Decision for dispute CAC-UDRP-102324

Case number	CAC-UDRP-102324
Time of filing	2019-02-20 10:34:00
Domain names	Spectrumseurope.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Spectrum Cannabis Canada Ltd.

Complainant representative

Organization	Plougmann & Vingtoft a/s

Respondent

Name	Olivier Chauve

Respondent representative

Organization	IPSIDE

OTHER LEGAL PROCEEDINGS

No other legal proceedings concerning the disputed domain name are currently pending.

IDENTIFICATION OF RIGHTS

The Complainant relies on ownership of the following trademarks:

- EUTM registration No. 017068115 SPECTRUM CANNABIS, filed on 2 August 2017 and granted on 5 September 2018, for products/services in classes 5, 35, 40, 41, 44 and 45.

- EUTM registration No. 016924664 SPECTRUM CANNABIS (fig.), filed on 27 June 2017 and granted on 12 June 2018, for products/services in classes 3, 5, 9, 16, 18, 25, 29, 30, 31, 32, 34, 35, 41, 42, 44 and 45.

- German trademark registration 302017106247 SPECTRUM, filed on 22 June 2017 and granted on 12 October 2018, for products/services in classes 3, 5, 9, 16, 18, 25, 29, 30, 31, 32, 34, 35, 41, 42 and 44.

FACTUAL BACKGROUND

The Respondent registered the spectrumseurope.com domain name on 15 January 2018.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant Spectrum Cannabis Canada Ltd. is a subsidiary of Canopy Growth, a world-leading cannabis company. In 2019 the Complainant has operations in all corners of the world, among other in Denmark, Germany, Czech Republic, Poland, Spain and United Kingdom.

The Respondent registered the domain name <SPECTRUMSEUROPE.COM> on 15 January 2018 and is apparently a seller of the same Cannabis products as the Complainant.

The Respondent is not a reseller of the Complainant's services and has no business association with the Complainant. The Complainant has just found out about the registration and use of the domain name, which gives customers the impression that the Respondent represents the Complainant or is part of the Complainant's company.

The Complainant has registered SPECTRUM CANNABIS as a word mark under EUTM No. 017068115, SPECTRUM CANNABIS as a figurative trademark under EUTM No. 016924664, and SPECTRUM as a word mark in Germany under No. 302017106247. In addition, the Complainant have numerous other trademarks filed or registered in Europe containing either SPECTRUM or SPECTRUM CANNABIS.

The Complainant claims that the disputed domain name <SPECTRUMSEUROPE.COM> is confusingly similar to the Complainant's registered trademarks SPECTRUM and SPECTRUM CANNABIS, in which the Complainant holds prior rights.

The Respondent has no rights or legitimate interests in respect of the domain name.

The Respondent has not received any license or consent, expressed or implied, to use the Complainant's trademark SPECTRUM in a domain name or in any other manner from the Complainant, nor has the Complainant agreed to such use by the Respondent.

There is no evidence that the Respondent is known by, or commonly associated with, the disputed domain name. Nor is the Respondent, to the best of the Complainant's knowledge, engaged in a personal or business activity that demonstrates that the Respondent has any legal rights to or legitimate interests in the disputed domain name.

The domain name was registered and is being used in bad faith.

The reputation of the Complainant's trademarks SPECTRUM and SPECTRUM CANNABIS is clearly established and the Respondent knew or must have known that the disputed domain name <SPECTRUMSEUROPE.COM> was confusingly similar to the Complainant's trademarks, especially because the content of the relevant website are offering the same services as the Complainant.

The Respondent is using the domain name commercially to sell the same products as the Complainant is selling.

The Respondent's domain <SPECTRUMSEUROPE.COM> is confusingly similar to the Complainant's trademarks SPECTRUM and SPECTRUM CANNABIS in both name and services, which indicates bad faith in the intention of using the Complainant's

established goodwill to SPECTRUM and SPECTRUM CANNABIS and to improperly guide interested customers to SPECTRUMSEUROPE.COM.

The intention of the Respondent's use of the disputed domain name can therefore only be to attract internet users, normally searching for the Complainant's products and services and thereby to mislead the Complainant's customers.

The Respondent's registration and use of the disputed domain name must therefore have been in bad faith.

Consequently, the Respondent's intention in registering and using the disputed domain name appears to be to attract, for commercial gain, Internet users to the Respondent's website, by creating a likelihood of confusion with the Complainant's trademarks as to the source, sponsorship, affiliation, or endorsement of the disputed domain name. The Respondent's registration and use of the disputed domain name SPECTRUMSEUROPE.COM also constitutes bad faith in the Respondent's intention to infringe the Complainant's trademark rights and interests in its well-known trademarks SPECTRUM and SPECTRUM CANNABIS.

In consequence, the Complainant requests that the domain name be transferred to it.

RESPONDENT:

The Respondent is Mr. Olivier Chauve, the CEO of SPECTRUMS EUROPE, a French simplified join-stock company (SAS) duly registered under French law on January 28, 2018.

The Respondent reserved the domain name <spectrumseurope.com> in order to offer its products on the Web to customers located across Europe.

French company SPECTRUMS EUROPE is an exclusive wholesale importer and B2B distributor of raw materials and semi-finished product with high concentration of cannabidiol CBD and phytocannabinoid rich products THC free.
The products sold by the Respondent are legal in Europe and are intended exclusively for professionals and in particular for cosmetic laboratories.

The Complainant sells finished products (oils, capsules and cannabis flowers) with THC which are not legal in France or in Europe. Furthermore, it is a B2C activity.

The trademarks and the domain name are thus not identical. The only term in common between the earlier trademarks and the contested domain name is the word element SPECTRUM.

The discussion must therefore focus on the verbal element SPECTRUM, in singular or plural form. However, this word is not distinctive and is generic, it is a common ordinary term in the medical field and particularly with regard to drugs.

The Complainant's registered marks have been granted by the respective Trademark Offices, for « SPECTRUM CANNABIS » in European Union and « SPECTRUM » in Germany. That does not mean that the marks do not contain elements that are descriptive or generic and in so far as they do, these elements enjoys limited protection or no exclusivity.

Merely descriptive marks, like the marks SPECTRUM CANNABIS or SPECTRUM, are entitled to only a very minimal degree of protection, if any. Minor differences between a mark and a domain name are sufficient to eliminate a finding of confusing similarity in such cases.

The Respondent has filed a cancellation action before EUIPO against the European trademark registration SPECTRUM CANNABIS as word mark on the ground that the mark is not distinctive and is descriptive of the goods and services covered.

The Complainant affirms that the Respondent has no rights or legitimate interest in the disputed domain name.

Nevertheless, the Respondent has shown that SPECTRUMS EUROPE is a corporate name since January 2018 of the French company which he is the CEO (ANNEX 9 – copy of the French Company Register and its translation).

The Respondent has registered the wording SPECTRUMS EUROPE in France as its company name and he registered the domain names <spectrumseurope.com> for use as its business name and URL.

In addition, the Respondent has also demonstrated that he has been using the disputed domain name in the course of their business activities since January 2018, so before any notice from the Complainant.

The Respondent has rights and a legitimate interest in the disputed domain name because it incorporates the generic term SPECTRUMS in the field of CBD products. That term is used by numerous third parties to describe the same type of products as those offered by the Complainant.

The mere registration of a common generic term, in and of itself, establishes the Respondent's legitimate interest.

The Respondent is commonly known by its company name and its domain name. Here is no basis for assessment by the Panelist of other issues, such as whether the Complainant holds superior rights under trademark law, since this is not the purpose of this type of proceedings.

There is absolutely no evidence the Respondent was aware or should have been aware of the Complainant or its rights when it registered the disputed domain name. Bad faith requires that the Respondent must have registered the domain name with the Complainant in mind.

The Respondent uses its domain name to promote CBD products, bolstering its legitimate interest based on this bona fide offering of goods.

There is no evidence that the Respondent intent to disrupt the Complainant's business, to prevent it from registering a domain name reflecting a similar sign too its mark, or to confuse users. The Respondent simply registered an available generic word domain name.

Moreover, the Respondent cannot divert the client from the Complainant since the first is specialized in B2B exclusively (for professionals only) and the second is specialized in B2C (for drug users). The activity of the Respondent is legal in France and in Europe, the activity of the Complainant is not legal in this geographical area.

In consequence, the Respondent requests that the complaint be dismissed.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the 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).

The Complainant has duly demonstrated its ownership of the cited trademark registrations.

The disputed domain names wholly incorporate the Complainant's trademark SPECTRUM, in plural (S), with additional geographical name EUROPE. Therefore, it is not identical but it can be considered as confusingly similar to the Complainant's trademark.

As stated in Crédit Industriel et Commercial v. Manager Builder, Builder Manager, WIPO Case No. D2018 2230:

"The disputed domain name incorporates the CIC trademark in its entirety. Numerous UDRP panels have recognized that incorporating a trademark in its entirety can be sufficient to establish that the disputed domain name is at least confusingly similar to a registered trademark (see e.g., PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I.) and EMS Computer Industry (a/k/a

EMS), WIPO Case No. D2003-0696). Moreover, it has been held in many UDRP decisions and has become a consensus view among panelists (see WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0"), section 1.8), that where the relevant trademark is recognizable within the disputed domain name, the addition of other terms would not prevent a finding of confusing similarity under the first element of the UDRP. Accordingly, the addition of the term "banks", which even is the English translation of the French term "banques" as it is reflected in Complainant's CIC BANQUES trademark, does not avoid the confusing similarity arising from the incorporation of Complainant's CIC trademark in the disputed domain name."

The Panel therefore finds that the disputed domain name is confusingly similar to the Complainant's trademarks as provided under paragraph 4(a)(i) of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Complainant affirms that the Respondent has no rights or legitimate interest in the disputed domain name. Nevertheless, the Respondent has shown that SPECTRUMS EUROPE has been its company's corporate name since its incorporation on 30 January 2018.

In addition, the Respondent has also demonstrated that he is using the said name in the course of the company´s business activities. Apparently, there has been no previous claim, warning letter or similar regarding such use.

In consequence, the panel finds that the Respondent has fulfilled the conditions laid down in paragraph 4(a)(ii) of the Policy, namely:

(i) that before any notice to the respondent of the dispute, the respondent used, or made demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services; or

(ii) the Respondent has been commonly known by the domain name, even if the Respondent has not acquired trade mark or service mark rights.

There is no basis for assessment by the Panelist of other issues, such as whether the Complainant holds superior rights in SPECTRUM or SPECTRUMS under trademark law, since this is not the purpose of this type of proceedings.

A very clear ruling in this regard was issued by the Panelist in WIPO Case No. D2000-1470:

"This Panel is not a general domain name court, and the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy is narrowly crafted to apply to a particular type of abusive cybersquatting. To invoke the Policy, a Complainant must show that the domain name at issue is identical or confusingly similar to a mark in which the Complainant has rights, that the Respondent lacks rights or a legitimate interest in the domain name, and that the Respondent registered and used the name in bad faith. Policy 4(a). To attempt to shoehorn what is essentially a business dispute between former partners into a proceeding to adjudicate cybersquatting is, at its core, misguided, if not a misuse of the Policy."

The decision in WIPO Case No. D2001-1324 also ruled along these same lines:

"The Policy, though, is a limited tool for acting against certain types of cybersquatting, and provides a contractual-based remedy. If there is a "legitimate interest" as that term is defined in the Policy, the Policy precludes transfer of the domain name, even if the use does not seem "legitimate" in the broader understanding of that word. Cf. e-Duction, Inc. v. Zuccarini, WIPO Case No. D2000-1369 <../2000/d2000-1369.html> (February 5, 2001); The Thread.com, LLC v. Poploff, WIPO Case No. D2000-1470 <../2000/d2000-1470.html> (January 5, 2001)."

Once the Respondent has demonstrated that the domain name matches the name of its company name, and that it is apparently making peaceful use of the domain name, any alleged trademark infringement that goes beyond the cases

specifically provided for in the Policy will have to be resolved in other forums, such as the courts of law, but not in this proceeding.

In consequence, this Panel finds that the Complainant has failed to show that the Respondent does not have rights or legitimate interests.

BAD FAITH

Pursuant to the foregoing, there is no indication of bad faith in the Respondent's conduct, in as much as the domain name is the same as their company name, which has been in use peacefully, at least in appearance.

There is likewise no proof that the Respondent has sought to take unfair advantage of the Complainant's trademarks and no other indication of bad faith.

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

While the Complainant has demonstrated that the disputed domain name is confusingly similar to its registered trademarks, the Respondent has demonstrated that the disputed domain name is the same as their company name and that it has been making use of the name, apparently in good faith. As this is the case, the Panel finds that the Respondent apparently has rights or a legitimate interest in the name, and consequently, there is no other circumstance indicating of bad faith on the Respondent´s part, the complaint is hereby dismissed.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

1. **SPECTRUMSEUROPE.COM**: Remaining with the Respondent

PANELLISTS

Name	**José Ignacio San Martín**

DATE OF PANEL DECISION 2019-04-02

Publish the Decision