Panel Decision for dispute CAC-ADREU-005744

Case number	**CAC-ADREU-005744**
Time of filing	**2010-06-25 09:59:08**
Domain names	**hosting-discounter.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Tiscom Hosting BV, Moore**

Respondent

Organization / Name	**Proxy Service Ltd, Proxy Service Ltd**

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 pending or decided relating to the disputed domain name.

FACTUAL BACKGROUND

The disputed domain name <hosting-discounter.eu> was registered on 26 November 2009 by the Respondent.

The Complainant claims to be the owner of the trademark HOSTINGDISCOUNTER at least in the BENELUX since 2004.

The Complaint was filed on 21 June 2010 in English. The Czech Arbitration Center carried out the formalities examination and ensured that appropriate notifications were sent to the contact details provided by the domain name owner.

The Respondent did not submit any response.

A. COMPLAINANT

Complainant essentially contends that it is the owner of a BENELUX trademark for HOSTINGDISCOUNTER since 2004 (proof of which was submitted with the complaint) and also of the domain name <hostingdiscounter.nl>.

In addition, Complainant claims that the Respondent is using the disputed domain name to provide similar services.

Complainant claims that it is entitled to the disputed domain name and that the registration of the disputed domain name was speculative and abusive.

B. RESPONDENT

Respondent did not submit any response.

DISCUSSION AND FINDINGS

In accordance with Article 21.1 of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration (hereinafter, Regulation 874/2004), a registered domain name shall be subject to revocation where

1.- the disputed domain name is identical or confusingly similar to a name in respect of which a right of the Complainant is recognised or established by national and/or Community law;

2.- the holder of the domain name does not have rights or legitimate interest in it; and

3.- the disputed domain name has been registered or is being used in bad faith.

It should be stated from the beginning that, while the named Respondent is Proxy Service Ltd, this is just a privacy service used by the actual owner of the disputed domain name. The case record shows that Complainant made reasonable efforts to contact the actual owner, but it appears that it chose not to participate in this proceeding. According to the case record, the privacy service confirmed that it had forwarded the communication of Complainant to the actual owner of the domain name. Any reference in this decision to the "Respondent" should be understood to mean the actual owner of the domain name.

1.- The disputed domain name is identical or confusingly similar to a name in respect of which a right of the Complainant is recognised or established by national and/or Community law:

In connection with the first of the above-mentioned conditions, the Complainant has provided the Panel with documentary evidence showing that it has had a registered trademark for the BENELUX countries for the mark "HOSTINGDISCOUNTER" since 2004.

The only difference between the domain name and the trademark of the Complainant is the hyphen and the .eu suffix (which is a technical requirement). The Panel does not consider that the differences are relevant and therefore finds that the disputed domain name is identical or confusingly similar to the Complainant's trademark.

The Panel finds that Complainant has met the first requirement in Article 21.1 of Regulation 874/2004.

2.- The holder of the domain name does not have rights or legitimate interest in the name.

Based on the information available, the Panel considers that the Respondent does not have any right or legitimate interest in the disputed domain name. In particular, Respondent has not come forward with any explanation as to the reasons for registering the domain name. There is no indication that the Respondent is known by the domain name. Further, the Panel has reviewed the website at www.hosting-discounter.eu and all it found was a "Demo Store" with no actual content, no contact details or any other information regarding the service provided. However, the "Demo Store" suggests that the Respondent provides web hosting services for on-line businesses. These services are closely connected to those provided by the Complainant which adds more suspicion to the real motivation of the Respondent in registering the domain name. Such services do not appear to qualify as "non-commercial or fair use".

In view of the above, the Panel finds that none of the circumstances in Article 21.2 of Regulation 874/2004 apply to the present case.

The Panel considers that the Complainant has proven that the Respondent does not have any right or legitimate interest to the disputed domain name and, consequently, that the Complainant has met the second requirement in Article 21.1 of Regulation 874/2004.

3.- The disputed domain name has been registered or is being used in bad faith

Article 21.3 of Regulation 874/2004 establishes a number of circumstances where bad faith may be found. The Panel finds the following circumstances particularly relevant to the present case: (c) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; and (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.

The fact that the services presumably provided by the Respondent under an almost identical domain name are very similar to those provided by the Complainant leads the Panel to believe that either the domain name was registered to disrupt the professional activities of a competitor and/or to intentionally attract Internet users (presumably for commercial gain) by creating a likelihood of confusion with the Complainant's trademark.

In addition, the fact that the Respondent hides itself behind a Whois privacy service and that it has provided no explanation for its behaviour throughout this proceeding, reinforces the Panel's finding of bad faith both in the registration and current use of the domain name.

Taking into account the above-mentioned circumstances, the Panel considers that the only likely explanation for the registration of the disputed domain name is that it was aimed at unfairly competing with (if not directly prejudicing) the Complainant.

Considering all the above, the Panel is of the view that the third element required by Article 21.1 of Regulation 874/2004 is met.

The Panel therefore finds that the registration of the disputed domain name is speculative or abusive as defined in Article 21 of Regulation 874/2004. The Complainant has requested the transfer of the domain name. According to Article 22.11, the domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name HOSTING-DISCOUNTER be transferred to the Complainant

PANELISTS

Name	**José Checa**

DATE OF PANEL DECISION 2010-09-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant provides hosting solutions and domain name registrations under the HOSTINGDISCOUNTER brand and owns the domain name <hostingdiscounter.nl>. The owner of the disputed domain name seems to be providing similar services under the domain name <hosting-discounter.eu>.

The Panel finds - in attention of the evidence available and in particular, to the competing services that Respondent seems to be rendering through the website located as the disputed domain name- that the domain name is identical or confusingly similar to the trademark of Complainant, that Respondent does not have any right or legitimate interest in the domain name and that both the registration and current use of the domain name is in bad faith.

The domain name shall be transferred to the Complainant.