Panel Decision for dispute CAC-ADREU-007078

Case number	CAC-ADREU-007078
Time of filing	2016-02-21 20:19:48
Domain names	dagens-nyheter.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	AB Dagens Nyheter

Respondent

Organization	Quantic Design SRL

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 related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner and publisher of the Swedish newspaper Dagens Nyheter ("DN"), first published on 23 December 1864.

The Complainant is the owner the following national Swedish trademark registrations:

- Reg. No 220625, DAGENS NYHETER (word), registered on February 1, 1991, for services in classes 41 and 42
- Reg. no 343696, DAGENS NYHETER CITY (word), registered on January 12, 2001, for goods and services in classes 16, 35, 38, 41 and 42
- Reg. no 351848, DAGENS NYHETER (word), registered January 18, 2002, for goods and services in classes 9, 16, 35, 38 and 41

The Respondent registered the disputed domain name on December 20, 2014. No specific information is provided about the Respondent's business activities (apart from what is mentioned below under "Parties' Contentions: Complainant).

Upon receipt of the Complaint, the Case Administrator notified the Complainant of Deficiencies in the Complaint, namely that the Respondent was wrongly identified.

On November 23, 2015, the Complainant submitted a Complaint amended in respect of the deficiencies identified.

The formal date of the Commencement of the ADR Proceeding was set to November 24, 2015.

The Respondent did not respond, and a Notification of Respondent's Default was issued on January 15, 2016.

On January 25, 2016, Mr Petter Rindforth was appointed as the panelist in this case. The Projected Decision Date was set to February 22, 2016.

A. COMPLAINANT

The Complainant is a company under the Swedish Companies Act. Apart from the newspaper (initially published in 1864), and the registered trademarks, Dagens Nyheter ("DN") has been available online on the domain name <dn.se> for more than twenty years. In addition, DN has a substantial mobile reach via the domain name <mobil.dn.se>.

In 2014, the printed edition of DN had a reach of between 700 000 and 770 000 readers in Sweden per day, making it Sweden's third largest newspaper. The Complainant's domain name <dn.se> has on average 1.5 million unique visitors every week, making it the seventh most visited domain name in Sweden.

International Media & Newspapers has ranked the Complainant's domain name dn.se as the second most popular newspaper related domain name in Sweden, the 62nd most popular in Europe and 155th most popular in the world.

The Complainant is the proprietor of some of the most well-known trademarks in Sweden in general, and in respect to news in particular. DN is defined by Encyclopedia Britannica as "one of the largest and most influential newspapers in Sweden".

The Complainant is also the holder of the domain names <dagensnyheter.se> (since June 9, 2000), <dagensnyheter.biz> (since March 27, 2007), <dagensnyheter.org> (since March 27, 2007), and <dagensnyheter.net> (since March 27, 2007), which all are redirect to the domain name <dn.se>.

The disputed domain name is currently used as a news aggregator site. The page title reads "Press recension | Dagens Nyheter | Senaste nyhetsrubrikerna" and the main headline is "Dagens Nyheter Sverige". The word "Sverige" is the Swedish word for Sweden.

The disputed domain name is entirely in Swedish. The front page includes headlines and preambles from articles taken from various Swedish news sites, including DN.

The Respondent is not, as far as the Complainant is aware, the proprietor of any trademarks corresponding to the disputed domain name.

The Complainant claims that in comparing the domain name <dagens-nyheter.eu> to the trademarks, it should be taken into account that the suffixes, including the .eu top level domain, may be excluded from consideration as being merely a functional component of a domain name.

The complainant's trademarks should therefore be compared to "dagens-nyheter", which reproduces the trademarks in their entirety and incorporates the key element, DAGENS NYHETER, with an addition of only a hyphen.

According to the Complainant, considering the Complainant's extensive exposure of the trademark DAGENS NYHETER in Sweden and that the domain name is entirely in Swedish, thus targeting a Swedish audience, it cannot be doubted that the Respondent has been fully aware of the Complainant's business and trademarks.

The Complainant contends there are good reasons to hold that the Respondent registered the disputed domain name to attract internet uses for its own commercial gain.

The Complainant requests that the Panel issue a decision that the domain name <dagens-nyheter.eu> be transferred to the Complainant.

B. RESPONDENT

The Respondent did not respond.

DISCUSSION AND FINDINGS

In order to render a decision, the Panel has to establish whether the conditions of Article 21(1) of Regulation (EC) No. 874/2004 ("the Regulation") are satisfied.

"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 recognized 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."

Established Rights:

Article 10(1) lists as relevant prior rights, inter alia, registered national and Community trademarks and, where they are protected under national law, trade names, business identifiers and company names.

The Panel notes that the Complainant has registered national Swedish trademark rights to DAGENS NYHETER, with the oldest registration date of February 1, 1991. In addition, based on the Complainant's evidence of use and historical description, the Panel does not exclude the possibility that the Complainant's trademark may have become well-known (at least at the Swedish market) long before 1991.

The Panel finds that the Complainant has successfully proved its rights to the trademark DAGENS NYHETER.

Identical or confusingly similar?

Having acknowledged that the Complainant has established prior rights to the trademark DAGENS NYHETER, the Panel has to decide whether the disputed domain name is identical or confusingly similar to Complainant's trademark.

It is well-established that the TLD extension of a domain name, in this case ".eu", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (see Case No. 00283, lastminute.eu).

Accordingly, <dagens-nyheter> shall be compared to "DAGENS NYHETER".

A domain name, consisting of two words, cannot technically be written as two separate words. Such domain name must there either be written in one word, or – as in this case – with a hyphen between the two words. Such hyphen is not enough to create a non-confusing dissimilarity between the trademark and the domain name.

The Panel finds that the disputed domain name is identical, or at least confusingly similar, to the Complainant's trademark.

Rights or legitimate interest?

The Complainant contends that the Respondent has no trademark right corresponding to the domain name, and no permission from the Complainant to register or use DAGENS NYHETER as a part of a domain name.

By not submitting a Response, the Respondent has failed to invoke any circumstance which could demonstrate any rights or legitimate interests in the disputed domain name.

There is nothing in the Respondent's name that indicates it may have become commonly known by the disputed domain name, or any evidence in the present record to indicate that the Respondent is making any legitimate noncommercial or fair use of the disputed domain names. On the contrary – the Panel finds that the Respondent is using <dagens-nyheter.eu> to point to a web site with links to news articles, and naming this web site "Dagens Nyheter" plus the country name for the Complainant's home country, Sweden. Such use can never establish legitimate interests. See further below at "Registered or used in bad faith?".

The Panel concludes that the Respondent has no rights or legitimate interests in respect of <dagens-nyheter.eu>.

Registered or used in bad faith?

Although it is not necessary to establish whether the disputed domain name is registered or used in bad faith, the Panel wishes to comment briefly also on this requirement:

As shown by the Complainant, the Complainant's newspaper (and trademark) is well-known in Sweden as well as in Europe. Although the Respondent is not based in Sweden, the use of <dagens-nyheter.eu>, pointing to a web site with a connecting name and news articles in Swedish, clearly shows that at least the use is conducted in bad faith. As shown by the printout of the said web site provided by the Complainant, the Respondent has also added advertisements to the news links.

The Panel's view is that the Respondent is using the disputed domain name in bad faith, with the goal to earn money from advertisement of companies that may think that <dagens-nyheter.eu> and the connected web site is related to the Complainant's business and newspaper.

Therefore, the Panel concludes that <dagens-nyheter.eu> is at least used in bad faith.

DECISION

Pursuant to B11 (b) of the ADR Rules a transfer of the disputed domain name should only be ordered if the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

The Panel finds that the Complainant satisfies the general eligibility criteria for registration.

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

PANELISTS

Name	**Petter Rindforth, LL M**

DATE OF PANEL DECISION 2016-02-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <dagens-nyheter.eu>

II. Country of the Complainant: Sweden, country of the Respondent: Romania

III. Date of registration of the domain name: December 20, 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 in Sweden, reg. No. 220625 , for the term DAGENS NYHETER, filed on August 30, 1988, registered on February 1, 1991 in respect of services in classes 41 and 42

2. Word trademark registered in Sweden, reg. No. 343696, for the term DAGENS NYHETER CITY, filed on June 30, 1999, registered on January 12, 2001 in respect of goods and services in classes 16, 35, 38, 41 and 42

3. Word trademark registered in Sweden, reg. No. 351848, for the term DAGENS NYHETER, filed on September 21, 2001, registered on January 18, 2002 in respect of goods and services in classes 9, 16, 35, 38 and 41

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 shown any prior rights, and is using the domain name in bad faith

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The domain name is used for a commercial web site with the same type of services (news) as 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. Is Complainant eligible? Yes