Panel Decision for dispute CAC-ADREU-006607

Case number	CAC-ADREU-006607
Time of filing	2014-02-12 19:43:01
Domain names	swarovskiuksale.eu

Case administrator

	Lada Válková (Case admin)

Complainant

Organization	Swarovski Aktiengesellschaft

Respondent

Name	Marcel Hertz

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 concerning 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 swarovskiluksale.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 contend that they hold trademark, company name and business identifier rights to the name SWAROVSKI.

The disputed domain name is confusingly similar to the Complainants' trademark because the addition of generic words "uk" and "sale" do not distinguish the disputed domain name from the trademark. Previous panels have also held that the use of a geographical indicator in a domain name does not differentiate the domain name from a complainant’s trademark name.

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 did not submit a response.

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.

The disputed domain name incorporates the Complainants' trademark in its entirety and combines it with the terms "uk" and "sale". These terms are generic terms relevant for the Complainants' business in the UK. The Panel finds that the addition of such generic terms to a distinctive trademark does not remove similarity between the trademark and the disputed domain name. Accordingly, the Panel finds that the disputed domain name is confusingly similar to the Complainants' trademark.

The Complainants' have submitted that the Respondent registered the disputed domain name without rights or legitimate interests to it and that it was registered in bad faith. The Complainants rights to the trademark predate the registration of the disputed domain name. The Complainants' have not agreed to the use of their trademark in the disputed domain name.

The Complainant has made at least a prima facie case that the Respondent lacks legitimate rights to the disputed domain name and that it was registered in bad faith. The Respondent had an opportunity to rebut these allegations but decided not to respond. The Panel therefore finds that the Respondent registered the disputed domain name without rights or legitimate interests to the name.

It is furthermore clear from the evidence that the disputed domain name was registered to direct consumers to the Respondent's online shop selling purported Swarovski jewellery. The Respondent has therefore used the Complainants' trademark to mislead Internet users to its website for commercial gain. The Panel finds that this is sufficient evidence of use and registration of the disputed domain name in bad faith.

DECISION

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

the domain name SWAROVSKIUKSALE be transferred to the Complainant D. Swarovski Kommanditgesellschaft.

PANELISTS

Name	**Tuukka Airaksinen**

DATE OF PANEL DECISION 2014-02-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SWAROVSKIUKSALE.EU

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

III. Date of registration of the domain name: 02 November 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word CTM, reg. No. 120576, for the term SWAROVSKI, filed on 1 April 1996, registered on 15 October 1998 in respect of goods and services in classes 3, 9, 11, 14, 16, 18, 21, 25, 26
2. word CTM, reg. No. 3895091, for the term SWAROVSKI, 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

V. Response submitted: No

VI. Domain name is confusingly similar to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: No response

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes

2. Why: Use of confusingly similar domain name to distract Internet users for commercial gain.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name to D. Swarovski Kommanditgesellschaft

XI. Procedural factors the Panel considers relevant: None

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