Decision for dispute CAC-UDRP-102049

Case number	CAC-UDRP-102049
Time of filing	2018-06-13 12:28:21
Domain names	windowsminimal.com

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	KELLER S.A.

Complainant representative

Organization	The Law Offices of Dr. Christos A. Theodoulou LLC

Respondent

Organization	ANDREAS ANDREOU - GEOPET ALUMINIUM (1979) LTD

Respondent representative

Organization	ANTONAKIS SOTERIOU & ASSOCIATES LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any pending or decided procedure which relates to the disputed domain name

IDENTIFICATION OF RIGHTS

The Complainant owns the following trademarks for classes 6, 19 and 37:

- European word trademark MINIMAL WINDOWS No 007093511 filed before the EUIPO on September 25, 2008 and registered on October 2, 2009 in Classes 6, 19 and 37. This trademark is part of the International registration No 0992134;
- European word and device trademark MINIMAL WINDOWS n°14241533, filed on June 11, 2015 and registered on November 17, 2015 ;
- European word and device trademark GLASSHOUSE MINIMAL WINDOWS No 7093586, registered on August 31, 2009. This trademark is part of the International registration No 0992135 ;

- European word and device trademark KELLER MINIMAL WINDOWS No 14241517, filed on June 11, 2015 and registered on October 14, 2015. This trademark is part of the International registration No 1291463 ;

The Complainant also owns the domain name <minimal-windows.com>, registered on December 8, 2008

The Respondent owns the domain name <windowsminimal.com>, registered on July 2, 2015.

FACTUAL BACKGROUND

The Complainant is a Luxembourg company, active since 1990 and known in the marketplace as one of the leading manufacturers of slim framed sliding doors and windows. It carries out its activities under and by reference to various distinctive and well-known trademarks. Through extensive use and marketing efforts, the Complainant's brand has acquired important goodwill and reputation in the field of slim framed sliding doors and windows.

The Respondent is a family operated company. George Petrou, founder, is one of pioneers in manufacturing of aluminum doors and windows in the local market of Cyprus. He diversified from steel to aluminum and continued developing material and equipment at his factory in Morfou. In 1979, with the help of his wife Eleni, he founded GEOPTER ALUMINIUM LTD. Since then, the company has grown in the leading local company in aluminum manufacture of doors, windows and facades. During the late 90's the company's operation moved to a new modern factory, equipped with cutting-edge technology machinery. That drove to new partnerships with worldwide brands that strengthened the company's portfolio both in products and projects, especially in energy saving systems. Andreas Andreou, Mr Petrou's son, established the company GEPOT ALUMINIUM (1979) LTD and he is continuing his father's legacy.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

Identical or confusingly similar:

The Complainant contends that the disputed domain name is confusingly similar to its MINIMAL WINDOWS trademarks and its domain names. The disputed domain name consists exclusively of the Complainant's registered MINIMAL WINDOWS trademark, written in a reversed way. MINIMAL WINDOWS does not have a meaning per se in English and has, therefore, an increased distinctiveness. It is well established that a domain name that wholly incorporates a Complainant's registered trademark is sufficient to establish confusing similarity for purposes of the UDRP, according, for instance, to the WIPO Case No. D2003-0888, Dr. Ing. h.c. F. Porsche AG v. V.T. on <porsche-autoparts.com>.

Rights or legitimate interest:

The Complainant states that the Respondent is not affiliated with him, nor authorized in any way to register and use the disputed domain name. Neither license nor authorization has been granted to the Respondent. The domain name points to a webpage that presents the products and services of a competitor of the Complainant, who is domiciled in London (UK) and who is not the Respondent. Such use is obviously not legitimate and is not a non-commercial or fair use. The Respondent has no rights or legitimate interest in the disputed domain name, and has registered and used the domain name only in order to create a likelihood of confusion with the Complainant's MINIMAL WINDOWS trademarks.

Bad faith:

The Complainant states that the whole incorporation of its trademark in a reversed order is clear evidence of the bad faith of the Respondent. Given the distinctiveness of the Complainant's trademark and reputation in the field of slim framed sliding

doors and windows, in which the Respondent also seems to be active as it can be seen from its own website, it is reasonable to infer that the Respondent has registered the domain name with full knowledge of the Complainant's MINIMAL WINDOWS trademarks. It also states that the use of the domain name in connection with a website which resolves to a competitor website related to the Complainant's activity is evidence of use in bad faith. The Respondent did to stop using the disputed domain name after he received the cease and desist letter that was sent to him on August 2, 2016. It means that he went on using the disputed domain name in full knowledge of the prior trademarks rights of the Complainant.

By registering and using the domain name, it seems clear that the Respondent has maintained the domain name in order to prevent the Complainant to register its trademark as a domain name, and to intentionally attract Internet users for commercial gain, by creating a likelihood of confusion with the Complainant's trademark.

RESPONDENT:

Identical or confusingly similar:

The Respondent contends that the disputed domain name is not identical to the Complainant's registered trademark neither confusingly similar. The Complainant uses its trademark with a combination view and there is no possibility of confusion with the disputed domain name. The disputed domain name <windowsminimal.com> is a short, without any meaning, fourteen letter «.com » domain name that could be used for a variety of purposes, which is why Respondent registered it and does not take advantage of the Complainant's MINIMAL WINDOWS trademarks.

Rights or legitimate interest:

The Respondent contends that there is nothing illegitimate about investing in domain names and that Complainant has failed to put forward any evidence that Respondent is seeking to capitalize on Complainant's « minimal windows » trademarks.

Bad faith:

The Respondent argues that it did not register the disputed domain name in bad faith because the Complainant appears to have never used its trademarks in the Cyprus Market, and it categorically denies it had any knowledge of the Complainant or its MINIMAL WINDOWS trademarks when he acquired the domain name. The Respondent claims he has never used the disputed domain name to target Complainant's products. He explains that it has used "windowsminimal slimline frame for 8 years now, since 2010, and it has finished projects over 3 millions euros and there is still projects over 2 millions euros".

RIGHTS

The Complainant owns a MINIMAL WINDOWS verbal International registration No 992134 which designates the European Union. This trademark was filed before the EUIPO under No 007093511 on September 25, 2008 and registered on October 2, 2009 in Classes 6, 19 and 37.
The Respondent asserts that the trademark is distinctive, when he explains that "it still must be noted that the phrase "WINDOWSMINIMAL" is a fourteen letters, pronounceable phrase with no specific meaning, which may be used for a variety of purposes". Nevertheless, it was used to offer products of a Complainant's competitor, established in London (UK).
The UDRP complaint is based on a valid verbal European trademark MINIMAL WINDOWS, which is protected in the EU member states, to which Cyprus belongs.
It means that this trademark is valid in Cyprus, where the Respondent is domiciled.
The fame of the prior trademark is not a condition to the finding of likelihood of confusion.
It's undisputable that the disputed domain name is composed of both verbal elements of the MINIMAL WINDOW verbal European trademark No 007093511. The disputed domain name is an inverted version of the Complainant's MINIMAL

WINDOW trademark. This is insufficient to exclude any likelihood of confusion.

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

Absence of rights or legitimate interest
The Respondent is using the disputed domain name to offer and promote goods and services of a British company which is a competitor of the Complainant.
The response that consists of explaining that the MINIMAL WINDOWS trademark was not used in Cyprus, that the Complainant is domiciled in Luxembourg and that investing in domain names is allowed is not relevant.
Even if the Respondent is established in Cyprus, its activity is not local and the disputed domain name is sued to promote a company established in London (UK).
The Respondent asserts that it “has been using windowsminimal slimline frame for 8 years now, since 2010, and it has finished projects over 3 millions euros and there is still pending projects over 2 millions euros”. The produced piece of evidence is an internal document citing names of projects in Cyprus and indicating their respective prices. The term “Windowsminimal” is not mentioned on this annex.
Anyhow, the MINIMAL WINDOWS European trademark was already registered and protected in 2010.
A “.com” domain name has an international scope and a Cyprus company is able to be active on the internet under any other local domain name.
The Respondent is not able to prove any legitimate right or interest on the MINIMAL WINDOWS trademark.

The Respondent has not been commonly known by the disputed domain name, and it is making a commercial use of the disputed domain name, that misleadingly divert consumers.
The Complainant has therefore established a prima facie case that the Respondent has no rights and legitimate interests in the disputed domain name.

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

Bad faith registration

The Respondent explains that it sells “slimline frame windows under the domain name www.windowsminimal.com>”. These windows have the same characteristics as the windows produced by the Complainant.
When the disputed domain name was registered, the MINIMAL WINDOWS verbal European trademark protected in Cyprus was registered and this registration was published on the related official trademarks’ databases.
The pieces of evidence produced by the Complainant show that it uses its MINIMAL WINDOWS trademark with the usual mention ® meaning that it’s a registered and protected trademark.
The Respondent could not ignore the MINIMAL WINDOWS tardemark when it registered the disputed domain name.
By choosing to register the disputed domain name the Respondent attempted to misrepresent its domain as that of the Complainant, what enables him to target the Complainant’s customers on the internet.

Bad faith use

The Respondent’s reaction to the cease and desist letter dated August 2, 2016 was to offer to sell the disputed domain

name, according to its answer dated December 16, 2016. In its second letter dated February 17, 2017, it explained that the offer to transfer the domain name had been made only to “find a solution out of court”.
Nevertheless it went on using the disputed domain name to offer Complainant’s competing products on the internet.
The Panel is of the opinion that there is a finding for bad faith use in the meaning of Par. 4 (b) (iv) of the Policy: “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location”.
The Respondent has registered and used the domain name in bad faith under the third element of the UDRP Policy.

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

According to the Rules (Art. 10):l

(a) The Panel shall conduct the administrative proceeding in such manner as it considers appropriate in accordance with the Policy and these Rules.

(b) In all cases, the Panel shall ensure that the Parties are treated with equality and that each Party is given a fair opportunity to present its case.

(...)

(d) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence.

Therefore, the Panel accepts the nonstandard commuication submitted by the Complainant after the response was filed.

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

Confusing similarity with prior EU trademark protected in the country where the Respondent is domiciled

Absence of rights or legitmate interests: Commercial use to resolve to a website offering services of a Compalinant's competitor.

Bad faith registration: the trademark is protected and the Respondent could not ignore it

Bad faith use: Commercial use to resolve to a website offering services of a Compalinants' competitor and offer to sell

Par. 4 (b) (iv) of the Policy appplies: “by using the domain name, you have intentionally attempted to attract, for commercial gain, Internet users to your 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 your web site or location or of a product or service on your web site or location”.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

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Accepted

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

1. **WINDOWSMINIMAL.COM**: Transferred

PANELLISTS

Name	**Marie-Emmanuelle Haas, Avocat**

DATE OF PANEL DECISION 2018-08-07

Publish the Decision