Decision for dispute CAC-UDRP-100715

Case number	CAC-UDRP-100715
Time of filing	2016-11-25 10:39:05
Domain names	amayani.com

Case administrator

Organization	Iveta Špiclová (Czech Arbitration Court) (Case admin)

Complainant

Organization	Juwelo TV Deutschland GmbH

Complainant representative

Organization	Lubberger Lehment

Respondent

Organization	CosmosVictory

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant states and provides evidentiary documentation that it is "the owner of the German trademark AMAYAN", No. 302010033725" (filed on June 7, 2010 and registered on August 24, 2010) and "the EU trademark AMAYANI, No. 009801663" (filed on March 10, 2011 and registered on August 22, 2011), which are registered and used inter alia for jewelry products in the International class 14.

FACTUAL BACKGROUND

The Complainant asserts the following facts, all of which are not contested by the Respondent:

"The Complainant uses the trademark AMAYANI for a line of precious jewelry which is sold through their shopping channel Juwelo TV and their website juwelo.de". Further, "the Complainant also owns the domain amayani.de which is used to present the jewelry products sold under the trademark AMAYANI and to inform about the manufacturing, care and treatment of these products".

"With email of 14th October 2016 Mr. Paul Lullen a Domain Broker of the firm Uniregistry Corp. contacted the Complainant in

the name of the Respondent and requested a <serious 5 figure offer> for selling the domain amayani.com" and "[t]o avoid long and expensive legal disput the Complainant offered 1,000.00 USD for the transfer of the domain, but not without pointing out their valid claim to the domain amayani.com because of their trademark rights". However, "[t]he Complainant did not receive any answer from the Respondent to their letter."

"The domain amayani.com is currently not in use. When calling up the page, a notice appears that loading the page content has failed. The domain was also offered for sale with the invitation: <Click here to buy AMayani.com for your website name!>. It also contains a link to the website domainnamesales.com. At this website, an offer could be made by submitting name, email address and phone number".

"The domain was registered on 6th November 2015 by the Respondent".

"The domain amayani.com is identical with the German and EU trademark AMAYANI of the Complainant" and "[t]he presence of the <.com> generic top-level-domain is negligible".

The Complainant submits that the Respondent lacks rights or legitimate interests in respect of the disputed domain name because, inter alia, "[t]he Respondent is not making legitimate non-commercial or fair use of the domain. The Respondent rather only uses the domain amayani.com to receive buying offers for the domain"; "[t]he Respondent is not commonly known as <Amayani> and the Respondent is not owner of trademarks consisting of the word <amayani>"; "[t]he Complainant has not authorized the Respondent to use the trademark AMAYANI"; "[t]he registration of the protected trademarks precedes the registration of the domain amayani.com"; the "name or the contact details of the Respondent contain no reference to <amayani>".

Furthermore, the Complainant submits that the disputed domain name has been registered and is being used in bad faith because, inter alia, "[t]he Respondent registered the contested domain primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the trademark AMAYANI or to a competitor of that Complainant, for valuable consideration in excess of the documented out-of-pocket costs directly related to the domain name and in order to prevent the Complainant as the owner of the trademark AMAYANI from reflecting the mark in the corresponding domain name"; "[t]here is no reason for the Respondent to use the AMAYANI trademark other than try to sell the domain to the Complainant and prevent the Complainant from registering a corresponding domain"; "there is no indication of the Respondent’s use of, or demonstrable preparations to use the disputed domain name in connection with a bona fide offering of goods and services. The Respondent has rather actually tried to sell the domain to the Complainant with email of 14th October 2016 <for a serious 5 figure> price and thus, to a price which exceeded the registration costs"; "[t]he domain is also equipped with an invitation to submit an offer and a button to facilitate the submission of the offer. Due to the trademark protection of the sign AMAYANI in favor of the Complainant this invitation is aimed primarily at the Complainant"; "[t]he advertising of the domain name for sale and the email offering the sale of the domain for a serious 5 figure amount, combined with the refusal of the monetary offer made by the Complainant which would have more than covered any relevant expenses clearly show 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.

PRINCIPAL REASONS FOR THE DECISION

Paragraph 4(a) of the UDRP Policy provides that to obtain the transfer of the disputed domain name, complainant must prove that each of the following elements is present:

(i) the disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights;

(ii) the respondent has no rights or legitimate interests in respect of the disputed domain name; and

(iii) the disputed domain name has been registered and is being used in bad faith.

By providing documentation of the trademark registrations, the Complainant established it has rights in the mark AMAYANI dating back to 2010/2011. Both the German and the EU trademarks were registered prior to the registration of the disputed domain name (November 6, 2015) and, in case of the EUTM, it is valid also in the territory where the Respondent resides (Sweden).

The disputed domain name consists of the word "amayani" and in the gTLD ".com". The disputed domain name <amayani.com> is identical to the Complianant's mark, since it contains the AMAYANI mark in its entirety and the only difference between the disputed domain name and the Complainant's mark is the suffix ".com". It is a well-established principle that the top-level suffix in the domain name is to be disregarded (as it is a technical requirement) under the test for identity or confusing similarity (see paragraph 1.2 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition).

Accordingly, the Panel finds that the Complainant has proven the first element of the paragraph 4(a) of the UDRP Policy.

The Complainant has argued that the Respondent lacks rights or legitimate interests in respect of the disputed domain name because, inter alia, "[t]heRespondent is not making legitimate non-commercial or fair use of the domain. The Respondent rather only uses the domain amayani.com to receive buying offers for the domain", which is supported by evidentiary documents submitted with the Complaint; "[t]heRespondent is not commonly known as <Amayani> and the Respondent is not owner of trademarks consisting of the word <amayani>"; "[t]he Complainant has not authorized the Respondet to use the trademark AMAYANI"; "[t]he registration of the protected trademarks precedes the registration of the domain amayani.com", which is proved by an evidentiary document submitted with the Complaint; the "name or the contact details of the Respondent contain no reference to <amayani>".

Since the task of proving a negative fact, requiring information that is often primarily within the knowledge of the respondent, is often impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for the complainant to establish a prima facie case that the respondent lacks rights or legitimate interests in the disputed domain name to shift the burden of proof to the respondent (see paragraph 2.1 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition: "complainant is required to make out a prima facie case that the respondent lacks rights or legitimate interests. Once such prima facie case is made, burden of production shifts to the respondent to come forward with appropriate allegations or evidence demonstrating rights or legitimate interests in the domain name. If the respondent fails to come forward with such appropriate allegations or evidence, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of UDRP".)

The Panel finds that the Complainant has established its prima facie case and without any evidence from the Respondent to the contrary, the Panel is satisfied that the Complainant has satisfied the second element of the paragraph 4(a) of the UDRP Policy.

The Panel finds that the disputed domain name was registered and is being used in bad faith for the following reasons.

The circumstances (all of them supported by evidentiary documentation submitted by the Complainant) that:
i) the Respondent, through a domain broker, has contacted the Complainant, inviting the same to submit a "serious 5 figure offer" for the domain name;

ii) the Respondent has not replied to/accepted the offer (i.e. Euro 1.000) made through the Complainant's authorized representative; and

iii) the domain name is offered for sale on the website to which it resolves

are sufficient for this Panel to determine that the Respondent registered or acquired the domain name primarily for the purpose of selling, renting, or otherwise transferring the domain name to the Complainant who is owner of the trademark or to a competitor of the Complainant, for valuable consideration in excess of the Respondent's documented out-of-pocket expenses related to the domain name (paragraph 4(b)(i) of the UDRP Policy).

The Complainant also argues that bad faith exists pursuant to paragraph 4(b)(ii) of the UDRP Policy, stating that disputed domain name was registered by the Respondent "in order to prevent the Complainant as the owner of the trademark AMAYANI from reflecting the mark in the corresponding domain name". The Panel notes that the cited provision of the Policy requires that "the respondent has engaged in a pattern of such conduct" too. It is a consensus view of UDRP Panels that "[a] pattern of conduct can involve multiple UDRP cases with similar fact situations or a single case where the respondent has registered multiple domain names which are similar to trademarks" (see paragraph 3.3 of the WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition). Nevertheless, in this case, neither the Complainant has provided any evidence in this regard, nor this Panel is aware about any facts relevant to determine that Respondent has engaged in a pattern of conduct of preventing the trademark holder (Complainant) from reflecting the mark in a corresponding domain name.

As pointed out above, the Complainant has already proved the Respondent's bad faith registration and/or use of the disputed domain name pursuant to paragraph 4(b)(i) of the concerned Policy. Accordingly, the Panel finds that the Complainant has proven the third element of the paragraph 4(a) of the UDRP Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **AMAYANI.COM**: Transferred

PANELLISTS

Name	**Avv. Ivett Paulovics**

DATE OF PANEL DECISION 2017-01-10

Publish the Decision