Panel Decision for dispute CAC-ADREU-006987

Case number	CAC-ADREU-006987
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Domain names	HJT.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	HJT Biler ApS

Respondent

Organization	Really Useful Domains Ltd

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

FACTUAL BACKGROUND

The Complainant, HJT Biler Aps, is a limited liability company, incorporated under Danish law. It is engaged in the business of renting and leasing equipment, including trucks.

The Respondent is the registrant of the disputed domain name, hjt.eu which was registered on 7 April 2006. He is engaged in the business of buying and selling domain names

A. COMPLAINANT

The Complainant submits that the domain name is confusingly similar to a name in which the Complainant has a right and says:

(i) It owns a company name in respect of which a right is recognized by Danish national law as required by Article 10(1) of Regulation (EC) No. 874/2004 of April 2004.

(ii) Under the Danish Company Act commercial designations are protected. Section 2 (2) states:

'The name of a private company shall differ distinctly from the names of other undertakings registered with the Commerce Agency (Erhvervsstyrelsen).The name must not include surnames, names of firms, specific names of real property, trade marks, logos, etc., that do not belong to the company or anything which may be confused therewith.'

(iii) The Complainant's name is HJT BILER ApS. The Complainant submits that a company can have a right to a domain name, which is only a part of the company name, as demonstrated in CAC No. 6440 (FIALA). In this regard the Complainant says:

'"HJT" must be seen as the main part of its name as "BILER" (Danish translation for autos) only describes the type of business (as so do "Projects"), and as ApS is the denomination for the company's legal form (as so is "GmbH")'.
(iv) HJT is the acronym for 'Hans Jensen Transport'. On this basis, the Complainant claims that the domain <hjt.eu> is similar or confusingly similar to the company name of Complainant, which is protected by Danish law.

(v) The Complainant owns a company name in respect of which a right is recognized by Danish national law as required by Article 10(1) of Regulation (EC) No. 874/2004 of April 2004. Further, it is established in the European Community, as required by Article 4(2)(b) of Regulation (EC)No. 733/2002.

The Complainant submits that the domain name is registered or used by the Respondent in bad faith and says:

(i) The domain name is offered for sale at a price of EUR 1299, which is approximately the price of the ADR procedure (without discount) as shown by the printout from www.hjt.eu.

(ii) The Respondent has registered the domain name only with intention to sell it, as evidenced by the fact that the domain is for sale on the Respondent's website www.reallyusefuldomains.co.uk and on the site www.sedo.com.

(iii) The Respondent's website states that over 10,000 domains are offered for sale, including over 1,000 rare 2 and 3 pure letter .eu top level domains, which shows that the Respondent's business is to register and sell .eu domains, which have an attractive and distinctive character. Such behaviour must be seen as speculative use, as prohibited by Article 21 of (EC) Regulation 874/2004. Further, 'Domain-grabbing', where the holder of the domains, registers domains only with the intention to sell it, without any legal business use is considered as bad faith.

(iv) Registration of a large number of domain names, with the intention to sell can be seen as acting in bad faith was demonstrated in CAC No. 3557 (FAG). In that case the respondent had registered about 150 trademarks in Malta and later registered them as eu. domains names, many of these were three-letters domains. The Panel stated that Respondent had registered the domain names in order to sell them: they were attractive because of their descriptive nature or because of their short form of three-letters and given their distinctive character the respondent must have been aware of other holders of rights to them. The Panel also said it is not a requirement that the Respondent, at the time of registration, had an intention to sell the domain to Complainant.

(v) The Respondent's name, 'Really Useful Domains', indicates that the domain name could be sold by the owner and the purpose of registering the domain must primarily have been for the purpose of selling. The Complainant cites CAC No. 4410 (4711) where the Panel found that the name 'domain handler' indicated that the owner would sell the domain, showing bad faith.

The Complainant submits that the Respondent has no legitimate interest in the domain name <hjt.eu> and says:

(i) Neither on the Respondent's own website nor on the website for 'hjt.eu' does the Respondent offer any services or goods which are linked to the domain name. Nor does such use appear to be prepared.

(ii) There is no indication that the Respondent is commonly known by the domain name. No information about the Respondent or their services/products appears from the website. The Complainant refers to CAC No. 4410 (4711) where the panel found that a webpage (www.4711.eu) which did not show this information, but only links to search result was a 'fake' website. The Complainant says the Respondent 's website also appears to be a 'fake website' and although there may be links connected to the acronym 'hjt', it does not change this fact, as, taking the all the circumstances into consideration, it only seems to be used in order to hide the Respondent's speculative business. Should the website be accepted as 'direct navigation', a domain dealer would be allowed to speculate in domain trading, 'hiding' their speculative business by linking it to some relevant links.

(iii) As the Panel stated in the CAC No. 03976 (ABAT):

'However, one could argue that the use of the domain parking system could be regarded legitimate, non commercial and fair use under Article 21.1 (a), 2 (c) EC Regulation No. 874/2004. But, however, this use cannot establish a legitimate interest according to Article 21. 2 (c) (EC) Regulation No. 874/2004, as it is commonly known that this parking systems are offered by the domain name providers solely as alternative to the "site under construction" design. Moreover, this parking system intensifies the proof that the Respondent intends to sell the domain name rather than using it for own (legitimate) purposes.'

(iv) That a great number of registrations of three-letter combinations can create doubt as to the legitimate interest is supported by CAC No. 1959 (LOT).

B. RESPONDENT

Respondent submits that the domain should not be transferred to the Complainant and says:

(i) .eu domain names are registered on a 'first-come, first-served' basis.

(ii) EURid had a very extensive and comprehensive sunrise period in 2006 in which European qualifying organizations could register domains in which they had rights, which it appears the Claimant did not take advantage of.

(iii) The Complainant does not appear to have any EU trademark or copyright on 'HJT'.
(iv) The Complaint uses the website http://www.hansjensen-transport.dk but has not registered:
<hansjensen-transport.eu>; or
<hansjensentransport.eu>; or
<hjttransport.eu>.

(v) These domain names are all still available to be registered, which demonstrates a lack of commitment by the Respondent to .eu domains. If anybody else registered any of them other than the Complainant, that would be a speculative or abusive registration.

(vi) The Claimant does not trade using the acronym of HJT: HJT is not shown on the content of the Respondent's website or the image on their trucks and so it does not appear to be known by those 3 generic letters.

(vii) The cases referred to by the Complainant are not applicable because certain cases were not defended by the respondents. CAC Nos. 3557 and 1959 are to do with .eu Sunrise and deliberate actions to cheat the system and are not relevant in this case.

(viii) The domain name HJT.eu was purchased at market rate and acquired as part of a long-term strategy of using non language specific acronym trade names, as it will be recognized in all EU countries. The contents of the website would be multi-lingual, to reflect the diverse number of EU languages and the Respondent would ensure the domain name's use would not cause confusion with any similar name.

(ix) Until time is committed to any domain name, it is available for sale, at market rate. The price asked for any domain is a fair price. This domain was on sale at Euro 1750 but the price was reduced earlier this year to Euro 1299 due to a lack of demand for EU domains and has nothing to do the ADR fees.

(x) Sedo.com is used to sell the domains as interested parties can buy the domain for a fixed price and not reveal their name to the seller which avoids that the price goes up when the buyer's worth is known.

(xi) The Complainant is trying to acquire a valuable generic non-language specific domain to which it has no rights.

DISCUSSION AND FINDINGS

Under the ADR Rules the Complainant must prove that:

(i) the domain name is identical or confusingly similar to a name in respect of which a right which is recognised or established by national and/or community law, and either:

(ii) the domain name has been registered by its holder without rights or legitimate interest in the name; OR

(iii) the domain name has been used in bad faith.

(Paragraph B. 1 (10) and 11 (d) of the ADR Rules).

Once the Complainant has proved it has the required rights it must prove either requirement (ii) or (iii).

Rights

The issue is whether <hjt.eu>, is confusingly similar to the Complainant's company name, 'HJT Biler Aps'. A company name is protected under the Danish Company's Act, but the Complainant does not explain whether it is the full company name 'HJT Biler Aps' that is protected or whether the Danish Company's Act also protects a part of the company name, 'HJT'.

The Complainant says that 'HJT' is the acronym for 'Hans Jensen Transport'. However, the three letter acronym 'HJT' could mean any number of things. Many parties in the EU are likely to use them. Many companies use HJT in the first part of their company name. The Complainant does not have exclusive rights to use the acronym or to exclude others from using it.

The Complainant cites the CAC Case No.06440 (FIALA) to support its claim to rights in part of a company name. However, the FIALA case did not involve a three letter acronym. It was decided on the basis of the Complainant's rights in his surname 'Fiala'. The company's rights strengthened the Complainant's position (as he was using his last name as a trade and company name), but the panel also found

that the rights of the company, Fiala Projects GmbH, were ‘not relevant to the case in question as the company was not a party to the dispute’.

Bad Faith

The Respondent does not deny that it acquired the domain name for the purpose of sale. Buying and selling domain names is its business. However, bad faith under Article 21(3)(a) of the Regulation has two elements: the domain name must be ‘registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain name’ and ‘to a holder of a name in respect of which a right is recognized or established by national and /or Community law’.

The domain name is comprised of three letters ‘HJT’. These three letters could be the acronym for any three words beginning with those letters. There is nothing to indicate that the Respondent knew or should have known of the Complainant, HJT Biler Asp, when it registered the domain name, <hjt.eu>, or that it registered the domain name for the purpose of selling it to the Complainant.

Further, there is nothing to show that the Respondent registered the domain name in order to prevent the Complainant from registering the company name ‘HJT Biler Asp’ in a corresponding domain name, contrary to Article 21 (3) (b) of the Regulation

It would appear that the main reason for the Respondent acquiring the domain name was its short length.

The Complainant refers to CAC No. 3557 (FAG) to support its claim of bad faith. But in that case the Complainant owned several German trade marks for ‘FAG’ and the panel found that the ‘Respondent must have been aware of the prime interest of the Complainant and/or other owners of trade mark or other rights in FAG’.

The Complainant also cites CAC No. 4410 (4711) to support its claim of bad faith registration or use. But in that case the name 4711 was a famous trade mark for perfumes and cosmetics, with over 1,000 trade marks containing the name, 4711. Further, the respondent in that case had registered several other domain names for which he had no rights or legitimate interests, namely CAC No. 01328 (TSE-SYSTEMS), CAC No. 02235 (PALMERSCOCOABUTTER) and CAC No. 04274 (SALOMON-SPORTS)). It was in this context that the panel found that the website using <4711.eu.> was fake and the registration and use of the domain name was in bad faith.

The Panel finds that the Complainant has failed to establish that the domain name was registered or used in bad faith for the purposes of Article 21 (b) of the Regulation.

Legitimate interest

As an alternative to the claim of bad faith, the Complainant submits that the Respondent has no legitimate interest in the domain name.

The Complainant cites several CAC decisions to support its case. But each of these differs from the present case. Each case had compelling reasons for the decision against its respondent, but these are not found in the present case.

In 4711, the panel concluded that a website using <4711.eu.> and which only linked to search results was a ‘fake’. But this was in the context of 4711 being a famous brand with numerous trade mark registrations. Further, there were three other CAC decisions against that respondent where domain names had been registered where there were no right of legitimate interests.

In CAC No.03976 (ABAT) the Complainant had a trade mark for ABAT. The domain name <abat.eu> was used as a parking page only. The respondent did not file a response and there was no evidence of any legitimate use.

In CAC No.01959 (LOT), the Complainant was the Polish national airline carrier with rights in the name LOT since 1929. It held numerous trade mark registrations for LOT and several domain names incorporating name LOT. Further the respondent in that case had registered other domain names that incorporated well-known third party trade marks.

In the present case the Complainant does not own a trade mark for ‘HJT’. The domain name <hjt.eu> was registered by the Respondent on a first come first served basis. The domain name is three letter acronym and links on the site were to this acronym and its generic meaning. The Respondent has not been shown to have registered as domain names the trade marks of third parties, nor is the domain name being used to trade off the good will of the Complainant’s brand, or link to competitor sites.

Taking into consideration these factors, the Complainant failed to prove that the Respondent has no legitimate interest in the domain name

DECISION

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

PANELISTS

Name	**Mrs Veronica Marion Bailey**

DATE OF PANEL DECISION 2015-08-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: hjt.eu

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

III. Date of registration of the domain name: 7 April 2006

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

V. Response submitted: Yes

VI. Domain name is neither identical nor 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: A company name is protected under the Danish Company's Act, but no explanation was given whether the full company name 'HJT Biler Aps' was protected or "HJT" as part of the company's name.
The Complainant has asserted that 'HJT' is the acronym for 'Hans Jensen Transport'. However, the three letter acronym 'HJT' could mean any number of things. Many parties in the EU use this acronym. Many companies use HJT in the first part of their company name. The Complainant does not have exclusive rights to use the acronym or to exclude others from using it

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. No
2. Why: The Complainant asserts that the domain name was registered in bad faith. The Respondent acquired the domain name because it was short. There is nothing to indicate that the Respondent knew or should have known of the Complainant, HJT Biler Asp, when <hjt.eu> was registered, or that it was registered for the purpose of sale to the Complainant; or to prevent the Complainant from registering the company name 'HJT Biler Asp' in a corresponding domain name.

IX. Other substantial facts the Panel considers relevant:
The Complainant does not own a trade mark for 'HJT'. The domain name <hjt.eu> was registered by the Respondent on a first come first served basis. The domain name is three letter acronym and links on the site were to this acronym and its generic meaning. The Respondent has not been shown to have used the domain name to trade off the good will of the Complainant's brand, or link to competitor sites.

Taking into consideration these factors, the Complainant failed to prove that the Respondent has no legitimate interest in the domain name

X. Dispute Result: Complaint denied