Decision for dispute CAC-UDRP-100281

Case number	CAC-UDRP-100281
Time of filing	2011-07-12 12:02:46
Domain names	myart.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	My Art

Complainant representative

Organization	CHAIN AVOCATS

Respondent

Organization	Domain Discreet- MyArt.com

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

According to the file, the Complainant is the owner of the French trademark MY-ART (word and device) n° 3744624, filed on 8 June 2010 and registered on 19 November 2010. This mark is not a Community Trademark (CTM), as suggested by the Complainant.

FACTUAL BACKGROUND

This Complaint is based on the following grounds:

The complainant, My-Art, is the owner of the French trademark « MY-ART » (n°3744624) as set out above. The disputed domain name is confusingly similar to trademark in which the Complainant has rights.

The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name. Internet inquiries as well as trademark database searches have not revealed any use or registrations by the Respondent that could be considered relevant. The web site for which the domain name is used, leads on a portfolio of other websites. This passive holding prevents the trademark owner from using the rights conferred by his marks.

The domain name is registered and being used in bad faith, because the purpose of the registration of the disputed domain name has been to prevent the Complainant, legitimate owner of My-Art trademark from reflecting the mark in a corresponding domain name. One way of establishing bad faith is where the domain name is inactive and is not being used. Trying several times, the Company has not been able to get any answer from the Respondent to the notice letters.

PARTIES CONTENTIONS

No administratively compliant Response has been filed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that the Domain Name is identical or confusingly similar to a trademark or service mark in which the complainant has rights (within the meaning of paragraph 4(a)(i)of the Policy).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has, to the satisfaction of the Panel, shown the Respondent to have no rights or legitimate interests in respect of the Domain Name (within the meaning of paragraph 4(a)(ii)of the Policy).

BAD FAITH

The Complainant has not shown that the Domain Name has been registered and is being used in bad faith (within the meaning of paragraph 4(a)(iii)of the Policy).

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

Under paragraph 4(a)(iii)of the Policy, the Complainant must cumulatively show that the Domain Name has been registered and is being used in bad faith.

Here, the Complainant brings acceptable evidence of bad faith use and the Respondent did not dispute this, given that no Response was filed.

But in the Panel's view, the domain name cannot have been registered in bad faith, contrary to the Complainant's contentions.

The disputed domain name has been registered on 18 December 1996, which is more than 13 years before the trademark of the Complainant was filed (the MY-ART trademark of the Complainant was filed in France on 8 June 2010).

As trademark rights were granted to the Complainant AFTER the registration of the disputed domain name, it cannot be ruled that this registration was made in bad faith (see CAC decision n° 100133 of 1 January 2011, Hurtta.com and CAC decision n° 100220 of 8 April 2011, Streetwave.com).

It is well established that that a domain name that is registered before a trade mark right has been established cannot be found to have been registered in bad faith. The registrant would not have been aware of the complainant’s rights because those rights did not then exist (see WIPO decisions D2001-0074, John Ode dba ODE & ODE - Optimum Digital Enterprises v. Intership 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).

Consequently, the Panel finds that the Complainant has not proved that the Respondent registered the Disputed Domain Name in bad faith. Therefore the cumulative requirements of paragraph 4(a)(iii) of the Policy have not been met.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **MYART.COM**: Remaining with the Respondent

PANELLISTS

Name	**Tom Heremans**

DATE OF PANEL DECISION 2011-08-22

Publish the Decision