Panel Decision for dispute CAC-ADREU-005546

Case number	**CAC-ADREU-005546**
Time of filing	**2010-01-11 09:53:38**
Domain names	**alkostore.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Alko Oy**

Respondent

Organization / Name	**European Investment Group Ou, Valev Visnapuu**

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant Alko Oy is a state-owned Finnish company with the sole right in Finland to the retail sale of alcoholic beverages over 4.7 cent of alcohol.

2. The Complainant is the proprietor of a number of Finnish and European Community trademark registrations for or including the mark ALKO and a trade name Alko Oy.

3. On 16 October 2009 the alkostore.eu domain name was registered by the Respondent.

4. The Respondent European Investment Group Ou is company based in Tallinn, Estonia.

5. The Respondent does not have any apparent rights or legitimate interests in the ALKOSTORE name.

6. The Complainant initiated these ADR proceedings in order to transfer the disputed domain name to itself.

7. The Respondent failed to submit a response to the complaint.

A. COMPLAINANT

1. The Complainant contends that the disputed domain name is confusingly similar to a name in respect of which a right is recognized by national and Community law, since the Complainant is the proprietor of a number of trademark registrations in the ALKO word mark and device mark including the mark ALKO. In addition, the Complainant is the owner of the company name Alko Oy, “Oy” being the indicator of the company form.

2. The Complainant bases its complaint on the fact the contested domain name consist only of the Complainant’s company name and trademark, added with a generic word “store”, which word does not have a distinctive character per se in the domain name. The Complainant contends that adding a generic term to a protected name of does not remove or even lessen the similarity.

3. The Complainant further contends that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name, since the Respondent does not have any rights to the name ALKO or to ALKOSTORE and the disputed domain should, therefore, be transferred to the Complainant.

4. The Complainant contends that the domain name is also registered and being used in bad faith and should be transferred to the Complainant. The claim is based on the fact that the Respondent is using the ALKO word mark and device mark on its website, together with misleading statements, trying to pass off as the Complainant.

B. RESPONDENT

The Respondent has not submitted of a Response to the complaint.

DISCUSSION AND FINDINGS

Preliminary issues

1. Even as the Respondent has not complied with the time period established by the ADR Rules to file a response to the Complaint, and has in fact failed to submit a response altogether, the Panel shall proceed to a decision on the Complaint.

2. The Complainant is a Finnish company, incorporated and based in Finland. In accordance with Regulation (EC) No 733/2002 Article 4(2)(b)(1), companies having a registered office in the Community may own a .eu top level domain name.

Confusing similarity

3. Article 21(1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 states that a registered domain name shall be subject to revocation 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 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.

4. The Complainant has submitted evidence which shows that it is the proprietor of a number of Finnish and Community trademark registrations for the ALKO word and device mark. In addition, the Complainant is the proprietor of the trade name Alko Oy, “Oy” being the indicator of the company form in the Finnish language.

5. The disputed domain name reproduces the Complainant’s registered trademark and trade name in its entirety, added with a generic word “store”. Adding a generic and non-distinctive element to a protected name does not remove or indeed even lessen the confusing similarity between the disputed domain name and the Complainant’s registered rights, but rather informs the internet user that the website where the disputed domain name points is a place where the products of ALKO are for sale.

6. The Panel finds that the domain name alkostore.eu is confusingly similar with the Complainant's trademark and trade name rights. The Panel’s position is in line with prior case law, according to which adding a non-distinctive element to a trademark of another has not been sufficient in differentiating the domain name from the rights of another. In this respect, the Panel refers to CAC case No. 4337 (enterprisecarrental.eu), case No. 4345 (merckgroupe.eu), Case No. 4319 (airfranceairlines.eu).

Right or legitimate interest

7. The Panel has failed to find any rights or legitimate interests on the part of the Respondent in the disputed domain name. The Respondent’s trade name does not contain any elements of the disputed domain name nor has any evidence been brought forward to the Panel by the Respondent showing that they have a right or a legitimate interest in the disputed domain name.

8. The Panel finds that the disputed domain name has been registered by the Respondent without rights or legitimate interests in the name.

Bad faith

9. Even when it is sufficient for the Panel to find that the disputed domain name is confusingly similar with the Complainant’s rights and that the Respondent does not have rights or legitimate interests in the disputed domain name, the Panel proceeds to consider the bad faith element of the registration.

10. Article 21(3) of the Regulation 874/2004/EC states that bad faith may be demonstrated, where

[…]

(b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) a pattern of such conduct by the registrant can be demonstrated; or
(ii) the domain name has not been used in a relevant way for at least two years
from the date of registration;

(c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(d) the domain name was 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/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name.

[…]

11. The Respondent has registered and used a domain name, which is confusingly similar with the Complainant's rights and evidence has been submitted that the Respondent has been using the registered trademark ALKO, both in its word and device mark form, on the website where the disputed domain name points to. It would even appear that the Respondent is trying to pass off as the Complainant itself, to attract internet users for commercial gain by creating a likelihood of confusion between the said parties. Various statements on the website in Finnish, such as "Welcome to Alko online store!", "Let us know how Alko is doing!" go to underline this finding.

12. The Panel finds that both the disputed domain name and the registered trademarks used on the site, together with statements used to confuse Finnish customers as to the identity of the Respondent, are clear indications that the Respondent has been acting in bad faith, pursuant to 21(3)(d) of the Regulation 874/2004/EC.

DECISION

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

PANELISTS

Name	**Mr. Nils Jan Henrik af Ursin**

DATE OF PANEL DECISION 2010-04-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. The Complainant Alko Oy is a state-owned Finnish company with the sole right in Finland to the retail sale of alcoholic beverages over 4.7 cent of alcohol. The Complainant is the proprietor of a number of Finnish and European Community trademark registrations for or including the mark ALKO.

2. On 16 October 2009 the alkostore.eu domain name was registered by the Respondent, European Investment Group Ou, a company based in Tallinn, Estonia.

3. The Panel found that the disputed domain name alkostore.eu was confusingly similar with the Complainant's rights in the trademark and trade name ALKO since the "store" element in the domain name was not a distinctive element.

4. Also, the Respondent did not have any apparent rights or legitimate interests in the ALKOSTORE name and had acted in bad faith since they used on the website the Complainant's registered trademarks and other statements to confuse customers as to the identity of the Respondent.

5. The disputed domain name was transferred to the Complainant.