Decision for dispute CAC-UDRP-101511

Case number	CAC-UDRP-101511
Time of filing	2017-04-18 13:20:12
Domain names	ecodenta.com

Case administrator

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

Complainant

Organization	UAB "BIOK laboratorija"

Complainant representative

Organization	Professional Law Partnership METIDA Law Firm Zaboliene and Partners

Respondent

Name	ISMAIL DURBAL

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant provided evidence that it owns a Lithuanian trademark word: “ecodenta”, No. 65046 (registered on April 18, 2012) which is registered and used for goods in the class 3 (Nice classification) and a figurative EM-Trademark “ecodenta”, no. 011220167 (registered on March 21, 2013) as well as a WO-Trademark no. 1215894 (registered on July 7, 2014). The Complainant also provided evidence that it owns a “.lt” domain name “ecodenta” (registered on September 8, 2014).

FACTUAL BACKGROUND

The Complainant is a beauty nourishment products company based in Lithuania. The Complainant offers under one of its brands, “ecodenta” cosmetic products. The Complainant exports these products into EU and non EU countries. Therefore the Complainant registered the ecodenta.lt domain name and ecodenta trademarks as well (LT word No. 65046, EM No. 011220167 and IR No. 1215894).

The Respondent claimed representation of the Complainant in Turkey. The Respondent registered the disputed domain name. He uses the disputed domain for commercial purposes. He offers purchase of ”ecodenta” products in Turkish language. The Complainant denied a commercial relationship with the Respondent.

The Complainant, filed a complaint against the Respondent claiming that the Respondent registered the disputed domain name without rights or legitimate interest and in bad faith. Therefore the registration should be declared abusive and the disputed domain name transferred to the Complainant.

Reference was made also to:

- WIPO case No. D2000-0226, Parfums Dior vs. Javier G. Quintas <christiandior.net>
- WIPO case No. D2000-0163, Veuve Cliquot Ponsardin vs. The polygenix Gro Co.
- WIPO Case No. D2001-0781, Fortuneo v. Johann Guinebert

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Complainant principally makes the following assertions:

The Complainant, UAB "BIOK laboratorija", is one of Lithuania's largest and most advanced beauty nourishment products manufacturer. The Complainant develops beauty nourishment products by utilizing the best resources of nature and the most innovative ingredients of cosmetics. The constantly renewed and modernized laboratory employs experts in different fields: biologists, chemists and cosmetologists. That is why the products developed and manufactured by the Complainant meet consumers' highest expectations and are highly valued by dermatologists and experts in cosmetics. The Complainant currently manages 5 brands: Margarita, Rasa, Aras, Ecodenta and BIOK Dermatology. Customers can choose from more than 170 different products — face and body creams, cosmetic milks, tonics, shampoos, shower gels, deodorants and oral care products. The company successfully exports its products to the United Kingdom, Italy, Sweden, the Baltic States, Ukraine and Poland.

It has become to the Complainant's attention that there is a website with the domain name <ecodenta.com>, the subject of this Complaint.

The use of the disputed domain name is confusing in that it violates the Complainant's trademark rights to the "ecodenta" mark as well as right to the domain name ecodenta.lt.

The administrative and technical contact listed in the WHOIS database is FBS INC (Domain Admin ContactID 2466355), who is operating the disputed domain name under the name of the Respondent.

UAB "BIOK laboratorija" has not given FBS INC (Domain Admin ContactID 2466355) or the Respondent any authority to operate under the name "ecodenta" and has not given any authority to operate, maintain, or register a website in its name.

RESPONDENT:

The Respondent argued to the Complainant's contentions.

The Respondent asserts that the export manager of the Complainant has allowed the Respondent to advertise the website www.ecodenta.com. However, this contention does neither explain the possession of the disputed domain name itself nor a legitimate interest, whatsoever. The Respondent failed in showing evidence concerning a license agreement or some other legal document providing the Respondent with a right to use the Complainant's trademark.

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

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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 Registration Agreement for the disputed domain name is in Turkish, however the Complainant asked for the change of the language of the proceedings in the Complaint. As the Respondent filed the Response and expressed no objection to usage of English in the proceeding, and the Response itself was filed in very good level of English, the Panel agrees the language of the proceeding to be English.

The Panel is otherwise 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

The Panel finds that the disputed domain name “ecodenta.com” is identical to the trademarks of the Complainant.
The Complainant asserts that the Respondent has no rights or legitimate interests in respect of the disputed domain name. Further he argues that the Respondent is not related to the Complainant. The Respondent failed in giving evidence that he is lawfully related to the Complainant.

It is necessary for the Complainant, if he is to succeed in this administrative proceeding, to prove each of the three elements referred to in paragraph 4(a) of the Policy, namely that:

(i) the disputed domain name is identical or confusingly similar to a trade mark in which the Complainant has rights; and
(ii) the Respondent has no rights or legitimate interest in respect of the disputed domain name; and
(iii) the disputed domain name has been registered and is being used in bad faith.

The Complainant rightfully contended that the disputed domain name is identical to the prior trademark of the Complainant.

Moreover, the Complainant contends and provides evidence that the disputed domain name resolves to a website that offers ecodenta cosmetic products. The Complainant further rightfully contends that the Respondent has not developed a legitimate use in respect of the disputed domain name. Competing use is not considered a bona fide offering of goods or services, nor a legitimate noncommercial or fair use. The Complainant contends that the Respondent was seeking to use the disputed domain name only to divert consumers to its own website and that the Respondent has no legitimate interests in respect of the disputed domain name.

In lack of any evidence (e.g. license agreement) from the Respondent, or any other information indicating the contrary, the Panel concludes that the Respondent has no rights or legitimate interests in respect of the disputed domain name.

The Complainant also asserted and proved that the Respondent tried to attract internet users for commercial gain by creating a likelihood of confusion with the Complainant's trademarks. As the Respondent said, no original “ecodenta” products were exported to Turkey. Hence, then is advertising the trademark protected product in Turkish language without sense. This makes it highly unlikely that the Respondent had no knowledge of the Complainant's prior trademark rights at the time of registration of the disputed domain name. The Complainant rightfully contends that the Respondent has used the disputed domain name intentionally to attract visitors for commercial gain by creating confusion with the Complainant’s trademarks, and that the Respondent has used the disputed domain name with that intention, namely in bad faith. Had the Respondent wanted to present a bona fide criticism site then it would have been well advised to include some negative modifier in its domain name and to restrict itself to objective and reasoned criticism on its website.

Accordingly, the Panel finds that the disputed domain name was both registered and used in bad faith and that the Complaint succeeds under the third element of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ECODENTA.COM**: Transferred

PANELLISTS

Name	**Dr. jur. Harald von Herget**

DATE OF PANEL DECISION 2017-06-06

Publish the Decision