Panel Decision for dispute CAC-ADREU-006843

Case number	CAC-ADREU-006843
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Domain names	www.chausport.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	JD Sports Fashion Plc

Respondent

Name	Djamila Bouchemoua

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 Complainant has declared that no other legal proceedings are pending or decided in respect of the disputed domain name.

The Complainant notes that the disputed domain name was the subject of previous proceedings, now terminated. The Panel has not been provided with details of this previous complaint other than its reference number, 6830.

FACTUAL BACKGROUND

The Complainant, JD Sports Retail Plc, is a retailer in the field of sports goods, with an address in the United Kingdom. Through its subsidiary JD Sports Fashion (France) SAS, it operates retail stores in France and a website (at domain name CHAUSPORT.COM).

JD Sports Fashion (France) SAS is the proprietor of a trade mark CHAUSPORT, registered as a Community trade mark (00851997) in classes 9, 14, 18, 25, 28, 35 and 36. The trade mark application was filed on 1 September 2009 and registered on 22 February 2010, with an expiration date of 1 September 2019.

The disputed domain name CHAUSPORT.EU was registered by the Respondent, Djamila Bouchemoua, through the registrar GoDaddy.com LLC, on 2 September 2014. The Registration Agreement was in the English language. Verification of registration was provided by EURid on 17 October 2014.

A. COMPLAINANT

The Complainant made submissions on 15 October 2014, and amended its submissions to cure notified deficiencies (regarding omitted information and the Respondent's postal address) on 24 October 2014. The transfer of the disputed domain name from the Respondent to the Complainant is requested, or in the alternative the revocation of the disputed domain name.

The Complainant contends that its trade mark rights are infringed by the continued registration of the disputed domain name, and further submits that the Respondent has no legitimate interests in the disputed domain name, and that registration has been in bad faith.

The Complainant has submitted five Annexes along with its complaint. These documents provide further information in support of the Complaint. Specifically, screenshots of the Complainant's own website CHAUSPORT.COM, the Respondent's website CHAUSPORT.EU, a certified copy of the certificate of registration of the Community Trade Mark 'CHAUSPORT', and a EurID verification (issued in respect of a previous complaint) were supplied.

B. RESPONDENT

The Respondent has not made any submissions.

Notification of the Complaint was attempted in the first instance by email, on 29 October 2014. As the Respondent did not confirm receipt (through accessing the ADR.eu online platform within 5 days of the sending of the email), a hard copy was dispatched on 4 November 2014. Confirmation of delivery was received by the Court on 12 November 2014, with delivery deemed to have taken place on 17 November 2014 (see Art 2(e)(3) of the Rules). A reminder of the deadline for a response was issued by email on 19 December 2014.

No response was received by the deadline of 30 December 2014. The Respondent's default was notified on 2 January 2015. The Respondent has not communicated with the Court at any point before or during these proceedings.

DISCUSSION AND FINDINGS

1. Rights recognised or established by national and/or EU law

The Panel is first required, by Article B11(d)(1)(i) of the ADR Rules, to consider whether the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or EU law.

The disputed domain name CHAUSPORT.EU is identical (disregarding the gTLD .EU, as is the normal practice of Panels - see for instance the cases reviewed in case 6303 (AMERICANEAGLEOUTFITTERS)) to the name CHAUSPORT.

The Complainant has provided without contradiction evidence that the name CHAUSPORT is the subject of a valid Community Trade Mark, and that the said mark has been registered in relevant classes in respect of the goods and services appearing to be advertised at the disputed domain name.

The Panel therefore concludes that this first condition is satisfied. It must therefore proceed to consider whether the Respondent has any rights or legitimate interests in the name, and whether registration has been in bad faith.

2. Legitimate interests

The Complainant contends that the Respondent has no rights or legitimate interests in the name CHAUSPORT. Article 21(2) of Regulation 874/2004 and corresponding provisions of the ADR Rules contemplate that rights or legitimate interest can be found, even in the presence of a prima facie case put forward by the Complainant, where the Respondent points in its defence to its relevant rights or legitimate interests in the disputed domain name.

The Complainant has provided more than adequate evidence of its rights and legitimate interests in the name CHAUSPORT and contends that no such rights or legitimate interests are present on the part of the Respondent. These submissions, and in particular the CTM held by the Complainant in respect of its substantial business interests in France (easily ascertainable to any potential registrant), raise reasonable doubt as to whether there is any support for the existence of rights or legitimate interests regarding the Respondent.

Consideration must be given to the possibility that, in the terms of article 21(2)(c) of Regulation 874/2004, the Respondent is making a legitimate and non-commercial or fair use of the disputed domain name, without intent to mislead consumers or harm the reputation of the name CHAUSPORT. However, in the absence of any submissions to this effect by the Respondent, and the Panel's own assessment of the Annexes supplied by the Complainant, and the inability of the Panel to view pages at CHAUSPORT.EU, the nature of any possible non-commercial or fair legitimate use cannot be ascertained. The disputed domain name alone does not point towards any non-commercial or fair use (e.g. review or criticism).

In any event, it is at least arguable that the absence of any explanatory material for the benefit of consumers (through the avoidance of confusion with the Community trade mark CHAUSPORT) on the screenshots supplied by the Complainant makes it extremely difficult for the Panel to consider finding that there is no intention to mislead.

The Panel must therefore conclude that there is no basis on which the Respondent can benefit from the protection of article 21(2) of Regulation 874/2004 in respect of its rights or legitimate interests. As such, the Panel finds that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name CHAUSPORT, and is therefore subject to revocation under the terms of article 21(1)(a) of Regulation 874/2004 and the corresponding provisions of the ADR Rules.

3. Bad faith

The Complainant also contends that the disputed domain name has been registered in bad faith. Regulation 874/2004 does not require

the Panel to be satisfied on this point, because of the Panel's decision regarding rights and legitimate interests (above). However, for completeness, the Panel has considered whether there is evidence of registration in bad faith under the terms of Article 21(3) of Regulation 874/2004.

The conclusions of the Panel in respect of rights and legitimate interests are relevant, but not conclusive. Many cases of this nature (that is, where a dispute domain name is the same text as a name in respect of which trade mark rights exist, and the Respondent has not supplied any evidence) have been heard under the dispute resolution procedure. For instance, in case 4645 (AIRFRANCEONLINE), it was held that 'the registration of a domain name identical or confusingly similar to a famous trademark by a person with no verifiable right or legitimate interest in the name constitutes a strong presumption that the domain name was registered in bad faith'.

Article 21(3)(e) is not relevant to this Dispute, as it pertains to personal names. However, the other sub-points contained in article 21(3) are of potential relevance.

Article 21(3)(a) requires consideration of whether the disputed 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 recognised by EU law, i.e. CHAUSPORT. No evidence has been presented in this regard and the Complainant has not indicated that any attempt has been made to sell, rent or otherwise the disputed domain name to it.

Article 21(3)(b) requires consideration of whether the disputed domain name has been registered in order to prevent the reflection of CHAUSPORT in a corresponding domain name. In order for this provision to be relevant, the Panel must be satisfied that a pattern of such conduct has been demonstrated, or that the domain name has not been used in a relevant way for at least two years from the date of registration (or where the Registrant has declared its intention to use the domain name in a relevant way in respect of a recognised right but has failed to do so within six months of the day of the initiation of proceedings). The Panel cannot be so satisfied; the disputed domain name has only been registered for five months, and no evidence has been presented regarding a pattern of conduct preventing the reflection of a name in which rights exists in a domain name.

Article 21(3)(c) requires consideration of whether the disputed domain name has been registered primarily for the purpose of disrupting the professional activities of a competitor. It is however not clear to the Panel, on the basis of the submissions of the Complainant, that the Complainant is a competitor of the Respondent. The absence of a functioning website accessible via CHAUSPORT.EU, or any further information regarding the Respondent, makes the Panel's task in this regard impossible.

Article 21(3)(d) requires consideration of whether the disputed domain name was intentionally used to attract Internet users, for commercial gain, to the CHAUSPORT.EU website, by creating a likelihood of confusion with the name CHAUSPORT, where such likelihood arises (in so far as is material to this case) as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website.

Had it been necessary to do so, the Panel would have concluded, on the basis of the information supplied by the Complainant and the absence of any contradictory information supplied by the Respondent, that on the balance of probabilities the disputed domain name was intentionally used (on 26 September 2014, the date on which screenshots were generated) to attract users for commercial gain through a likelihood of confusion. In particular, the screenshot from the website at CHAUSPORT.EU supplied by the Complainant is remarkably similar to that supplied by the complainant from the website at CHAUSPORT.COM (and still accessible to the Panel). The two websites appear to have had many of the same headings and graphics, with only minor differences in text. The Panel cannot be completely satisfied, on the basis of the evidence provided, that actual commercial gain was present (for instance, whether the Respondent invited transactions, sold advertising, etc). However, the Panel cannot avoid concluding on the balance of probabilities that such an intention was present, given the absence of any plausible reason for the Respondent's website following so closely the get-up of the Complainant's website on pages accessible through a name identical to the trade mark of the Complainant (see similar cases e.g. 6787 (SWAROVSKICRYSTALSALE), 6629 (NATWESTPLC).

4. Transfer

The Complainant is an undertaking with an address in the United Kingdom. It is therefore appropriate for the disputed domain name to be transferred to it as it requests, under the terms of article 4(2)(b)(i) of Regulation 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name CHAUSPORT be transferred to the Complainant.

PANELISTS

Name	Dr Daithí Mac Síthigh

DATE OF PANEL DECISION 2015-02-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: CHAUSPORT.EU

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

III. Date of registration of the domain name: 2 September 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. 00851997, for the term CHAUSPORT, filed on 1 September 2009, registered on 22 February 2010 in respect of goods and services in classes 9, 14, 18, 25, 28, 35 and 36.

V. Response submitted: No

VI. Domain name is identical to the protected right 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: intentional use for commercial gain through likelihood of confusion

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. Is Complainant eligible? Yes