Panel Decision for dispute CAC-ADREU-008014

Case number	CAC-ADREU-008014
Time of filing	2020-08-19 10:12:44
Domain names	senmotic.eu

Case administrator

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

Complainant

Organization	

Respondent

Name	Maxim Filippov

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 Complainant is Frank Demann, the co-founder of the German shoe manufacturer Senmotic 1.0 Limited, which is producing healthy shoe solutions from fine leather since 2010. It is the owner of the European trademark registration No. 007518095 “Senmotic”, registered since June 9, 2009, and the German trademark registration No. 30672945 “Senmotic”, registered since February 16, 2007.

The Respondent registered the disputed domain name on July 27, 2019.

The disputed domain name is used in connection with an active website offering sex-dating/matching services and displaying sensitive sexual content.

The Complainant filed a Complaint on August 17, 2020, and amended the same on October 14, 2020.

A. COMPLAINANT

The Complainant claims that the disputed domain name violates its trademark rights, that the Respondent has no legitimate interest in the disputed domain name and that the same was filed and is used in bad faith.
The Complainant requests the transfer of the disputed domain name.

B. RESPONDENT

The Respondent did not file any response to the complaint and was found in default on December 7, 2020.

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 SENMOTIC claimed by the Complainant are substantiated.

The Complainant justifies that it owns German and European trademark registrations for the name SENMOTIC, namely: European trademark registration No. 007518095 “Senmotic”, registered since June 9, 2009, and German trademark registration No. 30672945 “Senmotic”, registered since February 16, 2007.

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

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

The disputed domain name <senmotic.eu> is identical to the Complainant’s registered trademarks SENMOTIC. The addition of the technical suffix ".eu" corresponding to the extension of the domain name being irrelevant and in any case not sufficient to conceal the entire reproduction of the Complainant's earlier mark.

The Panel finds therefore that the disputed domain name is identical and 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 DISPUTED DOMAIN 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 on the grounds that:

- the Complainant has not licensed or otherwise permitted the Respondent to use any of its trademarks and has not permitted the Respondent to apply for or use any domain name incorporating the SENMOTIC Marks;

- there is no evidence of the Respondent’s use of, or demonstrable preparations to use the disputed domain name or a name corresponding to the disputed domain name in connection with a bona fide offering of goods or services within the meaning of paragraph B(1)(b)(10)(i)(B) of the ADR Rules; and

- the website at the disputed domain name is deceiving the internet users who want to access the Complainant’s website and is at the same time harming the reputation and the image of the Complainant by displaying sexual content;

- this action is used also to earn views and search-result clicks and thus capitalizing on the Complainant’s trademark;

- such use is neither a bona fide use of the disputed domain name nor a legitimate non-commercial or fair use of the disputed domain name pursuant to the ADR Rules.

Finally, there is also no evidence which suggests that the Respondent is commonly known by the disputed domain name or the name SENMOTIC.

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

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

The conditions of article 21 of Reg. No. 874/2004 are therefore satisfied, nevertheless the Panel will assess the bad faith registration and use as well.

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 SENMOTIC Marks are highly distinctive and solely connected with the Complainant. The word "SENMOTIC" is a unique, invented portmanteau word made up of "senso" and "motoric" and is, to the best of the Complainant's knowledge and belief, not a combination used by any third party in commerce or elsewhere. "SENMOTIC" is obviously not a word a domain name registrant would legitimately choose unless seeking to create an impression of an association with the Complainant. It is inconceivable that the Respondent registered the disputed domain name without knowledge of the Complainant and its rights.

The Respondent's use of the domain name redirects Internet users to an active website which is used for a dating/matching service and/or is providing porn videos. By using the website, the Respondent is, in all likelihood, trying to divert traffic intended for the Complainant's website to its own for the purpose of earning click-through revenues from Internet users searching for the Complainant's website. The use and exploitation of trademarks to obtain click-through revenues from the diversion of Internet users has in many decisions been found to qualify as bad faith under paragraph B(1)(b)(10)(i)(C) and B(11)(f) of the ADR Rules.

The Respondent's registration of the disputed domain name prevents the Complainant from reflecting its SENMOTIC Marks in a corresponding domain name.

The fact that the Respondent registered a domain name which includes a trademark that is obviously connected with the Complainant and its products also supports the finding of bad faith as the very use of such domain name by someone with no connection with the products suggests opportunistic bad faith.

The Respondent's use of the disputed domain name is qualified to disrupt the Complainant's business and that it is capable of reducing the number of visitors to the Complainant's website, may adversely affect the Complainant's business and therefore constitutes bad faith.

The registration of the disputed domain name by the Respondent also constitutes an abusive threat hanging over the head of the Complainant, which also supports a finding of bad faith.

In the absence of response from the Respondent, and considering the facts and legal grounds exposed by the Complainant, the Panel believes that the Respondent necessarily had the Complainant's trademark in mind when it registered the disputed domain name.

The use of the disputed domain name, which is identical to the distinctive earlier trademark of the Complainant, without any legitimate interest, in relation with adult-content web site, reveals the Respondent's intent to divert the reputation of the Complainant's mark to its own profit.

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 DISPUTED DOMAIN NAME / ELIGIBILITY OF COMPLAINANT

The Complainant is a German resident and having its domicile / 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.

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 <SENMOTIC.EU> be transferred to the Complainant

PANELISTS

Name	William Lobelson

DATE OF PANEL DECISION 2021-01-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: senmotic.eu

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

III. Date of registration of the domain name: 27 July 2019

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
- European trademark registration No. 007518095 “Senmotic”, registered since June 9, 2009,
- German trademark registration No. 30672945 “Senmotic”, registered since February 16, 2007.

V. Response submitted: No

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
Use in relation with adult entertainment web site

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