Panel Decision for dispute CAC-ADREU-008318

Case number	CAC-ADREU-008318
Time of filing	2022-06-14 12:24:43
Domain names	strengthwear.eu

Case administrator

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

Complainant

Organization	Eleiko Sport AB

Respondent

Name	Sally Goldberg

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None of which the Panel is aware

FACTUAL BACKGROUND

The Complainant is a company that has its registered office and principal place of business in Sweden. The Complaint, in a few words in passing, suggests that the Complainant is offering clothes and sports equipment “on several markets”. No further explanation or evidence is offered as to the nature and extent of the Complainant’s business.

The trade mark relied upon by the Complainant is Registered European Union trademark (EUTM) for the word mark “STRENGTHWEAR” in classes 25 and 28 with registration number 016506834 applied for on 24 March 2017 and registered on 7 July 2017.

The disputed domain name <strengthwear.eu> (the “Domain Name”) was registered on 27 May 2021.

Who exactly is the Respondent in this case is unclear although the details provided by EURid suggests that this is an individual located in Germany.

The Domain Name has been used since registration for a Dutch language website displaying pornography. However, at the date of this decision there appears to be no longer any active website operating from the Domain Name.

A. COMPLAINANT

The Complainant identifies the mark it relies upon and contends that the Domain Name is identical to that trade mark.

It claims that consumers are likely to believe that the Domain Name and the services offered on the website come from the same commercial undertaking or an economically linked undertaking as the Complainant, thus creating a likelihood of confusion among consumers.

The Complainant also contends that the Respondent has no right or legitimate interest in the Domain Name. In this respect it claims:

“We have not been able to match the Respondent or whoever is hosting the website of the Domain Name, to any existing trademark- or company registrations connected to the wording ‘strengthwear’. Nor have we found any evidence of any other party being commonly known by the wording ‘strengthwear’.”

It also maintains that the use made of the Domain Name in respect of pornographic content is “not a legitimate and non-commercial or

fair use".

The Complainant also complains that the Domain Name was registered and is being used in bad faith. In this respect it claims that the Domain Name is being used commercially and with an intent to mislead and divert consumers seeking the Complainant's products.

B. RESPONDENT

No Response was filed in these proceedings.

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

In order to succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of Commission Regulation (EC) No 874/2004 as amended (the "Regulation") have been complied with. That article reads as follows:

"A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been registered or is being used in bad faith."

Article 21(2) and (3) contain a list of examples of circumstances which may demonstrate the existence of a legitimate interest within the meaning of Article 21(1)(a) and of bad faith within the meaning of Article 21(1)(b), but these examples are non-exhaustive.

Paragraph B.10(a) of the ADR rules provides that:

"In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party."

However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

With this in mind I deal with each of the three constituent parts of Article 21(1) of the Regulation in turn:

IDENTICAL OR CONFUSINGLY SIMILAR

The Complainant has demonstrated that it is the proprietor of an EU registered trade mark for the word mark " STRENGTHWEAR".

In the circumstances, the Complainant has relevant trade mark rights in a name that, save for the <.eu> suffix, is identical to the Domain Name. As a consequence, it is clear that the Domain Name is at least confusingly similar to the Complainant's mark. The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

RIGHTS AND LEGITIMATE INTERESTS AND BAD FAITH

The Complainant contends that the Respondent has no right or legitimate interest in the Domain Name.

I accept that is the case. The Complainant has been unable to identify any existing trade mark or company registration related to the term "stregthwear" in which the Respondent might conceivably have an interest. Further, the screenshots that the Complainant has supplied of the pornographic website that operated from the Domain Name does not contain any content with which the terms "strengthwear" or the words "strength wear" has any obvious connection. As far as I can tell, neither "Strengthwear" or "Strength Wear" are being used as a name for that website or its operator.

Further and in any event, the Domain Name also appears to be no longer in active use.

The Complainant also contends that the Domain Name has been registered and has been used in bad faith, in that it has been used to divert consumers seeking the Complainant products to the Respondent's website. These allegations might well be right, since (as I have already concluded) there is no obvious other reason why the Respondent might have chosen the terms Strengthwear" or "Strength Wear for its website. However, usually a panel would expect a complainant when advancing such contentions to at least provide a minimal explanation of the extent of the complainant's use of the marks and the mark's reputation, from which a panel might reasonably infer that it was with an intent to take advantage of that reputation that the domain name was registered. This is completely absent from the Complaint in this case.

In the circumstances, I decline to make any finding on the question of bad faith.

Nevertheless, the finding that the Respondent has no right or legitimate interest is sufficient to satisfy the requirements of Article 21(1) of the Regulation and for these proceedings to be decided in the Complainant's favour (as to which see, for example, Noonan Services Group, Toman MacGinley v Oeeo Networks Limited, Michael Kopinski ADR Case No. 05578 and section V.7 of the CAC .EU Overview 2.0).

REMEDY

The Complainant, having satisfied the requirements of the first paragraph of Article 21(1) is entitled to obtain revocation of the Domain Name.

Under Article 22(11) of the Regulation (mirrored in paragraph B11(b) of the ADR Rules) a panel may instead order the transfer of a disputed domain name to a successful complainant, but only where that complainant can also show that it satisfies at least one of the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002.

The first of those criteria is that the registrant is an: "undertaking having its registered office, central administration or principal place of business within the Community". Here the Complainant, being a company registered in Sweden, satisfies this criterion. It is, therefore, entitled to an order that the Domain Name be transferred to it.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <STRENGTHWEAR.EU> be transferred to the Complainant

PANELISTS

Name	Matthew Stuart Harris

DATE OF PANEL DECISION 2022-06-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a company that has its registered office and principal place of business in Sweden and is the owner of a registered EU trade mark for the term "Strengthwear" and the domain name in dispute (the "Domain Name") comprises that term combined with the ".eu" TLD.

The Domain Name was registered on 27 May 2021 and has been used subsequent to that date for a website that displays pornographic content. The term "strengthwear" and the words "strength wear" has any obvious connection with the content of the website and there is nothing to suggest that "Strengthwear" or "Strength Wear" are being used as a name for that website or its operator.

Given this the Panel concluded that the requirements of Article 21(1) of Regulation (EC) No 874/2004, were satisfied in that the Complainant had satisfied the Panel that Domain Name was at least confusingly similar to the Complainant's mark and the Respondent had no right or legitimate interest in the Domain Name.

The Panel declined to make any finding on the questions of bad faith registration or use, since the Complaint failed to give sufficient explanation of the Complainant's activities, from which the Respondent's knowledge of the Complainant's mark and business and bad faith could be inferred.

The Complainant being registered in Sweden satisfied the least one of the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of Regulation (EC) No. 733/2002, and accordingly the Panel ordered the transfer of the Domani Name to the Complainant.