Panel Decision for dispute CAC-ADREU-006795

Case number	CAC-ADREU-006795
Time of filing	2014-12-10 16:19:04
Domain names	www.marathonbet.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Taisia Tomah

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the domain name marathonbet.eu ("the disputed domain name").

FACTUAL BACKGROUND

The Complainant is the owner of a number of trademarks MARATHON, MARATHONBET and MARATHON (Cyrillic script). Copies of trademark registration extracts corresponding and/or containing the MARATHON and MARATHONBET trademarks were enclosed with the Complaint.

The Complainant's earliest registered trademarks are for MARATHON (Cyrillic) in Russia, and date back to 22 July 2005. These Russian trademarks predate the filing of the disputed domain name by six years.

The disputed domain name, marathonbet.eu, was registered on 16 May 2011. The disputed domain name, directs Internet users to the Russian web site of William Hill, a main competitor of the Complainant and his associated companies in all the trading territories.
The Complainant requests the transfer of the disputed domain name to the Complainant or in suborder that the disputed domain name be revoked.

A. COMPLAINANT

The Complainant contends:

1) that both individually and through his associated businesses he is the owner of 21 trademark registrations and applications for MARATHON, MARATHONBET and MARATHON (Cyrillic script) across the world including Europe. In order to prove it, Complainant has enclosed with the complaint a list of MARATHON, MARATHONBET and MARATHON (Cyrillic script) trademarks filed and/or registered in his name in particular for goods and services such as: "computer software and networks relating to betting and gambling services; sponsorship services; entertainment services; casino and lottery services and betting, gambling and gaming services provided by the Internet or online";

2) that the Complainant's earliest registered trademarks are for MARATHON (Cyrillic) in Russia, and date back to 22 July 2005;

3) that the disputed domain name, directs Internet users to the Russian web site of William Hill, a main competitor of the Complainant and his associated companies in all the trading territories;

4) that Complainant's MARATHON and MARATHONBET trade names are well known throughout the world and have acquired

considerable goodwill and reputation;

5) that the disputed domain name which consists of the Complainant's registered trademark MARATHONBET and the country code Top Level Domain ".eu", is identical/confusingly similar to Complainant's trademarks, thus creating a high risk of confusion for the public;

6) that the domain names marathonbet.com and marathonbet.co.uk have been used (by the Complainant and/or his associated businesses) to provide online betting services since July 2000 and June 2001 respectively;

7) that the Respondent has not been commonly known by the domain name;

8) that the Respondent has no rights to the domain name, has no relationship with the Complainant and has never been authorized to use the trademark MARATHONBET by the Complainant;

9) that the Respondent had knowledge of betting sites available in Russia and as the Complainant's is the largest betting site in Russia, bad faith can be inferred in the registration of the disputed domain name;

10) that the Respondent has registered the disputed domain name in bad faith as it takes prospective "MARATHONBET" users away from the intended site and redirects them to a competitor's site (i.e. the William Hill web site);

11) that the subsequent lack of use of the marks MARATHON or MARATHONBET on the website shows that the Respondent does not have a legitimate interest in the disputed domain name and by misleadingly diverting customers for her own commercial gain, it is clear that the Respondent has registered and is using the disputed domain name in bad faith.

B. RESPONDENT

The Respondent did not file a reply.

DISCUSSION AND FINDINGS

To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Commission Regulation (EC) No. 874/2004 have been complied with.

That paragraph reads as follows:

"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where 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 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."

In addition, Article 22(10) of the Regulation and Paragraph B10(a) of the ADR rules provide that:

“In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party”.

The disputed domain name MARATHONBET.EU consists of the MARATHONBET trademark and the country code Top Level Domain ".eu". The Complainant has provided sufficient evidence that he is the proprietor of several trade mark registrations for the identical and confusingly similar names MARATHON and MARATHONBET, which were registered before the disputed domain name.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

The Complainant has further asserted that the Respondent is not known by the name and does not hold any exclusive rights or legitimate rights of any nature to the disputed domain name.

These assertions are not contradicted by the Respondent. Should the Respondent have rights or legitimate interests to the domain name, the Panel assumes that she would have advised the Panel of the same. As no response was filed, the Panel therefore accepts that the Respondent does not have rights or legitimate interests to the contested domain name.

In the absence of any submission on the issue from the Respondent, the Complainant has satisfied the requirements of Article 21(1)(a) of the Regulation (EC) No. 874/2004. It should therefore not be necessary to examine the Complainant's assertion of the Respondent's bad faith.

However, for the sake of completeness, the Panel finds that Complainant's assertions regarding Respondent's bad faith registration and use of the disputed domain name, that are also not contradicted by the Respondent, show that Respondent has registered the disputed domain name, aware of Complainant's rights to the trademarks MARATHON and MARATHONBET, with the intent to exploit their goodwill and reputation.

The Complainant has therefore satisfied also the requirements of Article 21(1)(b) of the Regulation (EC) No. 874/2004.

DECISION

The Complainant requested the transfer of the disputed domain name and in suborder its revocation

However, Mr. Leonid Bouryi, as a Russian individual does not seem to be entitled to register a domain name ".eu".

In fact, Complainant is not an EU entity and therefore he cannot register a domain name under the top-level domain ".eu", as a consequence the Panel cannot envisage transferring the disputed domain name to the Complainant.

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

PANELISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2014-12-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: marathonbet.eu

II. Country of the Complainant: Russian Federation, country of the Respondent: Bulgaria

III. Date of registration of the disputed domain name: 16 May 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. trademark registered in several countries including Europe and Russia, for the terms MARATHON and MARATHONBET, registered in respect of goods and services in classes 9, 16, 35, 36 and 41.

V. Response submitted: No

VI. Domain name is identical/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 has not been commonly known by the domain name; has no rights to the domain name, has no relationship with the Complainant and has never been authorized to use the trademark MARATHONBET by the Complainant;

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Respondent has registered the disputed domain name aware of Complainant's rights to the trademarks MARATHON and MARATHONBET. In addition the disputed domain name takes prospective "MARATHONBET" users away from the intended site and redirects them to a competitor's site.

IX. Dispute Result: Revocation of the disputed domain name.