Decision for dispute CAC-UDRP-101240

Case number	CAC-UDRP-101240
Time of filing	2016-07-01 10:35:55
Domain names	PANKAS.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	PANKAS A/S

Complainant representative

Organization	Zacco Denmark A/S

Respondent

Name	YUNKOOK JUNG

OTHER LEGAL PROCEEDINGS

None

IDENTIFICATION OF RIGHTS

The Complainant has rights in the trade mark PANKAS, established through continuous use in Denmark and elsewhere since 1939.

FACTUAL BACKGROUND

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

The Complainant is a Danish company established more than 75 years ago, registered with the name of PANKAS A/S in the Danish Business Register since April 1, 1939. The Complainant held the disputed domain name ('the Domain Name") since March 31, 2000 but failed to renew it. A few days after the Complainant's domain name registration had lapsed, the Complainant was contacted by an 'Andrew Garfield', who asked whether the Complainant was interested in buying the Domain Name.

The Domain Name was registered by the Respondent on June 6, 2016 in the name of a privacy service. It resolves to a website on which the Domain Name is offered for sale and which displays links to competitors of the Complainant.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

A Respondent is not obliged to participate in a proceeding under the UDRP, but if it fails to do so, asserted facts may be taken as true and reasonable inferences may be drawn from the information provided by the Complainant. See Reuters Limited v. Global Net 2000, Inc, WIPO Case No. D2000-0441.

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

Under section 3(i) of the “Consolidate Trade Marks Act” of Denmark (Act No. 109 of 24 January, 2012), a trade mark right may be established either by registration or by commencement of use of a trade mark in Denmark for the goods or services for which the trade mark has commenced to be used and for which it is continuously used. The Complainant has produced evidence of its use of the trade mark PANKAS, particularly in connection with asphalt, promoting itself as “PANKAS, the asphalt company” and a declaration of its Sales and Marketing Manager as to the expenditure of DKK 1.4 million in each of the last 5 years promoting the Complainant’s goods and services under the PANKAS mark. The Panel finds that the Complainant has established that it has rights in the trade mark PANKAS.

The Domain Name is identical to the Complainant's PANKAS trade mark since it comprises that mark in its entirety, together with the top level domain ".com", which is inconsequential and may be ignored: Magnum Piering, Inc. v. The Mudjackers and Garwood S. Wilson, Sr., WIPO Case No. D2000-1525; Rollerblade, Inc. v. Chris McCrady, WIPO Case No. D2000-0429.

As to legitimacy, the Complainant asserts that PANKAS is a distinctive term; that the Domain Name is for sale and that the Respondent is hiding behind a proxy service. Hence the Respondent has no rights or legitimate interests in respect of the Domain Name. The offer to sell the Domain Name to the Complainant was made within days of the lapse of the Complainant's registration and virtually at the same time as the Respondent registered it in the name of a privacy service and offered it for sale on the website, where links to the Complainant's competitors are displayed.

The Panel finds that the PANKAS mark is distinctive and that the Complainant’s assertions are sufficient to constitute a prima facie showing of absence of rights or legitimate interests in respect of the Domain Name on the part of the Respondent. The evidentiary burden therefore shifts to the Respondent to show that it does have rights or legitimate interests in the Domain Name. See Cassava Enterprises Limited, Cassava Enterprises (Gibraltar) Limited v. Victor Chandler International Limited, WIPO Case No. D2004-0753. The Respondent has made no attempt to do so.

In the circumstances of this case, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

Paragraph 4(a)(iii) of the UDRP sets out the conjunctive requirement that the Complainant establish both that the Respondent has registered the Domain Name in bad faith and that the Respondent is using the Domain Name in bad faith.

As to registration and as already mentioned, the offer to sell the Domain Name to the Complainant was made within days of the lapse of the Complainant's registration and virtually at the same time as the Respondent registered it in the name of a proxy service and offered it for sale on the website. The Panel infers that the Respondent must have had the Complainant and its PANKAS trade mark in mind when registering the Domain Name and that the Respondent did so primarily for the purpose of selling the Domain Name registration to the Complainant. The Panel concludes that the Domain Name was registered in bad faith.

As to use, the Respondent, whose name is not “Pankas”, sought to conceal his/her identity by registering the Domain Name in the name of a proxy service and has used the Domain Name to promote the Complainant’s competitors by confusing Internet users into thinking the Domain Name is that of the Complainant. The Panel concludes that the Domain Name is being used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **PANKAS.COM**: Transferred

PANELLISTS

Name	**Alan Limbury**

DATE OF PANEL DECISION 2016-08-19

Publish the Decision