Panel Decision for dispute CAC-ADREU-004872

Case number	**CAC-ADREU-004872**
Time of filing	**2007-12-27 09:02:43**
Domain names	**greenies.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Mars UK, Daniel Royle**

Respondent

Organization / Name	**UK Domain Developers, Ltd, Web Master**

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

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FACTUAL BACKGROUND

The Complainant is Mars UK Limited, a company registered in England. The Complainant's ultimate parent company is Mars, Incorporated ("Mars"). In 2006 Mars acquired S&M NuTec, a manufacturer of pet care products and whose best known brand is GREENIES.

Since that date S&M NuTec has been selling its GREENIES range of products in Europe through the Mars group of companies, including the Complainant. The Complainant claims the GREENIES products are sold throughout the European Union with substantial sales in Austria, Belgium, Denmark, France, Greece, Italy, Netherlands, Spain, Sweden and the United Kingdom.

S&M NuTec, LLC is the registered owner of Community Trade Mark No 002620391 dated 4 August 2003 for the mark GREENIES in class 31 (for pet food, foodstuffs for animals and fodder) and Community Trade Mark No 003618378 dated 21 April 2005 for the mark GREENIES in class 18 (for clothing and apparel for pets).

Pursuant to an Intellectual Property License Agreement dated 30 November 2007 (the "License Agreement"), the Complainant is licensed by S&M NuTec, LLC to use the registered and unregistered rights of S&M NuTec in the trade mark GREENIES, including the Community Trade Mark No 003618378, in the United Kingdom in relation to goods and services covered by such rights.

The Complainant claims that sales in the European Union in respect of the GREENIES pet care products were over US$2,200,000 in 2006, with sales in the UK in 2006 being over US$240,000. In addition, the Complainant claims significant resources have been spent promoting the GREENIES products at European dog shows, including Crufts in the UK.

The Respondent is UK Domain Developers Ltd, a company registered in England. The Respondent registered www.greenies.eu (the "Domain Name") on 7 April 2006. The Domain Name resolves to a pay-per-click website. This website currently offers a number of links related to the singer David Crosby. However, the Complainant has provided evidence that at least until 10 July 2007, the website offered links primarily to third parties offering pet food and other pet related products.

The Complainant has not licensed or otherwise permitted the Respondent to use the GREENIES trade mark nor has it licensed or otherwise permitted the Respondent to apply for or use any domain name incorporating this mark, and no evidence has been presented that S&M NuTec has so licensed or permitted the Respondent to use any of the foregoing.

A. COMPLAINANT

The Complainant contends as follows:
a) The 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 community law;
b) The Domain Name has been registered by the Respondent without rights or a legitimate interest in the name;
c) The Domain Name has been registered or is being used in bad faith; and
d) The Domain Name should be transferred to the Complainant.

B. RESPONDENT

No Response has been received from the Respondent in respect of the Complaint.

DISCUSSION AND FINDINGS

The Respondent has failed to submit any Response to the Complaint. However, in accordance with Paragraph 10(a) of the ADR Rules, the Panel proceeds to a decision on the Complaint as follows.

It is the decision of the Panel that the Complainant has satisfied the criteria set out in Paragraph 11(d) of the ADR Rules and that the disputed Domain Name should be transferred to the Complainant.

The Complainant has established rights to the name GREENIES in respect of which a right is recognized or established by national law and/or community law, based on being an authorized licensee of, among other rights, the registered Community Trade Mark No 003618378 pursuant to the License Agreement dated 30 November 2007.

The registered Community Trade Mark which is part of the subject matter of the licence granted to the Complainant under the License Agreement was registered prior to the Respondent's application for the Domain Name in dispute.

The disputed Domain Name greenies.eu is identical to the registered Community Trade Mark GREENIES which is licensed to the Complainant.

On the evidence made available to the Panel and in the absence of any Response from the Respondent, it would appear that the Respondent does not have any rights or legitimate interest to the disputed Domain Name. There is no evidence that the Respondent is commonly known by the Domain Name. Further, there is no evidence to demonstrate that the Respondent is making a legitimate and non commercial use of the disputed Domain Name without intent to confuse consumers. To the contrary, the fact that the Respondent used the disputed Domain Name up until at least July 2007 to provide links to other websites for pet related products infers that the Respondent attempted to confuse consumers into believing that the Respondent's website was authorised or otherwise connected with the GREENIES range of pet care products sold by the Complainant and other members of the Mars group.

The Panel also agrees that that there is evidence to infer that the disputed Domain Name has been registered or used in bad faith. Given the distinctive character of the Complainant's mark, it is very unlikely that the Respondent coincidentally chose and registered the Domain Name without reference to or knowledge of the GREENIES trade mark or brand. Further, the fact that the disputed Domain Name was initially used by the Respondent in respect of a website which contained links to other websites for pet related products infers that the use of the Domain Name by the Respondent was designed to confuse members of the public using the internet and divert internet users for commercial gain to the Respondent's website. These circumstances infer registration or use in bad faith.

DECISION

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

PANELISTS

Name	**Ranald Robertson**

DATE OF PANEL DECISION 2008-05-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is Mars UK Limited, a company registered in England. The Complainant's ultimate parent company, Mars, Incorporated, acquired S&M NuTec, a manufacturer of pet care products and whose best known brand is GREENIES, in 2006.

Since that date S&M NuTec has been selling its GREENIES range of products in Europe through the Mars group of companies, including the Complainant. The Complainant claimed that the GREENIES products are sold throughout the European Union with substantial sales in Austria, Belgium, Denmark, France, Greece, Italy, Netherlands, Spain, Sweden and the United Kingdom.

S&M NuTec, LLC is the registered owner of Community Trade Mark No 002620391 dated 4 August 2003 for the mark GREENIES in class 31 (for pet food, foodstuffs for animals and fodder) and Community Trade Mark No 003618378 dated 21 April 2005 for the mark GREENIES in class 18 (for clothing and apparel for pets).

Pursuant to an Intellectual Property License Agreement dated 30 November 2007 (the "License Agreement"), the Complainant is licensed by S&M NuTec, LLC to use the registered and unregistered rights of S&M NuTec in the trade mark GREENIES, including the Community Trade Mark No 003618378, in the United Kingdom in relation to goods and services covered by such rights.

The Respondent, UK Domain Developers Ltd, registered www.greenies.eu (the "Domain Name") on 7 April 2006. The Domain Name resolves to a pay-per-click website. This website currently offers a number of links related to the singer David Crosby. However, the Complainant provided evidence that at least until 10 July 2007 the website offered links primarily to third parties offering pet food and other pet related products.

The Complainant contended that:
a) The 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 community law;
b) The Domain Name has been registered by the Respondent without rights or a legitimate interest in the name;
c) The Domain Name has been registered or is being used in bad faith; and
d) The Domain Name should be transferred to the Complainant.

The Respondent failed to file a Response to the Complaint.

In relation to the above contentions the Panel held as follows:

a) The Complainant had established rights to the name GREENIES in respect of which a right is recognized or established by national law and/or community law, based on being an authorized licensee of, among other rights, the registered Community Trade Mark No 003618378 for GREENIES pursuant to the License Agreement dated 30 November 2007.

b) The disputed Domain Name greenies.eu was identical to the registered Community Trade Mark GREENIES which was licensed to the Complainant.

c) On the evidence made available to the Panel and in the absence of any Response from the Respondent, it appeared that the Respondent did not have any rights or legitimate interest to the disputed Domain Name.

d) The Panel also agreed that on the evidence made available it could be inferred that the disputed Domain Name had been registered or used by the Respondent in bad faith. Given the distinctive character of the Complainant's licenced mark, it was very unlikely that the Respondent coincidentally registered the Domain Name without knowledge of the GREENIES trade mark or brand. Further, the fact that the disputed Domain Name was initially used by the Respondent in respect of a website which contained links to other websites for pet care products inferred that the use of the Domain Name by the Respondent was designed to confuse members of the public using the internet and divert internet users for commercial gain to the Respondent's website. These circumstances inferred registration or use in bad faith.

e) It was the decision of the Panel that the Complainant satisfied the criteria set out in Paragraph 11(d) of the ADR Rules and that the disputed Domain Name should be transferred to the Complainant.