Panel Decision for dispute CAC-ADREU-008218

Case number	**CAC-ADREU-008218**
Time of filing	**2021-11-16 15:00:52**
Domain names	**incausa.eu**

Case administrator

Organization	**Denisa Bilík (CAC) (Case admin)**

Complainant

Organization	

Respondent

Organization	**Incausa Europe**

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 pending or decided legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is an American-based online store with headquarters in New York. It claims to be particularly active in the field of social entrepreneurship, by assisting artisans from around the Amazon to promote and sell their indigenous art, incense and ceramics, its alleged goal being cultural preservation. Further, it claims having been active in the above since 2012, while it also boasts popular pages on Facebook and on Instagram.

The Complainant owns a couple of trademarks including the wording "INCAUSA", among which a U.S. registration dating to early 2020. It also owns a multitude of related domain names (e.g. incausa.com, incausa.org), such as its main one <incausa.co> since September 10, 2014.
In these proceedings, the Complainant basically relies on the following two trademarks:

- INCAUSA (word), U.S. Registration No. 6146381, filed on February 5, 2020 for services in Class 35, in the name of Incausa Social Entrepreneurship LLC (the Complainant);and

- INCAUSA (word), EUTM Registration No. 018284975, filed on August 5, 2020 (with priority from February 5, 2020, as per the above U.S. Registration) for services in Class 35, in the name of Incausa Social Entrepreneurship LLC (the Complainant).

It is worth noting that, the Complainant does not seem to own any other trademarks but two logo marks that it has also cited. However, the said marks bear no words and are, thus, not useful for the present proceedings.

Further, the Complainant is also doing business as / DBA INCAUSA Limited Liability Company N.Y., who appears at the owner slot of the above trademarks in parallel to the Complainant.

The Respondent is an individual entrepreneur, apparently active in Ireland. He seems to operate the business Fenix in Europe, which deals mainly with the trade of incense. According to the Complainant, the Respondent managed the European orders of the Complainant, as an independent contractor between 2015-2019. The Respondent, on the contrary, considers himself to have been a true business partner of the Complainant, as they allegedly developed together the goodwill of the INCAUSA business in Europe during the period mentioned above.

The disputed domain name <incausa.eu> was registered on February 22, 2016 by the Respondent.

A. COMPLAINANT

The Complainant contends that, the disputed domain name is confusingly similar to its INCAUSA trademark; that the Respondent lacks rights or legitimate interests in the disputed domain name, and that the disputed domain name has been registered and is being used in bad faith.

For these reasons, the Complainant requests that the disputed domain name is transferred to the Complainant.

B. RESPONDENT

The Respondent contends, on the contrary, that the Complainant does not have sufficient trademark rights on the disputed domain name; that the Respondent has rights and legitimate interests in the disputed domain name, and that the Respondent has registered and used the disputed domain name in good faith. The Respondent is also claiming that the Complainant has shown vexatious bad faith behavior by filing the present complaint.

While he has not stated this verbatim, the Respondent through his response seems to suggest that the complaint must be denied. However, in his second response, the Respondent stated that he had no interest in the mark INCAUSA and that it was for this reason that he had listed the disputed domain name for sale.

DISCUSSION AND FINDINGS

Procedure

Before launching the substantial discussion, the Panel would like to make a general comment on this case. The Parties have misinterpreted the raison d'être and the goals of the ADR proceeding. Indeed, instead of trying to establish their rights on the disputed domain name, the Parties have tried to bring their wider business disputes before the Panel, probably considering that the latter is enabled to decide on such issues. However, the Panel may only take stance on the ownership of the disputed domain name itself. For the rest, the Parties must address themselves to Court.

On another note, the Panel has decided to admit the additional statements and documents provided by both Parties on top of the Complaint and the Response initially filed. The legal basis for such decision has been Rule B7 of the ADR Rules, which gives the flexibility to the Panel to conduct the proceedings in the way it considers fit in order to reach the best possible outcome, as well as Rule B8 of the ADR Rules, which allows the Panel to admit additional submissions of the Parties at its sole discretion.

Eligibility criteria: The Complainant requests the transfer of the disputed domain name. Nevertheless, the Complainant is a company based in the United States and therefore does not meet the eligibility criteria for registration of a .EU domain name set forth by Article 20 of Regulation (EU) 2019/517 (Amendment of Regulation (EC) No 733/2002) applicable from October 19, 2019. The only possible relief that the Complainant may seek in regard of the disputed domain name is therefore its revocation.

Rights

The Complainant has, to the satisfaction of the Panel, proven that the disputed 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 (within the meaning of Rule 11(d)(1)(i) of the ADR Rules).

Indeed, the disputed domain name consists of the Complainant's whole trademark (INCAUSA). Despite its relatively recent registration at the European Union Intellectual Property Office (EUIPO), the said trademark is at present valid and subsisting in the name of the Complainant.

As far as the ccTLD ".eu" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity.

Hence, the Panel is satisfied that the first requirement under the ADR Rules is met.

Bad faith

The Complainant has, to the satisfaction of the Panel, proven that the disputed domain name is being used in bad faith (within the meaning of Rules B11(d)(1)(iii) and B11(f)(4) of the ADR Rules).

The Parties have attempted twice each, through their long statements and exhibits, to convince the Panel of their seniority and/or preponderance of rights over the disputed domain name. Nevertheless, as it has been shown by the evidence provided by both Parties, the disputed domain name was for quite some time intentionally used by the Respondent to attract internet users for commercial gain to the Respondent's website of Fenix, by creating a likelihood of confusion with the Complainant's trademark INCAUSA, such likelihood arising as to the source, sponsorship, affiliation and/or endorsement of the said website.

After the dispute has arisen, the Respondent has admitted in his second submission that he has no further interest in the mark INCAUSA and that it is for this reason that he has listed the disputed domain name for sale.

Therefore, based on this behavior of the Respondent, the Panel finds it clear that the disputed domain name has been / is being used in bad faith. According to Rule B11(d)(1)(iii) of the ADR Rules, the Panel need not examine the bad faith of the Respondent also at the time of registration of the disputed domain name, as this is alternative.

For all circumstances mentioned above, the Panel is satisfied that also the bad faith requirement under the ADR Rules is satisfied. Since the last two requirements of Rule 11(d)(1) are alternative and the Complainant has proven the last one (bad faith use), there is no need for the Panel to additionally discuss if the Respondent lacks rights or legitimate interest in the disputed domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name INCAUSA.EU be revoked.

PANELISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2021-11-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: INCAUSA.EU

II. Country of the Complainant: U.S.A., country of the Respondent: IRELAND

III. Date of registration of the domain name: 22 February 2016

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. INCAUSA (word), U.S. Registration No. 6146381, filed on February 5, 2020 for services in Class 35, in the name of Incausa Social Entrepreneurship LLC (the Complainant)
2. INCAUSA (word), EUTM Registration No. 018284975, filed on August 5, 2020 (with priority from February 5, 2020, as per the above U.S. Registration) for services in Class 35, in the name of Incausa Social Entrepreneurship LLC (the Complainant)

V. Response submitted: Yes

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. N/A
2. Why: Not necessary to examine.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. Yes
2. Why: Overall behaviour (e.g. attracting users to his website for commercial gain by creating a likelihood of confusion with Complainant's mark; keeping the domain without real interest and then putting it for sale)

IX. Other substantial facts the Panel considers relevant: N/A

X. Dispute Result: Revocation of the disputed domain name

XI. Procedural factors the Panel considers relevant: Admission of additional submissions of the Parties

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