Panel Decision for dispute CAC-ADREU-005582

Case number	CAC-ADREU-005582
Time of filing	2010-03-01 10:52:57
Domain names	myalli.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	GlaxoSmithKline Services Unlimited, Miss Helen Wheeler

Respondent

Organization / Name	AYDIN BOZKURT

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

Panel is not aware of any legal proceedings which are pending or decided that relate to the disputed domain name.

FACTUAL BACKGROUND

FACTUAL BACKGROUND

1. The Complainant, Glaxo Group Limited and its representative, GlaxoSmithKline Services Unlimited, are part of the GlaxoSmithKline group of companies.

2. Glaxo Group Limited is the registered owner of the trade marks:

MY ALLI, UK Trade Mark Registration No. 2431292, dated 30 August 2006.

MYALLI, Community Trade Mark Registration No. 005780192, dated 22 March 2007.

MYALLI, Community Trade Mark Registration No. 006610232, dated 25 January 2008.

MY ALLI, Community Trade Mark Registration No. 005690797, dated 15 February 2007.

MY ALLI, Community Trade Mark Registration No. 006610034, dated 31 October 2008.

3. Glaxo Group Limited uses the domain name, myalli.com registered on 19 February 2005 in connection with a website supporting its ALLI weight loss product.

4. The Respondent, Aydin Bozkurt registered the domain name MYALLI.eu on 24 May 2007.

PROCEDURAL BACKGROUND

5. The original Complaint was filed on 15 February 2010. The ADR centre notified the Complainant of deficiencies in the Complaint on the 16 March 2010 and the Complainant filed an amended Complaint on 17 March 2010.

6, The Respondent did not submit a response to the Complaint, and on 4 May 2010 the ADR Centre filed a notice of the Respondent's

default.

7. Exercising the general powers of the Panel under Paragraph B7 of the Rules, the Panel requested the Complainant by Non Standard Submission dated 11 June 2010 to respond to issues specifically raised by the Panel and at the same time provided the Respondent with an opportunity to submit a response to the Complainant's further submission.

8. The Complainant filed a Non-standard Submission on 17 June 2010 clarifying that the proper Complainant in this dispute was Glaxo Group Limited (the party named as the Complainant in the body of the Complaint under 'Facts and Legal Grounds' and each Exhibit) and that the GlaxoSmithKline Services Unlimited (the party named as the Complainant on the Complaint form) was the Complainant's authorised representative.

9. The Respondent did not submit any response to the Complainant's further submission in time or at all.

A. COMPLAINANT

The Complainant submits that:

1. The disputed domain name myalli.eu is identical to the prior rights of the Complainant which as defined under Article 10 (1) Commission Regulation (EC) No 874/2004 ('the Regulation') are registered national and community trademarks.

2. The Complainant is the owner of UK trade mark MY ALLI dated 30 August 2006 and the Community Trade Mark MYALLI dated 22 March 2007. The Complainant has other worldwide registrations and applications for the trade marks MY ALLI and MYALLI in addition to its UK and Community trade mark.

3. The Complainant owns the domain names myalli.com registered 19 February 2005 and myalliplan.eu registered 20 March 2008. The Complainant therefore has an established presence on the Internet in relation to these names.

4. The disputed domain name myalli.eu registered on 24 May 2007 is identical to the Complainant's domain name myalli.com and is also identical to the Complainant's earlier trade marks MY ALLI and MYALLI over which it holds exclusive rights.

5. The Respondent has no business relationship or other financial connection to the Complainant or the Complainant's business. The Complainant has not granted a licence or other authorization to the Respondent to use, nor apply for the disputed domain name.

6. The Respondent is offering to sell and is selling ALLI products sourced from the USA to customers within the European Union in breach of European and local national regulatory laws.

7. The disputed domain name takes an unfair advantage of the Complainant's exclusive trade mark rights and is likely to confuse consumers into believing they are accessing the website of the Complainant.

8. The Respondent's domain name as evidenced via the Internet Archive Wayback Machine http://web.archive.org reveals that the domain name was first used in July 2007, approximately one month after the ALLI product was launched in the USA.

9. The Respondent has made unauthorised use of copyright images, registered logos and slogans which are owned by the Complainant and have been taken directly from the Complainant's website myalli.com. This unauthorised use and copying its wording and layout demonstrates an intent to mislead consumers who are likely to believe that they are accessing either the Complainant's website or a website which is authorised, legitimate and safe from a genuine licensee of the Complainant.

10. Under Article 21(3)(d) of the Regulation this act constitutes bad faith on the part of the Respondent as the domain name has intentionally been used to attract Internet users, for commercial gain, to the holder of the domain name website by creating (i) a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law (as set out above under paragraph 4) and (ii) confusion as to the source, sponsorship, affiliation or endorsement of the website.

11. The Complainant wrote to the Respondent on 4 August 2009 requesting the Respondent to cease its illegal activities and use of the domain name. As of 16 December 2009 the domain name is still being actively used by the Respondent in the manner set out above.

12. The contested domain name should be revoked within the meaning of Article 21(1) of the Regulation as it is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, as defined under Article 10(1) of that regulation and because the contested domain name:

(a) has been registered by its holder without rights or legitimate interest in the name;
(b) has been registered or is being used in bad faith.

13. The Respondent has no right or legitimate interest(as defined under Article 21(2)(c) of the Regulation) in the disputed domain name.

The Complainant requests the transfer of the disputed domain name to the Complainant in accordance with Article 22(11) of the Regulation.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

Article 21 of the Regulation provides that a registered domain name shall be subject to revocation where the 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 and where it:

(a) has been registered by its holder without rights or legitimate interest in the name; or

(b) has been used in bad faith.

Once the Complainant has established that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by national law of a member state and/or Community law, the Complainant has only to prove one of the elements set out in Article 21 1. (a) or (b), namely, that it is registered without rights or legitimate interests in the name or has been registered or used in bad faith.

RIGHTS

The Complainant is the registered owner of both UK and Community Trade Mark registrations for MYALLI and MY ALLI which were registered prior to the registration of the disputed domain name.

The Panel finds that the disputed domain name, excluding the .eu suffix, is identical to a name in respect of which the Complainant has rights recognised by national law of a member state and also by law of the European Union by virtue of its UK and Community Trade Mark registrations.

NO RIGHTS OR LEGITIMATE INTERESTS

The Respondent has no business relationship with the Complainant. The Complainant has not granted a licence or other authorisation to the Respondent to use or apply for the disputed domain name.

The Respondent has not filed a Response in time or at all and has not provided any evidence that it has rights or legitimate use of the domain name. Under Article 22(10) of the Regulations, failure of a party involved in an ADR proceeding to respond within the given deadlines may be considered grounds for accepting the claims of the other party. Further, under Rule 10 of the ADR Rules the if the Respondent fails to comply with any time period, the Panel shall proceed to a decision and may consider the failure to comply as grounds to accept the claims of the other party and is entitled to draw such inferences from a default as it considers appropriate.

The Panel finds that the disputed domain name has been registered by its holder without any rights or legitimate interests in respect of the disputed domain name, within the meaning of Article 21 1. (a) of the Regulation.

BAD FAITH

Having determined that the Respondent has no rights or legitimate interest in the disputed domain name it is not necessary to determine whether it has been registered in bad faith as alleged by the Complainant. However, for completeness it is proposed to address this issue.

Under Article 21(3) of the Regulation, bad faith may be demonstrated in a number of ways, including under sub-paragraph(d) where ‘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 by or established by national and /or Community law…, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website …'.

The Respondent is offering to sell ALLI products which are not licensed for sale or use within the European Union. The Respondent has no business relationship with the Complainant and is not licensed to use the Complainant's trade marks, MY ALLI and MYALLI in connection with the disputed domain name or a website using that domain name. The Respondent has not elected to file a Response to the Complainant's assertions that the domain name was registered in bad faith.

The Panel finds, on the evidence submitted, that the disputed domain name was registered in bad faith within the meaning of Article 21 1 (b) of the regulation.

CONCLUSION

The Panel finds that disputed domain name (excluding the .eu suffix) is identical to a name in respect of which the Complainant has rights recognised by national and/or Community law and that the Respondent has no right or legitimate interest in the domain name and (although it is not necessary to do so) the Panel also finds that the domain name is registered in bad faith.

The Panel finds that the registration of the domain name is speculative or abusive as defined in Article 21 of the Regulation and shall be revoked. The Panel also finds that the Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002 and accordingly the Panel directs that the Domain Name should be transferred to the Complainant, Glaxo Group Limited .

DECISION

For all the foregoing reasons, and in accordance with the Rules, the Panel orders that the domain name MYALLI be transferred to the Complainant, Glaxo Group Limited.

PANELISTS

Name	**Veronica Marion Bailey**

DATE OF PANEL DECISION 2010-06-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant seeks the transfer of the domain name myalli.eu. The respondent did not file a response.

Exercising the general powers of the Panel under Paragraph B7 of the Rules, the Panel requested the Complainant by Non Standard Submission to respond to issues specifically raised by the Panel and at the same time provided the Respondent with an opportunity to submit a response to the Complainant's further submission.

The Complainant filed a Non-standard Submission clarifying that the proper Complainant in this dispute was Glaxo Group Limited (the party named as the Complainant in the body of the Complaint under 'Facts and Legal Grounds' and each Exhibit) and that the GlaxoSmithKline Services Unlimited (the party named as the Complainant on the Complaint form) was the Complainant's authorised representative.

The Complainant, has established that the disputed domain name is confusingly similar to the UK and Community Trade Mark registrations for MY ALLI and MYALLI in which it has rights which are recognised by national or Community law.

The Panel finds that disputed domain name (excluding the .eu suffix) is identical to a name in respect of which the Complainant has rights recognised by national and/or Community law and that the Respondent has no right or legitimate interest in the domain name and (although it is not necessary to do so) the Panel also finds that the domain name is registered in bad faith.

The Panel finds that the registration of the domain name is speculative or abusive as defined in Article 21 of the Regulation and shall be revoked. The Panel also finds that the Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002 and accordingly the Panel directs that the Domain Name should be transferred to the Complainant, Glaxo Group Limited.