Panel Decision for dispute CAC-ADREU-008327

Case number	CAC-ADREU-008327
Time of filing	2022-06-15 17:29:03
Domain names	hamiltonbeach.eu

Case administrator

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

Complainant

Organization	

Respondent

Name	Privacy Guardian

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

1. The Panel is not aware of any other pending or decided proceedings related to the Disputed Domain Name.

FACTUAL BACKGROUND

2. The Disputed Domain Name has been registered by the Respondent on 11 May 2021.

3. The Complaint has been filed on 16 March 2022.

4. There is no evidence or indication of any prior mutual communication or settlement attempts between the parties of these proceedings.

A. COMPLAINANT

5. The Complainant is Alexander Raring.

6. The Complaint does not contain an explicit statement regarding the affiliation of the Complainant to Hamilton Beach Brands Holding, but the address stated by the Complainant together with the content of the Complaint and publicly available information regarding the current work position of the Complainant demonstrate that the Complainant acts in these proceedings on behalf of Hamilton Beach Brands Holding, a U.S. company listed at NYSE.

7. The Complainant is represented by Stobbs IP Ltd, Richard Ferguson.

8. The Complainant asserts that it is a leading manufacturer and distributor of kitchen appliances in the U.S. and internationally and has a presence in markets around the world, including the EU.

9. The Complainant asserts that HAMILTON BEACH is its main brand since 1949 and that it has been using <hamiltonbeach.com> and other similar domain names since 1998.

10. The Complainant asserts that it is the proprietor of the EU trademark No. 015961048 for HAMILTON BEACH in Classes 7, 8, 9, 11, and 21.

11. The Complainant asserts that the Respondent does not have any rights or legitimate interests in the indication supra 10 and has not been known under that indication at any point in time. The Complainant also asserts that the Respondent has not used the Disputed Domain Name in connection with goods or services or has made any demonstrable preparation to do so.

12. The Complainant asserts that the Disputed Domain Name has been registered and is being used in bad faith. In that respect, the Complainant notes that the indication supra 10 is not generic and suggests that, bearing in mind the considerable reputation of the HAMILTON BEACH brand and the Complainant's operations worldwide, there is no believable or realistic reason for registration or use of the Disputed Domain Name other than to take advantage of the Complainant's reputation and rights.

13. The Complainant asserts that another sign of the Disputed Domain Name being registered and used in bad faith is that the Disputed Domain Name was offered for sale.

14. The Complainant supports its assertions supra 8 to 13 with documentary evidence.

15. The Complainant claims the transfer of the registration of the Disputed Domain Name to a third party, Lexsynergy Limited, that is registered in Ireland.

B. RESPONDENT

16. The Respondent is Privacy Guardian.

17. The Respondent confirmed receiving the notice of these ADR Proceedings by accessing the online platform on March 29, 2022. However, the Respondent did not submit any response or other communications in these Proceedings.

DISCUSSION AND FINDINGS

18. A domain name is subject to revocation under Art. 21 of Regulation (EC) No 874/2004 if that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or EU law and if it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

19. The Complainant proved that it holds an EU trademark HAMILTON BEACH that is identical to the Disputed Domain Name. This indication is not generic, despite containing generic terms 'hamilton' and 'beach,' as it is used by the Complainant for original labelling of household products.

20. The Panel thus holds that the Disputed Domain Name is identical to a name in respect of which a right of the Respondent is established by EU law pursuant to Art. 21(1) of Regulation (EC) No 874/2004.

21. The Complainant proved that it uses the indication supra 19 for a considerable time and its products are internationally known under this indication. The Complainant also contended and proved that the Respondent is neither known under that indication nor has used that indication ever before.

22. By proving the facts supra 19 to 21, the Complainant managed to establish a prima facie case that allowed the Panel, in the absence of any reaction by the Respondent, to conclude that there are no rights or legitimate interests by the Respondent to the indication pursuant to Art. 21(1)(a) of Regulation (EC) No 874/2004 (see e.g. CAC 2986 terxon.eu or CAC 6387 jucyads.eu).

23. The Complainant proved that the Disputed Domain Name was offered for sale. That alone does not prove bad faith under the meaning of Art. 21(3)(a) of Regulation (EC) No 874/2004 unless such offer is genuine and demonstrates an actual intention of the Respondent to sell the Disputed Domain Name. In that respect, the Complainant also proved that the offer for sale was made directly under the Disputed Domain Name. The Panel also found that the potential sale of the Disputed Domain Name was mediated by a website operated by the Registrar and Technical Contact of the Disputed Domain Name. That altogether proves that the Disputed Domain Name was registered primarily for the purpose of selling under the meaning of Art. 21(3)(a) of Regulation (EC) No 874/2004.

24. The Panel thus holds that the Disputed Domain Name has been registered and is being used in bad faith pursuant to Art. 21(1)(b) of Regulation (EC) No 874/2004.

25. As the Panel found all three requirements of Art. 21(1) of Regulation (EC) No 874/2004 fulfilled (even when only two requirements are sufficient to support claims in the complaint), the Panel holds that the Disputed Domain Name is subject to revocation.

26. If the Panel decides that the domain name shall be revoked, the domain name shall be according to Art. 22(11) of Regulation (EC) No 874/2004 transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

27. The Complainant does not meet eligibility criteria under 4(2)(b) of Regulation (EC) No 733/2002 and so the Complainant requested the Disputed Domain Name be transferred to a third party, Lexsynergy Limited, that is registered in Ireland and thus it is eligible for becoming a holder of a .eu domain name.

28. It is in principle possible even for a complainant that does not itself meet the eligibility criteria to achieve transfer of the disputed domain name provided that the transfer can be regarded, as laid down in Art. 22(11) of Regulation (EC) No 874/2004, 'to the complainant'. Thus, it has to be either an eligible direct branch of the complainant (see e.g. CAC 5837 turkcell.eu or CAC 5117 akbank.eu) or it has to be an eligible third party that joins the proceedings on the side of the complainant and thus officially becomes a complainant.

29. A transfer of a revoked domain name to a third party that is only designated by the complainant, without that third party being a direct branch of the complainant or joining the complainant in respective proceedings, is not possible, as it would not fall outside the meaning of Art. 22(11) of Regulation (EC) No 874/2004 (see e.g. CAC 3924 xango.eu or CAC 5665 oanda.eu).

30. The Complainant was specifically notified about not fulfilling the eligibility criteria in a nonstandard communication dated 23 March. However, the Complainant failed to take any procedural action. Thus, the Panel is not entitled to transfer the Disputed Domain Name either to the Complainant or to the third party designated by the Complainant.

31. Consequently, the Panel holds that the Disputed Domain Name shall be revoked pursuant to Art. 22(11), first sentence, of Regulation (EC) No 874/2004.

DECISION

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

PANELISTS

Name	**Radim Polcak**

DATE OF PANEL DECISION 2022-06-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: <hamiltonbeach.eu>

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

III. Date of registration of the domain name: 11 May 2021

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 EU, reg. No. 015961048, for the term HAMILTON BEACH, filed on 24 October 2016, registered on 06 April 2017 in respect of goods and services in classes 8.
2. word trademark registered in EU, reg. No. 009616831, for the term HAMILTON BEACH, filed on 21 December 2010, registered on 16 June 2011 in respect of goods and services in classes 7, 8, 9, 11, 21.

V. Response submitted: No

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): No

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: Prima facie case, no response.

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: The Complainant does not meet eligibility criteria under 4(2)(b) of Regulation (EC) No 733/2002 and so the Complainant requested the Disputed Domain Name be transferred to an eligible third party. The third party designated by the Complainant was neither a branch of the Complainant nor it joined the Complainant as a party in these proceedings. Thus, it was not possible to consider the designated third party 'a complainant' pursuant to Art. 22(11) of Regulation (EC) No 874/2004.

XII. Is Complainant eligible? No