

Decision for dispute CAC-UDRP-100321

Case number	CAC-UDRP-100321
Time of filing	2011-10-17 10:28:41
Domain names	ECCOSKOUDSALG.COM

Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	ECCO Sko A/S
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Complainant representative

Organization	Chas. Hude A/S
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Respondent

Organization	wangzhenhua
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of other legal proceedings related to the disputed domain name.

IDENTIFICATION OF RIGHTS

Complainant is the owner of the trademark ECCO registered in several jurisdictions worldwide, inter alia the following:
Community Trademark Reg. No. 001149871, reg. date 06/02/2003
Community Trademark Reg. No. 002967040, reg. date 02/05/2007
US Trademark Reg. No. 1935123, reg. date 14/11/1995
Canadian Trademark Reg. No. 280654, reg. date 26/3/1983
Australian Trademark reg. No. 375267, reg. date 10/5/1982
Chinese Trademark Reg. No. 208743, reg. date 30/5/1984.

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. Furthermore, the first part of the disputed domain name corresponds to the company name of Complainant (ECCO Sko A/S). 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)).

The trademark ECCO / company name ECCO Sko 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 and company name for selling goods which are very likely counterfeit. The provision of false whois information is a further evidence of bad faith. 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.

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 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, 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.

In view of the circumstances of the case, including the undisputed allegations of Complainant that the homepage using the disputed domain name is partly in English and partly in Danish and that the goods offered on sale are often referred to with descriptive terms in English, and the fact that Respondent has been given a fair chance to object but has not done so, the Panel determines in accordance with paragraph 11(a) of the UDRP Rules that the language of the proceeding is English.

PRINCIPAL REASONS FOR THE DECISION

In the opinion of the Panel Complainant has made a prima facie case that the respondent lacks rights or legitimate interest in the domain name. This is particularly true as Respondent is not making a legitimate noncommercial or fair use of the domain name without intent for commercial gain to misleadingly divert consumers or to tarnish the well known marks of Complainant. In fact Respondent is making a commercial use of the disputed domain name to sell footwear bearing the trademark of Complainant without being an authorized dealer. Respondent was not commonly known by the domain name nor has it acquired trademark rights. Under these circumstances the Panel finds that Respondent has no rights or legitimate

interest in the domain name.

The Panel also finds that Respondent has been registered and is being used in bad faith. This is particularly true as Respondent intentionally attempts to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the mark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or of a product on its website or location. In addition, Respondent has not responded to the allegation of Complainant that the shoes sold on the website of Respondent are counterfeit.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ECCOSKOUDSALG.COM: Transferred

PANELLISTS

Name	Dinant T.L. Oosterbaan
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DATE OF PANEL DECISION **2011-11-16**

Publish the Decision
