Panel Decision for dispute CAC-ADREU-006874

Case number	CAC-ADREU-006874
Time of filing	2015-03-17 15:43:28
Domain names	nikkenbg.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Nikken UK Ltd

Respondent

Organization	Atina Travel EOOD

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 Nikken UK Limited is the European subsidiary of Nikken International Inc which is the owner of
- word trade mark registered as Community Trade Mark No. 002355311 for the term “NIKKEN”, filed on 28 August 2001, registered on 4 October, 2007 in respect of goods and services in class 25
- word trade mark registered as Community Trade Mark No. 004924510 for the term “NIKKEN”, filed on 28 August 2001, registered on October 10, 2007 in respect of goods and services in classes 5, 10, 11 and 20.

The disputed domain name was registered on November 20, 2013.
Complainant submitted a complaint on November 25, 2014.

The Respondent failed to submit a Response within the time frame required and a Notification of Respondent’s Default was therefore issued on February 9, 2015.

A. COMPLAINANT

Complainant asserts that it is a company which offers a wide range of NIKKEN wellness products.

Complainant states that Nikken was created more than 40 years ago and has been operating in Europe since 1996 with the same trade marks.
Complainant states that they rely on a network of independent distributors across Europe to distribute their products. All distributors are required to sign a contract with Complainant thereby are subject to Nikken Policies & Compensation Plan. All distributors are required to present themselves as independent sellers of Nikken products.

Complainant states that one of its distributors ordered and paid for a website to be created in breach of the Nikken Policies. The domain name was registered and the website was created by Respondent. The domain name was selected by the distributor and registered by the Respondent, who furthermore created a website which in itself is in breach of the Nikken Policies. Complainant called upon the distributor to shut down the website and transfer the domain name. The distributor informed Complainant that Respondent did not cooperate therefore Complainant contacted Respondent directly. Respondent refused to shut down the website and asked for more money to sell the domain. After this development Complainant submitted the complaint.

Complainant asserts that they have recognized and established right on the word “Nikken”.

Nikken International Inc., the parent company of the Complainant, is the owner of two EU trade marks registered with the Office for Harmonization in the Internal Market namely Community Trade Mark 002355311 and 004924510 for the term “NIKKEN”.

Complainant states that they are the holder of the trade name Nikken which they have been using continuously.

Complainant alleges that as the subsidiary of Nikken International Inc., Complainant has authority and actual commercial interest in defending the intellectual property of Nikken.

Complainant asserts that the domain name “nikkenbg.eu” is confusingly similar when compared to the invoked trade marks and trade name.
Complainant alleges that Respondent has no rights or legitimate interest in the name since Respondent is not a distributor of Complainant. Furthermore Respondent is not commonly known by the domain name.

Complainant states that Respondent used “nikkenbg.eu” to attract internet users and diverted potential customers by bypassing the distributor of the Complainant and not allowing access to it.

B. RESPONDENT

The Respondent failed to submit a Response within the time frame required

DISCUSSION AND FINDINGS

Under Article 21(1) of Regulation (EC) 874/2004 (“the Regulation”), the disputed domain name is subject to revocation if it 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 interests in the name or (b) has been registered or is being used in bad faith.

The Complainant must first establish a right that “is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1)”.
Article 10(1) of the Regulation refers to: “registered national and community trade marks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trade marks, trade names, business identifiers, company names”.

The Complainant relies on two Community Trade marks 002355311 and 004924510, which protect the sign “NIKKEN” which are however owned by Complainant’s US parent company, which is not a party to this proceeding. However Complainant has also established with the submitted documents that it has traded within the EU under the name “NIKKEN” that it is the subsidiary of the trade mark owner its company name contains that mark “NIKKEN” which circumstances imply a license from its parent company, the trade mark owner.

Additionally, Complainant claims trade name rights. Panel is of the opinion that it reasonable to conclude that extensive trade under the name “NIKKEN” within many EU countries for many years is very likely to have generated rights in the term “NIKKEN” which are protected under the national law of one or more of those countries in accordance with Article 10(1).

Previous Panels have also held that with the inspection of submitted documents it is reasonable to infer that the Complainant engaged in commercial activity under license from its parent company (CAC06400 bac.eu) and that a license is evident, in the first instance, by the mere fact that the trade mark is an integral part of the Complainant’s company name in which case this license would logically include granting powers to defend the trade marks within the European Community area, thereby granting the Complainant the legitimacy to file the Complaint in these proceedings (CAC 05002 benq.eu).

Assessing the above and taking into account findings of previous Panels in this question, this Panel concludes that the minimal requirement to prove legitimacy and rights in a name which recognized or established by national and/or Community law have been established by Complainant.

Since the disputed domain name incorporates the trade mark “NIKKEN” in its entirety, only adding a descriptive and generic term "BG" (country code for Bulgaria), the domain name can be considered practically identical to the trade marks and the trade name of the Complainant. This is a recognized principle in the case law as far as .eu ADR decisions are concerned, e.g. CAC 4645 (airfrance.eu) and CAC 3207 (Allianz-online.eu).

Previous Panels have held that the Complainant is only required to establish a prima facie case of lack of rights or legitimate interest and then burden of proof shifts to the Respondent to show it does have rights or legitimate interests. In the Panel's view, the Complainant has established a prima facie case of lack of rights or legitimate interest of the Respondent.

Since the Respondent did not submit a response, Respondent failed to present evidence supporting that it has rights or legitimate interests in the domain name pursuant to Article 21 (2) of the Regulation.

The Panel notes that the Respondent is not the proprietor of a corresponding trade mark or other rights, neither has the Complainant nor its parent company licensed or otherwise authorized the Respondent to use the "NIKKEN" trade mark.

Accordingly, the Panel concludes Respondent's lack of rights or legitimate interest in the disputed domain name.

Since the Panel has established Respondent's lack of rights or legitimate interest in the disputed domain name the Panel is not required to examine if the domain name has been registered or is being used in bad faith. Nevertheless, for the sake of completeness, the Panel will also examine the bad faith registration and use of the disputed domain name.

The examination of the background of the case, in particular that the Respondent (i) was tasked to register the domain name and create a website for the distributor of the Complainant but later on blocked access to the domain name and the website, furthermore (ii) that Respondent refused to relinquish the domain name to the Complainant and did not take the website offline (iii) but kept asking for more money is in the view of the Panel evidence of bad faith.

DECISION

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

the domain name NIKKENBG be transferred to the Complainant

PANELISTS

Name	Katalin Szamosi

DATE OF PANEL DECISION 2015-03-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: nikkenbg.eu

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

III. Date of registration of the domain name: November 20, 2013

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trade mark registered as Community Trade mark No. 002355311for the term "NIKKEN", filed on 28 August 2001, registered on 4 October 2007 in respect of goods and services in classes 25
2. word trade mark registered as Community Trade mark No. 004924510 for the term "NIKKEN", filed on 28 August 2001, registered on 10 October 2007 in respect of goods and services in classes 5, 10, 11 and 20.
9. company name: NIKKEN

V. Response submitted: Yes
VI. Domain name is practically 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: Respondent is not the proprietor of a corresponding trade mark or other rights, neither has license nor was otherwise authorized to use the trade mark.
VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. YES
2. The Respondent blocked access to the domain name and website of the distributor and kept asking for more money in order to surrender the domain name.

IX. Other substantial facts the Panel considers relevant:
X. Dispute Result: Transfer of the disputed domain name
XI. Procedural factors the Panel considers relevant:
XII. Is Complainant eligible? Yes