Panel Decision for dispute CAC-ADREU-007303

Case number	CAC-ADREU-007303
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Domain names	llusar.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization

Respondent

Name	Jesus Llusar

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

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the domain name <llusar.eu>

FACTUAL BACKGROUND

The Complainant in this proceeding is ANTONIO LLUSAR & CIA, S.L., a Spanish company that operates in the field of commercialization of fruits, especially citrus fruit. It mainly trades its products under the mark LLUSAR.

The Complainant is seeking the transfer of the domain <llusar.eu>.

The claim is based on rights in a trademark and on bad faith registration primarily for the purpose of disrupting the professional activities of a competitor.

The Complainant has documented that it is the owner of European Union Trademark LLUSAR (device) no. 001659028, registered on August 14, 2001.

The Respondent, Mr. Jesus Llusar, has established a legitimate interest in the domain by virtue of his surname.

The disputed domain name is not used and apparently has not been used since its registration on July 3, 2006.

The Respondent in its defense has affirmed only that that the disputed domain name has been held by him for ten years and that Llusar is his family name.

A. COMPLAINANT

The Complainant has affirmed and documented that it has rights in the name LLUSAR particularly in virtue of European Union Trademark LLUSAR (device) no. 001659028, registered on August 14, 2001.

The Complainant has claimed and documented that one of its competitors JOAQUIN LLUSAR Y CÍA S.A. owns 99.94% of the company PEREZ-LEMEUNIER S.A.S., which distributes its products at the Rungis Market in France.

Indeed, the Complainant has shown that JOAQUIN LLUSAR Y CÍA S.A. and the Complainant have already been involved in several judicial proceedings in relation to the LLUSAR trademarks, and that both compete in the same sector of the marketplace.

The Complainant then documented that Ms. Isabelle Dal Soglio Llusar is in charge of the PEREZ-LEMEUNIER S.A.S. company and

affirmed that the Respondent, Jesus Llusar, is her brother.

The Complainant thus claimed that the above facts, i.e. the connection between Jesús Llusar and JOAQUIN LLUSAR Y CÍA S.A (a competitor of the Complainant), highlights the bad faith of the Respondent when registering the domain name <llusar.eu>.

In order to settle this matter amicably, the Complainant sent a cease and desist letter to Jesus Llusar, but did not receive any response.

The Complainant concludes by claiming that the above evidence, together with the registration as a domain name of a competitor's trademark and never using it, demonstrates that Jesus Llusar registered the domain name <llusar.eu> in bad faith.

B. RESPONDENT

The Respondent in its defense has affirmed only that that the disputed domain name has been held by him for ten years and that Llusar is his family name.

DISCUSSION AND FINDINGS

Article 21 of Regulation No. 874/2004 stipulates:

"Speculative and abusive registrations

1. 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."

Here, the Panel wishes to emphasize that the fulfilment of any of these two criteria individually is sufficient (i.e. either registration without rights or legitimate interests or registration and use in bad faith). This is the principal characteristic of the ADR for .EU domain names. It is also the main difference from the Uniform Domain Name Dispute Resolution Policy (UDRP) for generic Top Level Domains.

I. The dispute domain name is identical or confusingly similar

The disputed domain name is confusingly similar to the name in which the Complainant has prior rights. In fact, there is no doubt that the domain name <llusar.eu> is identical to the textual and main part of the Complainant's trademark LLUSAR. Paragraph B11(d)(1)(i) of the Rules is therefore met.

II. Registration and use in bad faith

However, since the Respondent has legitimate rights and an interest in the name LLUSAR by virtue of his surname, the Complainant has failed to satisfy Paragraph B11(d)(1)(ii) of the Rules (i.e. the Respondent's lack of rights on or legitimate interest in the name LLUSAR).

Nevertheless, the Complainant has given a prima facie demonstration that the disputed domain name has not been used since its registration and that the respondent should have known of the complainant's activity and rights to the trademark LLUSAR when registering the domain name <llusar.eu>.

The Complainant has also given sufficient elements to infer that the Respondent himself and/or at least a close component of his family (his sister) is a competitor of the complainant.
Although the Complainant's assertion of the family link between Jesus Llusar and Isabelle Dal Soglio Llusar has not been supported by documents, the Panel, owing to the fact that it would have been extremely simple for the Respondent to prove the contrary or at least to rebut this claim, considers the Respondent's silence an admission of the above indicated link between himself and Ms. Isabelle.
The Panel is of the opinion that the absence of a response to the Complainant's cease and desist letter is a further element from which to infer the Respondent's bad faith.
Therefore, the Panel considers that the disputed domain name <llusar.eu> was registered and being used in bad faith by the Respondent pursuant to Article 21 (3) b) ii) and Article 21 (3) c) of Regulation 874/2004 and that therefore Paragraph B11(d)(1)(iii) of the Rules is also met.

DECISION

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

PANELISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2016-10-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The disputed domain name <llusar.eu> is identical to the textual and main part of Complainant’s trademark LLUSAR.

The Respondent, Jesus Llusar, has legitimate rights and an interest in the name LLUSAR by virtue of his surname. Thus the Complainant failed to satisfy Paragraph B11(d)(1)(ii) of the Rules.

The Complainant has given a prima facie demonstration that the disputed domain name has not been used since its registration and that the Respondent should have known of the Complainant's activity and rights to the trademark LLUSAR when registering the domain name <llusar.eu>.

The Complainant has also given sufficient elements to infer that the Respondent himself and/or at least a close component of his family (his sister) is a competitor of the Complainant.

The Respondent has not contested the Complainant's claims, which are therefore considered true by this Panel.

Therefore, the Panel considers that the disputed domain name <llusar.eu> was registered in bad faith by the Respondent pursuant to Article 21 (3) b) ii) and Article 21 (3) c) of Regulation 874/2004 and that therefore Paragraph B11(d)(1)(iii) of the Rules is also met.

The Panel orders that the domain name <llusar.eu> be transferred to the Complainant.