Panel Decision for dispute CAC-ADREU-006800

Case number	CAC-ADREU-006800
Time of filing	2015-02-22 22:25:05
Domain names	Nextbit.EU

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Nextbit

Respondent

Name	M Jank

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 relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a company working in the field of data analysis, founded in 2006 and having its seat in Italy.

The Complainant uses the trade name NEXTBIT and is the holder of the domain names NEXTBIT.IT and NEXTB.IT.

The Complainant was the holder of the disputed domain name for several years until 2011. At the end of 2011 the renewal procedure failed and the domain name was registered by a third party.

On 22 October 2014, in accordance with Rule A 3 (b) of the ADR Rules, the language of the proceedings was changed from German to English.

On 7 November 2014 the Complainant submitted the complaint. The Complainant requested the transfer of the disputed domain name.

After the review of the compliance with formal requirements, the Complainant amended the complaint, regularising formal deficiencies, and the proceedings formally commenced on 19 November 2014.

The Respondent failed to submit a Response within the time frame required and a Notification of Respondent's Default was therefore issued on 16 January 2015.

On 23 January 2015 the appointment of the ADR Panel was notified to the parties.

A. COMPLAINANT

The Complainant relies on its trade name NEXTBIT S.R.L., on its unregistered trademark NEXTBIT, as well as on its domain names NEXTBIT.IT and NEXTB.IT.

The Complainant used for years also the disputed domain names, however the last renewal procedure was unsuccessful.

The Complainant states that its business partners are multinational corporations based in Europe.

The Complainant refers to marketing materials containing the name NEXTBIT which are sent regularly to clients and prospects, as well

as to an article published on a specialised review and the abstract of a presentation given in a business forum.

The Complainant alleges that the domain name NEXTBIT.EU is identical to its trade name and unregistered trademark.

The Complainant alleges that the disputed domain name has been used since 2011 in bad faith, having been used as a parking website for the sole purpose of the domain's sale.

The Complainant alleges that the disputed domain name has been registered without any legitimate interest in the name since the registrar has no affiliation whatsoever to the Complainant nor any business with a NEXTBIT name, nor is promoting any goods or services with the name NEXTBIT.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

In accordance with Article 21 (1) of the Commission Regulation (EC) No. 874/2004, the Complainant, in order to succeed, is required to prove that the domain name:

(a) is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law; and

(b) has been registered by its holder without rights or legitimate interest in the name; or

(c) has been registered or is being used in bad faith.

The Complainant submitted evidence in relation with its trade name NEXTBIT S.R.L., on its unregistered trademark NEXTBIT, as well as on its domain names NEXTBIT.IT and NEXTB.IT.

All the cited rights are recognised by the Italian Law (Civil Code: Articles 2563 to 2574 and 2598 to 2600; Industrial Property Code: Articles 22 and 118, paragraph 6).

The Complainant's trade name is "NEXTBIT S.R.L.". The acronym "S.R.L." indicates the company type (Società a responsabilità limitata – Italian limited liability company), consequently it is not a relevant part of the name.

The Complainant submitted a certificate of the Italian National Business Register, issued in 2013, in Italian without translation in English. Article A 3 (c) of ADR Rules provides that all documents relating to the ADR Proceeding have to be in the language of the ADR Proceeding (or accompanied by a translation into that language) or in different requested language if the Complainant proves in his submission that the Respondent has adequate knowledge of such different language. The Panel may disregard documents submitted in other languages than the language of the ADR Proceeding without requesting their translation. The purpose of such language rule is to keep both parties in equal footing.

Consequently, the Panel decides to disregard the above mentioned certificate.

In accordance with paragraph B 7 (a) of the ADR Rules, the Panel has however conducted its own investigation based on the Complainant's taxpayer code on the publicly available tool VIES (VAT Information Exchange System). The Panel received the confirmation from the system that such code is a valid VAT number, which corresponds to the company NEXTBIT S.R.L. which has an address in Italy.

The Complainant alleges also to be the holder of the unregistered trademark NEXTBIT, of the domain names NEXTBIT.IT and NEXTB.IT.

The Complainant has submitted a brochure (10 pages) and a presentation (22 slides – marked as "Confidential"). An article published on a specialised review and an introduction for a business forum were also submitted, however the Panel has decided to disregard them because the documents are in Italian, without translation in the language of the ADR Proceeding.

The Panel considers the brochure and the presentation (which is an internal and confidential document) not sufficient proof of the establishment of an unregistered trademark.

The Complainant submitted the results of a Whois search of the domain name NEXTBIT.IT and NEXTB.IT.

It is well established that the top level domain, in determining identity or confusing similarity of domain names to other rights, is excluded from consideration, therefore the Panel considers that the disputed domain name is identical to the domain name NEXTBIT.IT.

The Panel does not consider the domain name NEXTB.IT as identical or confusingly similar to the disputed domain name, due to the structural and phonetic difference between the word NEXTBIT and the word NEXTB.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21 (1) of Regulation No. 874/2004. The rights recognised by national law are the trade name NEXTBIT S.R.L. and the domain name NEXTBIT.IT.

The Complainant alleges that the disputed domain name has been registered without any legitimate interest in the name since the registrar has no affiliation to the Complainant nor any business with a NEXTBIT name, nor is it promoting any goods or services with name NEXTBIT.

Furthermore, the Complainant alleges that the disputed domain name has been used in bad faith as a parking website for the sole purpose of the domain's sale.

No response or other communication was received from the Respondent in respect of the complaint.

The Panel accepts the arguments of the Complainant with respect of missing rights and legitimate interests of the respondent in the disputed domain name and, according to article 22 (10) of the Commission Regulation No 874/2004 and paragraph B 10 of ADR Rules, bases its decision on this prima facie presentation.

The Complaint is already well-founded according to Article 21 (1) of the Commission Regulation No 874/2004, however, for the sake of completeness the Panel would like to assess a possible bad faith of the Respondent.

Article 21 (3) of the Commission Regulation No 874/2004 provides that bad faith may be demonstrated, where:

(a) circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law or to a public body; or

(b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) a pattern of such conduct by the registrant can be demonstrated; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated;

(c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(d) the domain name was 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 recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or

(e) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.

The Complainant alleged that the disputed domain name has been used since 2011 in bad faith, having been used as a parking website for the sole purpose of the domain's sale, and submitted a print screen of the webpage at the address www.nextbit.eu where the domain name was put on sale at the price of 1.642,00 Euros.

The Panel is of the opinion that the domain name was registered by the Respondent, using the practice known as "domain drop catching", primarily for the purpose of selling it. Furthermore, the Respondent was a party in other ten similar cases at the Czech Arbitration Court, thus showing a pattern of conduct.

Therefore the Panel considers that the Respondent registered and used the disputed domain name in bad faith.

The Complainant requested the transfer of the domain name NEXTBIT.EU As the Complainant, an Italian based company, satisfies the general eligibility criteria set out in Article 4 (2) (b) of Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002, the disputed domain name is transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraph B 12 (b) of the Rules, the Panel orders that

the domain name NEXTBIT be transferred to the Complainant

PANELISTS

Name	**Michele Antonini**

DATE OF PANEL DECISION 2015-02-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: NEXTBIT.EU

II. Country of the Complainant: Italy, country of the Respondent: Austria

III. Date of registration of the domain name: 11 December 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. trade name: NEXTBIT S.R.L.
2. domain name: NEXTBIT.IT

V. Response submitted: No

VI. Domain name is identical 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: Prima facie case of absence made out by Complainant; no evidence supplied by Respondent

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: domain name registered and used primarily for the purpose of selling it; pattern of conduct

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: None

XII. Is Complainant eligible? Yes