Panel Decision for dispute CAC-ADREU-007731

Case number	CAC-ADREU-007731
Time of filing	2019-04-05 14:18:38
Domain names	FemmyCycle.eu

Case administrator

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

Complainant

Organization	FemCap Inc

Respondent

Name	Anastasia Nires

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 information available about other legal proceedings this Panel is aware of, which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an US Company FemCap Inc, which holds a USPTO trademark registration under no. 4,325,449 dated April 23, 2013 for FemmyCycle for Class 10 (US Class 26, 39 and 44).
The Complainant is also the holder of a patent for FemmyCycle menstrual cups, which are advertised under FemmyCycle trademark on femmycycle.com website.
The Respondent is an individual - Anastasia Nires, located in Vilnius, Lithuania who registered the disputed domain name on 18th of March 2018.

A. COMPLAINANT

contends that:
1) it is the creator of FemmyCycle menstrual cups, for which possess the patent and trademark for FemmyCycle.
2) it discovered in early 2018 that “its” FemmyCycle.eu domain name was being used for an adult chat room.
3) it does not hold any association with any adult services. This association could really distort its brand.

B. RESPONDENT

contends that:
1) It purchased disputed domain name in accordance with the EURid rules, on a "first-come, first-served" basis.
2) It does not hold the disputed domain name for speculative or abusive purposes, as the site does not mention trademark of FemCap Inc and the theme of the site is not related to the business of FemCap Inc.
3) The disputed domain name is entertainment site for the Spanish-speaking community.
4) There is no domain .EU registration on the hostgator.com website, for which the Complainant asserts that it pays the FemmyCycle.eu domain name.
5) The Complainant is an American company and not established in the European Union, Iceland, Liechtenstein or Norway.
6) It spent considerable funds on the development and promotion of this site.

DISCUSSION AND FINDINGS

For granting the Complainant's request for the transfer of the disputed domain name, the Panel has to analyse whether the Complainant demonstrated that the requirements of Article 21.1 of EC Regulation No. 874/2004 and Paragraph B.11(d)(1) of the ADR Rules are

satisfied.

1. In accordance with Article 21.1 of EC Regulation No. 874/2004 and Paragraph B.11(d)(1) of the ADR Rules, in order to succeed, the Complainant must establish the following elements:
(a) the disputed domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant recognized or established by national and/or Community law; and either
(b) the domain name has been registered by the Respondent without rights or legitimate interest in the domain name; or
(c) the domain name has been registered or is being used in bad faith.

1.1. In connection to the first element, the Panel finds that the Complainant provided evidence according to the requirements of Article 21 (1) EC Regulation No. 874/2004 that the disputed domain name is identical to the Complainant's USPTO trademark "Femmycycle". The Panel is an agreement with main CAC ADR.eu previous practice that a U.S. registered trademark qualifies under ADR Rule 11(d)(1)(i) as a 'name in respect of which a right is recognized...by the national law of a Member State and/or Community law'. The Panel finds, that national laws usually recognize rights which exist under the laws of other countries (without extending their scope beyond those countries) and it would be consistent with the UDRP to accept that a non-European trademark or service mark qualifies for protection.

1.2. The Panel chooses to consider only the third element, the registration and use in bad faith of the disputed domain name. The disputed domain name reproduces identically the Complainant trademark FemmyCycle. The trademark of the Complainant has a distinctive character and a search on any relevant search engine reveals links that relate to the Complainant. This creates an indication of so called willful blindness, which under relevant CAC ADR.eu practice constitutes bad faith. According to the 2nd Edition of the Overview of CAC Panel Views on Selected Questions of the Alternative Dispute Resolution for .EU Domain Name Disputes. Before paying registration fees, the respondent is able to enter the relevant domain name into a search engine and thereby become aware of existing rights. Such indication is applicable also for the Respondent in this case, which is likely to have known or could have known about the Complainant trademark, before registering the disputed domain name.

Contrary to the Respondent allegations, the disputed domain name reproduces the Complainant distinctive trademark and the website depicts expressly the Complainant trademark. Such circumstances confirm that the disputed domain name has been registered and it has been used in bad faith in the sense of article 21(3) from EC Regulation No. 874/2004.

2. Because the Complainant is not an entity eligible to be the holder of .eu domain name in accordance with the Article 4(2) b) of Regulation 733/2002, the Panel orders the domain name Femmycycle.eu to be revoked.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders the domain name FEMMYCYCLE.EU to be revoked.

PANELISTS

Name	Beatrice Onica Jarka

DATE OF PANEL DECISION 2019-03-22

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: FemmyCycle.eu

II. Country of the Complainant: US, country of the Respondent: Lithuania

III. Date of registration of the domain name: 18 March, 2018

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. combined trademark registered in US, reg. No. 4,325,449 for the term -, filed on 23 April 2013, registered on 18 March 2018 in respect of goods and services in classes 10

V. Response submitted: Yes

VI. Domain name/s is identical to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004): Not addressed

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why:Because it reproduces in its entirety the trademark of the Complainant which is very distinctive

IX. Other substantial facts the Panel considers relevant. the disputed domain name resolves to a website for adults

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant:

XII. If transfer to Complainant. Is Complainant eligible? No