Panel Decision for dispute CAC-ADREU-005118

Case number	CAC-ADREU-005118
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Domain names	byronadvertising.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Byron Publicity Limited, Bryon Publicity

Respondent

Organization / Name	Olaf Fantenhof

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 disputed domain name byronadvertising.eu ("the Domain Name").

FACTUAL BACKGROUND

The Complainant trades in advertising, media buying, on-line marketing and public relations.

The Complainant is generally known as Byron and has a number of trading divisions including Bryon Advertising Ltd which specialises in various advertising activities. The Complainant registered the domain name byronadvertising.co.uk on 28 November 2001 and trades on the internet using that domain name. The Complainant does not have any registered trade mark rights (whether in the name Bryon Advertising or otherwise).

The Complainant has established that the Respondent has effectively cloned the Claimant's website. The cloned website is at the site of the Domain Name. Although the Claimant has no registered rights, it asserts that it has unregistered rights in various names which entitle it to relief under the applicable Rules, as are more particularly set out below.

A. COMPLAINANT

In support of its contentions the Complainant refers to Article 21 of the Public Policy Regulation which provides that a registered domain name shall be subject to revocation where that name is identical or confusing 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 the name has either been registered by its holder without rights or a legitimate interest in the name or it has been registered or is being used in bad faith.

Article 10 (1) in turn provides that prior rights shall include, amongst other matters, unregistered trade marks and business identifiers. In this respect, the Complainant contains that (although it has no registered trade marks) the names in respect of which it has unregistered rights include the trading name Byron Advertising, the domain name byronadvertising.co.uk and the trading name Byron.

The Complainant contends that these names denote the Complainant and its services and that it has common law rights in the goodwill and reputation which attaches to the names. It says that in the UK such goodwill and reputation is protected under the law of passing off and, in that of other member states, by the laws of unfair competition.

In further support of this contention the Complainant has appended to its Complaint details of the its website which, it says evidence of use of all of the names in which it claims unregistered trade mark rights. It contends further that its annual turnover in the UK under the name Bryon Advertising Limited has been in excess of £10 million for the last 3 years and it has produced consolidated accounts in

support of that contention.

Moreover, the Complainant says that there would have been no point in the Respondent registering the domain name and cloning the Complainant's website if the Complainant did not have substantial goodwill and reputation in its trading names.

On this basis, the Complainant contends that the Domain Name is:

1. identical to or confusingly similar to the trading name Bryon Advertising

2. identical to or confusingly similar to the domain name byronadvertising.co.uk

3. confusingly similar to the trading name Bryon and the company name Byron Publicity Ltd.

In support of its contention that the Respondent has no rights or interest in the Domain Name and the Domain Name has been registered or is being used in bad faith the Complainant says that the Respondent has provided a number of false details in relation to the Domain Name. It asserts that:

1. The Registrant's name is probably fictitious
2. The address given for the Registrant in the "whois" search conducted through EURid is that of the Complainant
3. The telephone contact details for the Registrant are probably false since the country code provided does not exist.

IThe Complainant contends further that the Domain Name has been registered by the Registrant without rights or legitimate interest in the name because the Respondent has no connection with the Complainant and there are no known circumstances which demonstrate the Respondent's rights or legitimate interests.

Lastly, the Complainant contends that the Domain Name has been registered and used in bad faith. In this respect the Complainant draws attention to Article 21.3 (d) of the Public Policy Rules which stipulates that bad faith may be demonstrated if the domain name is intentionally used to attract internet users for commercial gain to the holder of a domain name website or other on-line location by creating a likelihood of confusion with a name on which a right is recognised or established by national and community law, such likelihood arising as to the source, sponsorship affiliation or endorsement of the website or location of a product or service.

The Complainant contends that the domain name has been registered and used in bad faith because of the circumstances surrounding the registration of the domain name, the cloning of the Complainant's website and the alteration of the contact details on the website. The Complainant asserts that the Registrant's name is to obtain goods or services or credit by pretending that he or she is the Complainant.

For these reasons, the Complainant seeks transfer of the Domain Name or alternatively revocation.

B. RESPONDENT

The Respondent has failed to comply with the deadline indicated in the notification of Complaint and was informed of such default on 19th September 2008. Paragraph 10 of the ADR Rules provides that in these circumstances a failure to comply by the Respondent can be treated as grounds to accept the claims of the other party. Nonetheless, the Complainant's evidence must still be properly evaluated in accordance with the Procedural Rules.

DISCUSSION AND FINDINGS

Article 11 d (1) of the ADR Rules provides that the Panel shall issue a decision granting the remedies requested under the procedural rules if the Complainant can establish that;

(i) the domain name in issue is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or community law and:

(ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the domain name has been registered or is being used in bad faith

Rights in the name/identical and confusingly similar

Based on the information provided by the Complainant the Panel accepts that the Complainants has rights in the name Byron and Byron Advertising. It accepts (in relation to, at least, Bryon Advertising) that the Domain Name is identical or confusingly similar to this name.

It is sensible for the Panel to look with care at the extent of unregistered rights in a name in the absence of registered rights which are plainly easier to establish. Nonetheless, having regard to the content of the Complaint, the absence of any contrary contentions by the Respondent and the content of the Complainant's website, the Panel finds that such rights exist in, at least, the UK and would be capable of founding an action to restrain unregistered trade mark infringement ("passing off"). Accordingly, the first element of the relevant Article is made out.

Legitimate interest

The Respondent having declined to file any response from the Complaint there is no evidence before the panel to suggest that the Respondent has any rights or legitimate interest in the Domain Name. Having regard to the circumstances of the registration set out above, it is, to say the least, improbable that such rights exist. The Panel accordingly finds that the Respondent has no rights or legitimate interest in the Domain Name.

Bad faith

The circumstances of the Respondent's registration set out above are, to say the least, suspicious. The provision of erroneous "whois" data coupled with the establishment of a website which is evidently identical to that of the Complainant raises a strong case that the grounds for bad faith as defined in Article 21.3 (d) of the Public Policy Rules above are made out. The Panel accordingly finds that the domain name has been registered by the Respondent 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 BYRONADVERTISING be transferred to the Complainant

PANELISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2008-10-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant Bryon Publicity Ltd seeks transfer to it of the Domain Name byronadvertising.eu. No response was filed by the Respondent to the Complaint. The Panel has found that the Complainant had rights and interests in the Domain Name, as the Domain Name was identical or confusingly similar to a name in which it had rights. The Panel has also found that the Respondent has no rights or legitimate interest in the disputed Domain Name and that it was registered in bad faith.

The Domain Name is accordingly to be transferred to the Complainant.