Panel Decision for dispute CAC-ADREU-006659

Case number	CAC-ADREU-006659
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Domain names	vuarnet.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Domains Master

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 pending or concluded proceedings concerning the disputed domain name.

FACTUAL BACKGROUND

The disputed domain name 'vuarnet.eu' was registered on November 10, 2013. The Respondent is the holder of the disputed domain name but his name and postal address are not disclosed in the WHOIS database.

The Complainant is a French company. The extract from the register of companies for the Complainant shows that the Complainant's main registered activities include production and sale of eyeglasses, sunglasses, and other optical and sport accessories.

The Complainant is a holder of several trademarks comprising the word 'vuarnet', namely:
- French national trademark 'VUARNET' stylized; No. 1269831; application date: April 26, 1984; covering among others: eyeglasses, sunglasses, eyeglasses' frames in class 9 of the Nice classification; status: registered and valid;
- French national trademark 'VUARNET EXTREME' word mark; No. 95574540; application date: June 7, 1995; covering among others: eyeglasses, eyeglasses' frames, sunglasses, ski glasses in class 9 of the Nice classification; status: registered and valid;
- Community trademark (CTM) 'VUARNET' word mark; No. 000658278; application date: October 10, 1997; covering among others: spectacle frames, glasses and sunglasses, spectacles for sports, among other, for skiing in class 9 of the Nice classification; status: registered and valid;
- Community trademark (CTM) 'V VUARNET' stylized; No. 000744979; application date: January 30, 1998; covering among others: spectacle frames, glasses and sunglasses, spectacles for sports, including for skiing, surfing, tennis in class 9 of the Nice classification; status: registered and valid.

The Complainant filed the respective complaint on January 30, 2014. The notification on the commencement of the ADR procedure was sent to the Respondent on February 6, 2014, however the Respondent failed to confirm the receipt of the notification and also failed to respond to the notification and the complaint.

A. COMPLAINANT

The Complainant stated that he is the owner of two registered French trademarks: V VUARNET No. 1269831 and VUARNET EXTREME No. 95574540; and two CTMs: VUARNET No. 000658278 and V VUARNET No. 000744979. Therefore, he argues, he has legal right to prevent third parties from unauthorized use of his trademarks, including the right to prevent third parties from registering the domain name composed of a word VUARNET, which is identical to his trademarks.

The Complainant has never granted any license to the Respondent to use the sign VUARNET or to register a domain name comprising

the word VUARNET.

The Complainant considered the Respondent to register the disputed domain name in bad faith because the Respondent had no authorization from the Complainant. The internet site at www.vuarnet.eu features a notice that the disputed domain name is for sale; and the Respondent has put the disputed domain name to an online auction at www.sedo.com. The Respondent's name and other contact details, except email address, are not disclosed in the WHOIS database, which also shows bad faith on the Respondent's part.

The Complainant seeks that the disputed domain name be transferred to him.

B. RESPONDENT

The Respondent did not respond to the complaint and the notification of commencement of the ADR procedure.

DISCUSSION AND FINDINGS

1. According to Article 21(1) of Commission Regulation No. 874/2004 a registered domain name shall be revoked if that 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, such as national trademarks or Community trademarks, and where 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.

2. According to Article 22(11) of Commission Regulation No. 874/2004 the domain name shall be transferred, instead of revoked, if the complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of the Regulation No. 733/2002, for example if a complainant is a company with its registered office or principal place within the European Union.

3. The Complainant submitted sufficient evidence, namely extracts from French trademark database and OHIM trademark database, to prove that the Complainant is the proprietor of the following registered and valid trademarks:

(a) French national trademark 'V VUARNET' stylized; No. 1269831; application date: April 26, 1984; covering among others: eyeglasses, sunglasses, eyeglasses' frames in class 9 of the Nice classification; status: registered and valid;

(b) French national trademark 'VUARNET EXTREME' word mark; No. 95574540; application date: June 7, 1995; covering among others: eyeglasses, eyeglasses' frames, sunglasses, ski glasses in class 9 of the Nice classification; status: registered and valid;

(c) Community trademark (CTM) 'VUARNET' word mark; No. 000658278; application date: October 10, 1997; covering among others: spectacle frames, glasses and sunglasses, spectacles for sports, among other, for skiing in class 9 of the Nice classification; status: registered and valid;

(d) Community trademark (CTM) 'V VUARNET' stylized; No. 000744979; application date: January 30, 1998; covering among others: spectacle frames, glasses and sunglasses, spectacles for sports, including for skiing, surfing, tennis in class 9 of the Nice classification; status: registered and valid.

4. All mentioned trademarks were applied for registration before the disputed domain name was registered on November 10, 2013, so they enjoyed earlier legal protection in the EU.

5. The disputed domain name is identical or confusingly similar to three of the above mentioned Complainant's trademarks (French national trademark No. 1269831, and CTMs No. 000658278 and 000744979). The CTM No. 000658278 is a word mark which consists of word 'VUARNET', so its identity with the disputed domain name VUARNET.EU is obvious. The CTM No. 000744979 and French national trademark No. 1269831 comprise additional graphic elements, such as two circles, stylized letter V in the background, and a rectangular frame around the inscription 'VUARNET', however the main element of these two trademarks is a word 'VUARNET', which is identical to the disputed domain name.

6. The Complainant stated that no license was granted to the Respondent to use any of the above mentioned trademarks. Given that the Respondent did not respond to the complaint, the Panel has no reason to doubt that statement. Since the Complainant has provided evidence of a prima facie lack of rights or legitimate interests on the part of the Respondent the Panel concludes that the Respondent has acquired the registration of the disputed domain name without any rights or legitimate interest in that name.

7. The Respondent registered and used the disputed domain name in bad faith. The printout of the website at www.vuarnet.eu,

submitted by the Complainant, showed the indication that the disputed domain name is for sale by the owner. The website also featured several links, among others, related to sunglasses of other manufacturers. Given that the links on this website were related to eyewear, which is identical to goods covered by the Complainant's trademarks and to goods mentioned in the activities section in the extract of register of companies for the Complainant, it is obvious that the Respondent must have been aware of the Complainant's company, its activities and trademarks when using and also very likely when seeking registration of the disputed domain name. It is evident that the Respondent registered the disputed domain name with the intention to sell it, which is additionally supported by the fact, that the Respondent put the disputed domain name to an online auction at www.sedo.com, as evident from the printout of that website, submitted by the Complainant. The Respondent's website was designed to attract the internet traffic by users, interested in the Complainant's brand and products, to other websites. Therefore, the Respondent's actions clearly fall within the meaning of 'bad faith' as defined in Articles 21(3)(a) and (d) of the Commission Regulation 874/2004.

8. The Complainant is a French company, so it satisfies the general eligibility criteria under Article 4(2)(b) of the Regulation No. 733/2002 to be the holder of the .eu top level domain name.

9. Given that the registration of the disputed domain name was speculative and abusive according to Article 21(1) of the Commission Regulation No. 874/2004, and the Complainant satisfies the general eligibility criteria under Article 4(2)(b) of the Regulation No. 733/2002, the Panel grants the Complainant's request and transfers the disputed domain name to the Complainant according to Article 22(11) of the Commission Regulation No. 874/2004.

DECISION

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

PANELISTS

Name	Gregor Macek

DATE OF PANEL DECISION 2014-05-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: vuarnet.eu

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

III. Date of registration of the domain name: 10 November 2013

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No. 874/2004) on which the Panel based its decision:
1. combined trademark registered in France, reg. No. 1269831, for the term VUARNET, filed on 26 April 1984, registered on 26 April 1984 in respect of goods in class 9
2. word trademark registered in France, reg. No. 95574540, for the term VUARNET EXTREME, filed on 7 June 1995, registered on 7 June 1995 in respect of goods in class 9
3. word CTM, reg. No. 000658278, for the term VUARNET, filed on 10 October 1997, registered on 26 November 1998 in respect of goods in class 9
4. combined CTM, reg. No. 000744979, for the term VUARNET, filed on 30 January 1998, registered on 13 June 2000 in respect of goods in class 9

V. Response submitted: No

VI. Domain name/s is identical and 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: The Respondent does not provide any evidence of rights or legitimate interest in the Domain Name although it was duly given a chance to do so.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Respondent registered domain name for the purpose of selling and used the domain name in a way to attract internet traffic to other on-line location.

IX. Other substantial facts the Panel considers relevant: The Respondent had no rights or legitimate interest to register the domain name.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. Is Complainant eligible? Yes