Panel Decision for dispute CAC-ADREU-008164

Case number	**CAC-ADREU-008164**
Time of filing	**2021-08-27 13:01:24**
Domain names	**bsstc.eu**

Case administrator

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

Complainant

Organization	**BSSTC.PL sp. z o.o.**

Respondent

Organization	**AKnet Tomasz Wadas**

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 other legal proceedings which are pending or decided and which relate to the disputed domain name <BSSTC.EU>.

FACTUAL BACKGROUND

The Parties of the disputed domain name <BSSTC.EU>.

Complainant, BSSTC.PL spółka z ograniczoną odpowiedzialnością, is a Polish limited liability company, with its seat in Opole, Poland, registered on June 10, 2013 under the number 465353 of the National Court Register (KRS). The name "BSSTC" constitutes an abbreviation of the previous firm name of the Company that was used until 2018: "Blue Smart Technologies Cluster". The abbreviation "BSSTC" has been used in business activity of the Complainant since the beginning of its operation, i.e. from June 10, 2013. The Company is active in manufacturing and research of the advanced lighting lamp systems in: telecommunications, automation, industrial obstruction lighting systems, renewable energy sources, aircraft warning lights and mechanics.The Company cooperates with universities and research centers.

Complainant is the owner of a Polish domain <www.bsstc.pl> which was registered on May 15, 2013 and has been in regular business since then by the Complainant in offering obstacle lighting system in the market.

Complainant is the owner of the Polish trademark: BSSTC", registration number: R.285460, effective date of legal protection: September 28, 2015.

Respondent, AKnet Tomasz Wadas, the registrant and owner of the disputed domain name, runs a small, unincorporated activity in designing internet websites (PKD 17.23.Z), ul. Armii Krajowej 17A, apt. 1, 67-200 Głogów, Poland.

The disputed domain name <BSSTC.EU> was registered by Respondent on July 17, 2015.
According to EURid:
Registrar: Consulting Service Sp. z o.o.
Registrant and owner: AK net Tomasz Wadas
Expiry date: July 17, 2021
Status: ON HOLD, blocked during the pending ADR proceeding.

Procedural History

The Complaint submitted by BSSTC.PL, represented by dr. inż, Patryk Łukasz Weisser, president of the management board of the Company, was received by e-mail on May 18, 2021, at 11:31:27 by the Czech Arbitration Court. The Time of Filing is May 20, 2021, at 09:48:40. The Complainant has requested to enter the transfer of the disputed domain name as a "Remedy Sought".

On May 20, 2021, EURid's verification concerning the domain name <BSSTC.EU> (case no. 08164) was issued. Status: ON HOLD. Registered July 17, 2015, Expiry date: July 17, 2021. The Registry has confirmed that the disputed domain name will remain blocked during the pending ADR Proceeding.

On May 25, 2021, ADR Center has confirmed that the language of the ADR Proceeding is English, as based on the EURid verification of the registration agreement.

On May 31, 2021, ADR Proceeding formally commenced and the Respondent was asked to submit a Response within 30 working days from the delivery of ADR notice according to ADR Rules in force.

On June 9, 2021, as the Respondent has not confirmed receiving the notice of the ADR Proceeding by accessing the online platform within 5 days of its sending by e-mail, ADR Center has sent to Respondent the notice of ADR Proceeding by post.

On June 17, 2021, Complainant made a Nonstandard Communication to ADR Center at advise in part as follows:
"I kindly inform that after commencement of ADR Procedure the Respondent has changed redrection at www.bsstc.eu (by entering www.bsstc.eu we now see redirection to www.bsstc.au, previousy by entering www.bsstc.eu we saw redirection to www.colozuz.pl - as stated in complaint). Domain www.colozuz.pl belongs to Colozuz Klaudiusz szkudlarek, which stays in direct competition with complainant.".

On August 3, 2021, ADR Center issued a Notification of Respondent's Default.

On August 13, 2021, the ADR Center appointed Sylwester Pieckowski as a sole panelist and established a projected decision date on September 13, 2021 (Notification of Appointment of the ADR Panel and Projected Decision Date). Sylwester Pieckowski has issued a Statement of Acceptance and Declaration of Impartiality and Independence.

On August 17, 2021, The Case File No. 08164 was released to the ADR Panel.

A. COMPLAINANT

Complainant considers the disputed domain name to be confusingly similar to trademark in which it claims to have legally protected rights. Complainant further claims that Respondent has no rights or legitimate interests in respect of the disputed domain name and uses it with fraudulent intent to deceit the business community at his own benefit. According to Complainant, Respondent has not used the disputed domain name in connection with a legitimate use. In addition, Respondent has not been known by the disputed domain name. Complainant alleges that the disputed domain name was registered and is being used by Respondent in bad faith.

B. RESPONDENT

Respondent did not reply to the Complaint.

DISCUSSION AND FINDINGS

GENERAL FINDINGS

The Panel concludes that Respondent did not file its Response to Complaint within due date i.e. within 30 working days from the Commencement of ADR Proceedings on May 31, 2021, or after that date, Respondent is completely passive and does not respond to notifications of the ADR Center. Therefore, pursuant to Paragraph B (10) of the ADR Rules the Panel shall proceed to issue a Decision based upon the facts and evidence provided by the Complainant.

SPECIFIC FINDINGS

Pursuant to Article 21, Speculative and abusive registrations of the Regulation (EC) No. 874/2004, for the Complainant in order to succeed it must prove that:

1. The disputed domain name is identical or confusingly similar to the name in respect of which a right is recognized or established by national/or Community law such as trademarks, trade names or service marks in which Complainant has rights; and

2. Respondent has no rights or legitimate interests in respect of the disputed domain name; or

3. The disputed domain name has been registered and is being use in bad faith.

The Panel will deal with each of these requirements in turn.

A. The disputed domain name is identical or confusingly similar to a trademark in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

Respondent's <BSSTC.EU> domain name is, obviously, confusingly similar to Complainant's trademark 'BSSTC'. As a matter of fact, the disputed domain name only differentiates itself from Complainant's mark for the format required of Internet domain names, i.e., the inclusion of the suffix .eu.

In this regard, the term 'BSSTC' is phonetically, graphically and conceptually identical since Complainant's mark is entirely comprised in Respondent's domain name. Consequently, the presence of the .eu suffix is obviously not sufficient to differentiate Respondent's domain name from Complainant's trademark.

Accordingly, the Complainant has successfully established that the disputed domain name is identical or confusingly similar to the trademark in respect of which it has rights.

B. Respondent has no rights or legitimate interests in respect of the disputed domain name.

Respondent is not affiliated in any way with Complainant and, to the best of our knowledge, does not own any trademark applications or registrations for "BSSTC" or any similar marks in connection with any goods or services.

Complainant has not licensed or otherwise authorized Respondent to use its "BSSTC" trademark, or to apply for any domain name incorporating such mark.

Respondent is not commonly known by the disputed domain name and does not trade under the name "BSSTC" and does not make any legitimate commercial or non-commercial use thereof.

Complainant has been using its "BSSTC" trademark in commerce since 2013, and, as such, Complainant has established his proprietary rights to the name "BSSTC".

Finally, Respondent did not reply to Complainant's arguments and decided not to take part in the ADR proceedings. This is a further indication of the absence of rights or legitimate interests in the disputed domain name.

Accordingly, Complainant has successfully established that the disputed domain name has been registered by Respondent without rights or legitimate interests in the name.

C. The disputed domain name has been registered and is being used in bad faith.

Respondent's bad faith in registering and using <BSSTC.EU> is evident for several reasons.

Since the disputed domain name was created in 2015, it is obvious that Respondent registered it with a view to take unfair advantage of the reputation of the Complainant's firm name and mark "BSSTC". It is therefore evident that not only the use of the disputed domain name is blatantly in bad faith, but also its registration considering the reputation enjoyed by the mark "BSSTC". In fact, when creating disputed domain name, Respondent knew or must have known that "BSSTC" is a well-known brand in the professional lighting business.

Respondent's registration of <BSSTC.EU> obviously confuses potential customers as to Respondent's affiliation with Complainant.

Furthermore, Respondent's domain name discouraged Internet users from locating Complainant's true website, thereby diluting the value of Complainant's "BSSTC" trademark.

Currently, the website www.BSSTC.eu appears to be in a clear state of passive holding.

Redirection at www.bsstc.eu leading to www.colozuz.pl existed at least since December 2020, up to June 11, 2021, as properly evidenced by Complainant. Redirection to www.bsstc.com.au should still be considered as using disputed domain name (<BSSTC.EU>) in bad faith. The Respondent did not use domain name <BSSTC.EU> for his own purposes, but to mislead potential Complainant's customer entering www.bsstc.eu. Complainant carries out business activity not only in Poland (Complainant runs www.bsstc.de for German market), but also in other countries.

In summary the Panel concludes that the disputed domain name was registered primarily for the purpose of disrupting the professional activities of Complainant. Since 2015 the Respondent used <BSSTC.EU> to indicate Complainant's competitor i.e. Colozuz Klaudiusz Szkudlarek, as confirmed by evidence attached to the Complaint.

Accordingly, Complainant has successfully established that the disputed domain name has been registered or is being used in bad faith.

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 <BSSTC.EU> be transferred to the Complainant.

PANELISTS

Name	**Sylwester Pieckowski**

DATE OF PANEL DECISION 2021-08-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: BSSTC.EU

II. Country of the Complainant: Poland, country of the Respondent: Poland.

III. Date of registration of the domain name: 17 July 2015

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in Poland, reg. R.285460.], for the term [term], filed on 28 September 2015, registered on 24 May 2016 in respect of goods and services in class 11.
2. [word/combined/figurative] trademark registered in [country], reg. No. [number], for the term [term], filed on [XX Month XXXX], registered on [XX Month XXXX] in respect of goods and services in classes [numbers]
3. [word/combined/figurative] CTM, reg. No. [number], for the term [term], filed on [XX Month XXXX], registered on [XX Month XXXX] in respect of goods and services in classes [numbers]
4. [word/combined/figurative] CTM, reg. No. [number], for the term [term], filed on [XX Month XXXX], registered on [XX Month XXXX] in respect of goods and services in classes [numbers]
5. geographical indication:
6. designation of origin:
7. unregistered trademark:
8. business identifier:
9. company name: BSSTS.PL SP. Z O.O.
10. family name:
11. title of protected literary or artistic work:
12. other:

V. Response submitted: No.

VI. Domain name/s is/are identical/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):
1.No.
2. Why: Respondent did not provide any evidence of rights or legitimate interest in the disputed domain name. Complainant has provided extensive evidence of a prima facie lack of rights or legitimate interest on the part of Respondent who did not challenge any of the Complainant's claims.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes.
2. Why: Respondent registered the domain name with a view to take unfair advantage of the reputation of the Complainant's mark "BSSTC". It is therefore evident that not only the use of the contested domain name is blatantly in bad faith, but also its registration considering the reputation enjoyed by the mark "BSSTC". In fact, it is almost obvious that the Respondent has been or should have been perfectly aware of the Complainant's firm "BSSTC.PL" and also his mark "BSSTC" whcih has been known in the professional lighting lamp business.
Respondent's registration of <BSSTC.EU> has confused and is still confusing potential customers as to Respondent's affiliation with Claimant.
Furthermore, Respondent's passive domain name discouraged Internet users from locating Complainants' true website, thereby diluting the value of Complainants' trademark.

IX. Other substantial facts the Panel considers relevant:

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

XI. Procedural factors the Panel considers relevant: EURid's verification note and expiration date of the disputed domain name.

XII. If transfer to Complainant: Is Complainant eligible? Yes.