Panel Decision for dispute CAC-ADREU-007403

Case number	CAC-ADREU-007403
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Domain names	lundhagsskor.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	Lundhags Skomakarna AB

Respondent

Name	Erika Gabler

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Lundhags Skomakarna AB, is a Swedish company set up in 1932 by the shoemaker Jonas Lundhag. The Complainant is well-known for his walking shoes and his functional clothing.

The Complainant, Lundhags Skomakarna AB, is the owner of the European figurative trademark <LUNDHAGS> with the registration number 1041478, which was registered on April 1st, 2010 in the classes 18, 25 and 28 (Annex 6). This figurative IR trademark recorded under WIPO's Madrid System <LUNDHAGS> is also registered in Switzerland, China, Japan, Norway in the classes 18, 25 and 28 (Annex 8). The Complainant is also the owner of the European word trademark <LUNDHAGS> with the registration number 1054350, which was also registered on April 1st, 2010 in the classes 18, 25 and 28 (Annex 7). This word trademark <LUNDHAGS> is also registered in Switzerland, the Republic of Korea and in Norway in the classes 18, 25 and 28 (Annex 9).

The disputed domain name <lundhagsskor.eu> was registered on October 11th, 2016 by the Respondent. The disputed domain name <lundhagsskor.eu> is used for offering – unauthorized – the products of the Complainant (Annex 16 – 19).

A. COMPLAINANT

The Complainant requests the transfer of the disputed domain name <lundhagsskor.eu> from the Respondent.

The Complainant contends that the disputed domain name <lundhagsskor.eu> fulfils the requirements set forth in paragraph B11 (d) (1) (i) of the ADR Rules, the domain name being identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

The Complainant also contends that the Respondent must have registered and used the disputes domain name <lundhagsskor.eu> in bad faith, fulfilling the requirements set forth in paragraph B11 (d) (1) (iii) of the ADR Rules, since the Respondent was clearly aware of the Complainant's <LUNDHAGS> trademarks by registering the disputed domain name <lundhagsskor.eu> and by using these trademarks extensively on their website.

B. RESPONDENT

The Respondent did not submit a response.

DISCUSSION AND FINDINGS

According to Article B 11 (d) (1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested in the event that Complainant proves that:

(i) the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

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

(iii) the domain name has been registered or is being used in bad faith.

1.
In accordance with Paragraph B11 (d) (1) (i) of the ADR Rules, the Complainant should prove that the domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

The Complainant is the proprietor of a number of <LUNDHAGS> trademarks and has put the <LUNDHAGS> trademarks into extensive use for his (walking) shoes and his functional clothing.

The disputed domain name <lundhagsskor.eu> contains the Complainant's <LUNDHAGS> trademark in its entirety and only differs from the Complainant's <LUNDHAGS> trademark in the addition of the term "skor" at the end of the disputed domain name. The term "skor" is the Swedish word for shoes and is descriptive for the goods offered by the Complainant.

The Panel considers that the Complainant's <LUNDHAGS>trademark is the dominant part of the disputed domain name <lundhagsskor.eu> and the de-scriptive element "skor" is not sufficient in differentiating the disputed domain name from the Complainant's trademarks. The ".eu" top-level suffix in the dis-puted domain name <lundhagsskor.eu> is disregarded when assessing identity or confusing similarity of the Complainant's <LUNDHAGS> trademarks and the disputed domain name as it is a technical requirement of registration.

As the disputed domain name <lundhagsskor.eu> incorporates the Complain-ant's <LUNDHAGS> trademark in its entirety, only adding a descriptive and ge-neric term "skor", the disputed domain name can be considered as confusingly similar to the Complainant's trademarks. This is a recognized principle in the case law at .eu ADR decisions. Therefore, the Panel considers that the requisite in Paragraph B11 (d) (1) (i) of the ADR Rules is established.

2.
In accordance with Paragraph B11 (d) (1) (ii) and (iii) of the ADR Rules, the Com-plainant should prove that domain name has either been (ii) registered by the Respondent without rights or legitimate interest in the name or that (iii) the domain name has been registered or is being used in bad faith.

The disputed domain name <lundhagsskor.eu> is used for offering – unauthor-ized – the products of the Complainant. Therefore, it is highly unlikely that the Respondent would have been unaware of the Complainant, the Complainant's <LUNDHAGS> trademarks and its reputation at the time of registration; rather it must be assumed that the Respondent has registered the disputed domain name <lundhagsskor.eu> in full knowledge of the Complainant's <LUNDHAGS> trademarks.

The Respondent has also registered and used the disputed domain name <lundhagsskor.eu> in bad faith, because – in accordance with ADR Rule B11 (f) (4) – it is evidence of bad faith that the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website by cre-ating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law. The website where the disput-ed domain name points to is in Swedish and therefore mainly directed to (po-tential) consumers on one of the Complainant's main markets, namely the Swedish and Scandinavian market. Moreover, the Complainant's <LUNDHAGS> word trademark and also the Complainant's <LUNDHAGS> figurative trade-mark are used all over the Respondent's website. The disputed domain name <lundhagsskor.eu>was registered to exploit the Complainant's reputation and to attract (potential) consumers to the Respondent's website and online shop for commercial gain. Therefore, the Panel considers that the requisite in Para-graph B11 (d) (1) (iii) of the ADR Rules is established.

3.
As the requirements in Paragraph B11 (d) (1) (i) and (iii) have been established, the Panel is not required to examine if the requirements in Paragraph B11 (d) (1) (ii) are also established. However, for the sake of completeness, the Panel will also examine, if the disputed domain name <lundhagsskor.eu> has been registered by the Respondent without rights or legitimate interests.

It is necessary for the Complainant only to make out a prima facie case that the Respondent lacks rights or legitimate interests. Once a prima facie case is made out, the burden shifts to the Respondent to come forward with statements and/or evidence demonstrating the rights or legitimate interests in the disputed domain name. <lundhagsskor.eu> The Respondent has failed to respond to the Complaint.

In considering if the Respondent has registered the disputed domain name <lundhagsskor.eu> without rights or legitimate interests in the name, the Panel bears in mind that the Respondent is not the proprietor of a corresponding trademark or other rights, nor has the Complainant licensed or otherwise authorized the Respondent to use its <LUNDHAGS> trademarks. The Respondent is also not known by the name “lundhagsskor”. Therefore, the Panel considers that the requisite in Paragraph B11 (d) (1) (ii) of the ADR Rules is established.

DECISION

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

the domain name LUNDHAGSSKOR.EU be transferred to the Complainant

PANELISTS

Name	**Prof. Dr. Lambert Grosskopf, LL.M.Eur.**

DATE OF PANEL DECISION 2017-04-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: lundhagsskor.eu

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

III. Date of registration of the domain name: 11. October 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. [figurative CTM trademark registered, reg. No. 1041478, for the term LUNDHAGS, filed on 01. April 2010, registered on 01. April 2010 in respect of goods and services in classes 18, 25 and 28
2. [figurative IR trademark registered in Switzerland, China, Japan and Norway, reg. No. 1041478, for the term LUNDHAGS, filed on 01. April 2010, registered on 15. July 2010 in respect of goods and services in classes 18, 25 and 28
3. word CTM, reg. No. 1054350, for the term LUNDHAGS, filed on 01. April 2010, registered on 01. April 2010 in respect of goods and services in classes 18, 25 and 28

V. Response submitted: No

VI. Domain name is identical/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: The Respondent is not the proprietor of a corresponding trademark or other rights, nor has the Complainant licensed or otherwise authorized the Respondent to use its <LUNDHAGS> trademarks.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The website where the disputed domain name points to is in Swedish and therefore mainly directed to (potential) consumers on one of the Complainant’s main markets, namely the Swedish and Scandinavian market. Moreover, the Complainant’s <LUNDHAGS> word trademark and also the Complainant’s <LUNDHAGS> figurative trademark are used all over the Respondent’s website. The disputed domain name <lundhagsskor.eu>was registered to exploit the Complainant’s reputation and to attract (potential) consumers to the

Respondent's website and online shop for commercial gain.

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. If transfer to Complainant] Is Complainant eligible? Yes