Decision for dispute CAC-UDRP-102075

Case number	CAC-UDRP-102075
Time of filing	2018-07-24 12:41:24
Domain names	UYNSPORT.COM

Case administrator

Name	Sandra Lanczová (Case admin)

Complainant

Organization	Trerè Innovation S.r.l.

Complainant representative

Organization	FASANO PAULOVICS Società tra Avvocati

Respondent

Name	Mattia Cavazzini

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings that relate to the Disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is the registered owner of the following trademarks:

(a) European Union figurative trademark UYN, no. 016950883, filed on 5 July 2017, registered on 6 November 2017 in classes 25 and 35;

(b) European Union figurative trademark UYN Unleash Your Nature, no. 016950917, filed on 5 July 2017, registered on November 6, 2017 in classes 25 and 35;

(c) International figurative trademark UYN, no. 1384243, registered on 19 October 2017 in classes 25 and 35; and

(d) International figurative trademark UYN Unleash Your Nature, no. 1382912, registered on 19 October 2017 in classes 25 and 35.

(“Complainant’s Trademarks”).

The Disputed domain name was registered on 18 September 2017.

FACTUAL BACKGROUND

Although the Respondent filed a Response to the Complaint, it did not challenge the facts or evidence submitted by the Complainant. Therefore, the Panel considered the following facts asserted by the Complainant (and supported by the documentary evidence submitted by the Complainant) and unchallenged by the Respondent:

(a) The Complainant is an Italian family-owned clothing company with over 70 years of history based in Asola, province of Mantova, Italy specializing in production of socks, underwear and clothing with a high technical content;

(b) Since 2017 the Complainant has been engaged in the design and development of a range of products, comprising base layers, mid layers, functional socks and accessories for outdoor sports under its own new brand UYN (Unleash Your Nature);

(c) The Complainant is also owner of multiple domain names consisting of the terms “uynsports”, “uynsport” and “unleashyournature”, such as <uynsports.com> registered on 29 June 2017 and used as primary website of the Complainant’s UYN products as well as <uynsports.it>, <uynsports.fr>, <uynsports.eu>, <uynsports.de>, <uynsports.co.uk>, <uynsport.eu>, <uynsport.de>, <unleashyournature.com>, <unleashyournature.co.uk>, <unleashyournature.de> and <unleashyournature.fr>.

(d) The Disputed domain name was registered on 18 September 2017, a few months after the filing and publication of the Complainant’s Trademarks and registration of the primary domain name of the Complainant and has not been actively used ever since. The Disputed domain name resolves to a website which states “Lavori in corso” (under construction in Italian) and “Coming soon”;

(e) Two other domain names under the ccTLD .it <uynsport.it> and <unleashyournature.it> were registered on the same date as the Disputed domain name, through the same registration service provider/registrar, using the same nameservers and IP addresses. The websites to which these other domain names resolve have the same layout and display the same content as the website under the Disputed domain name (“lavori in corso” and “coming soon” messages and logo); and
(f) the Complainant's provider (Register.it S.p.A.) contacted the Respondent on 22 February 2018 and with Complainant's offer of EUR 6,000 for the transfer of the Disputed domain name, however, the Respondent rejected such offer and requested EUR 25,000.

On the other hand, the Panel did not consider allegations of the Complainant that the Respondent is somehow connected to the company Norman Group (a competitor of the Complainant) as these allegations were not supported by any evidence.

The Complainant seeks transfer of the Disputed domain name to the Complainant.

PARTIES CONTENTIONS

THE COMPLAINANT:

In addition to the above factual assertions, the Complainant also contends the following:

(i) Disputed domain name is confusingly similar to Complainant’s Trademarks;

(ii) The Respondent is not affiliated with nor authorized by the Complainant and is not related in any way to its business nor it obtained any license to use the Complainant’s Trademarks;

(iii) There is no evidence that the Respondent has been commonly known by the Disputed domain name or has acquired any rights in a trademark or trade name corresponding to the Disputed domain name;

(iv) The Disputed domain name is inactive and the website associated with it contains “Lavori in corso” (under construction

in Italian) and “Coming soon” messages. There is no proof of any demonstrable preparations to use the Disputed domain name in connection with a bona fide offering of goods or services.

(v) The Disputed domain name is also confusingly similar (almost identical) to the primary domain name of the Complainant <uynsports.com>, since the Respondent only eliminated the letter “s”, using the singular form of the term “sport”; and

(vi) The Respondent is connected to the company Norman Group, sited in Castel Goffredo, very close (approximately 15 km) to Asola, where the Complainant has its production site and registered office. Norman Group is involved in the manufacturing of hosiery and, therefore, is a competitor of the Complainant. Hence, it is the Complainant's well-founded suspicion that the Disputed domain name (together with uynsport.it and unleashyournature.it) was (were) registered by the Respondent on behalf of Norman Group, in order to disrupt the business of the Complainant and/or to sell the Disputed domain name (and other domain names) to the Complainant for valuable consideration.

THE RESPONDENT:

The Respondent filed its Response to the Complaint in which it stated that it bought the domain names different from the brands of the Complainant for Respondent`s new personal project, however, now the Respondent is willing to negotiate on possible renouncement of the domains.

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).

For details, please see "Principal Reasons for the Decision".

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).

For details, please see "Principal Reasons for the Decision".

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

Paragraph 4(a) of the UDRP Policy requires that the Complainant proves each of the following three elements to obtain an order that the Disputed domain name should be transferred or revoked:

(i) the Disputed domain name is identical or confusingly similar to a trademark or service mark in which the complainant has rights; and

(ii) the respondent has no rights or legitimate interests in respect of the Disputed domain name; and

(iii) the Disputed domain name has been registered and is being used in bad faith.

The Panel will proceed to analyze whether the three elements of paragraph 4(a) of the Policy are satisfied in these

proceedings.

RIGHTS

The Disputed domain name is confusingly similar to Complainant's Trademarks. The Panel agrees with the Complainant that the Disputed domain name includes the distinctive element of Complainant's Trademarks (i.e. the "UYN") and adding the non-distinctive term "sport" is insufficient to diminish confusing similarity of the Disputed domain name with Complainant's Trademarks.

For sake of completeness, the Panel asserts that the top-level suffix in the domain name (i.e. the ".com") must be disregarded under the identity / confusing similarity test as it is a necessary technical requirement of registration.

Therefore, the Panel concludes that the Complainant satisfied the requirement under paragraph 4(a)(i) of the UDRP.

NO RIGHTS OR LEGITIMATE INTERESTS

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 (please see, for example, WIPO case no. D2003-0455, Croatia Airlines d.d. v. Modern Empire Internet Ltd.).

As asserted by the Complainant (and unchallenged by the Respondent), the Respondent is not commonly known by the Disputed domain name. Neither is the Respondent in any way related to the Complainant or licensed to use Complainant`s Trademarks. No website is operated under the Disputed domain name and no preparations for any such website were demonstrated by the Respondent.

Therefore, the Panel concludes that the Respondent did not establish any right or legitimate interest to the Disputed domain name (within the meaning of paragraph 4(a)(ii) of the Policy).

BAD FAITH

The Panel also concurs with the Complainant that registration of Disputed domain name by the Respondent was hardly coincidental. Complainant filed its trademark applications and registered its primary domain name <uynsports.com> in June 2017, the Respondent registered the Disputed domain name in September 2017, i.e. shortly after the Complainant`s Trademarks were applied for and Complainant`s primary domain name was registered. The Complainant as well as the Respondent are domiciled in the same geographic area (Mantova Province, Italy) and therefore it is likely that the Respondent is aware of the existence of the Complainant and its brands.

The Panel also concurs with the Complainant that the Respondent has also registered the domain names <uynsport.it> and <unleashyournature.it>, i.e. other domain names confusingly similar to Complainant`s Trademarks. Although the registrant`s name is not shown in the publicly available whois record, the Disputed domain name and both .it domain names were registered on the same date, through the same registrar and all three webpages contain the same "work in progress" message with the same picture. Also in its Response the Respondent referred to "domain names" in plural making clear that the Respondent holds more domain names that could be of interest to the Complainant.

In the light of the above circumstances, it is, in the opinion of the Panel, impossible, that the Respondent could have registered the Disputed domain name without being aware of Complainant`s Trademarks. The Respondent demonstrated no intention to use the Disputed domain name for bona fide offering of goods or services (for example to sell the products of the Complainant), it only stated that it acquired the Disputed domain name for some unspecified "personal project" which, however, never materialized in any website being operated under the Disputed domain name. Therefore, a conclusion can be made that the Respondent registered the Disputed domain name either with the intention of its future sale to the Complainant (as the Respondent`s counteroffer to sell the Disputed domain name for EUR 25,000 seems to suggest) or with

some other ulterior motive (such as blocking Complainant from the use of the Disputed domain name or parasitizing on goodwill of Complainant`s brand). In any case, the Respondent could not have acted in good faith upon registration and use of the Disputed domain name.

On the other hand, the Panel does not concur with the Complainant that the Respondent`s objective also was to disrupt business of the Complainant as competitor because the alleged connection between the Respondent and company Norman Group (a competitor of the Complainant) has not been proved by the Complainant. This, however, cannot change the ultimate conclusion of the Panel that the Disputed domain name was registered and is being used in bad faith by the Respondent for the reasons set out above.

As a result, the Panel found that the Disputed domain name has been registered and used by the Respondent in bad faith (within the meaning of paragraph 4(a)(iii) of the Policy).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **UYNSPORT.COM**: Transferred

PANELLISTS

Name	**Michal Matějka**

DATE OF PANEL DECISION 2018-09-04

Publish the Decision