Panel Decision for dispute CAC-ADREU-007470

Case number	CAC-ADREU-007470
Time of filing	2017-06-15 12:02:00
Domain names	samsøesamsøekjole.eu

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Samsøe & Samsøe Holding A/S

Respondent

Name	Michelle Theissen

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 legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the holder of the community trademark Samsøe & Samsøe, EUTM 003057511, registered on February 15, 2015.

The Complainant operates within the clothes industry and the Samsøe & Samsøe brand is well-known within the industry.

The disputed domain name contains the identical mark followed by the word "kjole" which means "dress" in Danish. The disputed domain name is being used for marketing and sale of products, including dresses, also carrying the name of the Complainant.

A. COMPLAINANT

The Complainant contends that the disputed domain name is confusingly similar to its trademarks and domain names.
The Complainant alleges that the disputed domain name combines the words Samsøe & Samsøe, protected by the abovementioned trademarks, with the word "kjole", which means "dress" in Danish.

The Complainant affirms that the disputed domain name was registered by the Respondent without any rights or legitimate interests in the name, and that the Respondent was never authorized by the Complainant to register such domain, as it has never been granted a licence or other rights to use its trademarks as part of any domain name or for any other purpose.

The Complainant concludes that the Respondent is not making a legitimate non-commercial or fair use of the disputed domain name.
The Complainant observes that the Respondent website offers for sale the counterfeits of Complainant’s products.

The Complainant requests the Panel to order the revocation of the disputed domain name.

B. RESPONDENT

The Respondent did not file a Response to the Complaint.

DISCUSSION AND FINDINGS

According to Article 10 (a) of the ADR Rules 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. In addition according to Article 10 (b) of the ADR Rules unless provided differently in these ADR

Rules, if a Party does not comply with any provision of, or requirement under, these ADR Rules, the Supplemental ADR Rules or any request from the Panel, the Panel shall draw such inferences therefrom as it considers appropriate.

From the absence of the Response by the Respondent, the Panel draws that the factual and coherent allegations by the Complainant are true.

In order to succeed the Complainant is required to prove that the disputed domain name:
(a) 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
(b) has been registered by its holder without rights or legitimate interest in the name; or
(c) has been registered or is being used in bad faith.

The Panel observes that the Complainant has rights in "Samsøe & Samsøe" in the form of a registered European Union trademark no. 003057511. The Panel further confirms that the disputed domain name is confusingly similar to the Complainant‘s trademark, from which it differs only in the addition of the word "dress" in Danish, an addition that is - at least in the space of fashion-related brands or domains - not able to distinguish the disputed domain name from the registered trademark of the Complainant.

The Panel also finds that the Respondent is misleading Internet users believing that his website and business are endorsed by the Complainant when they are not. The website fails to make it clear that the Respondent is not endorsed by the Complainant.

The Panel is convinced that the disputed domain name has been registered and used in bad faith since it contains the Complainant's trademark together with only a non-distinctive addition.

Whether or not the goods on the website connected to the disputed domain name are counterfeit or not does not need to be investigated and/or decided since the Respondent's conduct in registering the disputed domain name and setting up the website using the trademark of the Complainant without the express authorization, approval of license of the Complainant, amounts to bad faith registration and use, irrespective of whether the goods offered for sale on the website are indeed counterfeit.

Accordingly, in accordance with Article 21(3)(d) of the Regulation, the Panel finds that the disputed domain name is being used by the Respondent 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 be revoked

PANELISTS

Name	**Friedrich Kurz**

DATE OF PANEL DECISION 2017-06-15

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SAMSØESAMSØEKJOLE.EU

II. Country of the Complainant: DENMARK, country of the Respondent: GERMANY

III. Date of registration of the domain name: November 19, 2016

IV.

3. Word EUTM, reg. No. 003057511, for the term 20 years, filed on February 17, 2003, registered on February 15, 2005 in respect of goods and services in classes 18,25,28

V. Response submitted: No

VI. Disputed domain name is confusingly similar 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: No Response.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The disputed domain name has been registered and used in bad faith since it contains the Complainant's trademark together with only a non-distinctive addition.

IX. Other substantial facts the Panel considers relevant: None

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: None