Decision for dispute CAC-UDRP-102156

Case number	CAC-UDRP-102156
Time of filing	2018-09-17 10:11:27
Domain names	hennessydayparty.com

Case administrator

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

Complainant

Organization	Jas Hennessy & Co

Complainant representative

Organization	Nameshield (Enora Millocheau)

Respondent

Organization	AN FIOR GROUP

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:

- International trademark HENNESSY with registration number 554084, registered on May 10, 1990;

- European Union trademark HENNESSY with registration number 4559241, registered on August 7, 2006;

- US trademark HENNESSY with registration number 86846, registered on April 22, 1969;

together to be referred to as the "HENNESSY trademark"

FACTUAL BACKGROUND

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

The Complainant is a cognac house that was founded in 1765 by Richard Hennessy, and headquarters in Cognac, France.

The Complainant is a part of the Louis Vuitton Moët-Hennessy group and sells about 70 million bottles every year worldwide and is now the top French wine and spirits brand by value in the world.

The Complainant is also the owner of several domain names which include the HENNESSY trademark, such as the domain name <hennessy.com>, registered on June 25, 1996 and <hennessy.fr>, registered on May 21, 2004.

The disputed domain name was registered on June 21, 2018 and redirects to the official website of the Complainant at www.hennessy.com.

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. The disputed domain name consists of the words 'Hennessy', 'day' and 'party', followed by the generic top level domain ("gTLD") ".com", that may be disregarded in the assessment of the similarity of the disputed domain name to the HENNESSY trademark. As opposed to the fairly discriptive words 'day' and 'party' the Panel finds the term "Hennessy" to be highly distinctive and therefore to be the dominant element of the disputed domain name, to which the average member of the public will pay the most attention. The Panel considers that the dominant element of the disputed domain name is identical to the HENNESSY trademark and therefore finds the disputed domain name to be confusingly similar to the HENNESSY trademark, pursuant to paragraph 4(a)(i) of the Policy.

b. The Panel is satisfied that the Respondent has not been licensed or authorised to use the HENNESSY trademark in the disputed domain name. The Panel further finds that the Respondent has succesfully submitted prima facie evidence that the Respondent has made no use of, or demonstrable preparations to use, the disputed domain name in connection with a bona fide offering of goods or servies, nor is it making a legitimate non-commercial or fair use of the disputed domain name. Use of the disputed domain name to redirect users to the Complainant's website does not qualify as a legitimate non-commercial or fair use by the Respondent. The Panel therefore finds the Respondent has no rights or legitimate interests in respect of the disputed domain name.

c. The Respondent has provided sufficient evidence of the fame of the HENNESSY trademark, that was registered in multiple jurisdictions several decades before the disputed domain name. Further, the HENNESSY trademark is sufficiently distinctive to discount the possibility the HENNESSY trademark was used in the disputed domain name by accident. For these reasons, and in absence of a Response, the Panel is in no doubt that the original registrant of the disputed domain name must have had the HENNESSY trademark in mind when registering the disputed domain name. Therefore, the Panel finds that the

disputed domain name was registered in bad faith. The transfer of the disputed domain name to the current registrant (i.e. the Respondent), does not prevent a finding of registration in bad faith.

As the Complainant has further rightly indicated, Panels have held that use of an infringing domain name to redirect to the complainants own website can still be considered as use of the domain name in bad faith. In absence of a Response in which circumstances may have been presented that would justify the use of the domain name, the Panel finds that the use of the disputed domain name to redirect users to the Complainant's website at <www.hennessy.com> qualifies as use of the disputed domain name in bad faith.

For the reasons stated above, the Panel finds that all three elements under the paragraph 4(a) of the Policy have been proved by the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **HENNESSYDAYPARTY.COM**: Transferred

PANELLISTS

Name	**Alfred Meijboom**

DATE OF PANEL DECISION 2018-10-17

Publish the Decision