Decision for dispute CAC-UDRP-101948

Case number	CAC-UDRP-101948
Time of filing	2018-04-03 09:11:43
Domain names	eiderclothing.com

Case administrator

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

Complainant

Organization	MILLET MOUNTAIN GROUP

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	Bernard Munoz

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks including the distinctive wording EIDER®, such as the following registrations:

- French registration EIDER® n° 1325492 registered since September 30, 1985
- French registration EIDER® no. 96612536 registered since February 2, 1996
- European registration EIDER® no. 003312972 registered since August 1, 2003

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Created in France in 1921 by Marc Millet, MILLET MOUNTAIN GROUP SAS (please see their website at: http://www.millet-mountain.com) is an adult clothing and mountain equipment company, covering trekking, mountaineering and skiing activities, using three different brands : LAFUMA®, MILLET® et EIDER®. Each brand has its own website. The disputed domain name <eiderclothing.com> was registered by the Respondent identified as “Bernard Munoz” on March 27, 2017.

The disputed domain name points to an active website, where the Complainant’s trademarks EIDER® are reproduced.

PARTIES CONTENTIONS

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 only differs from the trademark EIDER® by the addition of the generic word “CLOTHING”, which is related to the Complainant’s activity. Indeed, the Complainant sells clothing and equipment for trekking, mountaineering and skiing activities.

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).

According to the WIPO case no. D2003-0455 Croatia Airlines d.d. v. Modern Empire Internet Ltd., the 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, the Respondent carries the burden of demonstrating rights or legitimate interests in the domain name. If the Respondent fails to do so, the Complainant is deemed to have satisfied paragraph 4(a)(ii) of the UDRP.

The Respondent is not known as “EIDERCLOTHING”, but as “Bernard Munoz”, and has not acquired trademarks rights on this term. Indeed, past panels have held that a Respondent was not commonly known by a disputed domain name if the WHOIS information was not similar to the disputed domain name. Please see for instance FORUM case no. FA 96356 Broadcom Corp. v. Intellifone Corp.,: Panel stated that the Respondent has “no rights or legitimate interests because the Respondent is not commonly known by the disputed domain name or using the domain name in connection with a legitimate or fair use”.

The Complainant contends that the Respondent is not affiliated with nor authorized by MILLET MOUNTAIN GROUP SAS in any way. The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name. The Complainant does not carry out any activity for, nor has any business with the Respondent.

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 Respondent is attempting to pass itself off as the Complainant by using its registered trademarks EIDER® in violation of Policy.The disputed domain name has also been registered in an effort to take advantage of the goodwill Complainant had built up in its EIDER® trademarks, and to unduly benefit from creating a diversion of the internet users of the Complainant by pretending to be an official online partner of the Complainant. Indeed, the Respondent is offering for sale the Complainant’s products and is displaying the figurative trademarks of the Complainant .

The Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of such websites. These activities amount to bad faith use of the disputed domain names pursuant to paragraph 4(b)(iv) of the Policy. As explained in case CAC n° 101284 SALOMON SAS v. Hui min <salomontw.com> (“The conclusion is inescapable that the Respondent has intentionally attempted to attract Internet users to his website for commercial gain by creating a likelihood of confusion with the Complainant's SALOMON trademark as to the source, sponsorship, affiliation, or endorsement of his website. These activities are evidence of bad faith registration and use of the disputed domain name pursuant to paragraph 4(b)(iv) 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

The Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of such websites.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EIDERCLOTHING.COM**: Transferred

PANELLISTS

Name	**Thomas Hoeren**

DATE OF PANEL DECISION 2018-05-03

Publish the Decision