Panel Decision for dispute CAC-ADREU-006840

Case number	CAC-ADREU-006840
Time of filing	2015-01-16 13:32:52
Domain names	PARAJUMPERS.EU

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Jan Krdzic

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

On 25 July 2014 Jan Krdzic (hereinafter, the "Respondent") registered the domain name <parajumpers.eu> (hereinafter "the Domain Name" or the "disputed domain name").

On 25 September 2014 the companies Ape & Partners S.p.A. and PJS International S.A. (hereinafter, the "Complainants") filed a complaint before the ADR Center for .eu of the Czech Arbitration Court, requesting the transfer of the disputed Domain Name to the Ape & Partners S.p.A.

On 30 September 2014 the EURid verified that the Respondent is the registrant of the disputed Domain Name.

The Respondent was duly notified of the ADR proceedings by email and by registered mail to the addresses he provided to the EURid. The registered mail communication went undelivered and the Respondent failed to file a response to the complaint. Therefore, the Center issued a notification of Respondent's default.

A. COMPLAINANT

The Complainants submitted a list of trademarks claiming these trademarks over the years have become well known in the field of winter garments, especially for coats and jackets:
1. word CTM, reg. No. 4905493, for the term PARAJUMPERS, filed on 13 February 2006, registered on 13 February 2007 in respect of goods in classes 9, 18, 25;
2. combined CTM, reg. No. 4905451, for the term P.S.J. THAT OTHERS MAY LIVE PARAJUMPERS, filed on 13 February 2006, registered on 13 February 2007 in respect of goods in classes 9, 18, 25;
3. word trademark registered in the USA, reg. No. 3486435, for the term PARAJUMPERS, filed on 5 June 2006, registered on 12 August 2008 in respect of goods in classes 9, 18, 25;
4. word trademark registered in the Russian Federation, reg. No. 365020, for the term PARAJUMPERS, filed on 24 September 2007, registered on 17 November 2008 in respect of goods in class 25;
5. word trademark registered in China, reg. No. 6294841, for the term PARAJUMPERS, filed on 25 September 2007, registered on 7 April 2010 in respect of goods in class 25.
(hereinafter, the "Trademarks").

The Complainants submitted evidence that one of the Complainants - Ape & Partners s.p.a. - is the exclusive licensee of the registered

trademarks owned by PJS International S.A., including “PARAJUMPERS” and “P.J.S. THAT OTHER MAY LIVE PARAJUMPERS”.

Moreover, the Complainants contend that Ape & Partners S.p.A. is the owner of the following domain names: parajumpers.it, parajumpers.net, parajumpers.org, parajumpers.no, parajumpers.se, parajumpers.dk, parajumpers.ca, parajumpers.us, parajumpers.ch, parajumpers.jp, parajumpers.es, parajumpers.at, parajumpers.be, parajumpers.cz, parajumpers.de, parajumpers.pl, parajumpers.ru, parajumpers.sk, parajumpers.si, parajumpers.ee, parajumpers.fi, parajumpers.gr, parajumpers.lv, parajumpers.lu.

The Complainants contend that the Trademarks are amongst the most popular in the market of winter garments, that the clothing bearing the trademarks are commercialised in North America, Europe and Asia and that several celebrities of the international show business are often photographed while wearing jackets bearing the Trademarks.

A.
The Complainants claim that the disputed domain name exactly reproduces the Trademarks (being identical to the trademark "PARAJUMPERS" and confusingly similar to the trademark "P.JS: THAT OTHERS MAY LIVE PARAJUMPERS") and is identical to the domain names listed above.

B.
The Complainants contend that prior to any notice of this dispute, the Respondent did not use the disputed domain name in connection with the offering of goods or services, nor made demonstrable preparations to do so.

The Complainants also submit that <parajumpers.eu> does not correspond to a trademark registered in the name of Jan Krdzic, nor to the name of the Respondent. Moreover, to the best of the Complainants' knowledge, Jan Krdzic is not commonly known as “PARAJUMPERS”.

Furthermore, the Complainants submit not to have found any fair or non-commercial uses of the domain name at stake.

C.
The Complainants state to be willing to make a complete assessment arguing also on the bad faith of the Respondent, albeit this would not be necessary once the lack of Respondent's rights or legitimate interests has been demonstrated.
In this regard, the Complainants submit that:

- the Respondent was certainly aware of the existence and renown of the Trademarks considering that the same registered the Domain Name only recently and that the Trademarks, in fact, are currently used and widely known all around the world, even in Sweden (homeland of the Respondent) and that several on-line magazines have published press articles related to the Trademarks;

- if the Respondent had researched the term “PARAJUMPERS” on Internet before registering the Domain Name, he would inevitably have noted the existence of the official website of the Complainants;

- the presence of the sponsored links on the parking page of the Domain Name, which are sponsoring the same products for which the Complainants' trademarks are registered and used, represents an opportunistic and unfair use of the disputed domain name;

- the Domain Name's parking service works on a click-based commission, in this way the Respondent gains a profit every time someone clicks on one of the hyperlinks on the website linked to the disputed domain name. Therefore, the Respondent takes advantages of direct accesses of users who cannot remember the precise web address of the Complainants;

- the Domain Name contains several listings that redirect the customers, clicking on them, to other online locations, such as garment-related websites and webpages, most of them leading to products offered by competitors of the Complainants.

B. RESPONDENT

The Respondent was declared in default and did not file any reply.

DISCUSSION AND FINDINGS

According to Article 21(1) of the Commission Regulation (EC) 874/2004 and to Paragraph B11(d)(1) of the ADR Rules, the Complainant must show that: the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law (point A below); and has been registered by its holder without rights or legitimate interest in the

name (B); or has been registered or is being used in bad faith (C).

A. Identity or confusing similarity

The Panel found out that the Complainants have provided evidence of being the exclusive licensee of a number of trademark registrations for PARAJUMPERS and PARAJUMPERS formative trademarks (the "Trademarks" listed above) in several jurisdictions, including the European Union.

In comparing the domain name <parajumpers.eu> to the Trademarks, it should be taken into account that the suffixes, including the .eu top level domain, may be excluded from consideration as being merely a functional component of a domain name.

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainants' Trademarks, as it reproduces one of the Complainants' trademarks in its entirety and incorporates the key element, PARAJUMPERS, of the other.

The first requirement of Article 21(1) of the Commission Regulation (EC) 874/2004 and of § B11(d)(1) of the ADR Rules is therefore met.

B. Rights or legitimate interest to the Domain Name

The Panel found out that, according to the evidence filed by the Complainants, prior to notice of the present dispute the Respondent had not been using <parajumpers.eu> domain name in connection with offering of goods or services nor had made any demonstrable preparation to do so.

In fact the Domain Name's homepage is a typical so-called "parking page", containing only sponsored links, which in itself in the opinion of the Panel and according to several previous ADR decisions (see e.g. CAC 3976 <abat.eu> and CAC 3949 <acl.eu>) does not constitute use in connection with bona fide offering of goods or services or preparation to do so according to § B11(e)(1) of ADR Rules nor a legitimate, non-commercial or fair use according to § B11(e)(3) of ADR Rules.

The Complainants state that the Respondent has no rights in the disputed domain name, since the latter does not correspond to a trademark registered in the name of Jan Krdzic, nor to the name of the Respondent, and to the best of their knowledge, Jan Krdzic is not commonly known as "PARAJUMPERS".

It is well-established that the burden of proof of the above lies on the Complainant; however, satisfying the burden of proof which lies in a lack of the Respondent's rights or legitimate interests is potentially quite onerous (almost a probatio diabolica), as it's always the case when proving a negative circumstance instead of a positive one. Accordingly, it is sufficient that the Complainant shows prima facie evidence in order to shift the burden on the Respondent (see e.g. CAC 5235 <jackwolfskin.eu> or CAC 1827 <mueller.eu>).

In case the Respondent had rights or legitimate interests, the Panel assumes that it would have advised the Panel of these. However, by not filing a response (a circumstance which in itself could be considered as a ground to accept the Complainants' claim, according to § B10(a) of the ADR Rules), the Respondent failed to prove its rights and legitimate interest in the Domain Name (see e.g. CAC 2235 <palmerscocoabutter.eu> or CAC 5903 <manako.eu>).

Furthermore the Panel observes that there is no relation, disclosed to the Panel or otherwise apparent from the record, between the Respondent and the Complainants. Lastly there is no indication before the Panel that the Respondent is commonly known as PARAJUMPERS, and the Respondent's name is completely different from the disputed domain name.

The Panel therefore concludes that, on the balance of probabilities, the Domain Name was registered by the Respondent without rights or legitimate interest in accordance with Article 21(1) of the Commission Regulation (EC) 874/2004 and of § B11(d)(1) of the ADR Rules.

C. Bad faith

Although the Complainants are correct in claiming that the literal text of the Commission Regulation (EC) 874/2004 and of the ADR Rules does not mandate to examine the Respondent's bad faith requirement once the lack of rights or legitimate interests requirement is satisfied, the Panel will now also examine the requirement of bad faith, in order to make a complete assessment and in line with the best

practices in the matter.

As far as the bad faith in the use of the disputed domain name is concerned, the Panel took into consideration evidence submitted by the Complainants which shows a parking page with sponsored links - in majority keyed to the business sector of the Complainants, i.e. based on the value of the Complainants' trademarks.

The Panel considers that, on the balance of the probabilities, such set-up was intentionally used to make a profit out of the Complainants' name and goodwill and therefore constitutes a finding of Respondent's bad faith.

As far as the bad faith in the registration of the disputed domain name is concerned, the Panel considered the following.

Given the widespread and longstanding presence of the Complainants' trademarks and products both online, in several publications and with actual retail shops in many European countries, it is likely that the Respondent was aware of the Complainants' trademarks and other domain names registrations as well of the Complainants' business, and thus proceeded to registration in bad faith.

Finally, and even more decisively, as noted in the WhoIs of the disputed domain name, the Respondent provided the Registrar with false contact details when he registered the domain name. The Respondent indicated Sweden as his country of residence, while the city was recorded as Bjorbekk, a town actually located in Norway. In fact the post service was unable to contact the Respondent and advised that the recipient is "unknown". Also the fax number +1.1111111111 is ictu oculi false.

It appears that the Respondent's purpose, in supplying false address and contact details, was to hide his true business address when registering the Domain Name. Several decisions establish that supplying false information for a domain name registration, in order to hide the registrant's identity, can be considered evidence of bad faith (see e.g. CAC 6813 <divxstage.eu> or CAC 6585 <jack-wolfskinsjacket.eu>).

The third requirement of Article 21(1) of the Commission Regulation (EC) 874/2004 and of § B11(d)(1) of the ADR Rules is therefore, on the balance of probabilities, also met.

For Ape & Partners S.p.A. is a company with registered offices in Italy as evidenced in the extract obtained by a Chamber of Commerce enquiry, the Complainant satisfies the eligibility criteria as set out in Article 4(2)(b) of Regulation (EC) 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel orders that the domain name <parajumpers.eu> be transferred to Ape & Partners S.p.A.

PANELISTS

Name	**Avv. Giovanni Orsoni**

DATE OF PANEL DECISION 2015-01-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: parajumpers.eu

II. Country of the Complainant: Italy; country of the Respondent: Sweden.

III. Date of registration of the domain name: 25 July 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. 4905493, for the term PARAJUMPERS, filed on 13 February 2006, registered on 13 February 2007 in respect of goods in classes 9, 18, 25;
2. combined CTM, reg. No. 4905451, for the term P.S.J. THAT OTHERS MAY LIVE PARAJUMPERS, filed on 13 February 2006, registered on 13 February 2007 in respect of goods in classes 9, 18, 25;
3. word trademark registered in the USA, reg. No. 3486435, for the term PARAJUMPERS, filed on 5 June 2006, registered on 12 August 2008 in respect of goods in classes 9, 18, 25;

4. word trademark registered in the Russian Federation, reg. No. 365020, for the term PARAJUMPERS, filed on 24 September 2007, registered on 17 November 2008 in respect of goods in class 25;
5. word trademark registered in China, reg. No. 6294841, for the term PARAJUMPERS, filed on 25 September 2007, registered on 7 April 2010 in respect of goods in class 25.

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: no use in connection with the offering of goods or services prior notice of the dispute; no non-commercial/fair use; no evidence that the Respondent has been commonly known by the Domain Name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: parking page on the Domain Name containing sponsored links keyed to the Complainant's business sector; likely knowledge by the Respondent of the Complainant's trademarks and domain names; false address provided by the Respondent to the Registrar.

IX. Other substantial facts the Panel considers relevant:
False address provided by the Respondent to the Registrar.

X. Dispute Result:
Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant:
Default of the Respondent.

XII. Is Complainant eligible? Yes.