Panel Decision for dispute CAC-ADREU-006640

Case number	**CAC-ADREU-006640**
Time of filing	**2014-05-01 11:12:45**
Domain names	**ikeawilrijk.eu, ikeaanderlecht.eu, ikeazaventem.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization	**Inter IKEA Systems B.V.**

Respondent

Organization	**PM Meulenijzer**

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 other pending or decided proceedings related to the disputed domain names.

FACTUAL BACKGROUND

The Complainant is Inter IKEA Systems B.V., a company active in the business of furniture and home furnishing. Its business model is based on a franchise system with approved retailers who may use the IKEA trademark. In 2013, the total number of IKEA stores was 345, spread over 42 countries generating annual sales of more than 29.2 billion €.

The Complainant has registered IKEA trademark in numerous States, but also as an international trademark, with the USPTO and as a community trademark in several classes listed by the Complainant. The trademark was listed 26 on the Interbrand's list of best global brands in 2013 and previous panels have recognized that it is very well-known all over the world.

The disputed domain names <ikeawilrijk.eu>, <ikeaanderlecht.eu> and <ikeazaventem.eu> have all been registered on July 24, 2013 by the Respondent, named PM Meulenijzer,

The Complainant filed a complaint on 7 January 2014 and requested the domain names to be transferred to Inter IKEA Systems B.V.

The Respondent has not confirmed receiving the e-mail notice of the ADR Proceeding by accessing the online platform. The same was sent by post on 28 January 2014 and on 10 February 2014 an advice of delivery proving the delivery of the written notice of the ADR Proceeding was returned to the Czech Arbitration Court. The Respondent has further failed to comply with the deadline indicated in the notification of commencement of ADR proceeding for the submission of a response and has not challenged the appointment of a Panelist.

A. COMPLAINANT

The Complainant considers the registration and use of the disputed domain names to be an infringement on its exclusive trademark rights, creating unjustified profits to the domain name holder and damaging to the distinguishing character and the reputation of its trademarks.

Therefore it has filed a complaint on the following grounds:

1. The disputed names are confusingly similar to the name in respect of which the Complainant has rights, since the addition of descriptive or generic terms to a name for which a right is recognized or established by national and/or Community law does not take away the confusing similarity, nor does the addition of geographic identifiers.

2. The disputed names have been registered without rights or legitimate interest in the names since the Respondent is not commonly known by the disputed domain names. The domain names are used for a quickly made website, the Respondent has not acquired trademark or service mark rights and the use and registration of the names were not authorized by the Complainant.

3. The disputed names have been registered or are being used in bad faith since the Respondent was aware or at least had to be aware of the Complainant's existing rights and since the registration of multiple domain names with similar uses demonstrates a pattern of bad faith registration.

B. RESPONDENT

The Respondent did not submit a response within 30 working days from the delivery of a notification according to the requirements of the ADR Rules and Supplemental Rules nor did it later and is to be considered in default.

DISCUSSION AND FINDINGS

In accordance with Article 21(1) of Regulation 874/2004 a registered domain name is speculative or abusive and is 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:
a) has been registered by its holder without rights or legitimate interest in the name; or
b) has been registered or is being used in bad faith.

1. The disputed names are confusingly similar to the name recognised by national and community law as a trademark.

They incorporate the IKEA trademark in its entirety and add the geographic identifiers 'wilrijk', 'anderlecht' and 'zaventem', which are all generally known to be places were retailers of the Complainant are located.

According to the established case law referred to by the Complainant, there is indeed confusing similarity where the entire mark in question is incorporated into the disputed domain name and where only a generic or descriptive word has been added. See the WIPO Case No. D2010-1919, January 25, 2011, where it was decided that the addition of the term 'catalogue' in the domain name <ikeacatalogue.org> was not sufficient to refute the confusing similarity between the disputed domain name and the Complainant's IKEA trademark.

Nor does the addition of a geographic term for that matter, as was decided in CAC 6430, <vinci-france.eu>, where the panel considered that the addition of "-france" to the Complainant's business name and to the most distinctive part of its registered community trademark creates confusing similarity between the Complainant's prior rights and the disputed domain name.

2. The disputed names have been registered by the Respondent without legitimate interest in the name.

The burden of proof regarding lack of legitimate rights or interests rests on the Complainant, but the Complainant only needs to establish a prima facie case, see e.g., Yakult Europe B.V. v. Mark Weakley, CAC 5156, <yakult.eu>; Diehl Stiftung & Co. KG, Ralf Kummer v. H. Klomp, CAC 5824 a.o.

Article 21(2) of Regulation 874/2004 provides a non-exhaustive list of examples of how a Respondent may demonstrate a legitimate interest.

This may be the case where the Respondent has been commonly known by the domain name or has used or made preparations to use the domain name in connection with the offering of goods or services, while the name Meulenijzer is most certainly not associated with the disputed names. A quick search on Google for PM Meulenijzer at Mere shows a website that lists doctors and pharmacists.

This may also be the case where the Respondent is making a legitimate, non-commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under national or Community law. But copyright protected material from the Complainant is displayed on the Respondent's website and it contains sponsored links to websites offering coupons and other goods and services beneficial to the Respondent. This is not a legitimate and non-commercial or fair use of the domain names without intent to mislead the consumers as required by the Regulation.

3. Bad faith may, according to Art. 21.3 (d) be demonstrated where the domain name was intentionally used to attract internet users for

commercial gain to the holder of a domain name website by creating a likelihood of confusion with a name on which a right is recognised or established, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or a product or service on the website or location of the holder of a domain name.

Considering the above bad faith within the meaning of Article 21.1 (b) is sufficiently demonstrated.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain names IKEAWILRIJK, IKEAANDERLECHT, IKEAZAVENTEM be transferred to the Complainant

PANELISTS

Name	**Herman Sobrie**

DATE OF PANEL DECISION 2014-04-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: IKEAWILRIJK, IKEAANDERLECHT, IKEAZAVENTEM

II. Country of the Complainant: the Netherlands, country of the Respondent: Belgium.

III. Date of registration of the domain name: 7 January 2014

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

V. Response submitted: No

VI. Domain names are 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): No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): Yes. The domain name was intentionally used to attract internet users for commercial gain to the holder of a domain name website by creating a likelihood of confusion with a name.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain names.

XI. Procedural factors the Panel considers relevant: No

XII. Is Complainant eligible? Yes