Panel Decision for dispute CAC-ADREU-007605

Case number	CAC-ADREU-007605
Time of filing	2018-04-12 11:04:22
Domain names	scandicorganic.eu

Case administrator

	Aneta Jelenová (Case admin)

Complainant

Organization	Scandic Organic OU

Respondent

Name	ID Dela Cruz

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.

FACTUAL BACKGROUND

Complainant Scandic Organic OÜ is a private limited liability company organized under the laws of Estonia and registered in October 2015. According to its website it is a company specialized in the growing and sales of shitake mushroom. Complainant also owns the domain names <scandicorganic.com> and <scandicorganic.ee>.

The disputed domain name <scandicorganic.eu> ("the Domain Name") was registered on 11 December 2017.

The Domain Name is used in connection with a website in the Spanish language with adult content.

A. COMPLAINANT

Complainant submits that it owns the company name SCANDIC ORGANIC and the websites (.com and .ee) with the name of the company. Its business is to grow mushrooms. The domain name used to belong to the company Scandic Organic OÜ.
In December 2017 the domain name was registered to Respondent due to the inability of Complainant to renew the domain name. According to Complainant Respondent inserted unrelated pornographic content to the website with intention to damage the Scandic Organic brand.
Complainant submits that the domain name has been registered or is being used in bad faith. The content of the newly registered Domain Name is not business related. Screening shows it has been done in a hurry and the outcome is damaging to the Scandic Organic brand in the EU market. According to Complainant it is corporate sabotage and intentional bad faith has been applied to registering and using the domain to reflect a negative image.

B. RESPONDENT

Respondent did not file a Response.

DISCUSSION AND FINDINGS

According to Article 21(1) of Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules, a Respondent's registration of the disputed domain name is considered abusive and speculative if:
(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.

Identity and confusing similarity

The Panel finds that the disputed domain name is identical or confusingly similar to the SCANDIC ORGANIC OÜ company name of Complainant. A company name is considered a “prior right” within the meaning of Article 10 of Commission Regulation (EC) No 874/2004.
The dominant element of the disputed domain name are the words “scandicorganic”, which are identical to the SCANDIC ORGANIC company name. As to the suffix “.eu”, it is widely accepted that this element is not relevant for the purpose of the identity or confusing similarity test. The deletion of the descriptive word “OÜ”, which stands for limited liability company under Estonian law, and the deletion of the space between SCANDIC and ORGANIC can be disregarded. Therefore, the condition set forth under Paragraph B11(d)(1)(i) of the ADR Rules is fulfilled.

Rights and legitimate interests

In the opinion of the Panel Complainant has made a prima facie case that Respondent lacks rights or legitimate interest in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use the SCANDIC ORGANIC company name or to register a Domain name incorporating its company name.
Based on the undisputed evidence provided by Complainant the disputed domain name resolves to a website in the Spanish language containing adult content. This cannot be considered a bona fide offering of goods or services nor a legitimate and non-commercial or fair use of the disputed domain name without intent to mislead consumers or harm the reputation of Complainant. Respondent is also not commonly known by the disputed domain name nor has it acquired any trademark rights.
Therefore, the condition set forth under Paragraph B11(d)(1)(ii) of the ADR Rules is fulfilled.

The Panel notes that Respondent knew or should have known that the disputed domain name included Complainant’s SCANDIC ORGANIC company name as the disputed domain name includes the entire company name of Complainant. The Panel also notes that the adult content of the website to which the disputed domain name resolves is a clear example of bad faith use of a Domain name.
Therefore, the condition set forth under Paragraph B11(d)(1)(iii) of the ADR Rules is fulfilled.

As Complainant is a company established in Estonia, it satisfies the general eligibility criteria for registration of the Domain name set out in Article 4(2)(b) of Regulation (EC) No 733/2002. Therefore, Complainant is entitled to request the transfer of the disputed domain name to itself.

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 transferred to the Complainant.

PANELISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2018-04-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: SCANDICORGANIC.EU

II. Country of the Complainant: Estonai, country of the Respondent: France

III. Date of registration of the disputed domain name: 11 December 2017

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

V. Response submitted: No

VI. Disputed domain name is identical and confusingly to the protected right of the Complainant: Yes

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Yes
2. Why: the website of the Respondent associated with the disputed domain name contains adult content

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: the Respondent knew or should have known that the disputed domain name included the company name of the Complainant

IX. Other substantial facts the Panel considers relevant: N.A.

X. Dispute Result: Transfer of the disputed domain name

XI. Procedural factors the Panel considers relevant: N.A.

XII. Is Complainant eligible? Yes