Panel Decision for dispute CAC-ADREU-006908

Case number	CAC-ADREU-006908
Time of filing	2015-07-11 12:32:14
Domain names	www.ccbill.eu

Case administrator

	Lada Válková (Case admin)

Complainant

Organization	CC Bill EU Limited

Respondent

Name	Stichting OpenTLD WHOIS Proxy

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

CC Bill EU Limited (hereinafter 'the Complainant') is a company registered in Malta. Complainant provides global payment solutions, especially online payment processing services to European-based organizations. Complainant is related to the holder of a U.S. trademark registration for CCBILL claiming the date of first use in commerce of April 14, 1998 and the owner of several domain names containing the term CCBILL, including CCBILLEU.COM.

The Respondent has its registered address in the Netherlands and has registered the domain name at issue in 2011 and has been apparently using it since then. The website associated with the domain name contains nudity and suggestive sexual background, which presumably refers to the services offered (online payment solutions for online entertainment, including adult entertainment). This website is powered by the company Verotel, a competitor to the Complainant, see e.g. http://www.webhostingtalk.com/showthread.php?t=567668

The Complainant has sent a cease and desist letter, whereby the Respondent was informed that the use of the domain name is abusive. However, Respondent did not respond, and continued using the domain name. Nor did the Respondent file any response in this ADR proceeding.

A. COMPLAINANT

1. Identity or confusing similarity

The Complainant claims that the contested domain name, CCBILL.EU is virtually identical to domain names, the well-known trademark and the distinctive business trade usage of CCBILL;

The Complainant claims that the only difference in between the domain name at issue and the registered domain name by the complainant is the positioning of the letters "EU". Complainant claims that the services offered by Respondent is strikingly similar to the services offered by the Complainant, thus further contributing towards creating confusion.

In support of its claims, the Complainant cites case law 06641 ("AMAZON-IT") and 06629 "NATWESTPLC").

2. Registered without rights or legitimate interests

The Complainant argues that the domain name used by the Respondent has nothing to do with its trade name, Verotel. In addition Verotel registered the disputed domain name without having any registered rights or trade usage associating it to the name www.ccbill.eu, nor does it appear to be commonly known by this name. Furthermore, Respondent has no rights or legitimate interest unfair advantage and mislead consumers, which are intended on reviewing and/or accessing the portal managed by CCBILL.

Thus, the Complainant argues that the Respondent´s registration and use of the disputed domain name breaches every point of Article 21(2) of the EC Regulation No 874/2004.

3. Registered and/or used in bad faith

The Complainant claims that the Respondent is using the disputed domain name to attract internet users, for commercial gain, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and EU law, 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 Respondent. It follows that the disputed domain name is being used in bad faith.

B. RESPONDENT

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

DISCUSSION AND FINDINGS

The Respondent did not file its Response to Complaint neither respond to notifications of the ADR Center. Therefore, pursuant to Paragraph B (10) of the ADR Rules the Panel shall proceed to issue a Decision based upon the facts and evidence provided by the Complainant.

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 recognized or established by national and/or EU law (point A below); and has been using by its holder without rights or legitimate interest in the name (B); and has been registered or is being used in bad faith (C).

A. Identity or confusing similarity to the registered trademark owned by the Complainant

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 trademark and trade and company name rights. In support of these, the Complainant has firstly enclosed a copy of its trademark in the USPTO database. This piece of evidence, although it is not a European trademark registration, can be the basis of a valid prior right if combined with use in Europe, see e.g. Case No. 1580 (“AUNTMINNIE”). The Complainant has also submitted the documents of the registration of the Maltese company in 2002, as well as claimed use of the mark in Europe. Several European countries, including Denmark, Malta, and the UK, recognize unregistered “common law” rights. Numerous Panels have in the past have held that unregistered rights can be the basis of a valid claim, see among others cases Nos. 06950 (“FLIRT4FREE”), 06295 (“BENEFITCOSMETICS”) and 05118 (“BYRONADVERTISING”). The Panel believes that the Complainant provided enough evidence to reasonably conclude that extensive trade under the name “ccbill” and “ccbilleu” the EU for several years. Therefore, it is very likely the Complainant has generated rights in the terms “ccbill” and “ccbilleu”, which are protected under the national law of one or more of those countries in accordance with Article 10(1).

The Panel agrees with the Complainant that the disputed domain name is, if not identical, confusingly similar to Complainant’s rights. Complainant owns an extensive list of domain names which are derivations of “ccbill”, such as ccbill.org, ccbill.com, ccbill.net, ccbilleu.com, ccbilleu.net. ccbill.eu could easily be mistaken for another domain of CCBILL EU, Limited. This is primarily because the Complainant´s trade name forms an integral part of the disputed domain name.

The case law submitted by the Complainant, which concerns similar facts, supports the finding that the first requirement of Article 21(1) is therefore met.

B. Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Respondent did not reply to Complainant's arguments and apparently decided not to take part in the ADR proceedings. The Panel is therefore expected to rely solely on the arguments and evidence brought by the Complainant. Shall the Respondent have had any trademark or legitimate rights for these terms, he could have responded to claim with evidence of the rights and legitimate interests. Although not bound to do so, the Panel has carried out an independent investigation, which has revealed that, as the Complainant claims, the Respondent has no connection with the term "ccbill" or "ccbilleu". The contested domain name does not correspond to a trademark registered in the name of the Respondent, nor is the Respondent is commonly known or does it trade under the name "ccbill" or "ccbilleu". The search of "ccbill" in any internet search engine shows that the term is not generic and only relates to Complainant's company. Therefore, the Panel did not find any evidence or circumstances that may prove the Respondent having any rights or legitimate interests in the disputed domain name.

The Panel therefore concludes that the Domain Name was registered by the Respondent without rights or legitimate interest in accordance with Article 21(1) of the Regulation.

C. The disputed domain name has been registered and is being used in bad faith.

The Complainant claims that the Respondent uses the disputed domain in bad faith, in order to attract the interest of users for commercial gain and free ride from Complainant's recognized and reputed right. The services provided by both parties to these proceedings show that they are in competition. The Complainant claims that its company is deemed one of the largest third-party payment solutions in the world, something that has not been contested by the Respondent. Furthermore, the Respondent has ignored Complainant's cease and desist letter.

Given the widespread and longstanding presence of the Complainant's services across the world, as well of Complainant's domain names on Internet, it is unlikely that the Respondent was not aware of them when he proceeded to registration of the disputed domain name. The Panel therefore is of the opinion that it very likely that the Respondent registered the domain name with a view to take unfair advantage of the reputation of the Complainant's trade and domain name. On top of that, the use of the disputed domain name can causes a weakening of Complainant's mark and reputation due to the unreliable appearance of the connected website.

Accordingly, the Panel agrees with the Complainant that the disputed domain name has been registered and is being used in bad faith, in accordance with Paragraph B11(d)(1)(iii) of the ADR Rules.

DECISION

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

PANELISTS

Name	NJORD, Peter Gustav Olson

DATE OF PANEL DECISION 2015-07-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: CCBILL

II. Country of the Complainant: Malta, country of the Respondent: Netherlands

III. Date of registration of the domain name: 9 June 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision: unregistered trademark and company name.

V. Response submitted: No

VI. Domain name is 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): none

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: domain name used to point to a site competing with the Complainant

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: [Transfer of the disputed domain name/s/Revocation of the disputed domain name/s/Complaint denied]

XI. Procedural factors the Panel considers relevant:

XII. [If transfer to Complainant] Is Complainant eligible? [Yes/No]