Panel Decision for dispute CAC-ADREU-005962

Case number	**CAC-ADREU-005962**
Time of filing	**2011-03-24 10:05:40**
Domain names	**got-milk.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**The California Milk Processor Board, James**

Respondent

Organization / Name	**MyInternet Media 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

Not applicable

FACTUAL BACKGROUND

The Complainant is The California Milk Processor Board, which is comprised of 11 fluid milk processors in the State of California, USA. According to the Complaint, the Complainant was formed in 1993 for the purpose of promoting the consumption of milk through marketing, advertising, promotion and public relations.

Since 1993, the Complainant has used the GOT MILK? mark to promote the consumption of cow's milk.

The Complainant is the registrant of the domain name gotmilk.com. It is also the proprietor of various registered trade marks for the brand GOT MILK? including, in the European Union, Community Trade Mark number 8527178 ("the CTM") in classes 6, 9, 10, 11, 14, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 30 and 35.

The Respondent is the Registrant of the Domain Name. It has established a website ("the Website") at the site of the Domain Name which contains links to generate pay-per-click revenue.

The Complainant asserts that its registered rights in the brand GOT MILK? entitle it to relief under the applicable Rules, as are more particularly set out below.

A. COMPLAINANT

The Complainant contends that

(1) the Domain Name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law.

In support of its contentions the Complainant refers to its numerous registered trade marks, including the CTM. It also refers to its extensive use of the GOT MILK? mark, which includes television advertisements, and campaigns involving celebrities in the USA and the European Union. The Complainant further attaches evidence of press coverage of its campaigns in France, Sweden, Germany and the UK.

The Complainant says that its first GOT MILK? television advertisement in 1993 was named one of the ten best advertisements of all time in a USATODAY.com poll. It further asserts that in 2005, taglineguru.com named GOT MILK? as the most culturally influential

tagline since the advent of broadcast television. According to sitetrail.com, the estimated number of page views of the Complainant's gotmilk.com website exceed 1.8m annually.

The Complainant contends that the Domain Name is identical or confusingly similar to the CTM. In support of this contention, the Complainant says that the .eu suffix and the addition of a hyphen are not considered relevant differences and cites the decision in ADR 05744 "HOSTING-DISCOUNTER" as authority for that.

AND EITHER THAT;

(2) the Domain Name has been registered by the Respondent without rights or legitimate interest in the name;

In support of this contention, the Complainant says that the Respondent does not satisfy any of the evidential requirements of paragraph B11(e) of the ADR Rules, and has not demonstrated that (1) it has used the Domain Name prior to the ADR procedure for the purposes of offering goods and services; (2) it is commonly known by the name comprised in the Domain Name; or (3) it is making a legitimate and non-commercial or fair use of the Domain Name, without intention to mislead consumers or harm the reputation of the GOT MILK? trade mark. The Complainant contends that the domain name is currently parked, and is being used to generate pay-per-click revenue. It says that Panels have decided in other proceedings that use of a domain name for parking and generation of pay-per-click revenue use does not qualify as fair use under Article 21. 2 (c) EC Regulation No. 874/2004 (ADR 04526 "PLACEMENT", "EMPRUNT", ADR 3976" ABAT", 4337 "ENTERPRISECARRENTAL", 3949 "ACL", 2381 "HAJI"

OR THAT;

(3) the Domain Name has been registered or is being used in bad faith.

The Complainant provides evidence in support of this contention which shows that the home page of the Website included links to pornography, to a link to a competitor of the Complainant, and to a generic offer of the domain name for sale, and continues to include the latter two links.

The Complainant further contends that the Domain Name has been registered in order to prevent the Complainant from registering an .eu domain name, and is part of a pattern of conduct on the part of the Respondent, which has been involved in at least two other .eu ADR cases.

B. RESPONDENT

The Respondent has failed to comply with the deadline indicated in the notification of Complaint and was informed of such default on 1st June 2011.

DISCUSSION AND FINDINGS

Paragraph B 10 (a) of the ADR Rules provides that in these circumstances a failure by a party to comply with any of the time limits established by the Rules may be treated by the Panel as grounds to accept the claims of the other party.

Article B 11 d (1) of the ADR Rules provides that the Panel shall issue a decision granting the remedies requested under the procedural rules if the Complainant can establish that;

(i) the domain name in issue 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:

(ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the domain name has been registered or is being used in bad faith

Rights in the name/identical and confusingly similar:

In addition to the addition of a hyphen and the domain name suffix accepted as differences by the Complainant, the Domain Name also lacks the question mark at the end of Complainant's mark. However, this typographical symbol cannot form part of an internet address as the DNS system is currently configured and does not serve to render the Domain Name dissimilar to the Complainant's marks. Based on the information provided by the Complainant, and on the existence of the CTM, the Panel accepts that the Complainant has rights in

the name GOT MILK?. It accepts that the Domain Name is identical or confusingly similar to this name.

Legitimate interest

The Respondent having declined to file any response to the Complaint, there is no evidence before the Panel to suggest that the Respondent has any rights or legitimate interest in the Domain Name. Having regard to the use of the Domain Name in relation to the Website as set out above, it is, to say the least, improbable that such rights exist. The Panel accordingly finds that the Respondent has no rights or legitimate interest in the Domain Name.

Bad faith

Paragraph 11 (f) (4) of the Rules stipulates that bad faith may be demonstrated if the domain name is 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 community law, such likelihood arising as to the source, sponsorship affiliation or endorsement of the website or location of a product or service.

The use of the Respondent's registration in relation to the Website as described above raises a strong case that the grounds for bad faith as defined above have been made out. There is nothing at all to suggest that the Respondent has had any legitimate commercial motive behind its registration and use of the Domain Name. The Panel accordingly finds that the domain name has been registered by the Respondent in bad faith. It is therefore unnecessary for the Panel to determine whether the additional bases for asserting bad faith made by the Complainant have been made out.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name GOT-MILK be revoked.

PANELISTS

Name	**Antony Gold**

DATE OF PANEL DECISION 2011-06-23

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, The California Milk Processor Board, seeks transfer to it of the Domain Name GOT-MILK.eu. No response was filed by the Respondent to the Complaint. The Panel has found that the Complainant had rights and interests in the Domain Name, as the Domain Name was identical or confusingly similar to a name in which it had rights. The Panel has also found that the Respondent has no rights or legitimate interest in the disputed Domain Name and that it was registered in bad faith.

The Domain Name is accordingly revoked.