Decision for dispute CAC-UDRP-101743

Case number	CAC-UDRP-101743
Time of filing	2017-10-26 10:07:49
Domain names	ecodenta.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	UAB "BIOK laboratorija"

Complainant representative

Organization	Professional Law Partnership METIDA Law Firm Zaboliene and Partners

Respondent

Name	Jinsoo Yoon

OTHER LEGAL PROCEEDINGS

The Panel's attention has been drawn to the earlier decision of a differently constituted Panel operating under the auspices of this Provider, in case 101511 (6 June 2017), concerning the disputed domain name. In the earlier case, in which the present Complainant was the Complainant, but the Respondent (who took part in proceedings) was another party, the Panel found in favour of the Complainant and ordered that the disputed domain name be transferred to it.

The Complainant states that 'due to certain circumstances the Complainant failed to take over the domain name <ecodenta.com> in time and it became available for registration'. No further information is available regarding said circumstances.

IDENTIFICATION OF RIGHTS

The Complainant has rights in the string 'ecodenta' (Lithuanian trademark 65042, registered 18 April 2012), as well as two figurative trademarks comprising the same text and a stylised image of a tooth (Community Trade Mark 011220167, 21 March 2013; international mark 1215894, 7 July 2014).

FACTUAL BACKGROUND

Complainant UAB "BIOK laboratorija", with an address in Lithuania, and owner of the domain name <ECODENTA.LT> (registered in 2014), is active in the field of manufacturing and exporting beauty products, including those branded as Ecodenta.

Respondent Jinsoo Yoon, with an address in South Korea, registered the disputed domain name <ECODENTA.COM> on 28 August 2017.

PARTIES CONTENTIONS

No administratively compliant response has been filed. The written notice of the Complaint was returned as undelivered, while an email sent to the WHOIS contact was successfully relayed. An email notice sent to <postmaster@ecodenta.com> was returned as undelivered, and no further email address could be found on the website at the disputed domain name. The Respondent never accessed the online platform.

The Complainant contends that all three elements of paragraph 4(a) have been satisfied and asks that the disputed domain name be transferred to it.

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).

The disputed domain name, disregarding the top-level domain in accordance with the usual practice under the UDRP, is identical to the text in the trademark 'ecodenta', and (disregarding non-alphanumeric aspects) also identical to the remaining text within the figurative mark.

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).

The Complainant has declared that it has not granted any permission to the Respondent to use the disputed domain name. As the Respondent has not participated in the proceeedings, the Panel is unable to rely on any statement of possible rights or legitimate interests. The domain parking page, and associated offer to sell the disputed domain name, does not demonstrate the existence of such rights or legitimate interests. In particular, the presence of pay per click links not associated with (for instance) a genuine meaning such as a dictionary word points mitigates against the possibility of legitimate interests being found through such commercial uses (see, for example, WIPO D2016-0818 <CANDI.COM>).

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).

The most relevant aspect of paragraph 4(a)(iii) of the Policy that arises in this Case, in the view of the Panel, is not the provisions of paragraph 4(b)(iii) on intention to sell to the Respondent. The offer of sale is at its most generic and the Complainant has not adduced any evidence of correspondence between it and the Respondent, which is often a determining or strengthening factor in cases under paragraph 4(b)(iii). Instead, the closest fit is that set out in paragraph 4(b)(iv) of the Policy: that the Respondent has 'intentionally attempted to attract, for commercial gain, Internet users to [the] web site or other on-line location, by creating a likelihood of confusion with the complainant's mark as to the source, sponsorship, affiliation, or endorsement of [the] web site or location or of a product or service on [the] web site or location'.

The presence of pay per click advertising on the website is an indication of commercial gain. The Respondent has taken no positive steps, to the knowledge of the Panel, to displace the possible likelihood of confusion through the use of a name corresponding directly to a trademark held by the Complainant. The deliberate registration of a name for which there appears to be no current meaning other than the products made and exported by the Complainant is relevant. See for instance the decision in WIPO D2013-1409 <WRDPRESS.COM>.

The present facts also fall close to the 'passive holding' cases, where a Panel cannot realistically identify a situation where

use would be in good faith (see WIPO Jurisprudential Overview 3.0, para 3.2 including its summary of the 'Telstra' line of cases (WIPO D2000-0003 <TELSTRA.ORG>). In the present case, as noted above, it would be rather difficult for the Respondent to demonstrate a good-faith use of this mark; if the intention were, for instance, to provide a critical analysis of the Complainant's products or the like, a good faith attempt to do so could use relevant text alongside the mark, and/or ensure that users were not confused through explanatory text on the website. Here, the Panel notes that the website at the disputed domain name contains advertising, an offer of sale, and no more.

The facts of this case can be compared with those reported in WIPO D2016-1048 <INTOCABLE.COM>, where although similar use was made of the same domain parking / reselling service (Sedo) in a case decided by a three-member Panel in favour of the Respondent, the Respondent participated in the case and affirmed that it had no prior knowledge of the Complainant (a musical band), and the string at issue was a common Spanish word that translate as 'untouchable', as well as being the name used by the Complainant. In this case, the Respondent has not provided information, and the word does not appear in dictionaries, whether in English, Lithuanian, or Korean. Indeed, the word appears to be used by the Complainant for its range of products. There is of course the possibility that the word could be used for other purposes, given its simple construction (eco for ecological and denta for matters related to teeth), but the Panel cannot attribute such an approach to the Respondent.

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 Panel however reminds parties that the useful WIPO 'Overview of Panel Names' is now in its third edition (as of May 2017), and so references to this edition, rather than to the second edition, are more useful.

Moreover, all parties should be aware that providing undated screenshots as 'evidence' makes it more difficult for Panels to draw certain conclusion, especially when priority and use are in question.

PRINCIPAL REASONS FOR THE DECISION

The reasons for the decision are as set out under the various components, above.

In the absence of any Response 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 <ECODENTA.COM>. On the other hand, it is clear that the Complainant has rights in respect of the trademark ECODENTA, as indeed it has during the decision of the earlier Panel in a different dispute. In light of the evidence presented regarding the use of the disputed domain name by the Respondent in this case, and the legal findings as set out above, the Panel can find that the disputed domain name was registered and is being operated in bad faith. The requirements for the acceptance of a Complaint under paragraph 4 of the UDRP have therefore been met.

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	**Prof Daithi Mac Sithigh**

DATE OF PANEL DECISION 2017-11-25

Publish the Decision