Panel Decision for dispute CAC-ADREU-007350

Case number	CAC-ADREU-007350
Time of filing	2017-02-28 15:11:58
Domain names	entrack.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	Entrack AB

Respondent

Name	Tony Bale

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

Besides the information from the Complainant that the accused fraud connected with the Disputed domain name has been reported to the Swedish police, the Panel is not aware of any other legal proceedings related to the Disputed domain name.

FACTUAL BACKGROUND

The Complainant, registered on November 3, 2007, is the owner of the registered Swedish company name Entrack AB.

The Respondent registered the Disputed domain name on November 3, 2016. No specific information is provided about the Respondent's business activities (apart from what is mentioned below under "Parties' Contentions: Complainant).

The Complaint was filed on November 17, 2016.

The formal date of the Commencement of the ADR Proceeding was set to November 23, 2016.

The Respondent did not respond, and a Notification of the Respondent's Default was issued on January 30, 2017.

On February 8, 2017, Mr Petter Rindforth was appointed as the panelist in this case. The Projected Decision Date was set to March 6, 2017.

On February 15, 2017, having noticed the Complainant's references to its company name registration Entrack AB, however without any supporting evidence, the Panel requested the Complainant to provide the Panel with a copy of the Certificate of Registration for Entrack AB, issued by the Swedish Companies Registration Office ("Bolagsverket"). The Complainant was given until February 21, 2017 to reply.

On February 15, 2017, the Complainant replied and presented a copy of the requested Certificate of Registration for the company name Entrack AB in Sweden.

A. COMPLAINANT

The Complainant states that the Disputed domain name has been used for several attempts of fraud against the Complainant in Sweden since November 4, 2016.

Persons using the Disputed domain name are ordering mobile phones, large quantities of movie tickets, etc., by contacting various suppliers in Sweden, and by incorrectly claiming that they are representing the Complainant and its parent company Entrack Sverige AB. An email address with the name of the CEO of the Complainant, but using the Disputed domain name has been used during these fraud

attempts.

Fraud attempts with a total value of more than 100 000 SEK have been reported so far, and new cases seem to be still coming in.

Police reports have been filed to the Swedish Police for the attempted frauds.

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.”

Article 10(1) describes such prior rights to "include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works".

The Panel notes that the Complainant has not proved any prior rights to the trademark ENTRACK.

Article 10(1) is, however and as shown above, not limited to registered trademarks. Also other rights, such as trade names, business identifiers and company names where they are protected under national law, are accepted as prior rights.

The Complainant has refereed to, and provided evidence in the form of the Certificate of Registration from Swedish Companies Registration Office, its in Sweden registered and thereby protected company name Entrack AB.

The exclusive rights to trade names (such as registered company names) is described in the Swedish Trade Names Act ("Firmalagen"1974:156), and is similar to the exclusive rights of a Swedish trademark owner.

A limited company becomes a legal entity in Sweden upon registration with Bolagsverket. Once registered, the company has achieved protection for the full trade name / company name throughout Sweden, within the line of business of the company.

Although provided in Swedish and not English (the language of the Certificate of Registration shows that the Complainant, based in Sweden, has a registered company name with exclusive rights to Entrack AB.

Accordingly, the Panel finds that the Complainant has proved its rights to the company name Entrack AB, and that this right is recognizable under the meaning of Article 10(1) of the Regulation.

Identical or confusingly similar?

Having acknowledged that the Complainant has established prior rights to the company name Entrack AB, the Panel has to decide whether the Disputed domain name is identical or confusingly similar to the Complainant’s company name.

The Complainant’s company name consists of the word “Entrack”. The Panel purposely omits the “AB” parts of the name, as it indicate the company type, and therefore is excluded from the comparison.

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.

Accordingly, <entrack> shall be compared to “Entrack”.

As the Disputed domain name <entrack.eu> is identical to the Complainant’s protected company name Entrack AB, the Panel finds that the first requirement of Article 21(1) of the Regulation is satisfied for the Disputed domain name.

Rights or legitimate interest?

Although not specifically stated by the Complainant, it is so understood by the Panel that the Complainant has not granted the Respondent any rights to reflect the Complainant’s company name in any domain names. This conclusion is based on the fact that the Complainant states that the Disputed domain name has been used for several attempts of fraud against the Complainant, as well as the Complainant's statement that by using the Disputed domain name, the users have "incorrectly claimed they are representing" the Complainant.

As the Respondent has no rights to the Disputed domain name, the question is whether the Respondent has any legitimate interest in the same.

Pursuant to Article 21(2) of the Regulation, the legitimate interest condition is considered as fulfilled when:

a) prior to any notice of an alternative dispute resolution procedure, the Respondent 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,
b) the Respondent has been commonly known by the domain name,
c) the Respondent is making a legitimate and non commercial or fair use of the domain name, without intend to mislead consumers or harm the reputation of the name on which a right is recognized.

Although the Respondent has obviously used <entrack.eu> prior to the notice of the alternative dispute resolution procedure, this kind of use cannot be seen as a base for legitimate interest.

Further, the Respondent is not commonly known by the domain name <entrack.eu> and it is not making a legitimate and non commercial or fair use of the Disputed domain name.

The Respondent has not been able to prove any rights or legitimate interests in the Disputed domain name.

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 wish to comment briefly also on this requirement:

The Respondent, although based in Great Britain, seems to had full and clear knowledge of the Complainants company name and business on the date of registering <entrack.eu> . The use of the fake e-mails connected to the Disputed domain name started just some days after the registration, and was clearly referring to the Complainant and its CEO.

The Panel therefore concludes that <entrack.eu> was both registered in bad faith and is used in bad faith.

DECISION

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

PANELISTS

Name	**Petter Rindforth, LL M**

DATE OF PANEL DECISION 2017-02-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: ENTRACK.EU

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

III. Date of registration of the domain name: 03-11- 2016

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

9. company name: Entrack AB

V. Response submitted: No

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The Respondent has not been able to prove any rights or legitimate interests in the Disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Respondent started to use of fake e-mails connected to the Disputed domain name some days after the registration, clearly referring to the Complainant and its CEO.

IX. Other substantial facts the Panel considers relevant:

X. Dispute Result: Transfer of the Disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. Is Complainant eligible? Yes