Panel Decision for dispute CAC-ADREU-004323

Case number	CAC-ADREU-004323
Time of filing	2007-03-08 12:04:42
Domain names	crufts.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	The Members of the General Committee of the Kennel Club, Miss Katharine Cameron

Respondent

Organization / Name	The Hemp Company, Jason Clarke

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

FACTUAL BACKGROUND

The Complainant is “the Members of the General Committee of the Kennel Club”, i.e., the organiser of the CRUFTS Dog Show in the United Kingdom.

The Complainant claims that “the CRUFTS show is the largest annual dog show in the world. It launched in 1891 in London and has been held annually ever since. In 1991 it moved to the National Exhibition Centre in Birmingham to accommodate the record-setting number of entrants. The CRUFTS show is a 4-day event that attracts participants and spectators from around the world, with more than 140,000 visitors attending each year. It is internationally known as the premier dog show event in the world”.

The CRUFT is not only a dog show. The brand name is also used for a wide range of dog-related products and services provided at the show and year round by the Complainant (including dog kennels and cages, dog beds, dog bowls, dog toys, books, DVDs and other dog-related merchandise, and insurance for dogs).

The Complainant is the owner of several domain names, including crufts.com and crufts.co.uk.

The Respondent is Jason Clark representing the Hemp Company, registered in Cork (Ireland).

The Respondent registered the domain name crufts.eu on 7 April 2006. The web page of the domain name displays links to providers of dog insurance, kennels, dog food, dog leads and collars, books and other dog-related materials, as well as links to non-dog-related topics such as jobs, music, flowers, shopping … and also to “adult” and “loans” links.

A. COMPLAINANT

The Complainant contends that the domain name at stake is identical or confusingly similar to several of its rights recognized or established by national and/or Community law, including the followings:

- United Kingdom registration 1445203 CRUFTS of 22 October 1990,
- United Kingdom registration 1102343 CRUFTS of 11 March 1999,
- Community Trade Mark application 4766598 CRUFTS of 25 November 2005,
- UK registration 1445200 CRUFTS DOG SHOW Logo of 22 October 1990,
- UK registration 1582461 CRUFTS DOG SHOW Logo of 22 August 1994,

- CTM registration 125518 CRUFTS DOG SHOW Logo of 1 April 1996,
- CTM application 4766581 CRUFTS DOG SHOW Logo of 25 November 2005.

Evidences are attached to the complaint.

In the Complainant's mind, the absence of right or legitimate interest of the Respondent may be inferred notably from the followings:

- The Respondent is not known or connected to, associated with or endorsed by the Complainant. The Complainant has not authorized the Respondent to use the CRUFTS trademark.

- The Domain Name does not correspond to a name by which the Respondent is or has been commonly known.

- The Respondent is not making a legitimate and non-commercial or fair use of the Domain Name. It is, on the contrary, making a manifest commercial use by advertising links to third-party commercial sites, some of which are operated by competitors of the Complainant, and this doesn't amount to bona fide use in connection with the offering of any goods or services.

In the Complainant's mind, the bad faith of the Respondent is blatant based on the followings:

- Because of the fame of the CRUFTS name (it had been in use by the Complainant and its predecessors for over 110 years to denote the CRUFTS show and dog-related products and services), the Respondent was certainly aware of the Complainant, and it deliberately used the domain name to attract Internet users, for commercial gain, to the Respondent's website by creating a likelihood of confusion with the Complainant's activities. In this respect, the Respondent has taken unfair advantage of the Complainant's international reputation.

- The Respondent moreover registered the Domain Name primarily for the purpose of unfairly disrupting the business of the Complainant. The Respondent uses the Domain Name to host links to competitors of the Complainant in the provision of dog insurance, dog-related items such as kennels and cages, and dog-related books, DVDs and the like.

The Complainant also affirms that the Respondent registered the Domain Name as a blocking registration against the CRUFTS trademark, in which the Complainant has rights, with a view to selling, renting or otherwise transferring it to the Complainant, and that the Respondent's use of it to host links to the Complainant's competitors and to topics inappropriate for association with a family event such as the CRUFTS dog show (such as the "adult" and "loan" links posted) is designed to pressure the Complainant into offering a sum of money for transfer of the Domain Name.

B. RESPONDENT

The Respondent did not respond.

DISCUSSION AND FINDINGS

When the Czech Arbitration Court (CAC) receives a complaint, it follows a strict procedure including the notification of the complaint to the Respondent.

Said notification notably states that:

"Default. If your Response is not sent in the period of time above or if it will not comply with all administrative requirements mentioned in the ADR Rules and/or ADR Supplemental Rules even after granting additional time period to remedy the non compliance under Paragraph B3 (d) of the ADR Rules, you will be considered in default. We will still appoint an ADR Panel to review the facts of the dispute and to decide the case. The Panel will not be required to consider a Response filed late or not administratively compliant, but will have the discretion to decide whether to do so and may draw such inferences from your default as it considers appropriate, as provided for by ADR Rules, Paragraph B10. There is a possibility to challenge the Notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules."

The Respondent also received a "non-standard communication" from the CAC to inform it of the deadline to submit its response.

When a Respondent doesn't answer within the delay, it also receives a "notification of Respondent's default" informing it of the consequences of said default. This notification notably stipulates that:

(begin of quote)

1. We shall go forward and appoint an ADR Panel based on the number of panelists designated by the Complainant. As the Complainant has designated a single-member Panel, we shall appoint the panelist from our published list. / As the Complainant has designated three-member Panel, we shall appoint a Panelist from the list of Candidates provided by Complainant and 2 Panelists from our published list. In case we are unable within five (5) calendar days to secure the appointment of a Panelist from the list of Candidates, we shall appoint a Panelist from our published list of Panelists.

2. The ADR Panel and the Complainant will be informed of your default. The ADR Panel will decide in its sole discretion whether or not to consider your defective Response (if submitted) in deciding the case.

3. Notwithstanding your default, we shall continue to send you all case-related communications to your contact details and using the methods you have specified in your Response (if submitted later), or as we consider appropriate in our discretion (if not submitted).

4. You have a right under Paragraph B3 (g) of the ADR Rules to challenge this Notification in a written submission to the Czech Arbitration Court filed within 5 days from receiving this notification. The Czech Arbitration Court shall acknowledge receiving your challenge and shall forward it to the Panel within 3 days from its receipt. In submitting your potential challenge, you must use Form "Challenge of Notification of Respondent Default" available on the Online Arbitration Platform of the Czech Arbitration Court.

(end of quote)

It is quite unquestionable that the domain name is identical or confusingly similar to several rights recognized or established by national and/or Community law, owned by the Complainant (see here above for details of said rights).

As far as the bad faith and the right/legitimate interest are concerned, it must be stressed that in most cases, it is impossible for a Complainant to demonstrate with an absolute certainty the absence of right and legitimate interest and/or the bad faith of a Respondent.

This is why the Panels usually require the Complainant to make a reasonable demonstration rather than to bring absolute evidence. This demonstration lays on the various facts and legal elements of each case.

The response is then the occasion for the Respondent to challenge and contradict the reasonable demonstration of the Complainant and to draw the Panel's attention on other facts and legal elements to support its view.

In this case, the least that can be said is that the complaint is quite persuasive.

It underlines facts and legal elements that are indeed good signs that the domain name "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" (art. 21 of EC regulation 874/2004). (see hare above "Parties' contentions" for factual and legal details).

The respondent had a chance to reply; it chose not to.

This case is also remarkable because there is no active website under the domain name at stake. (Note: In the absence of any explanation provided for by the Respondent, this Panel is convinced that the mere use of the domain name to advertise links to third-party commercial sites, some of which are operated by competitors of the Complainant, doesn't amount to bona fide use in connection with the offering of any goods or services.) The absence of a bona fide provision of service has always been considered as a strong sign of a possible cyber squatting. This was one more reason for the Respondent to answer to the complaint and to explain its project (if any).

Based on the sole complaint, this Panel is convinced that the domain name "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" (art. 21 of EC regulation 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 CRUFTS be transferred to the Complainant

PANELISTS

Name	**Joost Verbeek**

DATE OF PANEL DECISION 2007-05-31

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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