

Decision for dispute CAC-UDRP-100327

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| Case number | CAC-UDRP-100327 |
| Time of filing | 2011-10-24 11:41:38 |
| Domain names | ECCOONLINESALEUSA.COM |

Case administrator

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| Name | Tereza Bartošková (Case admin) |
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Complainant

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| Organization | ECCO Sko A/S |
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Complainant representative

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| Organization | Chas. Hude A/S |
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Respondent

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| Organization | easysh opping |
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OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name (the 'Domain Name').

IDENTIFICATION OF RIGHTS

The Complainant is the owner of registered trade mark rights for ECCO in a substantial number of territories across the world, including across the European Union, the United States of America and China.

FACTUAL BACKGROUND

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

The disputed Domain Name contains the Complainant's ECCO trade mark as the first and most dominant element. It then contains some descriptive words: ONLINE, SALE, and USA (prior to the .com suffix). Therefore, the disputed Domain Name is confusingly similar to the Complainant's trade mark(s) (Policy, Par. 4 (a)(i)).

The Respondent has no rights in the ECCO trade mark, and use of the trade mark ECCO by the Respondent has never been authorised by the Complainant. Further, the Respondent is using the website attached to the Domain Name to promote the sale of unauthorised ECCO branded goods. Accordingly, the Respondent has no rights or legitimate interests in respect of the Domain Name (policy, Par. 4 (a)(ii)).

The Complainant's logo and images have been copied direct from the Complainant's website. These images are being used by the Respondent on the website attached to the Domain Name without the Complainant's authority. The Respondent is attempting to divert Internet users by creating a likelihood of confusion with the Complainant's ECCO trade mark. In this regard, the Complainant has received customer complaints referring to the website attached to the Domain Name as 'fake'. In addition the Respondent may be exploiting the goodwill attached to the Complainant's trade marks for phishing purposes.

The WHOIS information provided by Respondent is very likely to be false.

The Complainant asserts that, in the circumstances, the disputed Domain Name was registered and is used in bad faith (Policy, Par. 4(a)(iii)).

The Complainant refers to previous CAC and WIPO decisions in support of its Complaint.

CAC:

Case no. 100259, ECCOSHOESSHOP.COM

Case no. 100278, ECCOSHOESUK.NET

Case No. 100311, UKECCOSHOES.NET

Case No. 100305, ECCOONLINESALE.COM

Case No. 100312, ECCOSALEONLINE.COM

WIPO:

Case no. D2010-2038, ECCODISCOUNT.COM

Case no. D2010-1443, ECCOBRANDSHOP.COM, ECOOSHOP.COM

Case no. D2010-1113, 51ECCO.COM

Case no. D2010-0650, ECCOSHOESOUTLET.COM, ECCOSHOESOUTLETS.COM, ECCOSHOESOUTLETS.NET

Language

Irrespective of the language of the Registration Agreement, which is Chinese, the Complainant respectfully requests that the language of these proceedings is to be English. In this regard the descriptive words contained in the Domain Name are in English and the website attached to the Domain Name is in English (including the customer service details provided on the website). According to the website attached to the Domain Name, the contact address is Hawkinsville, Georgia, USA. For all these reasons it must be assumed that the Respondent is proficient in English.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

COMPLAINANT'S CONTENTIONS:

The Domain Name is confusingly similar to the Complainant's trade mark ECCO, which is registered in a substantial number of territories across the world, including across the European Union, the United States of America and China.

The Respondent does not have any rights or legitimate interests in the Domain Name for the following reasons:

- The Respondent has no rights in the ECCO trade mark.
- Use of the trade mark ECCO by the Respondent has never been authorised by the Complainant.
- The Respondent is using its website to promote the sale of unauthorised branded goods.

Accordingly, Respondent has no rights or legitimate interests in respect of the domain name (policy, Par. 4 (a)(ii)).

The Domain Name has been registered and is being used in bad faith as:

- The Complainant's logo and images, which have been copied from Complainant's website and catalogue, are being used by

the Respondent on the website attached to the Domain Name.

- The Respondent is attempting to divert Internet users by creating a likelihood of confusion with Complainant's ECCO trade mark.
 - The Complainant has received customer complaints referring to the website attached to the Domain Name as 'fake'.
 - The Respondent may be exploiting the goodwill attached to Complainant's trade marks for phishing purposes.
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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 the Respondent has received notice of the Complaint via the emails sent to it by the CAC case administrator, and which the Panel has been informed were successfully relayed to the Respondent's email address as recorded on the WHOIS database.

The Registration Agreement is in Chinese. However, the Complainant has requested that the language of these proceedings be English. In support the Complainant states:

- The descriptive words contained in the Domain Name are in English.
- The website content attached to the Domain Name is in English, and the address given on this website is Hawkinsville, Georgia, USA.

The Panel is in agreement, and therefore determines that the language of these proceedings should be English, and that the Respondent will not be disadvantaged by such a decision.

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

Paragraph 4(a)(i) of the Policy

The Panel finds the Domain Name is confusingly similar to the ECCO trade mark in which the Complainant has registered rights.

Paragraphs 4(a)(ii) and 4(a)(iii) of the Policy

The Panel is satisfied that the Respondent has received notification of the Complaint and has chosen not to file an administratively compliant (or any) response. In the circumstances the Panel finds from the facts put forward that:

- The Respondent has no rights or legitimate interests in respect of the Domain Name. There was nothing put forward in the case file which might suggest otherwise.
- The Domain Name has been registered and is being used in bad faith. The Panel believes from the facts that the Respondent had the Complainant and its ECCO trade mark in mind when registering the Domain Name. Further, that the

Domain Name has, since registration, been used by the Respondent to divert web traffic to a website designed to create confusion with Complainant's ECCO trade mark in order to sell non authorised goods and/or be used for phishing purposes (paragraph 4(b)(iv) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. ECCOONLINESALEUSA.COM: Transferred
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PANELLISTS

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| Name | Steve Palmer |
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DATE OF PANEL DECISION 2011-12-07

Publish the Decision
