Panel Decision for dispute CAC-ADREU-004879

Case number	**CAC-ADREU-004879**
Time of filing	**2008-01-03 11:55:27**
Domain names	**sandvikcoromant.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Aktiebolaget Sandvik Coromant, Lena Gillström**

Respondent

Organization / Name	**Mikael Pirhonen**

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

The Panel is not aware of any other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a company within the Sandvik group and the trade name was registered on June 13, 1983 (printout from the Swedish companies Registry provided as Annex 4 of the Complaint).

One of the companies within the Sandvik Group – besides the Complainant – is Sandvik Intellectual Property AB, proprietor of the Swedish Trademark Registration No 55 744 COROMANT registered on March 1, 1942 and the Community Trademark Registration No 002423622 COROMANT registered on April 24, 2003.

The Respondent registered the disputed domain name on August 10, 2007, however no specific information is provided about the Respondent's business activities (apart from what is mentioned below under "Parties' Contentions: Complainant).

Upon receipt of the Complaint, the Case Administratior notified the Complainant of the following Deficiencies in the Complaint: i) the identification of the Respondent was insufficient, and ii) the Complaint was not filed in the the language of Respondent's registration agreement for the disputed domain name (ADR rules A3(a)).

On January 21, 2008, the Complainant submitted a Complaint amended in respect of the deficiencies identified.

The formal date of the Commencement of the ADR Proceeding was set to February 14, 2008.

The Respondent did not respond, and a Notification of Respondent's Default was issued on April 29, 2008.

On May 5, 2008, Mr P-E H Petter Rindforth was appointed as the panelist in this case. The Projected Decision Date was set to June 5, 2008.

A. COMPLAINANT

The Complainant states that it is one of the world's leading manufacturers of cutting tools for the metalworking industry, with more than 25,000 products, and that the Sandvik Group is represented in 130 countries with 42 000 employees and annual sales of approximately SEK 72 billion.

Complainant refers to Section 2 and 3 of the Swedish Trade Names Act, claiming that it has, since 25 years, an exclusive right to the

trade name Aktiebolaget Sandvik Coromant in Sweden. The Complainant argues that the disputed domain name is identical to the said trade name.

The Complainant further refers to the trademark rights of another company within the Sandvik Group - Sandvik Intellectual Property AB – and its trademark registrations for COROMANT, informing that the said trademark is used for the products and services supplied by the Complainant. According to the Complainant, COROMANT has for a long time constituted a well-known trade mark which has acquired a substantial goodwill.

The Respondent has no rights or legitimate interests in respect of the <sandvikcoromant.eu> as Complainant has not given the Respondent permission to register the domain name, the Respondent has no trademark or trade name corresponding to the domain name, is not using the domain name for any business or for providing information of any kind, nor is the Respondent commonly known under <sandvikcoromant.eu>.

The Complainant argues that it is obvious that the disputed domain name is used to harm the Complainants reputation and business. Previously, a person who entered the domain name on the web was directed to a website under the domain name http://www.myfetishdiary.com/hosted/011/004.jpg. Now the <sandvikcoromant.eu> is directed to the website of the company Atlas Copco, a competitor to the Complainant.

In the beginning of August 2007, the Complainant discovered that someone offered to sell the domain names <sandvikcoromant.eu> and <coromant.info> on one of the major Swedish sites for selling and buying goods on the Internet.

When the Complainant contacted the Respondent he offered Complainant to buy the domain names for a price of SEK 150,000. The Complainant concludes that the Respondent systematically deals with the selling of domain names identical or similar to well known companies trade marks and trade names.

The Complainant sent a cease and desist letter to the Respondent on August 10, 2007, informing on Complainant's rights to the name and demanding the transfer of the domain name to the Complainant. Respondent did not reply, but pointed <sandvikcoromant.eu> first to to a pornographic picture and then to the webpage of a competitor to the Complainant.

The Complainant requests that the Panel issue a decision that the domain name <sandvikcoromant.eu> be transferred to the Complainant.

B. RESPONDENT

The Respondent did not respond.

DISCUSSION AND FINDINGS

In order to render a decision, the Panel has to establish whether the conditions of Article 21(1) of Regulation (EC) No. 874/2004 ("the Regulation") are satisfied.

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."

Established Rights:

Article 10(1) lists as relevant prior rights, inter alia, registered national and Community trademarks and, where they are protected under national law, trade names, business identifiers and company names.

The Complainant's registered company name is Aktiebolaget Sandvik Coromant. "Aktiebolaget" is (although not explained by the Complainant) the Swedish equivalent to "Limited", indicating the judicial form of the association. As stated by the Complainant, the name of a registered aktiebolag is protected by Swedish law and accordingly, the Panel finds that the Complainant has proved its rights to the company name Aktiebolaget Sandvik Coromant, and that this right is recognizable under the meaning of Article 10(1) of the Regulation.

The Complainant also refers to the trademark COROMANT, owned by Sandvik Intellectual Property AB, "one of the companies within the

Sandvik Group". The Panel has no reason to doubt that the Complainant and Sandvik Intellectual Property AB are associated companies (having the same business address, etc). However, the Complainant is not the registered owner of the trademark COROMANT, and the Complainant has not filed any evidence regarding the exact nature of the affiliation with the trademark owner. See ADR Case No 04438 Interactive Brokers (U.K.) Ltd, Flavio Iten vs Georg Gottfried ("The USA company Interactive Brokers LLC and the Complainant are two legally-distinct and separate entities, and the rights of one cannot be automatically expanded to another"). The pure statement that the two companies are within the same group does not qualify as proof of the rights mentioned in Article 10(1) of the Regulation.

In order to be able to refer to the said trademark as a prior right, the Complaint should have been filed by the registered trademark owner (alone or jointly with the present Complainant).

In summary, the Panel finds that the Complainant has failed to prove any rights in the trademark COROMANT, but have successfully proved its rights to the company name Aktiebolaget Sandvik Coromant.

Identical or confusingly similar?

Having acknowledged that the Complainant has established prior rights to the company name Aktiebolaget Sandvik Coromant, the Panel has to decide whether the disputed domain name is identical or confusingly similar to Complainant's company name.

The word "Aktiebolaget" (see above) is a non-distinctive part of the company name and is therefore excluded from the comparison. It is well-established that the TLD extension of a domain name, in this case ".eu", does not affect the domain name for the purpose of determining whether it is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (see Case No. 00283, lastminute.eu).

Accordingly, <sandvikcoromant> shall be compared to "Sandvik Coromant".

The Panel finds that the disputed domain name is identical to the Complainant's company name.

Rights or legitimate interest?

The Complainant contends that the Respondent has no permission to register the domain name, has no trademark or trade name corresponding to the domain name, is not using the domain name for any business or for providing information of any kind, and is not commonly known under the disputed domain name.

In lack of any Response from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of <sandvikcoromant.eu>.

Registered or used in bad faith?

Although it is not necessary to establish whether the disputed domain name is registered or used in bad faith, the Panel wishes to comment briefly also on this requirement:

The Complainant is a well known Swedish company, with a distinctive company name. The Respondent is a Swedish citizen and should as such have been well aware of the Complainant's rights to its company name by the time of the registration of the domain name.

The Respondent has offered <sandvikcoromant.eu> for sale, for a sum largely exceeding the cost for registration. When contacted by the Complainant, the Respondent pointed the domain name to i) pornographic material, and later ii) to the site of a competitor of the Complainant.

Therefore, the Panel concludes that <sandvikcoromant.eu> was chosen with the Complainant in mind and that the domain name was both registered and used 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 SANDVIKCOROMANT be transferred to the Complainant.

PANELISTS

Name	**Petter Rindforth**

DATE OF PANEL DECISION 2008-06-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant's registered Swedish company name is Aktiebolaget Sandvik Coromant, the part "Aktiebolaget" referring to the company type. The disputed domain name <sandvikcoromant.eu> is considered identical to Complainant's company name.

The Respondent offered <sandvikcoromant.eu> for sale on one of the major Swedish auction sites, and when contacted by the Complainant, Respondent demanded SEK 150 000 for the disputed domain name plus another domain name related to the Complainant. Respondent has also directed the domain name to a pornographic site and later to the web site of one of Complainant's competitors in Sweden.

Respondent did not respond to the Complaint and has thus not contested the allegations of the Complainant.

The Panel finds that the Respondent has no rights or legitimate interest in the domain name and that <sandvikcoromant.eu> is registered and used in bad faith.