Decision for dispute CAC-UDRP-101890

Case number	CAC-UDRP-101890
Time of filing	2018-02-20 13:13:14
Domain names	MscSeaview.com

Case administrator

Name	Aneta Jelenová (Case admin)

Complainant

Organization	MSC Mediterranean Shipping Company Holding SA

Complainant representative

Organization	BrandIT GmbH

Respondent

Name	JInsoo Yoon

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other pending or decided legal proceedings relating to the disputed domain name.

IDENTIFICATION OF RIGHTS

In these proceedings, the Complainant relies on the following trademarks:

- MSC (device), International Registration No. 872580, filed on June 30, 2005, covering services in classes 39, 41 and 43 (incl. designation to South Korea, country of the Respondent);

- MSC SEAVIEW (word), International Registration No. 1305165, filed on May 24, 2016, covering services in classes 39, 41 and 43; and,

- MSC SEAVIEW (word), Swiss National Registration No. 561422016, filed on May 20, 2016, covering services in classes 39, 41 and 43.

It is worth noting that, the Complainant owns several other trademark registrations in various countries worldwide for its MSC trademark, and also a few for MSC SEAVIEW.

FACTUAL BACKGROUND

The Complainant is a Swiss-based European company, employing over 17,000 staff globally and selling cruise holidays in 67 countries worldwide. Its fleet of 14 large cruise liners was created in 2003 and is now among the largest in the world. MSC Seaview is one of the ships (currently under construction) owned by the Complainant, scheduled to join the fleet in June 2018.

The Complainant owns a fairly large portfolio of trademarks including the words “MSC” and "MSC SEAVIEW", most of which predate the registration of the Disputed domain name and some of which cover the Asian geographical area where the Respondent is based. It also owns (through its relative company MSC Cruises S.A.) a multitude of related domain names, like <mscseaview.co.za> and <mscseaview.us> since 2016.

The disputed domain name <MscSeaview.com> was registered on August 24, 2017 by the Respondent.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant contends that the disputed domain name is confusingly similar to its MSC SEAVIEW trademarks, as it fully incorporates this trademark.

The Complainant maintains that the Respondent lacks rights or legitimate interests in the disputed domain name because the Complainant is not affiliated with nor has it ever authorised the Respondent to register its trademark as a domain name, the Complainant has never licensed its trademark to the Respondent, and because the disputed domain name does not resolve to an active website since its registration, but to a pay-per-click parking webpage. Given the distinctiveness and reputation of the Complainant's trademark, the Complainant contends that the disputed domain name has been registered in order for the Respondent to benefit from an eventual affiliation with the Complainant. Thus, the Respondent registered and used the disputed domain name to create a likelihood of confusion with the Complainant's trademark.

According to the Complainant, given the distinctiveness and reputation of the MSC and MSC SEAVIEW trademarks, the Respondent registered the disputed domain name with full knowledge of the Complainant's trademark in an intentional way (see dates involved) and this is evidence of the fact that the disputed domain name was registered in bad faith. Further, the Respondent is publicly offering the disputed domain name for sale.

With respect to use in bad faith, the Complainant points out that the Respondent used the disputed domain name as a pay-per-click parking webpage with sponsored links (also to competitors), with the purpose of attracting internet traffic for commercial gain, which is a clear indication of bad faith. Further, the Complainant highlights a pattern of similar conduct on behalf of the Respondent, concerning more than 10,000 other domain names.

For all these reasons, the Complainant concludes that the Respondent registered and used the Disputed domain name in bad faith.

RESPONDENT:

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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 wholly incorporates and, in fact, consists of the Complainant's trademark MSC SEAVIEW, alone.

As far as the gTLD ".com" is concerned, it is generally recognized that top level domains do not have any bearing in the assessment of identity or confusing similarity, according to paragraph 4(a)(i) of the Policy.

Hence, the Panel is satisfied that the first requirement under the Policy is met.

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).

Since proving a negative fact is almost impossible, Panelists in UDRP proceedings have generally agreed that it is sufficient for a complainant to establish a prima facie case that a respondent lacks rights or legitimate interests in the Disputed domain name to shift the burden of proof to the respondent.

In the case at issue, the Complainant argued that it had never authorised the Respondent to register the MSC SEAVIEW trademark in the disputed domain name, and that it had never licensed its trademark to the Respondent.

Furthermore, the Disputed domain name does not resolve to an active website and therefore the Respondent cannot demonstrate any use of the Disputed domain name in connection with a bona fide offering of goods and services or a legitimate non-commercial or fair use of the Disputed domain name.

Finally, there is no other evidence in the case file that could demonstrate that the Respondent has been commonly known by the Disputed domain name.

In view of the foregoing, the Panel is satisfied that the Complainant has established a prima facie case that the Respondent lacks rights and legitimate interests in the disputed domain name. In order to rebut the Complainant's arguments, the Respondent had the possibility to make his own defense. However, the Respondent has chosen not to file a Response.

Therefore the Panel is satisfied that also the second requirement under the Policy is met.

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 Complainant has, to the satisfaction of the Panel, shown that 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).

As far as registration in bad faith is concerned, given the reputation of the Complainant's trademarks and the fact that the disputed domain name fully incorporates one of these trademarks (MSC SEAVIEW), it is clear that, at the time of the registration of the disputed domain name (just one day after the float out of the MSC SEAVIEW cruise ship), the Respondent was well aware of the Complainant's trademark. The registration as domain name of a third party's well-known trademark with full knowledge of the fact that the rights over this trademark belong to a third party amounts to registration in bad faith.

With respect to use in bad faith, the disputed domain name does not resolve to an active website. Lack of use of a domain name can amount to use in bad faith in some circumstances, such as when the complainant’s trademark has such a strong reputation that it is widely known, and when it is impossible to conceive any plausible actual or contemplated active use of the domain name by the Respondent that would not be illegitimate. These are exactly the circumstances that apply in the case at issue. The trademarks MSC and MSC SEAVIEW enjoy wide and extensive reputation, also at the geographical area where the Respondent is located. Therefore it is impossible to conceive any plausible active use of the disputed domain name that would be legitimate. Considering that the Complainant is one of largest cruise line companies in the world and the

pattern of conduct of the Respondent in more than 10,000 cases, where the Respondent registers (slightly misspelled, sometimes) famous domain names and then offers them for sale, the Panel finds it clear that the disputed domain name was used in bad faith.

For all circumstances mentioned above, the Panel is satisfied that also the third requirement under the Policy is satisfied.

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

The disputed domain name wholly incorporates the Complainant's trademark and, in fact, consists of that trademark, alone. The disputed domain name is therefore confusingly similar to the Complainant's trademark.

The Respondent was not authorised to include the Complainant's trademark in the disputed domain name, and the Complainant never licensed its trademarks to the Respondent. The Respondent is not using the disputed domain name in connection with a bona fide offering of goods or services, or a legitimate non-commercial or fair use.

The Respondent registered the disputed domain name with full knowledge of the Complainant's well-known trademarks. His passive use of the disputed domain name is in bad faith as there is no conceivable use of the disputed domain name that could amount to a legitimate use. The public offer for sale (especially, as a pattern) is a further indication of bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **MSCSEAVIEW.COM**: Transferred

PANELLISTS

Name	**Sozos-Christos Theodoulou**

DATE OF PANEL DECISION 2018-03-23

Publish the Decision