Panel Decision for dispute CAC-ADREU-005092

Case number	CAC-ADREU-005092
Time of filing	2008-10-21 09:07:04
Domain names	chupachupswatches.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Perfetti Van Melle S.p.A., Alessandro Biraghi

Respondent

Organization / Name	MyInternet Media Ltd., N/A

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

To the knowledge of the Panel, there are no other legal proceedings pending or decided that relate to the domain name chupachupswatches.eu (“the Domain Name”).

FACTUAL BACKGROUND

Complainant is the owner of a number of trademarks CHUPA CHUPS. A list of Community Trademark registrations corresponding and/or containing the CHUPA CHUPS trademark is enclosed with the complaint.

The CHUPA CHUPS community trademark No. 2271138 for goods of international class 14 was registered on november 25, 2002

The domain name chupachups.eu was registered on April 7, 2006.

A. COMPLAINANT

Complainant contends that it is the owner of many trademark registrations and applications for CHUPA CHUPS. In order to prove it, Complainant has enclosed to the complaint a list of CHUPA CHUPS Community Trademarks filed and/or registered in its name in particular for confectionery products but also for good of international class 14 namely watches and jewellery.

That the mark is made up of the Complainant's registered trademark CHUPA CHUPS and the word WATCHES, thus creating a high risk of confusion for the public. That this risk is increased by the fact that Complainant's trademark CHUPA CHUPS is registered and used by the Complainant also on gadgets and promotional items such as watches. Indeed, the CHUPA CHUPS trademark is licensed to a watch manufacturer.

That Complainant has owned the domain names CHUPACHUPSWATCHES.BIZ, CHUPACHUPSWATCHES.ORG, CHUPACHUPSWATCHES.INFO, CHUPACHUPSWATCHES.NET and CHUPACHUPSWATCHES.COM since 2002.

That the Respondent has not been commonly known by the domain name.
That Respondent has no rights to the domain name, has no relationship with the Complainant and has never been authorised to use the trademark CHUPA CHUPS by the Complainant.

That the Respondent has registered the domain name in bad faith with the intent to attract Internet users, expecting to reach a website corresponding to the Complainant's products, to another variety of services by creating a likelihood of confusion with the Complainant's trademark.

B. RESPONDENT

The Respondent did not file a reply.

DISCUSSION AND FINDINGS

To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Commission Regulation (EC) No. 874/2004 have been complied with. That paragraph reads as follows:

"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 recognized 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."

In addition, Article 22(10) of the Regulation and Paragraph B10(a) of the ADR rules provide that:

“In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party”.

The Complainant has provided sufficient evidence that it is the proprietor of many trade mark registrations for the name CHUPA CHUPS, which were registered before the contested domain name.

The domain name CHUPACHUPSWATCHES.EU is a combination of the CHUPA CHUPS trademark and the generic word WATCHES.

This panel is of the opinion that, as previously considered in numerous decisions, the addition in a domain name of a generic, descriptive and/or geographic term to a trademark, is not sufficient to avoid confusion. In this sense WIPO Overview of WIPO Panel Views on Selected UDRP Questions where: «Confusing similarity has been found because the domain name contains a trademark and a dictionary word.»

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

The Complainant has further asserted that the Respondent is not known by the name and does not hold any exclusive rights or rights of any nature to the Domain name.

These assertions are not contradicted by the Respondent. Should the Respondent have rights or legitimate interests to the domain name, the Panel assumes that it would have advised the Panel of the same. As no response was filed, the Panel therefore accepts that the Respondent does not have rights or legitimate interests to the contested domain name.

In the absence of any submission on the issue from the Respondent, the Complainant has satisfied the requirements of Article 21(1)(a). It is therefore not necessary to examine the Complainant’s assertion of the Respondent’s 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 CHUPACHUPSWATCHES be transferred to the Complainant

PANELISTS

Name	**Dr. Fabrizio Bedarida**

DATE OF PANEL DECISION 2009-02-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the holder of many CHUPA CHUPS Community Trade Mark registrations and alleges that the Respondent does not have rights or legitimate interests to the domain name.

The Panel finds that the addition in the domain name of the generic word WATCHES to the registered trademark CHUPA CHUPS does not avoid confusion. The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

In the absence of any submission on the issue from the Respondent, the Complainant's assertion of no rights or legitimate interest on the part of the Respondent is accepted.

It is therefore not necessary to examine the Complainant’s assertion of the Respondent’s bad faith.

Consequently, the domain is ordered to be transferred to the Complainant.