Panel Decision for dispute CAC-ADREU-006544

Case number	CAC-ADREU-006544
Time of filing	2013-11-20 22:46:58
Domain names	swarovskicrystaluk.eu

Case administrator

	Lada Válková (Case admin)

Complainant

Organization	Swarovski Aktiengesellschaft

Respondent

Organization	-

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 proceeding regarding the disputed domain name.

FACTUAL BACKGROUND

The Complainants Swarovski Aktiengesellschaft (“Swarovski AG”) and D. Swarovski Kommanditgesellschaft (“D. Swarovski KG”) contest the registration of domain name swarovskicrystaluk.eu. The Complainants and other companies belonging to the Swarovski group have been using the Swarovski name as part of their company name dating back to 1895 and have registered community trademark and have trademark registrations in the EU member states to various Swarovski marks. The disputed domain name was used to direct consumers to the online shop that according to the confirmation of the Complainants sold purported Swarovski jewelry products.

A. COMPLAINANT

The Complainants demonstrate that their rights in the name Swarovski are recognized and established by law by company registration, trademark registration and use of Swarovski name as business identifier.

The Complainants state that the domain name swarovskicrystaluk.eu is confusingly similar to trademarks and business names used by the Complainants. The addition of the common or generic words “crystal” and “uk” do not distinguish the domain name from the Swarovski name and trademarks.

The Complainants claim that the Respondent has no rights or legitimate interests in respect of the domain name swarovskicrystaluk.eu. The Respondent is not associated with, affiliated with or licensed by the Complainants to use the Swarovski® Marks or name in any way nor has the Respondent been authorised to register the disputed domain name by the Complainants and the Complainants’ rights in the Swarovski name predate the registration of swarovskicrystaluk.eu. The Respondent’s previous use of the disputed domain name to direct consumers to the online shop, which sold purported Swarovski jewelry products further supports the contention of the Complainants that swarovskicrystaluk.eu was registered for the purpose of trading on the good will of the Swarovski name and trademark and not because of any right or legitimate interests of the Respondent.

The Complainants also contend that the disputed domain name was registered primarily for the purposes of trading off the goodwill attached to the Swarovski name and trademarks and for the purpose of disrupting the business and activities of the Complainants and therefore domain name swarovskicrystaluk.eu was registered in bad faith.

B. RESPONDENT

The Respondent has not filed a response to the complaint.

DISCUSSION AND FINDINGS

According to Article B11(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that Complainant proves in the ADR proceeding that:

(i) the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national 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.

Firstly, the question whether the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law shall be analysed.

The Complainant has proven that it is the holder of the trademark Swarovski having both community trademark and national trademark registrations in several countries and that both Complainants are using Swarovski name as company name and business identifier. The disputed domain name consists of the name Swarovski as the main identifier and generic additions "crystal" and "uk". The Panel shares the opinion stated in earlier decisions regarding .eu domain name disputes, that the additions that are of generic nature are not sufficient to avoid confusion.

Therefore, the domain name swarovskicrystaluk.eu is confusingly similar to a name in respect of which a right of Complainant is established, and the condition set forth under Article B11(d)(1)(i) of the ADR Rules is fulfilled.

Secondly, it must be analysed whether the domain name has been registered by the Respondent without rights or legitimate interest in the name or whether the domain name has been registered or is being used in bad faith.

The Complainants state that the Respondent has no rights or legitimate interests in respect of the domain name as the Respondent is not associated with, affiliated with or licensed by the Complainants to use the Swarovski® Marks or name in any way nor has the Respondent been authorised to register the disputed domain name by the Complainants. The Complainants have thereby established a prima facie lack of rights or legitimate interest in the domain name by the Respondent.

The Respondent had a possibility to notify the Panel of its rights or legitimate interests in the name by filing a response to the complaint but the Respondent did not file any response in this ADR case.

Article B11(e) of the ADR Rules provide a non-exhaustive list of circumstances that shall demonstrate Respondent’s rights or legitimate interests to the domain name. None of these circumstances have been proven and the Panel has no other evidence proving the rights or legitimate interests of the Respondent. Considering also the Respondent’s failure to present a timely response the Panel finds that the Respondent has no rights or legitimate interest in the domain name swarovskicrystaluk.eu.

As the Respondent has registered domain name swarovskicrystaluk.eu without rights or legitimate interests in it, it is not necessary to investigate Respondent’s possible bad faith under Article B11(d)(1)(iii) of the ADR Rules but the Panel still would like to state that as the domain name was used to direct consumers to the online shop, which sold purported Swarovski jewelry products, the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent’s website by creating a likelihood of confusion with a name on which a right is recognized or established and according to Article B11(f) (4) of the ADR Rules such circumstance may be the evidence of the registration and use of a domain name in bad faith.

The remedy sought by the Complainants is transfer of the domain name swarovskicrystaluk.eu to the Complainant D. Swarovski Kommanditgesellschaft. As the Complainant D. Swarovski Kommanditgesellschaft has a registered office within the Community, it satisfies the general eligibility criteria for registration of the Domain Name set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002. Therefore, the Complainant D. Swarovski Kommanditgesellschaft is entitled to request the transfer of the Domain Name.

DECISION

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

the domain name SWAROVSKICRYSTALUK.eu be transferred to the Complainant D. Swarovski Kommanditgesellschaft.

PANELISTS

Name	**Viive Naslund**

DATE OF PANEL DECISION 2013-11-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: swarovskicrystaluk.eu.

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

III. Date of registration of the domain name: 21 September 2012

IV. Rights relied on by the Complainants (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Austria, reg. No. 55481, registered on 19 August 1965, last updated 25 May 2011 in respect of goods and services in international classes 3,7, 9, 14, 16, 18, 19, 20, 21, 24, 26, 27.
2. word trademark registered in United Kingdom, reg. No. 962682, for the term 20 July 2015, filed on 20 July 1970 in respect of goods and services in class 14.
3. word CTM, reg. No. 000120576, for the term 01 April 2016, filed on 01 April 1996, registered on 15 October 1998 in respect of goods and services in classes 3, 9, 11, 14, 16, 18, 21, 25, 26
4. word CTM, reg. No. 003895091, for the term 22 June 2014, filed on 22 June 2004, registered on 23 August 2005 in respect of goods and services in classes 2, 3, 6, 8, 9, 11, 16, 18, 19, 20, 21, 24, 25, 28, 34, 35, 41
5. business identifier: Swarovski
6. company name: Swarovski Aktiengesellschaft; D. Swarovski Kommanditgesellschaft

V. Response submitted: No

VI. Domain name is confusingly similar to the protected rights of the Complainants

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: Based on evaluation of all evidence presented, Panel did not find present any circumstances that shall demonstrate the Respondent’s rights or legitimate interests to the domain name for purposes of Paragraph B11(d)(1)(ii)

VIII. Dispute Result: Transfer of the disputed domain name

IX. Is Complainant eligible? Yes