Decision for dispute CAC-UDRP-102117

Case number	CAC-UDRP-102117
Time of filing	2018-07-31 09:55:37
Domain names	avonbp.info

Case administrator

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

Complainant

Organization	AVON PRODUCTS, INC.

Complainant representative

Organization	Petosevic Kft.

Respondent

Name	Zeky Alvarez

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

The Complainant is the proprietor of a large trademark portfolio, including numerous registrations including or consisting of “AVON”.

As established by the Complainant and confirmed by the Whois records, the Respondent is domiciled in Spain and the sales and marketing of the goods on the disputed domain name were aimed at Hungarian consumers.

Consequently, the emphasized trademark registrations EUTM 000139188 “AVON” filed on 1 April 1996 in classes 3, 14, 16, 18, 21, 24, 25, 28, 35 and 42 and IR 892960 “AVON”, filed 22 August 2005 in classes 9, 16, and 36 are relevant to this case.

FACTUAL BACKGROUND

The Complainant, AVON PRODUCTS, INC. was founded in 1886 by David H. McConnell and is a direct-selling company within beauty, household, and personal care products. The Complainant had, in 2016, an annual sale of over $5.7 billion worldwide and is the fifth-largest beauty company with 6.4 million representatives, also making them the second largest direct-selling enterprise in the world.

Apparently sometime in February 2018, the Complainant was made aware that the Respondent had registered the domain <avonbp.info> on 9 September 2009 and was marketing and selling the Complainant's products, presumably to Hungarian consumers.

This prompted a cease-and-desist letter, dated 5 March 2018, to the Respondent's address stated in the Whois record, as well as an e-mail, dated 7 March 2018, also containing, the aforementioned cease-and-desist letter.

Both remained unanswered.

According to this Panel's own investigation, the Respondent has, sometime between the cease-and-desist letter and e-mail mentioned above and the 28 August 2018 on which date this Panel was appointed, ceased to use the disputed domain to market and sell the Complainant's products and is currently using the domain to market and sell hotel reservations in Avon Colorado, USA.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

RIGHTS

The Complainant has not, 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).

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant has not, 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 not, 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

Pursuant to the presentation of this case by the Complaint, it is this Panel's opinion, that the Complainant is the proprietor of a well-known and reputed trademark "AVON" and that the Respondent's registration and use of the disputed domain constitutes "bad faith" under the current practice.

However, this Panel must base its decision on the facts available on 26 July 2018 when the Complaint was filed and, consequently, consider whether the Complainant has presented a Prima Facie case at the date of the filing of the Complaint.

The evidence presented by the Complainant indicates that the disputed domain name have previously been used in bad faith, maybe even as late as 5 March 2018 when the cease-and-desist letter was sent, although this cannot be confirmed as the Appendix to the cease-and-desist letter is not dated. Consequently, the Complainant has submitted no real evidence to support the fact that the disputed domain name was used in bad faith at the time of filing of the Complaint, nor has the Complainant submitted evidence that the content of the disputed domain name was changed after the Complaint was filed, which would have had significant impact on this Panel's decision.

Further to the above, it has to be noted, that this Panel is neither obliged to nor does it perform its own investigation into

other factors which might support either case. The decision is therefore based solely on the evidence provided by the Complainant and said evidence only shows, that the disputed domain was used in bad faith on 3 May 2016.

The fact that the Respondent did not submit a reply cannot be considered.

In concluding and in the lack of evidence that the Respondent did not change the content of the disputed domain prior to filing the Complaint, this Panel has to rule that the current use of <avonbp.info> for marketing and selling hotel reservations in Avon, Colorado, USA must be considered legitimate and fair use of the disputed domain name.

The Complaint is, consequently, dismissed.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **AVONBP.INFO**: Remaining with the Respondent

PANELLISTS

Name	**Lars Karnoe**

DATE OF PANEL DECISION 2018-09-07

Publish the Decision