Panel Decision for dispute CAC-ADREU-006787

Case number	CAC-ADREU-006787
Time of filing	2014-11-07 12:53:24
Domain names	swarovskicrystalsale.eu

Case administrator

	Lada Válková (Case admin)

Complainant

Organization	Swarovski Aktiengesellschaft

Respondent

Name	Osama Abusultan

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 either pending or decided which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainants, Swarovski Aktiengesellschaft (hereinafter referred to as "Swarovski AG") and D. Swarovski Kommanditgesellschaft (hereinafter referred to as “D. Swarovski KG”) both part of the Swarovski group of companies contest the registration of the domain name swarovskicrystalsale.eu. The Complainants state that they and other associated companies belonging to the larger Swarovski group have been using the Swarovski name since 1895 and have provided details of trademark registrations for the various Swarovski marks.

The disputed domain name originally directed visitors to an online shop selling purported Swarovski products which were similar to genuine products marketed by the Complainants. The Internet Service Provider was informed of the position and the website was then removed however the disputed domain name is still in existence and the Complainants state that new content could be uploaded at any stage.

A. COMPLAINANT

The Complainants have furnished evidence to support their contention that they hold trademark and company registration rights in the Swarovski name and use the name as a business identifier. A list of registered trademarks has been furnished. Evidence of the company registration has been furnished and evidence of use of the business name has been furnished.

They allege that the disputed domain name is identical or confusingly similar to the Swarovski name and that the Respondent has incorporated the Swarovski name into the disputed domain name to create an association with the Complainants and mislead consumers.

They further state that the disputed domain name has been registered by the Respondent without rights or legitimate interests and that the Respondent has no affiliation or association with the Complainants. They point out that the Complainants rights in the Swarovski name predate the registration of the disputed domain name.

Finally they state that the disputed domain name was registered and used in bad faith and as a method of trading off the goodwill of the Swarovski name.

Therefore, they request the disputed domain name to be transferred to D. Swarovski KG for it has its registered office within the EU.

B. RESPONDENT

The Respondent has not filed a response to the Complaint.

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:

(1) the domain 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: either

(2) the domain name has been registered by the Respondent without rights or legitimate interest in the name: or

(3) the domain name has been registered or is being used in bad faith.

Dealing with each of the above in turn:

(1) the disputed domain name incorporates the Complainants´ trademark and business name in full and simply adds the generic words "crystal sale". The Complainant has proven that it is the holder of the Swarovski trademark and evidence has been provided of both Community Trademark registrations and national trademark registrations. This Panel agrees with and shares the view taken in previous decisions for similar .eu disputes that the addition is of a generic nature and does not remove the similarity between the trademark and the disputed domain name. The Respondent has not made any submission in response to this submission. The Panel finds that the domain name swarovskicyrstalsale.eu is confusingly similar to a name in respect of which the Complainants have established a right. The Condition set forth at Article B11(d) (i) is fulfilled.

(2) The Complainants have demonstrated their legitimate interest in the Swarovski name. The Complainants have further stated that they are not aware of any rights or legitimate interests that the Respondent has in respect of the disputed domain name. They confirm that the Respondent is not associated with, affiliated with or licensed by the Complainants to use the Swarovski trademarks or name nor was the Repsondent authorised to register the disputed domain name. Article B11 (e) of the ADR rules provides a non exhaustive list of circumstances that a respondent may use to demonstrate a legitimate interest. The Respondent has failed to provide any response and has therefore not demonstrated any legitimate interest or rights in the name. In the absence of any response from the Respondent or the presentation of any other evidence to the Panel proving any legitimate interest or rights of the Respondent the Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

(3) As the Panel has reached the decision at (2) above it is not necessary to investigate if the domain was registered in bad faith but it is clear to the Panel that the disputed domain name was intentionally used to direct consumers to an online shop which purported to sell Swarovski products and this created a likelihood of confusion for consumers.

The Complainant D. Swarovski KG has a registered office within the EU; therefore it satisfies the eligibility requirements under Paragraph 4 (2) (b) (i) of Regulation 733/2002 and is entitled to request the transfer of the disputed domain name.

DECISION

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

the domain name SWAROVSKICRYSTALSALE be transferred to the Complainant D. Swarovski KG.

PANELISTS

Name	**Duncan Grehan & Partners, Griffin Conor**

DATE OF PANEL DECISION 2014-11-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: swarovskicrystalsale.eu

II. Country of the Complainant: Liechtenstein, country of the Respondent: Sweden

III. Date of registration of the domain name: 12 February 2014

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. 000120576 for the term 01/04/2016, filed on 01/04/1996 registered on 15/10/1998 in respect of goods and services in classes 3,9,11,14,16,18,21,25,26
2. word trademark registered in UK reg. No.1344595 for the term `19/05/2015 filed on 19/05/1988, registered on 19 February 1990] in respect of goods and services in class 9
3. [word CTM, reg. No. 007462922 for the term 04 December 2018 filed on 04 December 2008 registered on 21 July 2009 in respect of goods and services in classes 1,3,4,5,6,7,8,9,10,11,12,13,14,15,16,17,19,20,22,23,27,28,29,390,31,32,33,34,36,37,38,39,40,42,43,44,45
4. word CTM, reg. No. 003895091, for the term 22 June 2014 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
5. geographical indication: Not applicable
6. designation of origin: Not applicable
7. unregistered trademark: Not applicable
8. business identifier: Swarovski
9. company name: Swarovski Aktiengesellschaft
10. family name: Not applicable
11. title of protected literary or artistic work: Not applicable
12. other: Not applicable

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. Yes
2. Why: Under Paragraph B10 of the ADR rules the Panel accepts that the Complainants contention that the Respondent has no rights or legitimate interest in the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No decision required by the Panel as it found that the Respondent had no rights or legitimate interest in the disputed domain name.

IX. Other substantial facts the Panel considers relevant: None such

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None such

XII. Is Complainant eligible? Yes