Decision for dispute CAC-UDRP-102681

Case number	CAC-UDRP-102681
Time of filing	2019-09-25 16:12:23
Domain names	babychicco.com

Case administrator

Name	Šárka Glasslová (Case admin)

Complainant

Organization	Artsana S.p.A.

Complainant representative

Organization	Perani Pozzi Associati

Respondent

Name	Erol Kara

OTHER LEGAL PROCEEDINGS

The Panel is not aware of any other legal proceedings pending or decided which relate to the disputed domain name.

IDENTIFICATION OF RIGHTS

The Complainant is a worldwide renowned Italian company specialized in healthcare and baby care, that trades – among others – under the well-known trademarks “CHICCO” (infant care products), “PIC” (hypodermic syringes) and “CONTROL” (prophylactics). Artsana is currently an international corporation highly recognized for its brands and products manufactured at its own production plants and distributed throughout the world, with 21 active branches (12 in Europe), 6 production units in the European Union and over 100 countries covered by its wide range of brands.

The Complainant counts about 5.000 employees and (including dealers and distributors) the Group markets its brands in over one hundred countries with more than 300 Chicco sales points. Artsana focuses on two main business areas: Baby and Health Care, which yielded 87% and 13%, respectively, of the €1.442 million in turnover recorded in 2016. Artsana Group also owns 100% of Prenatal Retail Group S.p.A.

The Complainant is the owner, among others, of the following registrations for the trademark “CHICCO”:

- International trademark registration n. 763084 “CHICCO”, granted on May 29, 2001 and duly renewed, in classes 3, 5, 6, 8, 9, 10, 11, 12, 16, 18, 20, 21, 24, 25, 28 and 35, also covering Turkey;

- International trademark registration n. 1318052 “CHICCO”, granted on January 21, 2016, in classes 3, 5, 8, 9, 10, 11, 12, 14, 15, 16, 18, 20, 21, 22, 24, 25, 26, 27, 28, 29, 30 and 32, also covering Turkey;

-EU trademark registration n. 13418561 “CHICCO”, applied on October 30, 2014 and granted on March 24, 2015, in classes 3, 5, 8, 9, 10, 11, 12, 16, 18, 20, 21, 24, 25, 28, 30, 35 and 41;

-US trademark registration n. 3830028 “CHICCO & device”, applied on July 22, 2008 and granted on August 10, 2010, in classes 18 and 35.

Moreover, the Complainant is also the owner, among the others, of the following domain names bearing the sign “CHICCO”: CHICCO.COM, CHICCO.BIZ, CHICCO.INFO, CHICCO.IT, CHICCO.SHOP, CHICCO.RU, CHICCO.TN, CHICCO.PT, CHICCO.ASIA, CHICCO.SK, and CHICCOBABY.COM. All of them are now connected to the official website www.chicco.com.

FACTUAL BACKGROUND

The disputed domain name is confusingly similar to the protected mark.

The manner in which the disputed domain name is confusingly similar to the protected mark: Mark combined with generic term.

On March 30, 2019, the Respondent registered the domain name BABYCHICCO.COM.

It is more than obvious that the domain name at issue is identical to the Complainant’s trademark (also registered in the Respondent’s country of origin), as it exactly reproduces the wording “CHICCO”, with the mere addition of the word “baby”, which is a clear reference to the products commercialized by Artsana with the trademark CHICCO. Moreover, BABYCHICCO.COM is also almost identical to the above domain names owned by the Complainant, especially with CHICCOBABY.COM.

As a matter of fact, considering the health and baby care context in which the Complainant operates, it is undeniable that BABYCHICCO.COM will result even more confusingly similar to the business carried out under the trademark “CHICCO”, as it will be interpreted by internet users as a reference to the Complainant’s activity.

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).

Thus, the Respondent has registered the disputed domain name only in order to create a likelihood of confusion with the Complainant’s trademark.

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).

The Complainant contends that the Respondent has no rights or legitimate interests in respect of the disputed domain name and he is not related in any way with the Complainant. The Complainant does not carry out any activity for, nor has any business with the Respondent.

The Respondent has no rights on the disputed domain name, since Erol Kara has nothing to do with Artsana. In fact, any use

of the trademark “CHICCO” has to be authorized by the Complainant. Nobody has been authorized or licensed by the above-mentioned company to use the domain name at issue.

The domain name at stake does not correspond to the name of the Respondent and, to the best of our knowledge, Erol Kara is not known as “BABYCHICCO”.

Lastly, the Complainant does not find any fair or non-commercial uses of the domain name at stake (see www.babychicco.com home-page).

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).

Given the distinctiveness of the trademark and the content of the website, it is clear that the Respondent has registered the disputed domain name with knowledge of the Complainant and its trademark.

The domain name “BABYCHICCO.COM” was registered and is being used in bad faith.

The Complainant’s trademark “CHICCO” is distinctive and well known all around the world. The fact that the Respondent has registered a domain name that is confusingly similar to it indicates that the Respondent had knowledge of the Complainant’s trademark at the time of registration of the disputed domain name. In addition, if the Respondent had carried even a basic Google search in respect of the wording “CHICCO”, the same would have yielded obvious references to the Complainant. The Complainant submitted an extract of a Google search in support of its allegation. This raises a clear inference of knowledge of the Complainant’s trademark on the part of the Respondent. Therefore, it is more than likely that the domain name at issue would not have been registered if it were not for Complainant’s trademark. This is a clear evidence of registration of the domain name in bad faith.

All these elements lead to the conclusion that the Respondent has intentionally attempted to attract Internet users to the Respondent's website for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source, sponsorship, affiliation, or endorsement of such websites.

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

1. The three essential issues under the paragraph 4(a) of the Policy are whether:

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 with respect to the disputed domain name; and

iii. the disputed domain name has been registered and is being used in bad faith.

2. The Panel reviewed carefully all documents provided by the Complainant. The Respondent did not provide the Panel with any documents or statements. The Panel also visited all available websites and public information concerning the disputed domain name, namely the WHOIS databases.

3. The UDRP Rules clearly say in its Article 3 that any person or entity may initiate an administrative proceeding by submitting a complaint in accordance with the Policy and these Rules.

4. The Panel therefore came to the following conclusions:

a) The Complainant has clearly proved that it is a long standing and successful leading baby care products company. It is clear that its trademarks and domain names containing the term “CHICCO” are well-known.

The Complainant states and proves that the disputed domain name is confusingly similar to its trademarks and its domain names. Indeed, the trademark is partially incorporated in the disputed domain name.

The disputed domain name is therefore deemed identical or confusingly similar.

b) It has to be stressed that it was proven that there are no fair rights of the Respondent to the disputed domain name. The Respondent is not generally known by the disputed domain name and have not acquired any trademark or service mark rights in the name or mark.

Neither license nor authorization has been granted to the Respondent to make any use of the Complainant’s trademarks or apply for registration of the disputed domain name by the Complainant.

The Panel therefore finds that the Respondent does not have rights or legitimate interest with respect to the disputed domain name.

c) The disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder. Therefore there cannot be found any legitimate interest of the Respondent.

It is clear that the Complainant's trademarks and website(s) were used by the Complainant long time before the disputed domain name was registered and used. It is therefore concluded that the disputed domain name was registered with an intention to attract customers of another well-known domain name/registered trademark holder.

The Panel therefore finds that the disputed domain name has been registered and is being used in bad faith.

For the reasons stated above, it is the decision of this Panel that the Complainant has satisfied all three elements of paragraph 4(a) of the Policy.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **BABYCHICCO.COM**: Transferred

PANELLISTS

Name	**Dr. Vít Horáček**

DATE OF PANEL DECISION 2019-11-13

Publish the Decision