Decision for dispute CAC-UDRP-101820

Case number	CAC-UDRP-101820
Time of filing	2018-01-10 13:39:49
Domain names	singingrock.store

Case administrator

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

Complainant

Organization	Singing Rock s.r.o.

Respondent

Organization	Klaas Boereboom - SportHoliday

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings.

IDENTIFICATION OF RIGHTS

According to the evidence submitted by Complainant, Complainant is the owner of the following trademark: European Union trademark SINGING ROCK, with registration number 003907672 and a registration date of 22 December 2005.

FACTUAL BACKGROUND

According to the information provided, Complainant is a manufacturer of climbing equipment.

The disputed domain name, <singingrock.store>, was registered on 22 December 2016.

The trademark registration of Complainant has been issued prior to the registration of the disputed domain name.

According to Complainant the disputed domain name is identical to Complainant's trademark as it contains the trademark SINGING ROCK.

According to Complainant, Respondent has no rights or legitimate interest in the disputed domain name. Respondent has neither been authorized by Complainant to register the disputed domain name, nor has Respondent acquired a legitimate right to use the SINGING ROCK trademark by any written agreement with Complainant.

According to Complainant the disputed domain name is registered and is being used in bad faith. Complainant submits that it has received e-mails and phone calls from dissatisfied customers stating that they want a refund for orders that were never delivered.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

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

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

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.

Under paragraph 11(a) of the Rules it is stated that „unless otherwise agreed by the parties, or specified otherwise in the Registration Agreement, the language of the administrative proceeding shall be the language of the Registration Agreement, subject to the authority of the Panel to determine otherwise.“ In the present case, the language of the Registration Agreement is Dutch.

Complainant submitted its complaint in English and requested that the language of the proceeding be English. Respondent has not submitted any comments in this regard despite having been given the opportunity to do so. Taking into account the Respondent’s default and all of the other relevant circumstances of the case, in particular the fact that the website to which the disputed domain name resolves is in the English language, the Panel concludes that, in accordance with paragraph 11(a) of the Rules, it is appropriate that the language of the proceeding be English.

Therefore, the Panel has decided to accept Complainant’s filing in English and issue a decision in English.

PRINCIPAL REASONS FOR THE DECISION

Complainant has established that it is the owner of a European Union trademark registration for SINGING ROCK. The disputed domain name incorporates the entirety of the SINGING ROCK trademark. The addition of the generic Top-Level Domain (“gTLD”) “.store” is insufficient to avoid a finding that the disputed domain name is identical to the trademark of Complainant.

In the opinion of the Panel, Complainant has made a prima facie case that Respondent lacks rights or legitimate interests in the disputed domain name. Complainant has not licensed or otherwise permitted Respondent to use its trademark or to register the disputed domain name incorporating its trademark. Respondent is not making a legitimate non-commercial or fair use of the disputed domain name with intent for commercial gain to misleadingly divert consumers or to tarnish the trademark of Complainant.

The Panel accepts the undisputed evidence submitted by Complainant that the disputed domain name resolves to a website which is a copy of the website of Complainant and where products of Complainant are being advertised. The Panel does not consider such use a bona fide offering of goods or services nor a legitimate non-commercial or fair use of the disputed domain name. In addition, the website under the disputed domain name does not accurately and prominently disclose the relationship between Respondent and Complainant as the holder of the SINGING ROCK trademark, in particular as there has never been any business relationship between Complainant and Respondent. Respondent is also not commonly known by the disputed domain name nor has it acquired any trademark or service mark rights.

The Panel finds that the disputed domain name has been registered and is being used in bad faith. Noting the circumstances of this case, the Panel finds it more likely than not that Respondent knew or should have known of Complainant's SINGING ROCK trademark.

The Panel accepts the undisputed submission of Complainant that it has received e-mails and phone calls from dissatisfied customers stating that they want a refund for orders that were never delivered by Respondent. The Panel further notes that the disputed domain name incorporates Complainant's SINGING ROCK trademark in its entirety, which indicates, in the circumstances of this case, that Respondent registered and used the disputed domain name with the intention to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the trademark of Complainant as to the source, sponsorship, affiliation, or endorsement of its website or location or of a product or service on its website or location, which constitutes registration and use in bad faith pursuant to paragraph 4(b)(iv) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **SINGINGROCK.STORE**: Transferred

PANELLISTS

Name	**Dinant T.L. Oosterbaan**

DATE OF PANEL DECISION 2018-02-08

Publish the Decision