Panel Decision for dispute CAC-ADREU-006884

Case number	CAC-ADREU-006884
Time of filing	2015-03-09 10:41:34
Domain names	PEUTEREYOUTLETSHOP.EU

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	Jimme Hoek

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 legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant Peuterey Group S.p.A. (formerly known as G&P Net S.p.A.) is the proprietor of several PEUTEREY trademarks. The Complainant has registered the trademarks PEUTEREY and PEUTEREY & device in several jurisdictions, e.g.:

- International trademark registration no. 646277 PEUTEREY, registered on 14 November 1995, in classes 24 and 25;
- International trademark registration no. 850742 PEUTEREY + device, registered on 9 May 2005, in classes 3, 9 and 25;
- Community trademark registration no. 007088867 PEUTEREY, registered on 4 February 2009, in class 18;
- Community trademark registration no. 009604448 PEUTEREY + device, registered on 26 April 2011, in classes 3, 18 and 25.

The Respondent has registered the domain name <peutereyoutletshop.eu> on 15 April 2014, and the Complainant has, consequently initiated the present ADR proceedings. The Respondent has failed to file a reply to the Complaint.

A. COMPLAINANT

1. Infringement of the Complainant's trademarks

The Complainant contends that the contested domain name fulfils the requirements set forth in paragraph B11 (d) (1) (i) of the ADR Rules, the domain name being identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

The Complainant further contends that the only negligible difference is the addition of the descriptive term “outlet shop”, which should be ignored for the purpose of comparison as it is not sufficient to prevent the disputed domain name from being confusingly similar to the trademark PEUTEREY.

2. The Respondent's legitimate rights or interests in the domain name

The Complainant contends that, as set forth in Paragraph B11 (d) (1) (ii) of the ADR Rules, the domain name has been registered by the Respondent without rights or legitimate interest in the name.

The Complainant states that the following reasons indicate that the Respondent has no rights in the disputed domain name:

- the disputed domain name does not correspond to a trademark registered in the name of the Respondent;
- the Complainant has not licensed or otherwise authorized the Respondent to use the trademarks PEUTEREY and PEUTEREY + device; and
- to the best of the Complainant's knowledge, the Respondent is not commonly known as "PEUTEREYOUTLETSHOP".

3. Bad faith

The Complainant contends that the Respondent must have been acting in bad faith, fulfilling the requirements set forth in paragraph B11 (d) (1) (iii) of the ADR Rules, since the Respondent was clearly aware of the PEUTEREY brand by registering the disputed domain name and by using the trademark extensively on the website for <peutereyoutletshop>.

B. RESPONDENT

The Respondent has failed to file a reply to the Complaint.

DISCUSSION AND FINDINGS

1. According to Article 21(1) of Commission Regulation No. 874/2004, a registered domain name shall be subject to revocation, 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, and where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

2. According to Article 22(1) the said Regulation, an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21.

3. Article 22(11) of the Regulation states that the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

4. Paragraph B11 (d) (1) (i)-(iii) of the ADR Rules prescribes that the Panel shall issue a decision granting the remedies in the event that the Complainant proves that the domain name is (i) identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and either (ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name or (iii) the domain name has been registered or is being used in bad faith.

5. In accordance with Paragraph B11 (d) (1) (i) of the ADR Rules, the Complainant should prove that the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law. Complainant is the proprietor of a number of PEUTEREY trademarks and the Complainant has put the mark into extensive use throughout the years. The Panel considers that the PEUTEREY trademark is a dominant part of the disputed domain name and the descriptive element "outletshop" is not sufficient in differentiating the disputed domain name from the Complainant's trademarks.

6. As the disputed domain name incorporates the Complainant's trademark PEUTEREY in its entirety, only adding a descriptive and generic term "outletshop", the domain name can be considered as confusingly similar to the Complainant's trademarks. This is a recognized principle in the case law at .eu ADR decisions, e.g. CAC 4218 (olympiakos.eu), CAC 4645 (airfrance.eu), CAC 5376 (monstefinance.eu) and CAC 3207 (Allianz-online.eu). Therefore, the Panel considers that the requisite in Paragraph B11 (d) (1) (i) of the ADR Rules is established.

7. In accordance with Paragraph B11 (d) (1) (ii) and (iii) of the ADR Rules, the Complainant should then prove that domain name has either been (ii) registered by the Respondent without rights or legitimate interest in the name or that (iii) the domain name has been registered or is being used in bad faith.

8. It is necessary for the Complainant only to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once a prima facie case is made out, the burden shifts to the Respondent to come forward with statements and/or evidence demonstrating the rights or legitimate interests in the disputed domain name. The Respondent has failed to respond to the Complaint.

9. In considering if the Respondent has registered the domain name without rights or legitimate interests in the name, the Panel bears in

mind that the Respondent is not the proprietor of a corresponding trademark or other rights, nor has the Complainant licensed or otherwise authorized the Respondent to use the PEUTEREY trademark. The Respondent is also clearly not known by the name "peutereyoutletshop". Therefore, the Panel considers that the requisite in Paragraph B11 (d) (1) (ii) of the ADR Rules is established.

10. As the requisites in Paragraph B11 (d) (1) (i) and (ii) have been established, the Panel is not required to examine if the requisite in Paragraph B11 (d) (1) (iii) is established. However, for the sake of completeness, the Panel will also examine the bad faith registration and use of the disputed domain name.

11. Upon a superficial examination of the website where the disputed domain name points to, and judging from the general quality of the website, the multitude of grammatical errors, and considerably low price level of the goods compared with authorized PEUTEREY goods, the Respondent seems to be using the disputed domain name to sell what possibly to be counterfeited PEUTEREY goods.

12. As the above stated alone is such a strong evidence of using the bad faith use of the domain name, the Panel considers that the requisite in Paragraph B11 (d) (1) (iii) of the ADR Rules is established.

DECISION

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

the domain name PEUTEREYOUTLETSHOP.EU be transferred to the Complainant.

PANELISTS

Name	**Henrik af Ursin**

DATE OF PANEL DECISION 2015-03-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: PEUTEREYOUTLETSHOP.EU

II. Country of the Complainant: Italy, country of the Respondent: The Netherlands.

III. Date of registration of the domain name: 15 April 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 trademark registered as a Community Trade Mark, reg. No. 007088867, for the term PEUTEREY, filed on 24 July 2008, registered on 4 February 2009 in respect of goods and services in class 18;

2. Word trademark registered as an International Tradmark, reg. No. 646277, for the term PEUTEREY, registered on 14 November 1995 in respect of goods and services in classes 24 and 25.

V. Response submitted: No.

VI. Domain name/s is/are confusingly similar to the protected right/s of the Complainant.

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):

1. No.
2. Why: No rights or legitimate interest from the part of the Respondent are evident and no reply was filed by the Respondent.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Yes.
2. Why: The domain name is used to intentionally attract internet users by creating a likelihood of confusion.

IX. Other substantial facts the Panel considers relevant: No.

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

XI. Procedural factors the Panel considers relevant: No.

XII. Is Complainant eligible? Yes.