Panel Decision for dispute CAC-ADREU-007577

Case number	CAC-ADREU-007577
Time of filing	2018-03-13 17:13:40
Domain names	rimowaoutlet-shop.eu, rimowa-outlet.eu, rimowaoutlet.eu

Case administrator

Aneta Jelenová (Case admin)

Complainant

Organization	Company with limited liability

Respondent

Name	Rimowa Outlet GmbH

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and which relate to the disputed domain names.

FACTUAL BACKGROUND

The Complainant is the owner of Union Trademark “RIMOWA”, registered on 17 April 2009 (No. 007087059, word/image) and Union Trademark “RIMOWA”, registered on 10 January 2014 (No. 012027256, word) which protect, amongst others, luggage in class 18.

Complainant is selling goods under the Rimowa mark since 1937 und managed to build up a particularly strong presence in the German market and is known for its innovations in the field of lightweight material luggage cases. Therefore, the Rimowa-Trademark has to be considered a famous trademark.

The disputed domain names have been registered with the Respondent on 19 September 2017.

On 24 November 2017 the Czech Arbitration Court (CAC) received the Complainant`s Complaint.

The Complainant requests the Panel to decide:

Transfer of the disputed domain names to the Complainant.

Respondent did not file a Response to the Complaint.

A. COMPLAINANT

The Complainant asserts rights acc. to Article 21 (1), (2), and (3) of the Regulation (EC) No. 874/2004.

1. Recognition and establishment of rights by law acc. to Article 21 (1), and 10 (1) of the Regulation (EC) No. 874/2004

Complainant has, inter alia, obtained a Union Trademark registration for the word mark “Rimowa” (No. 012027256).

2. Identity or confusing similarity acc. to Article 21 (1) of the Regulation (EC) No. 874/2004

The disputed domain names are identical or at least confusingly similar to the Complainant's trademark “Rimowa”, which is protected under European law for the Complainant. The gTLD “.eu” is a technically essential element of the domain names and can be disregarded

in this respect. The Complainant`s trademark is entirely reproduced in the disputed domain name. The words “outlet” and “shop” have no distinctiveness and are merely descriptive.

3. Registration without rights or legitimate interests acc. to Article 21 (1) (a), (2) of the Regulation (EC) No. 874/2004

The Respondent has no right or legitimate interest in the disputed domain names with the element “Rimowa”. The Respondent is in no way authorized by the Complainant to use the name “Rimowa”.

4. Registration or use in bad faith acc. to Article 21 (1) (b), (3) of the Regulation (EC) No. 874/2004

The Respondent registered the disputed domain names and is using them in bad faith, namely for criminal activities like committing fraud on end customers by operating a fake shop. This is evidenced by the fact, that Respondent registered the domain in the name of a non-existing company with non-existing address. A significant number of consumers filed fraud complaints relating to Respondent‘s online shop under the disputed domain names. Furthermore, a criminal complaint has been filed with the public prosecutor in Traunstein, Germany.

B. RESPONDENT

The Respondent did not file a Response to the Complaint.

DISCUSSION AND FINDINGS

A claim for the transfer of the disputed domain names to the Complainant can only be granted in case the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 (Speculative and abusive registrations) are complied with and the Complainant is eligible to register “.eu”-names acc. to Article 4 (2) (b) of the Regulation (EC) No. 733/2002 (see also Paragraph B11 (b) ADR Rules).

I. As the Respondent has not disputed the facts provided by the Complainant with the Complaint, the Panel regards the facts provided by Complainant as given acc. to Paragraph B10 ADR Rules (see also ADR 4477 “WALTHER-PRAEZISION, 2810 “RATIOPARTS”, 3976 “ABAT”).

II. Under Article 21 (1) of the Regulation (EC) No. 874/2004 in order to succeed under this dispute resolution procedure the Complainant must show that the disputed domain names are:
(i) identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law and:
(ii) the disputed domain names have been registered by its holder without rights or legitimate interest in the names; or
(iii) have been registered or are being used in bad faith.

1. The Complainant has proven that he is the owner of a Union Trademark “Rimowa” (word). Such trademark is a right acc. to Art. 10.1 of the EC-Regulation No. 874/2004.

2. The disputed domain names are confusingly similar to this Union trademark “Rimowa)”.

a) The suffix “.eu” is to be disregarded in this respect (see also ADR 6442 “SWAROVSKI”, 4477 “WALTHER-PRAEZISION”, 475 “HELSINKI”, 387 “GNC”, 596 “RESTAURANT”).

b) The disputed domain names consist of the trademark “Rimowa” and the added words “outlet” and (in one domain name) “shop”. The descriptive terms “outlet” and “shop” are no distinctive terms but merely descriptive, as they mean a place where the (Rimowa) products can be purchased. The internet user would rather assume that he is confronted with the internet presence of the Complainant, who also distributes his trunks online.

Furthermore, the fact that a trademark is wholly incorporated in the disputed domain names has been seen as sufficient by numerous panels to establish confusing similarity (e.g. ADR 07151 Bayerische Motoren Werke AG (BMW AG) vs. Jiri Svec; WIPO Case No. D2002-0615 Bayerische Motoren Werke AG v. bmwcar.com; WIPO Case No. D2013-0150 Swarovski Aktiengesellschaft v. mei xudong; WIPO Case No. D2015-1699 Confederation Nationale du Credit Mutuel v. Fernand Macia / Registration Private / Domains By Proxy, LLC / DomainsByProxy.com)
The additional word elements are therefore not sufficient to distinguish the contested domain names from the Complainant’s trademark “Rimowa”. Thus, the disputed domain names are confusingly similar to the Complainant’s trademark “Rimowa”.

3. The disputed domain names have been registered by the Respondent without any rights or legitimate interest in respect of the disputed domain names. There is no indication whatsoever which could prove Respondent`s legitimate interest to the disputed domain names. He seems to have no trademark containing the word “Rimowa” and the company named on his website does not exist in the German Company Register (Handelsregister). The Respondent is not commonly known under the name, nor does he make a legitimate and non-commercial use or fair use of the domain names. Based on Complainant`s undisputed statements the Respondent’s webshop rather creates the impression of being a fraudulent business activity.
Acc. to Paragraph B10 ADR Rules and with respect to the missing response of Respondent the panel accepts this presentation as given and bases its decision on this presentation and accepts that the Respondent has no right or legitimate interest in the disputed domain names.

4. The fact that the Complainant’s trademark is well-known in the German market lead the Panel to the conclusion that the Respondent must have known about the Complainant and therefore registered the disputed domain names in bad faith. Based on Complainant`s undisputed statements, the Respondent rather registered the disputed domain names primarily for the purpose of attracting internet users and creating a likelihood of confusion with Complainant`s trademark and products as he pretended to offer the Complainant's products via his website. He seems to have used his online shop for fraudulent activities to the disadvantage of his customers. The Complainant stated undisputedly, that the Respondent offered "Rimowa" products via his webshop far below market price without indeed owning any such products. Some customers paid for these products without receiving them at all. Further, the Complainant is not aware to have sold any of its products to the Respondent.

The Respondent has made no statement that could help to justify a different result.

III. As the Complainant is a limited liability company located and registered in Germany, acc. to Article 4 (2) (b) (i) Regulation (EC) 733/2002 the Complainant is entitled to request the transfer of the disputed domain names.

DECISION

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

the domain names RIMOWAOUTLET-SHOP.EU, RIMOWA-OUTLET.EU, RIMOWAOUTLET.EU be transferred to the Complainant.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2018-03-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain names: RIMOWAOUTLET-SHOP.EU, RIMOWA-OUTLET.EU, RIMOWAOUTLET.EU

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

III. Date of registration of the domain names: 19 September 2017

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 the European Union, reg. No. 012027256, for the term Rimowa, filed on 31 July 2013, registered on 10 January 2014 in respect of goods and services in classes, inter alia, 18;
2. combined trademark registered in the European Union, reg. No. 007087059, for the term Rimowa, filed on 11 July 2008, registered on 17 April 2009 in respect of goods and services in classes, inter alia, 18.

V. Response submitted: No

VI. Domain names are 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: No indication, no response filed.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Complainant’s trademark is well-known in the German market. The Respondent must have known about the Complainant and therefore registered and used the disputed domain names in bad faith. Based on Complainant`s undisputed statements, the Respondent rather registered the disputed domain names primarily for the purpose of attracting internet users and creating a likelihood of confusion with Complainant`s trademark and products. He seems to have used his online shops for fraudulent activities to the disadvantage of his customers.

IX. Other substantial facts the Panel considers relevant: none

X. Dispute Result: Transfer of the disputed domain names

XI. Procedural factors the Panel considers relevant: The Respondent did not file a Response. Accordingly, the Panel regards the facts provided by Complainant as given acc. to Paragraph B10 ADR Rules (see also ADR 4477 “WALTHER-PRAEZISION, 2810 “RATIOPARTS”, 3976 “ABAT”).

XII. Is Complainant eligible? Yes