Panel Decision for dispute CAC-ADREU-007989

Case number	**CAC-ADREU-007989**
Time of filing	**2020-10-27 17:31:17**
Domain names	**nextkeys.eu**

Case administrator

Lenka Náhlovská (Case admin)

Complainant

Organization	**Hesalite Ltd**

Respondent

Name	**Fedor Ovchinnikov**

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 that are pending or decided and relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a company incorporated under the laws of Cyprus since in 2015. It runs an on-line e-commerce business using the trade name NEXTKEYS.

The Complainant registered the domain name <NEXTKEYS.IO> on 07 August 2018. The Complainant uses that domain name in its website for an autonomous e-commerce service offering electronic and internet devices through a “shop” section designed for consumers.

The Complainant owns the European Union trade mark NEXTKEYS, registered number 018046857, which was registered on 3 August 2019 in classes 9, 42 and 45.

The disputed domain name <NEXTKEYS.EU> was registered on 7 August 2019.

A. COMPLAINANT

A. The Complainant asserts that the disputed domain name is identical or confusingly similar to a trade mark or service mark in which the Complainant has rights. It says that from a visual, oral, phonetic and conceptual comparison the disputed domain name is identical to the Complainant’s trade mark, NEXTKEYS and its domain name <nextkeys.oi>.

B. The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name and submits that:
(i) the Respondent’s intended use is a direct and unlawful exploitation of the Complainant’s intellectual property rights;
(ii) the disputed domain name was registered exactly one year after Complainant’s domain name registration and the Complainant has never authorised, licensed, or in any way permitted the Respondent to register or otherwise use the disputed domain name, nor use its trade mark;
(iii) the disputed domain name has been registered to exploit the Complainant’s earlier rights in the name NEXTKEYS;
(iv) the Respondent has never been identified by, or associated with the disputed domain name; and has no trade mark rights in the name NEXTKEYS, nor any kind of activity that can be linked to or associated with the disputed domain name;and
(v) the disputed domain name currently displays an error message as landing page and the Respondent may be using it primarily for the purpose of selling, renting, or otherwise transferring it for valuable consideration in excess of the Respondent’s documented out-of-pocket costs directly related to it.

C. The Complainant asserts that the disputed domain name was registered or is being used in bad faith and states that:
(i) the Respondent has registered the disputed domain name primarily for the purpose of selling, renting, or otherwise transferring it or alternatively to prevent the Complainant from reflecting its company name in a corresponding domain name in respect of the top-level domain <.eu>;
(ii) the registration is cybersquatting as the Respondent already knew or should have known of the Complainant's rights and the registration of the disputed domain name was a deliberate attempt to free-ride on the Complainant's reputation;
(iii) the disputed domain name currently displays an error message as landing page and is passively held which the Complainant asserts indicates that the Respondent is unlawfully trying to exploit the Complainant's reputation;
(iv) the Complainant's domain name and trade mark registrations predate the filing date of the disputed domain name;
(v) the Respondent is unknown except for the e-mail address <z.i@mail.ru, which refers to a Russian entity; and
(vi) concealing his own identity at the time of registration of the disputed domain name is a deliberate attempt to free-ride on the Complainant's reputation.

B. RESPONDENT

The Respondent has not filed a Response.

DISCUSSION AND FINDINGS

The Panel must decide the Complaint of the basis of the statements made and the documents submitted and in accordance with the Procedural Rules (Paragraph B11(a) of the Rules). If a party fails to comply with any of the time periods established by the Rules, the Panel may consider this failure to comply as grounds to accept the claims of the other Party.

Under paragraph 11(d)(1) of the Rules and Article 21 Regulation (EC) 874/2004, in order for the Complainant to succeed it must that prove that the disputed domain name is identical or confusingly similar to a name in which a right is recognised or established by national and/or community law, and either:
(a) it has been registered by its holder without rights or legitimate interest in the name; or
(b) it has been registered or is being used in bad faith.

Once the Complainant has proved it has the required rights it must only prove either (a) or the alternative ground (b), above.

RIGHTS
The Complainant is the owner of the registered trade mark NEXTKEYS, which predates the registration of the disputed domain name.

It is generally accepted that the top-level domain <.eu> is a standard registration requirement and can be disregarded when assessing whether the disputed domain name is the same or confusingly similar to a name in which the Complainant has rights.

The disputed domain name incorporates the Complainant's registered trade mark, NEXTKEYS in its entirety. Ignoring the suffix <.eu>, the disputed domain name is the same as the Complainant's registered trade mark.

The Panel finds that the Complainant has proved that the disputed domain name is identical or confusingly similar to a name in which a right is recognised or established by national and/or community law and that the requirements of paragraph 11(d)(1)(i) of the Rules have been met.

NO RIGHTS OR LEGITIMATE INTEREST
The Panel accepts that the Complainant has not authorised, licensed, or permitted the Respondent to use its trade mark NEXTKEYS or to register or use the disputed domain name. The Respondent's name does not correspond to the disputed domain name, and there is nothing to indicate that the Respondent has ever been commonly known by or identified by that name.

The Panel finds that the Complainant has made out a prima facie case that the Respondent lacks rights or legitimate interest in the disputed domain name. The burden of proof now shifts to the Respondent. The Respondent has not filed a Response nor taken any steps to rebut the assertion that he lacks rights or a legitimate interest in the disputed domain name.The Respondent has not asserted any legitimate right or interest in the disputed domain name. There appears no reason why the Respondent would incorporate the Complainant's trade mark in the disputed domain name other than to trade off the Complainant's goodwill in that name.

Taking the above factors into consideration the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name and that and that the requirements of paragraph 11(d)(1)(ii) of the Rules have been met.

REGISTERED OR IS BEING USED IN BAD FAITH
As the Complainant has proved that the Respondent has no rights or legitimate interest in the disputed domain name, there is no need to prove the alternative ground of bad faith, but for completeness the Panel will consider this point.

The registration of the Complainant's trade mark, NEXTKEYS and its domain name <nextkeys.oi> pre-date the registration of the disputed domain name. The Respondent has used a privacy service and has failed to explain why it incorporated the Complainant's trade mark, when it registered the disputed domain name. It appears that the most likely reason for registering the disputed domain name, which incorporates the Complainant's trade mark, is to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark.

Taking these factors into consideration the Panel finds that the Complainant has proved the alternative ground that the disputed domain name was registered in bad faith and that the requirements of paragraph 11(d)(1)(iii) of the Rules have been met.

The Complainant is established under the laws of Cyprus and is entitled to request the transfer of the disputed domain name as it satisfies the general eligibility criteria set out in paragraph 4(2)(b)(ii) of Regulation (EC) No.733/2002.
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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 NEXTKEYS.EU be transferred to the Complainant.

PANELISTS

Name	Mrs Veronica M Bailey

DATE OF PANEL DECISION 2020-10-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: NEXTKEYS.EU

II. Country of the Complainant: Cypus, country of the Respondent:Austria.

III. Date of registration of the disputed domain name: 7 August 2019.

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
Word mark, European Union registration number 018046857, for the term NEXTKEYS, registered on 3 August 2019 in respect of goods and services in classes 9, 42, and 45.

V. Response submitted: No.

VI. Domain name is identical 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:the Complainant has not authorised, licensed, or permitted the Respondent to use its trade mark NEXTKEYS or to register or use the disputed domain name. There is nothing to indicate that the Respondent has ever been commonly known by or identified by the name NEXTKEYS. The Respondent has not filed a Response nor taken any steps to rebut the assertion that he lacks or a legitimate interest in the disputed domain name. There appears no reason why the Respondent would incorporate the Complainant's trade mark in the disputed domain name other than to trade off the Complainant's goodwill in that name. Taking the above factors into consideration the Panel finds that the Respondent has no rights or legitimate interest in the disputed domain name.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The registration of the Complainant's trade mark, NEXTKEYS and its domain name <nextkeys.oi> pre-date the registration of the disputed domain name. The Respondent has used a privacy service and has failed to explain why it incorporated the Complainant's trade

mark, when it registered the disputed domain name. It appears that the most likely reason for registering the disputed domain name is to intentionally attract Internet users for commercial gain by creating a likelihood of confusion with the Complainant's mark.

IX. Other substantial facts the Panel considers relevant: none.

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant: none

XII. If transfer to Complainant, is Complainant eligible? Yes