Panel Decision for dispute CAC-ADREU-007012

Case number	CAC-ADREU-007012
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Domain names	www.baylor.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	Baylor University

Respondent

Name	Idalina Magro

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None of which the Panel is aware.

FACTUAL BACKGROUND

The Complainant is a private Baptist university based in Waco, Texas. It was chartered in 1845 by the Republic of Texas just prior to Texas' admission to the Union. It is the largest Baptist University in the world. Although based in the United States, it also offers various educational programs to its students in Europe.

In addition to trade marks in the United States, it is the owner of Community Trade Mark No 1397124 for the word mark BAYLOR in classes 16, 21, 25 and 41. That mark was applied for on 24 November 1999 and proceeded to registration on 27 March 2001.

The domain name <baylor.eu> (the "Domain Name") was registered on 18 October 2013. The publically available WhoIs information for the Domain Name suggests that the Respondent is an individual in France.

The Domain Name has been used to redirect internet users to a website operating from the URL http://www.sexygirlimg.com. As at the date of this decision the Domain Name is redirecting internet users to a website operating from the URL http://www.xxcity.org/. The content of these websites is sexual in nature with the latter being what most people would describe as pornographic.

A. COMPLAINANT

The Complainant refers to its US and Community Trade marks and provides details of the founding and activities of its University, including its activities in Europe. It claims a reputation in the Baylor marks and makes reference to the judgment of a US federal court in the Western District of Texas in this respect. It claims that this reputation extends into the European Union.

It claims that it has rights recognised by Community law in accordance with Article 21(1) of Regulation 974/2004 (the "Regulation") and that the Domain Name is identical or confusingly similar to its BAYLOR marks. Further, it contends that the Domain Name differs only by one letter from the domain name that the Complainant uses for its own website; i.e. <baylor.edu> and that this is a case of typosquatting.

The Complainant contends that the Respondent has no rights or legitimate interests in the Domain Name and that the use that is being made of the Domain Name involves no legitimate use of, or association with, the term "Baylor". It is claims that the intent of the Respondent is to redirect internet users searching for the Complainant's website to pornographic websites when those users accidentally leave out the letter "D" in the top level domain ("TLD") <.edu>. Use of a domain name for pornographic content is also said to "weigh against a finding of a right in, or a legitimate use of, a domain name" (citing EU ADR Case No. 04049 <bormiolirocco.eu >).

The use that is being made of the Domain Name is said to be “particularly troubling to [the] Complainant as it is contrary to its principles” as a Christian and Baptist university. It refers to publications and articles of Baylor’s Center for Christian Ethics in relation to this issue of pornography, and it claims that the Respondent’s choice and use of the Domain Name has been deliberately designed to embarrass the Complainant.

Further, the Complainant contends that the registration and use of the Domain Name has been in bad faith. In this respect it claims that the Respondent’s use of the Domain Name has been for “commercial gain”.

B. RESPONDENT

No Response was filed by the Respondent.

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

In order to succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Regulation have been complied with. That paragraph reads as follows:

"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised 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 interest in the name; or

(b) has been registered or is being used in bad faith."

Articles 21(2) and (3) contain a list of examples of circumstances which may demonstrate the existence of a legitimate interest within the meaning of Article 21(1)(a) and of bad faith within the meaning of Article 21(1)(b), but these examples are non-exhaustive.

Paragraph B.10(a) of the ADR rules provides that:

“In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.”

However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

With this in mind I deal with each of the three constituent parts of Article 21(1) of the Regulation in turn.

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

The Complainant has demonstrated that it is the owner of a Community trade mark for the word mark Baylor. This is obviously a right both established and recognised by EU law.

The Domain Name comprises that term alone with the addition of the <.eu> TLD. Many, and perhaps most, panels consider it appropriate to disregard the <.eu> suffix when it comes to the assessment of whether the Domain Name is identical or confusingly similar to the mark or marks relied upon (see, for example, Helsingin Kaupunki v Traffic Web Holding BV, CAC Case No. 00475; Global Network Communication v Holland and Barrett Holdings Ltd, CAC Case No. 00387; and Nicolas De Borrekens v Van der Velden Beheer BV, Stephan Van der Velden, CAC Case No 00597). I am not sure that this is right (for similar reasons to those that I gave in Philip Morris USA Inc. v. Marlboro Beverages / Vivek Singh WIPO Case No. D2014-1398). However, practically it does not matter here, as regardless of whether the Domain Name and trade mark relied upon are identical, they are clearly confusingly similar.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

The only use of by the Respondent of the term “Baylor” appears to be in the Domain Name itself. There is no suggestion, and it is inherently implausible, that the Respondent has any trade mark type rights in that term.

Article 21(2) of the Regulation gives a number of examples of circumstances that may demonstrate a legitimate interest and Article 21(2)(a) refers to the following:

"Prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so”

Here the Respondent has used the Domain Name to redirect users to and to promote certain adult websites, but that is by itself insufficient to provide a legitimate interest. The term “Baylor” is not being used as the name for any independent business or service and the term Baylor has no obvious descriptive or generic connection with the content of the websites.

The mere fact that a domain name is being used to promote pornographic content does not alone demonstrate that the registrant has no right or legitimate interest in the Domain Name. However, I do accept the Complainant’s contention that the most likely reason why the Domain Name was registered was because that the Domain Name differs by only one letter from that used by the Complainant and that this is a case of typosquatting. Further, I accept that the use of the Domain Name to redirect internet users to adult websites was more likely that not done deliberately to embarrass the Complainant because of its stance on pornography.

Not only does such activity not provide a right or legitimate interest for the purposes of the Policy, but it provides positive evidence that such a right or interest does not exist.

The Complainant has, therefore, satisfied the requirements of Article 21(1)(a) of the Regulation.

BAD FAITH REGISTRATION OR USE

It follows from my findings above that the Domain Name has also both registered and is being used in bad faith. I have already accepted that this is a case of “typosquatting”.

Article 21 (3)(d) of the Regulation states that bad faith may be demonstrated where:

”the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, 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 “

Whether the Respondent has personally gained by redirecting internet users to various adult websites is unclear, but those adult websites appear to be commercial in nature. The intended commercial gain by the operators of those sites is sufficient for the purposes of to satisfy Article 21 (3) (d).

Further and in any event, the list of examples of bad faith registration and use in Article 21 (3) are non-exhaustive. They are all specific examples of a more general concept of bad faith registration and use that is characterised by an unfair taking advantage of the rights in and reputation of a trade mark of another. Whatever the exact underlying reasons why the Domain Name was registered, I am satisfied that the Domain Name was both registered and is has been used by the Respondent with some sort of unfair advantage in mind.

The Complainant has, therefore, satisfied the requirements of Article 21(1)(b) of the Regulation.

REMEDY

The Complainant, having satisfied the requirements of the first paragraph of Article 21(1) and of Article 21(1)(a) and of Article 21(1)(b), is entitled to obtain revocation of the Domain Name in accordance with Article 22(11) of the Regulation. That is the only remedy that the Complainant seeks in this case.

DECISION

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

BAYLOR be revoked.

PANELISTS

Name	Matthew Stuart Harris

DATE OF PANEL DECISION 2015-10-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant demonstrated that it had registered Community trade mark rights in the term “Baylor”.

The Panel held that the Domain Name was confusingly similar to that trade mark, comprising the registered mark together with the <.eu> suffix.

The Panel also held that this was a case of typosquatting. The Domain Name had been registered because it differed from the domain name used by the Complainant in respect of its activities (i.e. <baylor.edu>) by just one letter and was being used to redirect internet users to commercial websites that promoted adult content.

Such use did not provide the Respondent with a right or legitimate interest and constituted positive evidence that no such right or legitimate interest existed. Further, the registration and subsequent of the Domain Name for such a purpose demonstrated bad faith registration and use. The activity here fell within the scope of Article 21 (3) (d) of the Regulation (even if the Respondent did not personally commercially gain from such use). Further and in any event, the Domain Name had been registered and used to take advantage of the Complainant’s rights in and the reputation of the BAYLOR trade mark.

The Complainant therefore had satisfied the requirements of both Article 21(1)(a) and of Article 21(1)(b) of the Regulation.

Accordingly, the Panel ordered the revocation of the Domain Name.