Panel Decision for dispute CAC-ADREU-006643

Case number	CAC-ADREU-006643
Time of filing	2014-07-10 21:43:17
Domain names	amazon-it.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Solomon Jack

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 legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a globally known online retailer established in 1994, involved in sales of wide range of products including books, electronics, apparel, household goods, jewellery, cloud computing services, etc. The Complainant has been present in Europe for a number of years and has launched its UK website "amazon.co.uk" in 1998.

The Complainant owns over 40 community trademark registrations containing the word AMAZON, first being registered in 1998. Some of the Complainant's registered Community Trademarks are AMAZON, No. 386276, registered on 29.10.1998 in class 9; AMAZON.COM, No. 479816, registered on 12.4.2002 in class 35; and AMAZON.CO.UK, No. 916072, registered 15.5.2002, in classes 9, 16, 35, 39 and 42.

The Complainant is also the owner of many domain names containing the trademark AMAZON, including the domain "amazon.it", "amazon.de", "amazon.fr", "amazon.es", etc.

The contested domain name „amazon-it.eu“ has been registered by Solomon Jack, on September 28, 2013. The disputed domain name was in active use at the time the Complaint was filed.

The Respondent did not submit any Response to the Complaint.

A. COMPLAINANT

The Complainant asserts that the contested domain name “amazon-it.eu” is virtually identical to and incorporates the well-known trademark AMAZON. Country code abbreviation "it" separated by a hyphen, increases the possibility further confusion with the domain name “amazon.it”.

The Complainant asserts that the Respondent has no right or legitimate interest in respect to the domain name. The Respondent does not hold any trademark rights in connection to word AMAZON, while the word AMAZON is connected with the Complainant’s trademark and is not a word any trader would legitimately choose unless they were seeking to mislead internet users and to create an impression of an association with the Complainant. The Complainant and the Respondent are not affiliated with each other in any way, and the Respondent has never been authorized, licensed or otherwise permitted by the Complainant to use any of its trademarks, for domain name or otherwise.

The Complainant asserts that after the receipt of the notice of the dispute, the Respondent changed the content of the website from a

number of links promoting the resale of third parties' clothing and accessories, to redirecting visitors to a number of third parties' advertisement links, amongst which there are two which use the name AMAZON. The Complainant holds that none of the uses of the disputed domain name cannot be regarded as a legitimate use in connection with any legitimate offering of goods or services as it aimed solely to benefit from Amazon's recognition and goodwill amongst Internet users with clear purpose to mislead consumers.

The Complainant furthermore asserts that the disputed domain name is used in bad faith. As the Respondent has no right of his own to use the name and trademark AMAZON, Respondent's current use of the domain name is solely for the purpose of earning revenues by misleadingly redirecting Internet users and customers who may instead looking for the "amazon.it" or "amazon.eu" to its web pages, which shows an occurrence of a bad faith conduct.

B. RESPONDENT

The Respondent did not file any response within prescribed terms.

DISCUSSION AND FINDINGS

Under Article 21(1) of the Regulation EC No. 874/2004, a registered domain name is subject to revocation if it is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, namely rights mentioned in Article 10(1) of the Regulation, and if the domain name (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.

Article 10(1) of the Regulation refers to a national and community trademarks, amongst other rights, and, in as far as they are protected under national law in the Member State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, etc.

The Complainant has submitted evidences that it owns rights in registered Community Trademarks AMAZON, No. 000386276, AMAZON.CO.UK, No.000916072 and AMAZON.COM, 000479816. Word AMAZON is also distinctive part of the Complainant's company name.
While it is well established that the extension „.eu“ as such is irrelevant in assessing whether the domain name is identical or confusingly similar to the name in which Complainant has rights (ADR.EU cases No. 00596, restaurants.eu; No.00227, kinst.eu), designation „-it“ added to the word “amazon” in the contested domain name does not circumvent the confusion.

Contrary, this Panel finds that designation „-it“ additionally contributes to the confusing similarity of the contested domain name in relation to the Complainant's rights, given the fact that the Complainant already holds domain name „amazon.it“. Furthermore, the Panel finds that the fact that the Respondent offered on the website goods of third parties, such as apparel, which is also type of goods sold by Complainant, is another element increasing likelihood of confusion.

The Panel accepts the Complainant´s submissions and finds that domain name „amazon-it.eu“ is confusingly similar to the Complainant’s AMAZON trademarks.

The Complainant has asserted that the Respondent does not hold any rights in the name AMAZON, that the Respondent is not known by the name AMAZON, that the Complainant and the Respondent are not affiliated in any way, nor has the Complainant licensed or in other way authorized the Respondent to us AMAZON trademarks. The Complainant has furnished evidence showing that the Respondent initially used the website connected to the contested domain name offering third party's products, while after receiving the notice of the dispute it has changed the content of the website to redirecting users to a number of third parties' advertisement links. Moreover, the Complainant has furnished evidence that some of the links contain word AMAZON, however none of the links actually lead to any of the Complainant’s websites.

This Panel accepts the assertion of the Complainant that the word AMAZON is notoriously connected with the Complainant’s trademark and that no trader would legitimately choose such a name for its business unless seeking to create an impression of an association with the Complainant, or merely to groundlessly benefit from the Complainant’s reputation. The Panel finds that all facts of the case and the Respondent’s behaviour, once it became aware of the dispute, clearly indicate that it has not used the contested domain name for bona fide offerings of goods and services, it is commonly known by the domain name, nor it has made legitimate and non-commercial use of the domain.

The Panels accepts that the Complainant established prima facie case of lack of legitimate interest in the name. The Respondent failed to submit response and to defend its interests, and this Panel believes that the Respondent does not have legitimate interest in the contested domain name. Therefore, in Panel's view, the Complainant has satisfied the requirements of Article 21(1)(a).

The Complainant asserts that the contested domain name has been registered and used in bad faith, as the Respondent deliberately chose name AMAZON in order to collect click-through revenues from the Internet users seeking the Complainant's website. The Complainant relies on Article 21(3)(d) of the Regulation which stipulates that circumstances where „the domain name is intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established by national and/ or Community law…“ shall be considered as bad faith.

This Panel accepts that the Complainant's trademark AMAZON is notorious amongst Internet users, moreover, online shoppers, and that it is, on the balance of probabilities, likely that the Respondent intentionally used the AMAZON notoriety for its commercial gain. It is not probable that an entrepreneur involved in any online commercial activities would not be aware of the Complainant and its online business. Hence, having in mind the level of the similarity with the Complainant's trademark and domain names, as well as its reputation, the Panel concludes that the Respondent's activity has not been conducted in bona fide manner.

As the Respondent failed to argue its potential entitlement and challenge the allegations of the Complainant, having in mind all the facts of the case, this Panel takes that the Respondent acted in bad faith abusing the administrative procedure and, in the Panel's view, the Complainant has satisfied the requirements of Article 21(1)(b).

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) of the Rules, the Panel orders that the domain name AMAZON-IT be transferred to the Complainant.

PANELISTS

Name	**Vanja Kovačević**

DATE OF PANEL DECISION 2014-07-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: amazon-it.eu

II. Country of the Complainant: Luxembourg, country of the Respondent: Great Britain

III. Date of registration of the domain name: 28 September 2013

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. Word trademark AMAZON, CTM No. 386276, registered on 29 October 1998 in respect of goods and services in class 9;
2. Word trademark AMAZON.COM, CTM No. 479816, registered on 12 April 2002 in respect of goods and services in class 35;
3. Word trademark AMAZON.CO.UK, CTM No. 916072, registered on 15 May 2002 in respect of goods and services in classes 9, 16, 35, 39, 42;

V. Response submitted: No

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. Why: Respondent does not hold any rights in the name AMAZON, is not known by the name AMAZON, and the Complainant and the Respondent are not affiliated.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the domain name is intentionally used to attract Internet users, for commercial gain.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

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