Panel Decision for dispute CAC-ADREU-008044

Case number	CAC-ADREU-008044
Time of filing	2020-12-15 10:17:11
Domain names	sme-mpower.eu

Case administrator

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

Complainant

Organization	Harmony Solutions SA

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 other legal proceedings.

FACTUAL BACKGROUND

The main argument is that the disputed domain name has been registered by its holder without rights or legitimate interests in respect of the disputed domain name that is the subject of the Complaint. <sme-mpower.eu> was established by the European project consortium "smE-MPOWER" (launched in 2007). The smE-MPOWER brand got large recognition by the European CoachCom project (approved in 2014), in which the smE-MPOWER consortium introduced the smE-MPOWER Innovation Coaching System to the SME-Instrument of Horizon2020 (EU R&D frame). In those and further collaborative projects, relevant intellectual properties (IP) were assigned to the smE-MPOWER community, which legally is hosted by Harmony Solutions SA, Switzerland.

A. COMPLAINANT

The disputed domain name is identical or similar, to the extent of instilling confusion, in respect of a trademark or service mark name in which the Complainant has rights;
(Article 21 (1) of Regulation (EC) No. 874/2004 of the Commission dated 28 April 2004)

There is no evidence that there is any confusion or similarity with other IP but there is a project name which can be understood as a priority name.

The disputed domain name was registered or has been used in bad faith (Article 21 (1) (b) of the Regulation (EC) No. 874/2004 of the Commission dated 28 April 2004).

Unfortunately, an un-legitimate entity has taken the opportunity to register that domain name and is redirecting it to another website (whatabouthotbabies.com). As we can see on the redirected website, the disputed domain name has been registered by its holder without legitimate interests in respect of the disputed domain name that is the subject of the Complaint. While the final target public of smE-MPOWER are SMEs and their business innovation coaches, the current Holder redirects to erotic/pornographic content, with the obvious intent to depreciate our brand and to make money out of our uncomfortable situation.

We assume that this act has been done in bad faith. There is evidence that the disputed domain name has been registered by its holder under circumstances indicating that the disputed domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name. The remedy sought by the alternative dispute resolution proceedings is to transfer the disputed domain name back to the Complainant.

B. RESPONDENT

NO ADMINISTRATIVELY COMPLAINT RESPONSE HAS BEEN FILED.

DISCUSSION AND FINDINGS

Rights
The Complainant has, to the satisfaction of the Panel, shown the disputed domain name is identical or confusingly similar to a trade name and project in which the Complainant has rights (within the meaning of paragraph B 11 (d) (1) i) of the Rules).

No rights or legitimate interests
The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the disputed domain name according to the Rules.

The Respondent is not affiliated with the Complainant, nor authorized by him in any way to use the contested expression in a domain name or on a website. The Complainant does not carry out any activity for, nor has any business with the Respondent.

Bad faith
The Complainant has, to the satisfaction of the Panel, shown the disputed domain name has been registered and is being used in bad faith (within the meaning of paragraph B 11 (d) (1) iii) of the Rules).

Given the distinctiveness of the trademark and the content of the website, it is clear that the Respondent registered the disputed domain name in knowledge of the Complainant and its business.

All these elements lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's IP as to the source, sponsorship, affiliation, or endorsement of such websites.

Procedural Factors
The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

Principal Reasons for the Decision

1. The three essential issues under the paragraph B 11 (d) (1) of the Rules are whether:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or European Union 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.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The Rules clearly say that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proven that it is a long standing and successful company in the European SME support business.

The Complainant states that the disputed domain name is confusingly similar to its IP. Indeed, the trademark is incorporated in its entirety in the disputed domain name.

The disputed domain name is therefore deemed identical.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name, and has not acquired any trademark or service mark rights in the name or mark.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known project. Therefore there cannot be seen any legitimate interest of the Respondent.

It is clear that the Complainant's IP was used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph B 11 (d) (1) of the Rules.

DECISION

For all the foregoing reasons, in accordance with Art. 22 (11) of the Regulation (EC) 874/2004, being satisfied that Complainant is eligible for the registration of the disputed domain name <sme-mpower.eu>, the Panel orders that the disputed domain name <sme-mpower.eu> is transferred to Complainant.

It was proven by the Complainant and from public sources that the Complainant satisfied the general criteria for registration set out in § 4 (2) (b) of Regulation (EC) No. 733/2002.

The decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction.

PANELISTS

Name	**Vít Horáček**

DATE OF PANEL DECISION 2020-12-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: sme-mpower.eu

II. Country of the Complainant: EU - Great Britain, country of the Respondent: EU - Norway

III. Date of registration of the domain name 2014

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
company name and project name.

V. Response submitted: No

VI. Domain name/s is/are [identical/confusingly similar/neither identical nor confusingly similar] to the protected right/s of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
Yes.
VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
Yes.

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.