Panel Decision for dispute CAC-ADREU-004717

Case number	CAC-ADREU-004717
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Domain names	bristolmyerssquibb.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	BRISTOL-MYERS SQUIBB COMPANY, .

Respondent

Organization / Name	LehighBasin.com, Domain Handler

FACTUAL BACKGROUND

The Respondent registered the domain name «bristolmyerssquibb.eu» (the «Disputed Domain Name») on 7th April 2006.

The Complainant, Bristol-Myers Squibb Company, is one of the largest pharmaceutical companies in the world. The Complainant has provided evidence of its numerous trade mark registrations and applications with the denomination, «Bristol Myers Squibb» within different territories of Europe, since 1993.

The Respondent does not contest the Complaint.

A. COMPLAINANT

The following is a summary of the main submissions of the Complainant.

The Complainant asserts:

1. Complainant’s History

The Complainant is a US pharmaceutical company, established following a merger of two pharmaceutical companies in 1989, dedicated to research and production of medicines for human use and is one of the largest pharmaceutical companies in the world.

The name of the Complainant is «Bristol-Myers Squibb Company» and is evidenced by a Certificate of Incorporation (set out in an annex, provided).

2. Complainant’s Rights

The Complainant, who is also the owner of the domain name «bristolmyerssquibb.com», is the holder of numerous trademarks, including registered and or applications thereof, throughout the world and, in particular, in Europe to protect the «Bristol Myers Squibb» denomination (set out in an annex, provided). Such trade marks constitute rights to the name within meaning of the Article 10 of the Regulation.

In addition, the Complainant's company name is «Bristol Myers Squibb Company» in which the words «Bristol Myers Squibb» constitute a dominant and distinctive part. Hence, the denomination «Bristol Myers Squibb», which is identical to the Disputed Domain Name, is also protected in favour of the Complainant as a trade name within meaning of the Article 10 of the Regulation.

3. Respondent's Domain Name Registration

The Disputed Domain Name should be revoked within the meaning of Article 21 of the Regulation as it is (i) 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) of the Regulation, and since it (ii) has been registered by the Respondent without rights or legitimate interest therein as well as because (iii) it has been registered and is being used in bad faith.

(a) Identical or Confusingly Similar to Complainant's Trade Marks

The Complainant has provided a list of trade marks registered by the Complainant which it considers constitute sufficient rights established and recognised by national and/or Community law as mentioned in Article 10(1) of the Regulation. The Disputed Domain Name is, inter alia, identical or confusingly similar to the five trademarks registered for the Complainant, within the EU (set out in annexes, provided).

In addition, the Complainant's company name is «Bristol Myers Squibb Company» in which the words «Bristol Myers Squibb» constitute, without any doubt, a dominant and distinctive part.

Hence, the denomination «Bristol Myers Squibb», which is identical to the Disputed Domain Name, is also protected in favour of the Complainant as a trade name within meaning of the Article 10 of the Regulation.

Thus, the Complainant contends that it can be concluded that the Disputed Domain Name is identical to various Complainant's trade marks as well as to protected Complainant's trade name.

(b) Respondent Has No Rights or Legitimate Interest regarding the Domain Name

- No Rights or legitimate interest

The Respondent has no obvious trade mark rights, right to a company name or any other right (as mentioned in the Article 10(1) of the Regulation), which could legitimate registration of the Disputed Domain Name. To the Complainant's best knowledge, prior to any notice of an alternative dispute resolution (ADR) procedure, the Respondent has neither used the Disputed Domain Name in connection with offering of goods or services, nor made demonstrable preparation to do so. The Respondent has not been commonly known by the Disputed Domain Name; in fact the Respondent's company name is utterly different from the Disputed Domain Name.

There is no website or any other content available on the internet address consisting of the Disputed Domain Name. Apparently, the Respondent is not using the Disputed Domain Name at all. In light of the above, it can be concluded that the Respondent is not in any way making a legitimate and non-commercial or fair use of the domain name.

In light of the foregoing, the Respondent has registered the domain name without rights or interest to it within the meaning

of the Article 21(2) of the Regulation.

- Disputed Domain Name Has Been Registered in Bad Faith

The Complainant obtained registration of the cited trade mark rights prior to the date on which the Respondent registered the Disputed Domain Name. The Complainant's rights to the trade marks are prior to the Respondent's rights in the Disputed Domain Name.

It is very likely that the Respondent was aware of Complainant's existence, which is a company well-known worldwide, as well as Complainant's trademark registrations.

In addition, to the Complainant's best knowledge, the names «Bristol» «Myers» and «Squibb» are not affiliated in any way with the Respondent. To the Complainant's best knowledge, the Complainant is the only entity known by these famous names. For this reason, the Complainant finds it very unlikely that the Respondent would have registered Disputed Domain Name (consisting of such a well-known company name) by pure coincidence.

In light of the above, circumstances indicate that the Respondent has registered the domain name primarily for purposes of "cyber squatting", i.e. for purposes of selling, renting or otherwise transferring the domain name to the Complainant, who has recognised rights to the name that constitutes the Disputed Domain Name.

Moreover, a strong argument can be made that the Respondent tried to take advantage of the Complainant's reputation and well known status in order to attract and mislead consumers who would be confused by the identity of names and who would naturally expect that a website available under the Disputed Domain Name is an official Complainant's website for the European region. In light of the foregoing, the Respondent has registered the domain name in bad faith within meaning of the Article 21(3) of the Regulation.

B. RESPONDENT

The Respondent does not contest the Complaint and has indicated that it was willing to transfer the Disputed Domain Name to the Complainant.

DISCUSSION AND FINDINGS

Regulation (EC) No 874/2004 of 28 April 2004, sets out the principles governing registration of .eu domain names («the Regulation»). The Complainant must, in accordance with Article 21.1 of the Regulation and Paragraph B 11 (d)(1) of the ADR Rules, demonstrate that the Disputed Domain Name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by the national law of a Member State and/or Community law and either (a) the Disputed Domain Name has been registered by the Respondent without rights or legitimate interest in the name; or (b) the domain name has been registered or is being used in bad faith.

The Complainant is, according to the submitted evidence, the owner of five trademarks, registered within the EU, including BMS BRISTOL-MYERS SQUIBB, BMS BRISTOL-MYERS SQUIBB COMPANY and BRISTOL-MYERS SQUIBB MEDICAL IMAGING & Design, registered between 1993 and 2003. Further, the company is one of the world's largest pharmaceutical companies, and was established following a merger in 1989.

The Disputed Domain Name contains the Complainant's trade mark «Bristol Myers Squibb» in its entirety, and in the opinion of the Panel, such registration of the Disputed Domain Name renders it identical or confusingly similar to the Complainant's trade marks.

It has been argued by the Complainant that the Disputed Domain Name has been registered by the Respondent without rights or legitimate interest. The Respondent has not submitted any evidence indicating that the Respondent is the owner of any rights similar to the Disputed Domain Name or that the Respondent is or has been commonly known by the Disputed

Domain Name. On the contrary, the Respondent has indicated that it is prepared to surrender the Disputed Domain Name immediately as it was registered without prior knowledge of the Complainant's alleged prior rights.

In the light of these findings, the Panel does not need to consider whether the Disputed Domain Name has been registered or is being used in bad faith as the conditions set in Paragraphs B11(d)(1)(i) and (ii) (registered without rights or legitimate interest) of the ADR Rules are satisfied.

The Panel's original decision sought to effect the remedies requested by the Complainant. The Panel has subsequently discovered that the original decision indicated that the Disputed Domain Name be transferred to the Complainant, whereas in fact, the remedy sought was revocation.

DECISION

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

The Panel hereby confirms that the Disputed Domain Name should be revoked, and not transferred to the Complainant as originally indicated in the decision.

PANELISTS

Name	**Simon Moran**

DATE OF PANEL DECISION 2007-12-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Respondent registered the domain name «bristolmyerssquibb.eu» on 7th April 2006. The Complainant, Bristol-Myers Squibb Company, established that it had numerous trade mark and trade name rights to the denomination, «Bristol Myers Squibb» within different territories of Europe, since 1993. The Respondent did not contest the Complaint and indicated it was willing to transfer the domain name to the Complainant. The Panel found that the Complainant did have prior rights to the domain name, and without objection by the Respondent, and given that Paragraphs B11(d)(1)(i) and (ii) of the ADR Rules were satisfied, duly ordered the transfer of the domain name to the Complainant.

The Panel subsequently confirmed to EURID that the domain name should in fact be revoked and not transferred to the Complainant, and amended the original decision to this effect.