

Decision for dispute CAC-UDRP-100133

Case number CAC-UDRP-100133

Time of filing 2010-11-22 15:58:28

Domain names hurтта.com

Case administrator

Name Tereza Bartošková (Case admin)

Complainant

Organization Best Friend Group Oy

Organization Best Friend Denmark A/S

Complainant representative

Organization Berggren Oy Ab

Respondent

Organization Purple Bucquet

OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings which are pending or decided and which would relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

One of the Complainants, Best Friend Denmark A/S, is the owner of two trademarks HURTTA (details below).

FACTUAL BACKGROUND

THE COMPLAINANTS CONTEND AS FOLLOWS

Legal and Factual Grounds

1. Background

The Complainants are a Finnish company Best Friend Group Oy and a Danish company Best Friend Denmark A/S. Best Friend Denmark is the owner of international trademark registrations No. 846008 HURTTA and No. 958665 HURTTA. The mark is registered in many European countries as well as in the US. The Complainants are leading distributors of pet foods and pet related products. HURTTA is a leading Scandinavian brand

for dog clothing and apparel. The mark has been used for over a decade across Scandinavia and is also distributed across Europe.

2. Respondent(s)

The Respondent is, according to the Complainants, the proxy service "PrivacyProtect.org".

After the Complainants received a notification from the ADR center stipulating that they had identified the wrong Respondent, they stated that the submitted material showed that the Respondent had been identified correctly in accordance with the available Whois data at the time of filing. They were later informed that the domain name owner had "changed" (sic) after the complaint was filed. Since the Respondent had been correctly identified at the time of filing, they respectfully requested that the Panel considers the original Respondent, PrivacyProtect.org as a co-respondent in these proceedings. In this respect they referred to WIPO decision in the case D2010-1666 epargnecaisse.com, stating the situation was identical to the current situation.

Complainants also noted that they could only identify one respondent on the online platform. They named the current owner of the disputed domain name, Purple Bucquet, but still maintain the Complaint against PrivacyProtect.org as well. They requested guidance from ADR center, which agreed with this approach.

3. The disputed domain name is confusingly similar to a trademark in which the Complainants have rights

Co-complainant Best Friend Denmark is the owner of International trademark registrations No. 846008 HURTTA and No. 958665 HURTTA. The disputed domain name is identical to its registered trademarks.

3. The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name. The Respondent does not have any rights to the name HURTTA or to the corresponding domain name hurtta.com. The name bears no connection to the trade name of the Respondent. The Complainants have made good faith efforts to establish whether the Respondent might have any rights or legitimate interest in the name HURTTA, but none has been found. Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant.

Accordingly, the Complainants submit that the disputed domain name has been registered without rights or legitimate interest in respect of the domain name.

4. The domain name is registered and is being used in bad faith

The domain name is registered and is being used in bad faith. The purpose of the use and registration of the disputed domain name has been to prevent the legitimate owner of HURTTA trademark from reflecting the mark in a corresponding domain name.

UDRP rules provide several ways of establishing bad faith. One is where the domain name is registered in order to prevent the owner of the mark from reflecting the mark in a corresponding domain name, provided that the owner of the domain name has engaged in a "pattern of such conduct". In this regard Complainants, referring to "PrivacyProtect" (only), note that this Respondent has registered hundreds of domain names, and this practice constitutes a pattern of conduct that must lead to the finding of bad faith. They also note that this Respondent has been a party to more than a hundred UDRP-cases, and that dozens of random searches for these cases failed to reveal a single case in which the Respondent had prevailed. It is therefore evident that several (perhaps even over a hundred) UDRP cases have been decided against this Respondent. This demonstrates that this Respondent is engaged in a pattern of registering domain names that rightfully belong to others, in order to prevent those third parties from reflecting their trademarks in corresponding domain names. Accordingly, the disputed domain name is registered in bad faith, the Complainants contend.

The domain name is also being used in bad faith. According to UDRP rules, bad faith can also be demonstrated by showing that the domain name is used to attract Internet users to the site for commercial gain. Panelists have noted in the above mentioned cases that the Respondent (PrivacyProtect) uses the domain names for commercial gain. In the present case this Respondent is using this domain name in order to generate traffic to its website for the sole purpose of generating revenue through sponsored links on his website. By using the disputed domain name, the Respondent is trying to attract Internet

users to its website for commercial gain. The website has no other content or purpose than to generate click-through-revenue. It is therefore evident that the purpose of the registration and use of the disputed domain name is solely commercial gain, the Complainants contend.

They also allege that, if the Respondent PrivacyProtect.org is not the underlying owner of the domain name, it is nevertheless the case that PrivacyProtect.org is using the domain name for commercial gain through charging the underlying owner the proxy service.

To the best of Complainants' knowledge, name HURTTA does not have any meaning in any other language than in Finnish. It is therefore unlikely that the Respondent would have registered the disputed domain name without being familiar with trademark HURTTA. It should also be taken into account that the Complainants are well-known distributors of pet foods and pet-related products such as pet clothing and accessories for pets. The Complainants' HURTTA trademark is used for clothing and accessories for pets, products that are mentioned in the pay-per-click links on the Respondent's website. The disputed domain name is registered and is used in bad faith in order to generate commercial gain, resulting from the confusion that arises due to the identity of the domain name hurтта.com with the Complainants' registered trademark HURTTA.

The Panel notes that the Complainants do not have specific contentions against Co-respondent Purple Bucquet, which identity was revealed by the registrar during the proceedings.

The Complainants contend that the disputed domain name is identical to the registered trademarks cited above, that the Respondent has no rights or legitimate interests in respect of this domain name, and that the domain name was registered and is being used in bad faith, according to paragraph 4(a) of the Policy.

PARTIES CONTENTIONS

There was no Response to the Complainant's contentions.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the domain name hurтта.com is identical to the trademarks HURTTA, and met the first condition paragraph 4(a) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

In light of the Panel's finding in the next section, it is unnecessary to address this issue.

BAD FAITH

Under paragraph 4(a)(iii) of the Policy, the domain name must have been registered in bad faith, and must be used in bad faith.

Complainants bring acceptable evidence of bad faith use.

Nevertheless, it appears clearly that the domain name cannot have been registered in bad faith, contrary to the Complainants' contentions.

Attached to the Complaint is a document titled "Domain Names owned by the Respondent". This Annex indicates that the disputed domain name has been registered on January 20, 2003. There is no evidence that this name changed hands afterwards.

Though the Complainants rely on two trademarks, they do not mention their registration dates in the text of the Complaint. Copies of these trademarks are annexed.

The first annex shows that the sign HURTTA was registered on December 14, 2004 as an international trademark by one of the Complainants, Best Friend Danmark A/S (number 846008), in a dozen States.

The second annex shows that the same sign was registered on January 21, 2008 by the same company (number 958665), mostly for other countries and/or other products.

As trademark rights were granted to one of the Complainants AFTER the registration of the disputed domain name, it cannot be ruled that this registration was made in bad faith. It is well established that a registrant who cannot have contemplated the complainant's non-existent right at the time of the registration does not violate the Policy (see WIPO decisions D2001-0074, John Ode dba ODE & ODE - Optimum Digital Enterprises v. Internship Limited; D2001-0827, Digital Vision, Ltd. v. Advanced Chemill Systems; D2001-1182, PrintForBusiness B.V v. LBS Horticulture; or more recently D2009-1545, San Diego Hydroponics & Organics v. Innovative Growing Solutions, Inc.; D2010-0941, M. Corentin Benoit Thiercelin v. CyberDeal, Inc. See also NAF decisions 1153871, I4 Solutions, Inc. v Peter Miani; 1172987, Continucare Corporation v R.M.C. c/o Domain Administrator (role_account); 1291282, Kim Laube & Company Inc. v RareNames; 1309793, Riveron Consulting, L.P. v Stanley Pace; 1320513, United First Financial, LLC v Mdnh Inc. c/o Brendhan Hight).

Though the Complainants state that "[t]he mark has been used for over a decade across Scandinavia", they do not offer evidence of such use, nor of the acquisition of trademark rights through use. The Complainants neither allege that the Respondent was aware of the Complainants' potential rights in the sign HURTTA.

The Panel thus finds that there is nothing in the Complaint to support the claim that the domain name was registered in bad faith.

PROCEDURAL FACTORS

The Panel is satisfied that all procedural requirements under UDRP were met and there is no other reason why it would be inappropriate to provide a decision.

PRINCIPAL REASONS FOR THE DECISION

The Complainants did not give evidence that the disputed domain name was registered in bad faith. The Complaint must be rejected.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

AND THE DISPUTED DOMAIN NAME(S) IS (ARE) TO BE

1. HURTTA.COM: Remaining with the Respondent

PANELLISTS

Name	Prof. Cédric Manara
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DATE OF PANEL DECISION 2011-01-01

Publish the Decision
