Panel Decision for dispute CAC-ADREU-005580

Case number	**CAC-ADREU-005580**
Time of filing	**2009-12-28 13:17:30**
Domain names	**40over40.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Eli Lilly and Company Limited**

Respondent

Organization / Name	**Ian Malley**

FACTUAL BACKGROUND

The Complainant is a large pharmaceutical corporation which has used the trade mark 40over40 in the UK continually since 23 June 2008 in the field of erectile dysfunction. It also owns a registered trade mark for CIALIS.

The Respondent registered the DIsputed Domain Name on 2 September 2009 and is using it in relation to a web site concerning erectile dysfunction which links to an online pharmacy selling "generic CIALIS" which is not of the Complainant's manufacture.

A. COMPLAINANT

The Complainant has been using the trade mark 40 over 40 in the UK continually since 2008 in the field of erectile dysfunction and owns a number of domain names including this mark including 40over40.com and 40over40.co.uk. The Complainant has invested £3,415,000 in the 40over40 name from July 2008 to September 2009. The Complainant has passing off rights in the name 40over40 recognised by the national law of the UK and the Complainant owns reputation and goodwill in the UK in this name.

The Respondent is using the Disputed Domain Name which apart from the generic suffix .eu is identical to the Complainant's 40over40 name for a web site which relates to erectile dysfunction the same subject as the Complainant's 40over40 web site. The Respondent's web site links to an online pharmacy which sells "generic Cialis". CIALIS is a registered trade mark of the Complainant and it is being used to promote a generic drug not manufactured by the Complainant. A box of Cialis pills appears on the site and a distinctively shaped pill which imitates the get up of the Complainant's packaging and pills.

The Respondent does not have rights or legitimate interests in the 40over40 name, it is not commonly known by this name and it is not making non commercial or fair use of this name.

The Disputed Domain Name has been registered and is being used in bad faith. It is being used to attract Internet users to the Respondent's web site in circumstances where there is a likelihood of confusion as to the source, sponsorship, afiliation and endorsement of the web site and the goods featured on the site.

Since the filing of this Complaint the Respondent has contacted the Complainant suggesting that they lease the Disputed Domain Name name or purchase it from him.

B. RESPONDENT

The Respondent did not formally respond and is in default.

DISCUSSION AND FINDINGS

The Disputed Domain Name is identical to a name in which the Complainant has unregistered trade mark rights in UK law.

The Respondent has not responded and not given any reason why it is entitled to use the Complainant's 40over40 mark for erectile dysfunction related goods and services. He does not appear to be commonly known by this name, have any permission from the Complainant to use the name or
be using it for a non commercial or fair use. The Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

The Respondent has used the Disputed Domain Name for the same goods and services as the Complainant and has used them on a site with get up similar to the distinctive get up of the Complainant. He has also tried to sell or lease the Disputed Domain Name to the Complainant. As such the Disputed Domain Name has been intentionally used to attract Internet users for commercial gain to a web site in circumstances likely to cause confusion as to the source, sponsorship, affiliation or endorsement of the web site. As such there is no reason for the Panel to decide if the domain name was registered primarily for the purpose of selling to the Complainant The Respondent has registered and used the Disputed Domain Name 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 40OVER40 be transferred to the Complainant

PANELISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2010-03-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Disputed Domain Name is identical to a name in which the Complainant has unregistered trade mark rights in UK law.

The Respondent does not have any rights or legitimate interests in the Disputed Domain Name.

The Respondent has used the Disputed Domain Name in circustances likely to cause confusion as to the origin of his web site and goods and has registered and used the Disputed Domain Name in bad faith.