Panel Decision for dispute CAC-ADREU-006941

Case number	**CAC-ADREU-006941**
Time of filing	**2015-06-29 19:23:38**
Domain names	**juicycoutureuk.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	**Karine Dinsey**

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 has not been informed of any other legal proceedings that are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the current registered proprietor of the following 4 Community Trade Mark registrations, all by the name JUICY COUTURE, chronologically registered as follows:

- JUICY COUTURE No 1177377 (class 25), registered on 02/06/2000.
- JUICY COUTURE No 3810579 (classes 9,21,24), registered on 12/08/2005
- JUICY COUTURE No 5812458 (classes 14,30,32) registered on 25/03/2008.
- JUICY COUTURE No 10157741 (class 9), registered on 29/12/2011.

The Respondent has registered the domain www. juicycoutureuk.eu with the PublicDomainRegistry (PDR Ltd), on 12/08/2014.

A. COMPLAINANT

JUICY COUTURE is a contemporary casual wear and dress clothing brand in the USA, founded in 1997, and has since become a global fashion brand that spans clothing, handbags, shoes, intimates, swimwear, fragrance, accessories, sunglasses, yoga and babywear.

The CTM registrations, which are all validly registered to the Complainant, grant the Complainant exclusive rights to the use and registration of the trade mark JUICY COUTURE, such that the Complainant can enforce the rights granted to these CTM registrations against a third party's use of JUICY COUTURE, or something considered confusingly similar to the trade mark JUICY COUTURE, in relation to the goods covered by these registrations (or similar goods), and in relation to goods and services not specifically covered by these registrations, where such use of the other mark (or "sign") would be without due cause, or would take unfair advantage of, or be detrimental to, the distinctive character, or repute, of the registered trade mark.

The disputed domain name is being used to direct internet users to a website which clearly features the sign JUICY COUTURE in a stylised colour and font that is identical to the stylised font which is used by the Complainant on their website www.juicycouture.com, and the goods being offered for sale on the website www.juicycouture.uk.eu are goods that are either identical, or similar, to the goods covered by the Complainant's CTM registrations.

The Complainant also states that some of the goods being offered for sale on the website www.juicycoutureuk.eu are counterfeit goods of the Complainant's goods, and that website does not provide the internet enquirer with a physical address in order to contact the

owner/operator of the website. Any communication can only be via an email provision.

The disputed domain name is a “sign” that is clearly being used in the course of trade, as an indicator of origin of the goods concerned. The average internet consumer is, therefore, going to be confused as to the origin of the goods being offered for sale on the website www.juicycoutureuk.eu (either confused into believing that the goods are those of the Complainant, or originate from some form of economic undertaking that is linked to the Complainant).

The domain name juicycoutureuk.eu is virtually identical to the Complainant’s CTM registrations, such that there exists a very real likelihood of confusion being caused. The two signs at issue are visually, phonetically and conceptually almost identical. The additional elements “uk” and “.eu” appearing in the disputed domain name are effectively generic terms, and do nothing to detract from the dominant component of the disputed domain name, namely the words JUICY COUTURE. The goods being offered for sale on the website www.juicycoutureuk.eu are also identical, or similar, to the goods covered by the Complainant’s CTM registrations.

Complainant further claims that the disputed domain name has been registered by the Respondent without any rights or legitimate interest in the name (with it being a registered CTM belonging to the Complainant at the time that the disputed domain name was registered).

Also, the Respondent is not commonly known by the domain name, and the Respondent is making use of the domain name with the specific intent to mislead consumers or harm the reputation of the Complainant’s CTM rights.

Furthermore, it is submitted that the disputed domain name has been registered, and is being used, in bad faith, in that the disputed domain name was registered primarily for the purpose of disrupting the professional activities of the Complainant, and the disputed domain name is intentionally being used to attract internet users, for commercial gain, to the Respondent’s website, by creating a likelihood of confusion with a name which is the subject of the Complainant’s rights under its earlier CTM registrations. This bad faith is further demonstrated in the fact that counterfeits of the Complainant’s goods are being offered for sale on the website www.juicycoutureuk.eu.

B. RESPONDENT

The Respondent has failed to file any Response, and the written notice of the Complaint was returned to the Czech Arbitration Court as undelivered.

DISCUSSION AND FINDINGS

Based on the evidence provided by the Complainant and in the absence of a Response, there are indications that the Complainant's rights have been violated.

According to Paragraph B 11 (d) (1) of the ADR Rules, related to Articles 21 (1) of the Commission Regulation (EC) No 874/2004, the Complainant bears the burden of proof in proving the following:

(i) 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 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.

The first requirement is 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.

As the Complainant emphasized, the appearance of the sign JUICY COUTURE on Respondent's website is in a stylised colour and font that is identical to the stylised colour and font which are used by the Complainant on their website www.juicycouture.com, and the domain name juicycoutureuk.eu is virtually identical to the Complainant’s CTM registrations, such that there is a very real likelihood of confusion being caused. Also, the two signs at issue are indeed visually, phonetically and conceptually identical, and the goods being offered for sale on the Respondent's website correspond to the goods covered by most of the Complainant’s CTM registrations.

The suffix "uk" in the disputed domain name does not sufficiently alter the term "Juicy couture" registered by the Complainant in his CTM registrations, to avoid the confusingly similar aspects of the Respondent’s domain name.

The Panel considers that the disputed domain name may well cause association with the Complainant’s name or trademarks because both the disputed domain name, and the Complainant's registered CTMs have visual, phonetic and semantic similarity. The disputed domain name is thus, in the Panel's view, confusingly similar to the name in which the Complainant holds registered rights and in this respect the first requirement of Article 21 (1) of Regulation (EC) No. 874/2004 is satisfied.

The second requirement as per paragraph 11(d)(1)(ii) of the ADR Rules is that the domain name holder has no rights or legitimate interests in the disputed domain name.

The Respondent has failed to file any Response, and the evidence submitted by the Complainant show that a term Juicy Couture was already a registered CTM belonging to the Complainant at the time that the disputed domain name was registered.

Furthermore, the Respondent has not been commonly known by the domain name, and is making a commercial and unfair use of the domain name.

The last requirement as per paragraph 11(d)(1)(iii) of the ADR Rules is that the domain name holder has registered and is using the domain name in bad faith.

The sole registration of a domain name confusingly similar to a famous trade mark without legitimate interest or a right in the name constitutes by itself a strong presumption of bad faith. Also, the fact that the Complainant is well known and internet search engines reveal links that relate to him, and has a long standing history and reputation in a name, makes it impossible for the Respondent not to be aware of existing rights of the Complainant. Another indication of bad faith is the use of popularity to gain more traffic.

Considering all the facts abovementioned that prove the confusing similarity between the disputed domain and Complainant's recognized rights, the average internet consumer really can easily get confused as to the origin of the goods being offered for sale on the Respondent's website. In fact, it appears as though consumers are being mislead. All these facts indicate that the Complainant rightfully stated that the disputed domain name was registered, and is being used, in bad faith, and to attract internet users, for commercial gain, to the Respondent’s website, by creating a likelihood of confusion with a name which is the subject of the Complainant’s rights under its earlier CTM registrations, which also violates the rights specified in the Article 9(1) of Council Regulation (EC) No. 207/2009 as stated by the Complainant.

The fact that the Respondent created a false impression that he is affiliated with the Complainant for the purpose of profiting of the confusion, also proves the Respondent's bad faith.

As to the statement that counterfeits of the Complainant’s goods are being offered for sale on Respondent's website, this Panel finds that there is not enough evidence to determine it as a fact, although it appears that the goods in question are confusingly similar, if not almost identical, to those of the Complainant.

Article 22(11) of Regulation (EC) No. 874/2004 states that in the case of a procedure against a domain name holder, 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.

Taking into account all of the evidences submitted and in accordance with the applicable rules, this Panel finds that there was a violation of the Article 21(1) of Regulation (EC) No. 874/2004.

In accordance with Art. 2(e)(3) of the ADR Rules, the written notice is considered to be delivered to the Respondent on 13/04/2015. The Respondent has failed to file any Response, therefore the term for submitting the Response to Complaint expired on 28/05/2015. In accordance with the Article B 10 (a) of the ADR rules, and all the evidence submitted, this Panel has also taken the Respondent's failure to file the Response in favour of the Complainant.

As the Complainant, being a company registered under USA law, does not satisfy the eligibility requirement for .eu domain name registrations pursuant to Article 4(2)(b)(ii) of Regulation (EC) No 733/2002 and therefore it is not possible to order transfer of the disputed domain name to the Complainant the Panel orders the disputed domain name to be revoked.

DECISION

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

PANELISTS

Name	Branimir Tuškan

DATE OF PANEL DECISION 2015-06-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: JUICYCOUTUREUK

II. Country of the Complainant: United States, country of the Respondent: Germany

III. Date of registration of the domain name: 12 August 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 registered in United States, reg. No. 1177377 for the term JUICY COUTURE , filed on 19 May 1999 , registered on 02/06/2000, in respect of goods and services in class 25.
2. word CTM registered in United States, reg. No. 3810579, for the term JUICY COUTURE, filed on 30 April 2004, registered on 12 August 2005 in respect of goods and services in classes 9, 21, 24
3. word CTM, reg. No. 5812458, for the term JUICY COUTURE, filed on 04 April 2007, registered on 25 March 2008 in respect of goods and services in classes 14, 30, 32.
4. word CTM, reg. No.10157741, for the term JUICY COUTURE, filed on 28 July 2011, registered on 29 December 2011 in respect of goods and services in class 9.
5. geographical indication:
6. designation of origin:
7. unregistered trademark:
8. business identifier:
9. company name: ABG Juicy Couture, LLC
10. family name:
11. title of protected literary or artistic work:
12. other:

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: Respondent has not been commonly known by the domain name, and is making a commercial and unfair use of the domain name, with intent to mislead consumers. The disputed domain name was registered by the Respondent containing a confusingly similar term to a registered CTM belonging to the Complainant at the time.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The domain name was intentionally used to attract Internet users, for commercial gain, to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name registered by the Complainant, 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 holder of a domain name.

IX. Other substantial facts the Panel considers relevant: /

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: /

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