Decision for dispute CAC-UDRP-101963

Case number	CAC-UDRP-101963
Time of filing	2018-04-20 09:51:27
Domain names	eiderskiclothing.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	MILLET MOUNTAIN GROUP

Complainant representative

Organization	Cabinet Germain & Maureau

Respondent

Name	Tanner Wolf

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings which are pending or decided and which relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant owns several trademarks including the following registrations:

- French registration EIDER n° 1325492 registered since September 30th 1985;
- French registration EIDER no. 96612536 registered since Februar 20th 1996;
- European registration EIDER no. 003312972 registered since August 1st 2003.

MILLET MOUNTAIN GROUP SAS is also the owner of domain names, including the same wording EIDER, such as <eider.fr> registered since January 29, 1998.

FACTUAL BACKGROUND

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

Created in France in 1921 by Marc Millet, Complainant is an adult clothing and mountain equipment company, covering trekking, mountaineering and skiing activities, using three different brands : LAFUMA, MILLET and EIDER. Each brand has its

own website.

The Disputed domain name <eiderskiclothing.com> was registered by the Respondent identified as “Tanner Wolf” on March 24th 2017.
The Disputed domain name points to an active website, where the Complainant’s trademark EIDER is reproduced.

The Complainant states that the Disputed domain name is confusingly similar to its trademarks EIDER and its domain names associated, because the Disputed domain name contains the Complainant’s registered trademark EIDER in its entirety.

The Complainant contends that the Disputed domain name only differs from the trademark EIDER by the addition of the generic words “SKI” and “CLOTHING”, which is related to the Complainant’s activity. The Complainant sells clothing and equipment for trekking, mountaineering and skiing activities.

The Complainant states that the Respondent is not known as “EIDERSKICLOTHING”, but as “Tanner Wolf”, and has not acquired trademarks rights on this term.

The Complainant contends that the Respondent is not affiliated with nor authorized by Complainant 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.

Neither licence nor authorization has been granted to the Respondent to make any use of the Complainant’s trademark EIDER, or apply for registration of the Disputed domain name by the Complainant.

The website displays the Complainant’s figurative trademarks, the products of the Complainant for sale. There is no disclaimer or any information explaining that the Respondent is not affiliated with the Complainant. The Respondent’s sole intention in registering the Disputed domain name must have been to benefit financially from the Complainant’s EIDER trademarks by pretending to be an official reseller of the Complainant’s products.

The Disputed domain name is not used or maintained in good faith and in connection with a bona fide offering of goods or services. The Complainant concludes that the Respondent has registered and is using the Disputed domain name in bad faith.

Given the distinctiveness of the Complainant's trademarks and the content of the website, Complainant states that the Respondent has registered the Disputed domain name with full knowledge of the Complainant's trademarks. The Complainant contends that 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 trademark of the Complainant.

The Complainant also contends that the Respondent is found to have used the Disputed domain name intentionally to attract visitors for commercial gain by confusion with the Complainant’s trademarks, and to have made the registration with that intention, constituting registration and use in bad faith.

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).

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).

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 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

A. Identical or Confusingly Similar

The Complainant has rights in the mark by virtue of its registered trademark EIDER.

The Disputed domain name incorporates the whole of the Complainant’s EIDER trademark, and adds the generic word “SKICLOTHING" as a suffix and the gTLD suffix “.com". Whilst the addition of the term “SKICLOTHING” is enough to preclude the Disputed domain name from being identical to the Complainant’s registered trademark "SKICLOTHING is also the element that ensures that the Disputed domain name is confusingly similar to the "EIDER" mark, and the Panel accepts the Complainant’s submissions in so finding.

The Panel agrees with the Complainant that the addition of the generic term "SKICLOTHING" without space or hyphen at the end of the Disputed domain name and the gTLD “.com” is not sufficient to escape the finding that the Disputed domain name is confusingly similar to the Complainant's trademark and does not change the overall impression of the designation as being connected to the trademark "EIDER", as the EIDER trademark at the beginning of the Disputed domain name is the only distinctive part of the Disputed domain name. The Panel agrees with Complainant that the term “SKICLOTHING,” which is applicable as a descriptive term to the field in which the Complainant plays a prominent role, i.e. the niche sector for skiing clothes, is likely to increase the possibility of confusion amongst consumers. Therefore the Panel finds, that the Disputed domain name is confusingly similar to the Complainant’s trademark EIDER.

B. Rights or Legitimate Interests

When a respondent remains completely silent in the face of a prima facie case that it lacks any rights or legitimate interests in respect of a domain name, a complainant is generally deemed to have satisfied paragraph 4(a)(ii) of the Policy. Here the Complainant has presented an abundance of evidence to show that the Respondent has no plausible right or legitimate interest in respect of the Disputed domain name and the Panel so finds.

C. Bad Faith

The Panel believes that Respondent registered the Disputed domain name with knowledge of Complainant's rights. The Disputed domain name was registered decades after the registration of the trademarks of the Complainant and Complainant used it widely since then. Furthermore, the combination in the Disputed domain name of the EIDER mark with to the Complainant´s business related term "SKICLOTHING" shows that Respondent could not be ingnorant to the Complainant´s trademark. Futhermore, Respondent uses the trademark EIDER of Complainant on several places on the website of the Disputed domain name.

Moreover, the Panel agrees with Complainant that the Disputed domain name has also been registered in an effort to take advantage of the goodwill that Complainant had built up in its EIDER trademark, 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, because the Respondent is offering for sale the Complainant's products and is displaying the figurative trademarks of the Complainant.

Finally, the Respondent has, by promiently displaying the trademark of Complainant on the website, intentionally attempted to attract Internet users to the Respondent's website for commercial gain by offering (and probably selling) Complaintant's products and therefore creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

On these grounds, the Panel concludes that the Respondent has registered and is using the Disputed domain name in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **EIDERSKICLOTHING.COM**: Transferred

PANELLISTS

Name	**Jan Christian Schnedler, LL.M.**

DATE OF PANEL DECISION 2018-05-15

Publish the Decision