Panel Decision for dispute CAC-ADREU-007591

Case number	CAC-ADREU-007591
Time of filing	2018-03-08 11:51:50
Domain names	simbasleep.eu

Case administrator

	Aneta Jelenová (Case admin)

Complainant

Organization	Simba Sleep Limited

Respondent

Name	Lorraine Konovalova

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 pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The present Complaint was filed on December 11, 2017 by the British company SIMBA SLEEP LTD and is directed against Lorraine KONOVALOVA who registered the domain name <simbasleep.eu> on May 25, 2017.

The Complainant relies upon its earlier trademarks and domain names, as well as the trade name SIMBA SLEEP to sustain that the Respondent cannot have any legitimate interest in the disputed domain name and necessarily acts in bad faith, especially since the Respondent appears to be a recidivist.

The postal address and telephone number of the Respondent as declared in the application to register the disputed domain name appear to be erroneous; and the later did not file any response to the Complaint and was thus found in default on February 14, 2018.

The Panel was appointed on February 23, 2018.

A. COMPLAINANT

The Complainant seeks the transfer of the disputed domain name.

The Complainant claims earlier rights on the Trademarks SIMBA in EU and Iceland. The said trademarks are used in relation to mattresses, bedding and products akin thereto. The alleged earlier rights are the European Registration No 1 649 141 and the Iceland Registration No V010588.

The Complainant also claims earlier rights on the trade name and the domain names registrations made up of the terms SIMBA SLEEP including, but not limited to: <simbasleep.com> (registered in 2015), <simbasleep.co.uk> (registered in 2015), <simbasleep.fr> (registered in 2016), <simbasleep.ie> (registered in 2016), <simbasleep.be> (registered in 2016), <simbasleep.co.il> (registered in 2016), <simbasleep.de> (registered in 2017), <simbasleep.nl> (registered in 2017), <simbasleep.is> (registered in 2017).

The Complainant declares that the Respondent has no right or legitimate interest to use the trademark SIMBA SLEEP within a domain name, and that the disputed domain name has been registered in bad faith to pursue a speculative purpose.

B. RESPONDENT

The Respondent did not file any response to the complaint and was found in default on February 14, 2018.

DISCUSSION AND FINDINGS

The Panel is to decide, in view of the facts and arguments of the parties, whether the conditions of article 21 of Reg. No. 874/2004 are satisfied to decide whether the disputed domain name should be transferred to the Complainant or not.

1) ON THE PRIOR RIGHTS

Pursuant to Article 21. Reg. No. 874/2004, “A registered domain name shall be subject to revocation […] 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.”

The Panel finds that the trademark rights vested in the name SIMBA claimed by the Complainant are substantiated.

The Complainant justifies that it owns European and Icelandic trademark registrations for the name SIMBA as well as a series of domain names formed with SIMBA SLEEP, including under the country-top-level domain “.fr” (France is the declared country of origin of the Respondent).

Besides, SIMBA SLEEP is the Complainant’s tradename Under which it trades worldwide generally, and within the European Union specifically.

Consequently, the Panel finds that the Complainant demonstrated it has prior rights.

2) ON THE IDENTITY OR CONFUSINGLY SIMILARITY OF THE DOMAIN NAME

The disputed domain name <simbasleep.eu> is not identical to the Complainant’s registered trademarks.

However, the disputed domain name wholly incorporates the word element of Complainant’s trademark SIMBA. It is well-established that the extension of a domain name “.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 (EC) No. 874/2004 (cf case No. 00283, lastminute.eu).

The addition of the descriptive name SLEEP to SIMBA does not deprive the latter of its distinctiveness and individuality, but furthermore enhances the risk of association in the public’s mind between the Complainant and the disputed domain name, especially when the Complainant is involved in the trade of beds and mattreses, all its websites are formed with the name SIMBASLEEP as well as its tradename.

Consequently, the public is more than likely to believe that the domain name <simbasleep.eu> is registered and used by the Complainant or with its approval.

The Panel finds therefore that the disputed domain name is confusingly similar to the Complainant’s trademark and that the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004 are satisfied.

3) ON THE LEGITIMATE INTEREST IN THE NAME

Article 21 (1) of the Regulation (EC) No. 874/2004 : “A registered domain name shall be subject to revocation […] where it (a) has been registered by its holder without rights or legitimate interest in the name ».

Pursuant to Article 21 (2) of the Regulation (EC) No. 874/2004, 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.

It is the Panel’s view that the overall burden of proof under the above provision rests with the Complainant, which is required to establish

that the Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name, and that if the Respondent fails to answer such case, the Complainant is deemed to have satisfied its burden of proof.

The Complainant states that the Respondent has no rights to or legitimate interests in the disputed domain name because it does not trade nor is known in the course of trade under the name SIMBA SLEEP and does not make any genuine use thereof; and because it could not ignore the rights vested in the trademark SIMBA and tradename SIMBA SLEEP;

The Respondent, being in default, has not presented any justification for holding the disputed domain name.

The Panel simply observes on its part that, to date, the disputed domain name resolves to a page offering the opportunity to purchase the domain. This is a strong indication that the Respondent does not have any kind of trademark or trade name rights in the name SIMBASLEEP or that it intends to make a genuine use of the website SIMBASLEEP.EU in relation to goods or services offer.

In view of this factual situation exposed by the Complainant, and which is not contested by the Respondent, the Panel is to accept the Complainant's contentions and find that the Respondent does not appear to have any rights or legitimate interests in the disputed domain name.

4) ON THE RESPONDENT'S BAD FAITH

Article 21 (3) of the Regulation (EC) No. 874/2004: "A registered domain name shall be subject to revocation where it
(b) has been registered or is being used in bad faith."

The Complainant asserts that the Respondent "has knowingly and intentionally appropriated the Complainant's well-known and established name in bad faith".

It files as evidence a previous decision rendered by the National Internet Exchange of India demonstrating that the e-mail address associated with the disputed domain name, namely "kpmving@gmail.com", has been previously used in connection with a fraudulent domain name registration. There is no doubt that a single and unique person is using this e-mail address as a contact information at the time of registrating abusive domain names .

Moreover, the Complainant showed that the Respondent used fictitious contact details (postal address and telephone) when it registered the disputed domain name. It is the Panel's opinion that a person acting in good faith has no reason to conceal its contact details.

Furthermore, the Respondent offered to sell the disputed domain name to the Complainant only few months after registered it and the Complainant has established that the Respondent appears as a "serial cybersquatter", which reveals a pattern of conduct reflecting a speculative approach to domain names.

From that perspective, it makes no doubt that the Respondent necessarily had the Complainant's trademark in mind when it registered the disputed domaine name.

As pointed out above, the disputed domain name resolves to a page offering the opportunity to purchase the domain suggesting that the disputed domain name was registered for the purpose of making profits. This behaviour cannot be regarded as a use in good faith.

The Panel is thus satisfied that the disputed domain name was registered and is used in bad faith in the meaning of Article 21 (3).

5) TRANSFER OF THE DOMAIN NAME

The Complainant is a company incorporated under British law and having its place of business within the European Community. Therefore, the requirements for the requested transfer of the disputed domain name to the Complainant are satisfied (Section B No. 1 (b) (12) of the ADR Rules).

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

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 transferred to the Complainant.

PANELISTS

Name	**William Lobelson**

DATE OF PANEL DECISION 2018-03-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SIMBASLEEP.EU

II. Country of the Complainant: GREAT BRITAIN, country of the Respondent: FRANCE

III. Date of registration of the domain name: 25 May 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 CTM, reg. No. 1 649 141, for the term SIMBA in relation to mattresses, bedding and products akin thereto.
2. Word trademark registered in Iceland, reg. No. V010588, for the term SIMBA in relation to mattresses, bedding and products akin thereto.
3. Company name: SIMBA SLEEP
4. Domain names registrations: <simbasleep.com> (registered in 2015), <simbasleep.co.uk> (registered in 2015), <simbasleep.fr> (registered in 2016), <simbasleep.ie> (registered in 2016), <simbasleep.be> (registered in 2016), <simbasleep.co.il> (registered in 2016), <simbasleep.de> (registered in 2017), <simbasleep.nl> (registered in 2017), <simbasleep.is> (registered in 2017).

V. Response submitted: No

VI. Domain name is identical or 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): No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004): Yes

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