Panel Decision for dispute CAC-ADREU-005633

Case number	**CAC-ADREU-005633**
Time of filing	**2010-03-02 08:19:16**
Domain names	**majolka.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**ALIMA značková potravina a.s.**

Respondent

Organization / Name	**Perkins a.s.**

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

N/A

FACTUAL BACKGROUND

The Complainant is a Czech company and the owner of the following earlier registered International trade mark Majolka: - ITD Reg. No 615042, date of registration 22.2.1994, covering: mayonnaises and creams de mayonnaises, valid in Austria, Belarus, Germany, Hungary, Poland, Slovenia and Ukraine. The Complainant is also a non exclusive licensee of the following earlier registered Czech National trade mark Majolka: - NTD Reg. No 171453, with priority date 17.6.1991, date of registration 30.9.1992 which was declared famous on 27.9.1994, covering: mayonnaises and creams de mayonnaises. (c)The Complainant forms a Czech company which produces mayonnaises and other groceries.

The Respondent is a Slovak company producing mayonnaises and other groceries. The Respondent registered the disputed domain name on 6.6.2007.

A. COMPLAINANT

The Complainant contends as follows: (a)The Complainant is the owner of the following earlier registered International trade mark Majolka: - ITD Reg. No 615042, date of registration 22.2.1994, covering: mayonnaises and creams de mayonnaises,valid in Austria, Belarus, Germany, Hungary, Poland, Slovenia and Ukraine. (b)The Complainant is non exclusive licensee of the following earlier registered Czech National trade mark Majolka: - NTD Reg. No 171453, with priority date 17.6.1991, date of registration 30.9.1992 which was declared famous on 27.9.1994, covering: mayonnaises and creams de mayonnaises. (c)The Complainant forms a Czech company which produces mayonnaises and other groceries. Czech Republic and other EU countries are the main Complainant´s target market. (d)The Respondent forms a Slovak company producing mayonnaises and other groceries. The Respondent registered the domain name on 6.6.2007. (e)The domain name contains/presents the registered trade mark of the Complainant. (f) The authorized representative of the Complainant wrote to the Respondent on 17 December 2009. This letter explained the rights of the Complainant and demanded the transfer of the domain name under threat of an action, thus providing the Respondent with ample time to comply without the need to resort to the ADR proceedings and put both parties to unnecessary cost. In the Respondent reply on above mentioned notification, The respondent just offered to Complainant the possibility to buy the domain name and therefore, the ADR proceeding have now been filled. (g)The Respondent clearly has no legitimate rights or interests in the domain name and as the mayonnaises products of the Complainant are readily available throughout Europe both in commerce and via the Complainant´s website, The Respondent has taken advantage of the Complainant´s reputation and registered this valuable domain name in 2007 speculatively, thus causing damage and confusion to the Complainant´s established reputation in its “Majolka” mayonnaises products. (h) In addition to Respondents lack of legitimate rights or interests in the domain name, we submit that the Respondent registered the domain name in bad faith. The domain name is an instrument of fraud and thus a tool for committing unfair competition. The Domain name in the hands of the Respondent

must amount to a misrepresentation. Such misrepresentation has caused or is likely to cause damage to the Complainant. In the light of the above, the Complainant hereby requests the transfer of the domain name from the Respondent to the Complainant.

B. RESPONDENT

Respondent did not file a Response.

DISCUSSION AND FINDINGS

1. In accordance with article 22(11) of Regulation 874/2004 (“the Regulation”), the disputed domain name must be revoked or transferred to the Complainant if the Panel finds that its registration is speculative or abusive as defined in article 21 of the Regulation.

2. A registration is speculative or abusive according to article 21 of the Regulation if (a) the domain 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 (b) it has been registered by its holder without rights or legitimate interests, or it has been registered or is being used in bad faith.

3. In accordance with paragraph 10 of the ADR Rules, where a Respondent fails to submit a Response to the Complaint within the time specified in them, the Panel may consider this failure as grounds to accept the claims of the opposite party and shall draw such inferences from the Respondent’s default as it considers appropriate.

4. The Panel finds that the disputed domain name is identical to “MAJOLKA” trademarks held by the Complainant and also to "MAJOLKA" trademark to which the Complainant has rights as a licensee. All these rights pre-date the registration of the disputed domain name.

5. The Panel further finds that the disputed domain name was registered by the Respondent without any rights or legitimate interests. It is obvious from a response-letter from the Respondent to the Complainat's notification of breach of its rights that the Respondent wanted to register the domain name "MAJOLKA" because it is a recognized name for mayonnaise products in the Respondent's and Complianant's countries and nobody else had registered it as .eu domain name. Nevertheless, MAJOLKA is not an unprotected generic term, it is a protected brand with wide recognition and reputation in Slovakia and the Czech Republic. Therefore, the reasons provided by the Respondent cannot establish Respondent's rights or legitimate interests in the disputed term. The Panel has no hesitation in accepting the claims of the Complainant in this regard in the absence of any Response under paragraph 10 of the ADR Rules.

6. It follows that the disputed domain name must be revoked or transferred to the Complainant.

7. Article 22(11) of the Regulation provides that where it is found that the registration is speculative or abusive, the domain name should be transferred to the Complainant if the latter so requests and meets the general eligibility criteria set out in article 4(2)(b) of Regulation 733/2002; and otherwise it should be revoked.

8. The general eligibility criteria set out in article 4(2)(b) of Regulation are: an undertaking having its registered office, central administration or principal place of business within the Community; or an organisation established within the Community; or a natural person resident in the Community.

9. The Complainant is a Czech company and therefore it satisfies the general eligibility criteria.

10. The disputed domain name should therefore be transferred to the Complainant.

DECISION

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

PANELISTS

Name	**Martin Maisner**

DATE OF PANEL DECISION 2010-06-10

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel finds that the disputed domain name is identical to trademarks held by the Complainant and also to trademark to which the

Complainant has rights as a licensee. All these rights pre-date the registration of the disputed domain name.

The Panel further finds that the disputed domain name was registered by the Respondent without any rights or legitimate interests. It is obvious from a response-letter from the Respondent to the Complainat's notification of breach of its rights that the Respondent wanted to register the domain name because it is a recognized name for mayonnaise products in the Respondent's and Complianant's countries and nobody else had registered it as .eu domain name. Nevertheless, the term contained in the domain name is not an unprotected generic term, it is a protected brand with wide recognition and reputation in Slovakia and the Czech Republic. The reasons provided by the Respondent cannot establish Respondent's "rights or legitimate interests" in the disputed term and the Panel therefore accepts the arguments and claims of the Complainant.