Panel Decision for dispute CAC-ADREU-006737

Case number	**CAC-ADREU-006737**
Time of filing	**2014-09-26 12:21:16**
Domain names	**alamocostarica.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization	**Vanguard Trademark Holdings USA LLC**

Respondent

Name	**Eduard Eertink**

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 that are pending or decided in relation to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner of the mark ALAMO for vehicle rental services, including rental car services.

Amongst others, the Complainant owns the following trademark registrations: Community Trademark No. 001860592 for ALAMO (word mark), filed on September 19, 2000, in classes 12, 16, 36 and 39, and United Kingdom Trademark Registration No. UK00001278578 for ALAMO (word mark), filed on October 1, 1986, in class 39.

The Complainant is the owner, amongst others, of the domain names <alamo.com>, registered on April 14, 1999, and <alamo.cr>, registered on June 2, 2008.

The disputed domain name ALAMOCOSTARICA.EU was registered on December 14, 2013 and, at the time of the drafting of this decision, is pointed to a parking page with sponsored links where it is also indicated that the domain name is offered for sale.

A. COMPLAINANT

The Complainant states that, started in 1974, Alamo Rent A Car is a value-oriented, internationally recognized brand serving the daily rental needs of the airport leisure traveler throughout the United States, Canada, Mexico, Central/Latin America (including Costa Rica), the Caribbean, Asia and the Pacific Rim. The Complainant also alleges that it is the largest car rental provider to international travelers from the United Kingdom and other countries in the European community visiting North America.

The Complainant contends that the disputed domain name is confusingly similar to the trademark ALAMO since it incorporates the Complainant's mark in its entirety, with the mere addition of the country name Costa Rica, and of the top-level domain, ".eu", which is insufficient to distinguish the disputed domain name from the mark.

The Complainant also states that, in light of its long-standing registration and use of the ALAMO mark in connection with car rental services, the Respondent cannot have any legitimate rights in the disputed domain name in connection with a site that merely drives Internet traffic to other web sites. The Complainant therefore concludes that the Respondent's use is neither a bona fide offering of goods or services pursuant to Article 21(2)(a) nor a legitimate noncommercial or fair use pursuant to Article 21(2)(c).

The Complainant informs the Panel that it has not licensed or otherwise permitted the Respondent to use its ALAMO mark in connection with any goods or services or to apply for any domain name incorporating the ALAMO mark.

The Complainant also asserts that the Respondent does not operate a business known as “Alamo Costa Rica” and that, to the best of the Complainant’s knowledge, the Respondent does not advertise under the name “Alamo Costa Rica,” nor is he commonly known as “Alamo Costa Rica”.

The Complainant further states that the Respondent is not making any legitimate noncommercial or fair use of the disputed domain name since the web page to which the disputed domain name resolves is a generic type of web page commonly used by domain name owners seeking to monetize their domain names through “click-through” fees and the Respondent is attempting to divert Internet traffic to his web site published at the disputed domain name.

With reference to the circumstances evidencing the Respondent’s bad faith, the Complainant states that the Respondent’s registration of a domain name confusingly similar to the Complainant’s ALAMO mark for a web site that attempts to attract Internet users to the Respondent’s web site evidences a clear intent to trade upon the goodwill associated with the Complainant’s ALAMO mark for car rental services. The Complainant therefore concludes that the Respondent is deliberately using the disputed domain name to attract, for commercial gain, Internet users to his web site, by creating a likelihood of confusion with Complainant’s ALAMO mark as to the source, sponsorship, affiliation or endorsement of his web site and the services offered therein.

The Complainant also points out that the Respondent is using the disputed domain name in bad faith as it resolves to a “pay-per-click” web page containing online advertising that will provide the Respondent with revenue from “click-through” fees from Internet users who find their way to the web page published at the disputed domain name.

As an additional circumstance evidencing bad faith, the Complainant underlines that, in addition to the general offer to sell the disputed domain name published on the web page at <alamocostarica.eu>, the Complainant received a request from the Respondent of $999,999 for the disputed domain name. According to the Respondent, this offer, which bears no relation whatsoever to the Respondent’s out of pocket costs, makes it clear that the Respondent acquired the domain name for the purpose of selling it to the Complainant.

B. RESPONDENT

The Respondent did not submit a response within 30 working days from the delivery of the Complaint according to the requirements of the ADR Rules and Supplemental Rules and is to be considered in default.

DISCUSSION AND FINDINGS

Article 22(10) of Commission Regulation No. 874/2004 (hereinafter “the Regulation”) provides that the Respondent’s failure to respond to a Complaint may be considered by the Panel as a ground to accept the claims of the Complainant. However, as stated in ADR Case No. 05665 (OANDA), this does not mean that a Complaint will automatically be upheld whenever a Respondent fails to respond, since the Complainant is required to demonstrate that the provisions of Article 21(1) of the Regulation are satisfied.

According to Article 22 of the Regulation, an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21. Article 21 (1) provides that a registered domain name shall be subject to revocation where the 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, and where:
(a) it has been registered by its holder without rights or legitimate interests in the name; or
(b) it has been registered or is being used in bad faith.

With reference to the first element, the Panel finds that the Complainant has proved its rights in the name ALAMO within the meaning of the Article 10 (1) of the Regulation. Indeed the Complainant has provided evidence of ownership of a Community Trademark Registration and of a United Kingdom Trademark Registration for ALAMO.

The Panel finds that the addition of the geographical term “Costa Rica” is not sufficient to distinguish the disputed domain name from the Complainant’s trademark and that the generic top level domain “.eu” is irrelevant for the purpose of determining whether the disputed domain name is confusingly similar to the Complainant's trademark. See, inter alia, Swarovski Akteingesellschaft, D. Swarovski Kommanitgesellschaft v. Marcel Hertz, Decision No. 06544 (Czech Arbitration Court Nov. 20, 2013).

In view of the above, the Panel finds that the disputed domain name is confusingly similar to the Complainant’s trademark ALAMO and that, therefore, the first requirement of Article 21 (1) of the Regulation is satisfied.

With reference to the right or legitimate interest, Article 21 (2) of the Regulation states that “a legitimate interest may be demonstrated

where:

(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) it has been commonly known by the domain name;
(c) it is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national and/or community law.

Under the ADR Rules, the burden of proof of the lack of rights and legitimate interests of the Respondent lies with the Complainant. However, the existence of negative facts is difficult to prove, and the relevant information for the Respondent (including any potential evidence of rights and legitimate interests) is mostly in its sole possession. Therefore, the Panel finds that it is sufficient that the Complainant make a prima facie demonstration that Respondent lacks rights or legitimate interests in the disputed domain name. Once such prima facie case is made, the burden of production shifts to the Respondent to submit appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name

In the present proceeding, the Respondent was given a fair opportunity to present his case. However, he did not submit any Response to the Complaint. In particular, the Respondent has failed to contend that any of the circumstances described in Paragraph B11(e) of the ADR Rules is present in the present case. Therefore, the Panel concludes that the Respondent has no arguments or evidence to rebut the assertions of the Complainant, and any such evidence would have been unfavorable to the Respondent. See, along these lines, Mobitel EAD v. SdrujenieAsotsiatsiya na potrebitelite na telekommunikatsionniiinternetuslugi, Decision No. 05973 (Czech Arbitration Court July 10, 2011).

There is no relation, disclosed to the Panel, between the Respondent and the Complainant and the Respondent is not a licensee of the Complainant, nor has the Respondent otherwise obtained an authorization to use the Complainant's trademarks under any circumstance.

Furthermore, there is no evidence that the Respondent might be commonly known by the disputed domain name and the Panel finds that the use of the disputed domain name, confusingly similar to the Complainant's trademark, in connection with a pay-per-click landing page where the domain name is also offered for sale does not constitute a bona fide offering of goods or services or a legitimate non-commercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of the name in which the Complainant has right.

Based on the evidence on records, the Panel finds that the Complainant has also demonstrated the Respondent's bad faith pursuant to Regulation 874/2004 Article 21(3) (a) and (d), as it appears that the Respondent registered the disputed domain name with the primary purpose of selling it for an amount in excess of the out-of-pocket costs and used also the disputed domain name to intentionally attract Internet users to his web site for commercial gain, by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation or endorsement of the Respondent's web site.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name ALAMOCOSTARICA.eu be revoked.

PANELISTS

Name	**Dr. Luca Barbero**

DATE OF PANEL DECISION 2014-09-23

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: ALAMOCOSTARICA.EU

II. Country of the Complainant: United States, country of the Respondent: United Kingdom

III. Date of registration of the domain name: 14 December 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 registered in European Union, reg. No. 001860592, for the term ALAMO, filed on 19 September 2000, registered on 16 September 2002 in respect of goods and services in classes 12, 16, 36 and 39.
2. word trademark registered in United Kingdom, reg. No. UK00001278578, for the term ALAMO, filed on October 1, 1986, registered on 02 December 1988 in respect of goods and services in class 39.

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:
The Respondent has not been authorized by the Complainant to use its trademarks or register them as a domain name. The Respondent is not commonly known by the disputed domain name. The disputed domain name resolves to a web site featuring pay-per-click links and where the domain name is also offered for sale. The Respondent failed to submit any reply to prove his legitimate rights and interests.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why:
The Respondent has offered for sale the disputed domain name for an amount in excess of the out-of-pocket expenses related to the registration of the domain name and has also attempted to attract users to his web site for commercial gain by creating a likelihood of confusion with the Complainant's trademark.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: No