Decision for dispute CAC-UDRP-100305

Case number	CAC-UDRP-100305
Time of filing	2011-08-22 10:48:53
Domain names	ECCOONLINESALE.COM

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	ECCO Sko A/S

Complainant representative

Organization	Chas. Hude A/S

Respondent

Organization	Ideartrade, Song Jianwei

OTHER LEGAL PROCEEDINGS

N/A

IDENTIFICATION OF RIGHTS

Various trade marks comprising or incorporating the term "ECCO" including community Trade mark Reg. No. 001149871, reg. date 06/02/2003.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

The disputed domain name contains Complainant's trademark ECCO in full, together with some generic terms, which meaning is related to Complainant's business. Therefore, the disputed domain name is confusingly similar to Complainant's trademark (Policy, Par. 4 (a)(1)).

Respondent has no rights in the trademark ECCO and is not a reseller/licensee of Complainant, use of the trademark ECCO by Respondent has never been authorized by Complainant, and Respondent is using his website to promote the sale goods, which are very likely counterfeit. Accordingly, Respondent has no rights or legitimate interests in respect of the domain name (policy, Par. 4 (a)(11)).

ECCO constitute the first and dominant element of the disputed domain name. Complainant’s logo and pictures taken from Complainant's website and catalogue are used by the Respondent, who is attempting to divert Internet users to his domain name by creating a likelihood of confusion with Complainant’s trademarks, company name and domain names. Respondent is exploiting the goodwill attached to Complainant's trademarks for selling goods which are very likely counterfeit. For all these reasons, Complainant finds that the disputed domain name was registered and is used in bad faith (Policy, Par. 4(a)(iii)).

In all the aforementioned circumstances, Complainant finds that the disputed domain name has been registered and is used in bad faith.

CAC’s and WIPO’s decisions in the following complaint proceedings support the case:

CAC:
Case no. 100259, eccoshoesshop.com
Case no. 100278, eccoshoesuk.net

WIPO:
Case no. D2010-2038, eccodiscount.com
(http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-2038)
Case no. D2010-1443, eccobrandshop.com, ecooshop.com
http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-1443)
Case no. D2010-1113, 51ecco.com
(http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-1113)
Case no. D2010-0650, eccoshoesoutlet.com, eccoshoesoutlets.com, eccoshoesoutlets.net
(http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0650.html)

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the Domain Name is identical or confusingly similar to a trade mark 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, to the satisfaction of the Panel, shown 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

The Domain Name embodies the entirety of the Complainant's ECCO mark and the addition of "ONLINESALE" does not so change the reading of the Domain Name as to prevent a finding of confusing similarity (see Research in Motion Limited v. One Star Global LLC, WIPO Case No. D2009-0227).

It is clear from the material filed by the Complainant that the Domain Name is being used for a website the purpose of which is to promote or sell products that bear the ECCO mark . If (as is alleged to be most likely) the Domain Name was registered and being used for the sale of counterfeit products, the Respondent will have no right or legitimate interests and there will be registration and use in bad faith.

If genuine products are being used, then the Complainant will still succeed if the conditions laid down in Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903 are not satisfied. It is for the Respondent to raise and substantiate an "Oki Data" argument (see AREVA v. Industrial Tests, Inc. WIPO Case No. D2009-1686). It has not done so in this case. In any event on the material that the Panel has seen, there has been a failure to accurately distinguish itself from the Complainant.

Further, even the Respondent was able to show that the "Oki Data" conditions apply, the nature of the Domain Name is such that the Complainant may nevertheless still succeed (see the discussion in Research in Motion Limited v. One Star Global LLC, WIPO Case No. D2009-0227).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ECCOONLINESALE.COM**: Transferred

PANELLISTS

Name	**Matthew Harris**

DATE OF PANEL DECISION 2011-09-16

Publish the Decision