

Decision for dispute CAC-UDRP-100344

Case number	CAC-UDRP-100344
Time of filing	2011-11-22 11:07:06
Domain names	THEECCOSHOES.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	yu haitao
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the owner of trademark registrations for ECCO in several jurisdictions worldwide, among others the following, in classes that include leatherware or footwear:

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 26/03/1983
Australian Trademark reg. No. 375267, reg. date 10/05/1982
Chinese Trademark Reg. No. 208743, reg. date 30/05/1984.

In addition, the Complainant has a large portfolio of domain names consisting of, or containing, the trademark ECCO, including ECCO.COM, ECCOSHOE.COM, ECCOSHOES.COM, ECCOSHOES.ASIA, ECCOBRANDSHOP.COM, ECCOSHOPS.COM, ECCOSHOPS.DK, ECCO-SHOP.DK and ECCOSHOPPING.NL.

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 generic and neutral terms, whose 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 of 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 constitutes the 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

Case No. 100311, UKECCOSHOES.NET

Case No. 100321, ECCOSKOUDSALG.COM

Case No. 100312, ECCOSALEONLINE.COM

Case No. 100305, ECCOONLINEALE.COM

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>)

Language of the proceedings.

The Complainant respectfully requests that the language of the proceedings be English. The disputed domain name includes the English words THE and SHOES. Furthermore, the text on the website of the Respondent is all in English. All these circumstances show that the Respondent is proficient in English.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed 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 disputed 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 disputed 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.

The language of the Registration Agreement is Chinese. However, in view of the circumstances of the case, including the undisputed allegations of the Complainant that the website corresponding to the disputed domain name is entirely 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 be English.

PRINCIPAL REASONS FOR THE DECISION

1. The Panel finds that the disputed domain name is confusingly similar to the Complainant's trademark "ECCO" as the mere addition of the article "the" and of the descriptive term "shoes" is not sufficient to exclude the likelihood of confusion with the Complainant's trademark.
2. The Panel finds that the Complainant successfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, neither of the disputed domain name in connection with a bona fide offering of goods or services, nor is making a legitimate non-commercial or fair use of the disputed domain name, nor is commonly known under the disputed domain name. In fact, the Respondent has made a commercial use of the disputed domain name to sell footwear bearing the trademark of the Complainant without being an authorized dealer. Under these circumstances and in absence of a Response, the Panel finds that Respondent has no rights or legitimate interest in the disputed domain name.
3. The Panel also finds that the disputed domain name has been registered and used in bad faith. According to the evidence submitted by the Complainant and not challenged by the Respondent, the disputed domain name has been pointed to a web site where the Complainant's trademark was displayed and apparently counterfeit ECCO products were offered for sale. The Panel finds, therefore, that the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the mark of the Complainant as to the source, sponsorship, affiliation, or endorsement of its website or of a product on its website or location.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **THEECCOSHOES.COM**: Transferred

PANELLISTS

Name **Luca Barbero**

DATE OF PANEL DECISION **2011-12-28**

