Panel Decision for dispute CAC-ADREU-006405

Case number	CAC-ADREU-006405
Time of filing	2013-04-04 22:56:02
Domain names	wellensteynoutlet.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Organization	Guojimaoyi

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 have been decided and which are directly related to this dispute or the disputed domain name “wellensteynoutlet.eu”.

However, on 16 January 2013 – i.e. after the expiry of the 30 day time limit set for the Respondent to reply to the Complaint – the Respondent filed a submission with the Czech Arbitration Court. Although this submission does not directly concern legal proceedings related to the domain in question, it shows evidence of a Complaint filed with the State Police of Nuoro, Italy, in which the Respondent alleges that his identity has been stolen to file .it ccTLDs for famous clothing brands such as Gucci, Channel, Hogan, etc. The Complaint goes on to allege that the unknown third party which had stolen the Respondent’s identity also registered the domain “wellensteynoutlet.eu”.

FACTUAL BACKGROUND

The Complainant has requested the transfer of the domain “wellensteynoutlet.eu” to the Complainant.

The Complainant, Mr. Thomas Wuttke, is the proprietor of numerous trademark rights concerning the word “WELLENSTEYN”. These are registered as national trademarks in Germany, as Community Trademarks, as International Registrations and as national registrations in the USA. The Complainant uses the marks widely on items of clothing and in particular on jackets.

The Respondent is Mr. Antonello Virdis whose postal address cannot be established from the registration details of the contested domain name. The address provided for the purpose of registering the domain is “pacinotti 30 vrdnnl81l08f979t”. The city is also given as “07011 pacinotti 30 vrdnnl81l08f979t Italy”. The additional contact information reads “guojimaoyi“.

The Complaint was filed on 30-11-2012. The Respondent failed to provide a Response to the Complaint within the time limit provided by the Czech Arbitration Court.

A. COMPLAINANT

The Complainant seeks the transfer of the disputed domain name “wellensteynoutlet.eu” from the Respondent to the Complainant in accordance with paragraph B 11 (b) of the .eu Alternative Dispute Resolution Rules (hereinafter the “ADR Rules”).

The Complainant contends the following:

The Complainant is the founder and limited partner of the textile manufacturing company trading under Wellensteyn International GmbH & Co. KG. The Complainant inter alia owns the following registered trademarks:

- German trademark No. 30043641 WELLENSTEYN (word) of 8 June 2000 protected for classes 25, 33 and 36;
- German trademark No. 30562316 Wellensteyn (word) of 19 October 2005 protected for numerous classes including class 25;
- German trademark No. 30659755 Wellensteyn (word and device) of 27 September 2006 protected for goods in class 25;
- German trademark No. 30722985 WELLENSTEYN (word and device) of 4 April 2007, protected in classes 25, 09 and 18,
- Community trademark No. 3500998 Wellensteyn (word) of 31 October 2003, protected in classes 18, 24 and 25,
- International Registration No. 817862 WELLENSTEYN (word) of 17 November 2003 registered in classes 25, 33 and 36;
- US Trademark Reg. No. 3434253 Wellensteyn (word and device) of 11 March 2008 registered in classes 18 and 25.

Evidence of the registration of these and other trademarks was attached to the Complaint in the form of annexes.

The Complainant contends that the Wellensteyn International GmbH & Co. KG company manufactures and distributes outdoor clothing, particularly jackets which are well-known throughout Germany and are also sold over the internet through the website operated under the domain name “www.wellensteyn.de”. Additionally the Complainant alleges that there are over 30 Wellensteyn collection stores in Germany. Evidence of the products themselves and the stores and internet shops are also provided in the form of annexes to the Complaint.

The Complainant further alleges that the Respondent is the registered owner of the domain name “wellensteynoutlet.eu” and therefore responsible for all matters related to the domain.

The Complainant provides further documentary evidence of use of the domain “wellensteynoutlet.eu” for an internet store which purports to offer Wellensteyn jackets. The Complainant then goes on to claim that there is no connection of any kind between the Complainant and the Respondent and that in particular the Respondent has not been authorized in any way by the Complainant to make use of the mark WELLENSTEYN which is also the company name of the Complainant. The Complainant asserts that the domain name “wellensteynoutlet.eu” is nearly identical to the trademarks registered for the Complainant since the domain name is dominated by the element “WELLENSTEYN” with the verbal element “OUTLET” being merely descriptive.

The Complainant argues that the Respondent has neither rights nor legitimate interest in respect of the domain name and that the domain name was registered and is being used in bad faith.

Finally the Complainant submits a number of decisions of the administrative Panel of WIPO covering Complaints based on what is assumed to mean nearly identical circumstances as the present case and sets out that the Complainant meets the general eligibility criteria of Article 4 (2) (b) of Regulation (EC) No. 733/2002 as being a natural person and having his residence in Germany.

B. RESPONDENT

The Respondent is in default having failed to provide a timely Response to the Complaint.

However in the Response filed after the expiry of the time limit, the Respondent stated expressly that he has never applied for the domain name “WELLWNSTEYNOUTLET.EU” [sic] and declares that he has filed a Complaint with the State Police in Nuoro, Italy, regarding theft of his personal data by persons unknown. The Respondent attaches a copy of the Complaint filed with the police which states that an unknown third party has attempted to register famous clothing brands such as Gucci, Channel, Hogan, etc. as .it ccTLDs and that such an unknown third party also must have registered the contested domain name “wellensteynoutlet.eu”. A copy of the Complaint has been provided by the Respondent.

DISCUSSION AND FINDINGS

First of all, the Panel finds that the Complainant meets the general eligibility criteria of Article 4 (2) (b) (iii) of Regulation (EC) No. 733/2002 as he is a natural person with residence in Germany.

Additionally, the Panel takes note of the fact that the Respondent is in default within the meaning of Paragraph B10 (a) and (b) of the ADR Rules which state that the Panel may consider such failure of the Respondent as grounds to accept the claims of the Complainant and that the Panel shall draw such inferences from the default as it considers appropriate. However, it is up to the discretion of the Panel to take into consideration the contents of delayed submissions.

According to Articles 21 (1) and 22 (11) of the Commission Regulation (EC) (No. 874/2004 and Paragraph B 11 (d) (1) of the ADR Rules, the Complainant bears the burden of proof to establish that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either
(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) The domain name has been registered or is being used in bad faith.

In the deliberations leading to the decision, the Panel has not taken into consideration the case law provided by the Complainant from other dispute resolution processes like the UDRP, as these do not set binding precedents for the .eu ADR proceedings.

The first requirement to meet in order to obtain the transfer of the domain name to the Complainant is that the contested domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a member state and/or community law. In this respect the Panel finds that the Complainant is the legitimate proprietor of the trademark "WELLENSTEYN". The evidence provided by the Complainant shows that he is the proprietor of the company name and trademark rights inter alia on a German national level and through Community Trademark registrations on a European level. All of these rights were registered before the contested domain name.

While the US American registrations of the Complainant play no decisive role in these proceedings, they show that the Complainant has established rights in the mark in numerous countries around the world.

The use made by the Complainant of the mark in the clothing sector has also been shown to be substantial thus giving rise to a considerable scope of protection of the mark "WELLENSTEYN".

The rights of the Complainant have therefore been established.

The contested domain name "wellensteynoutlet.eu" consists of a combination of the mark "WELLENSTEYN" and the descriptive and generic term "OUTLET". This does not lead to the conclusion that the domain name is almost identical to the earlier trademark rights as the Complainant has alleged. However, the addition of the word "OUTLET" is a clear indication of the form of distribution of the "WELLENSTEYN" goods which purportedly can be found under this domain name. The additional word element is therefore not sufficient to distinguish the contested domain name from the Complainant's marks.

The likelihood that consumers will access the website "wellensteynoutlet.eu" believing that they are accessing an official website of the Complainant cannot be denied. For these reasons the Panel finds that the Complainant has satisfied the requirement of the disputed domain name being confusingly similar to the Complainant's marks and therefore to an earlier right established both by the national law of a Member State and by Community Law.

The second requirement according to Paragraph 11 (d) (1) (ii) of the ADR Rules is that the domain name holder has no rights or legitimate interests in the disputed domain name.

In this case, the Respondent, although in default, has submitted a statement to the Czech Arbitration Court expressly stating:

I, the undersigned Virdis, Antonello […] hereby declare […] that I have never applied for the domain name "wellwnsteynoutlet.eu". [sic]

Although the contested domain name is clearly misspelled in the Respondent's statement, it is spelled correctly in the Complaint filed by the Respondent with the state police. Since the Respondent has signed this Complaint it must be accepted that the statement provided to the Czech Arbitration Court contains a mere spelling error and that the Respondent expressly declares to have never applied for the contested domain name. Whether this is true or not cannot be ascertained in the context of the ADR proceedings. What it does however show is that the Respondent clearly does not purport to have any rights or interests in the disputed domain name since he expressly denies ever having attempted to register it.

The Panel finds that this is sufficient evidence for a finding of lack of rights or legitimate interests in the disputed domain name.

Additionally and as an alternative to the above, in accordance with Paragraph 11 (d) (1) (iii) of the ADR Rules, the Panel may also grant the requested remedies if the domain name holder has registered or is using the domain name in bad faith.

The evidence provided by the Complainant shows that the site operated under the disputed domain name sells products which appear to originate from the Complainant. However, the Respondent has neither been granted any rights by the Complainant nor is he a licensee or authorized representative of the Complainant. Additionally, the information provided on the website operated under the domain name "wellensteynoutlet.eu" is of such poor linguistic quality that it cannot seriously be believed to be connected to the proprietor of the

trademark rights.

In view of the above described facts, the registration of the disputed domain name appears to have been carried out with the intention of taking advantage of the Complainant's reputation in order to divert traffic from the Complainant's websites to a website selling goods of unknown origin. The Panel finds that this is an indication of a domain name having been used intentionally to attract Internet users for commercial gain to the Respondent's website by creating a likelihood of confusion in accordance with Paragraph 11 (f) (4) of the ADR Rules.

For these reasons, the Panel also finds that the third element of Paragraph 11 (d) (1) of the ADR Rules has also been met and that the domain name has been registered and is being used in bad faith.

It is not necessary to fulfil these additional elements if the domain name has been registered without rights or legitimate interest in the name. This fact has been established by the clear statement of the Respondent.

However, due to the fact that the Respondent has denied having registered the domain name which at the time of the filing of the Complaint was in use for an internet site purporting to sell "WELLENSTEYN" goods and such use may or may not be or have been taking place through an unknown third party, the Panel finds it necessary to show that bad faith is also given.

In particular if the Respondent himself is not responsible for the registration of the domain, then it is held that the provision of incorrect information about the registrant at the time of registration and the use of the domain name in the manner described above are compelling indications for the registration and use of the domain name in bad faith within the meaning of Paragraph 11 (d) (1) (iii) of the ADR Rules.

DECISION

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

PANELISTS

Name	**Udo Pfleghar**

DATE OF PANEL DECISION 2013-04-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: wellensteynoutlet.eu

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

III. Date of registration of the domain name: 06 October 2012

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

- German trademark No. 30043641 WELLENSTEYN (word) of 8 June 2000 protected for classes 25, 33 and 36;
- German trademark No. 30562316 Wellensteyn (word) of 19 October 2005 protected for numerous classes including class 25;
- German trademark No. 30659755 Wellensteyn (word and device) of 27 September 2006 protected for goods in class 25;
- German trademark No. 30722985 WELLENSTEYN (word and device) of 4 April 2007, protected in classes 25, 09 and 18,
- Community trademark No. 3500998 Wellensteyn (word) of 31 October 2003, protected in classes 18, 24 and 25,
- International Registration No. 817862 WELLENSTEYN (word) of 17 November 2003 registered in classes 25, 33 and 36;
- US Trademark Reg. No. 3434253 Wellensteyn (word and device) of 11 March 2008 registered in classes 18 and 25, and others.

V. Response submitted: Submitted out of time.

VI. Domain name is confusingly similar 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. Respondent expressly claims not to have registered the domain name. Instead the Respondent claims that the registration was the result of an identity theft.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Due to the fact that the Respondent has denied having registered the domain name which is or was in use for an internet site purporting to sell “WELLENSTEYN” goods and such use may or may not be or have been taking place through an unknown third party, the Panel found it necessary to show that bad faith is also given.

In particular if the Respondent himself is not responsible for the registration of the domain, it was held that the provision of incorrect information about the registrant at the time of registration and the use of the domain name in the manner described in Paragraph 11 (f) (4) of the ADR Rules are compelling indications for the registration and use of the domain name in bad faith within the meaning of Paragraph 11 (d) (1) (iii) of the ADR Rules.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. Is Complainant eligible? Yes