in the Complaint, Respondent has a history of registering domain names that incorporate the protected marks of others.

For these reasons the Panel considers that the Respondent registered the disputed domain name with bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

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

PANELISTS

Name	**Zbynek Loebl**

DATE OF PANEL DECISION 2013-03-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: JUICYADS.EU

II. Country of the Complainant: Ireland, country of the Respondent: Czech Republic

III. Date of registration of the domain name: November 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. unregistered trademark: YES
8. business identifier:YES

V. Response submitted: YES

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The fact that the domain was available for registration is not a legitimate interest if the domain is identical to the protected brand of another person.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Panel found that the Respondent passes-off his website operated under the disputed domain name as i fit was a website of the Complainant. This is a clear bad faith registration and use of the disputed domain name.

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: The parties agreed to use English as their procedural language.

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