Decision for dispute CAC-UDRP-100220

Case number	CAC-UDRP-100220
Time of filing	2011-02-10 16:00:37
Domain names	streetwave.com

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	Streetwave Pte Ltd

Respondent

Organization	Ashantiplc Ltd

Respondent representative

Organization	John Berryhill LLC

OTHER LEGAL PROCEEDINGS

The Panel is not aware of the existence of other proceedings concerning the Disputed Domain Name.

IDENTIFICATION OF RIGHTS

The Complainant has applied to register the trade mark STREETWAVE in Singapore, Hong Kong, the EU, India, United States, Australia, Korea, Philippines, Taiwan, Japan and Malaysia.
The Complainant is also the current holder of the following domain names:
<streetwave.asia>, <streetwave.biz>, <streetwave.com.my>,<streetwave.eu>, <streetwave.hk>, <streetwave.in>, <streetwave.jp>, <streetwave.kr>, <streetwave.me>, <streetwave.mx>, <streetwave.my>, <streetwave.ph>, <streetwave.sg>, <streetwave.tw>, <streetwave.us>, <streetwave.vn>

FACTUAL BACKGROUND

The Complainant is a Singapore based company that designs, manufactures and distributes castor boards. The Complainant has provided a list of trade mark applications for STREETWAVE, filed in Australia, the EU, Hong Kong, India, Japan, Korea, Malaysia, Philippines, Taiwan, United States and Singapore. All of these applications for registration appear to have been made within the last 12 months.

The Respondent, Ashantiplc Limited, states that it registered the Disputed Domain Name on September 28, 2000. The Respondent does not have the original receipt for the domain name purchase but has provided an invoice from the domain

registrar Fabulous.com which demonstrates that the Respondent engaged the registrar for domain administration services in 2003.

The Complainant is seeking the transfer of the Disputed Domain Name.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

The Complainant submits that the Disputed Domain Name is identical to it's company name, trade marks and domain names.

The Complainant further claims that the Respondent registered <streetwave.com> without any rights or legitimate interests in the name. It claims that the Disputed Domain Name has not been in active use since the date of its registration and that the Respondent's name and contact details contain no reference to "Streetwave" or to similar words or names.

The Complainant further asserts that the domain has been used in bad faith as it has been used by the Respondent for a parking page which features links to third-party websites, including websites of Streetwave's competitors.

RESPONDENT:

The Respondent contends that the Disputed Domain Name was registered prior to the formation of the Complainant, and before the Complainant's trade mark applications. The Respondent relies on; John Ode dba and ODE – Optimum Digital Enterprises v Intership Limited WIPO D2001-0074, Digital Vision, Limited v Advanced Chemmill Systems WIPO D2001-0827 and PrintForBusiness B.V v LBS Horticulture WIPO D2001-1182 to claim that there is a consensus view that when a domain name is registered before a trade mark right is established, the registration of the domain name is not in bad faith because the registrant could not have contemplated the complainant's non-existent right. The Respondent claims that the Complainant has failed to demonstrate that the Respondent's use of the domain name for ten years has been illegitimate. The Respondent states that the Disputed Domain Name has been used for paid advertising links relating to music and states that it believes that the term "street wave" is suggestive of music. Evidence of this use since 2004 has been provided.

The Respondent further asserts that the Complainant's applications for trade mark registrations in the last 12 months do not meet the test for the transfer of the Disputed Domain Name as set out in the Policy.

RIGHTS

The Panel notes that in view of its findings in relation to bad faith as set out below it is unnecessary to consider the first and second elements of the Policy.

NO RIGHTS OR LEGITIMATE INTERESTS

The Panel notes that in view of its findings in relation to bad faith as set out below it is unnecessary to consider the first and second elements of the Policy.

BAD FAITH

For paragraph 4(a)(iii) to apply, the onus is on the Complainant to prove that the Respondent registered the domain name in bad faith and continues to use it in bad faith.

In Paragon Micro, Inc v Julian Pretto WIPO D2010-0721 the panel considered that a domain name that is registered before a trade mark right has been established cannot be found to have been registered in bad faith. The registrant would not have been aware of the complainant's rights because those rights did not then exist. Here, there is no evidence of bad faith

registration. The Disputed Domain Name was registered 10 years before the Complainant applied to register the trade mark. Further there is no evidence that the Complainant had used the mark before registration of the Disputed Domain Name in such a way that the Respondent knew or should have known of any such use. Therefore the Complainant has not established bad faith registration.

As the Complainant has not proved bad faith registration it is not necessary to consider whether the Disputed Domain Name has been used in bad faith. However for the sake of completeness and to address an argument of the Complainant, the Panel has considered whether use of the Disputed Domain Name for a parking site constitutes bad faith in this case. In Laboratoires Thea v DNS Administrator, Domain Spa, LLC D2010-1138 the panel stated that parking pages can be a legitimate use of a domain name if the domain name was registered due to its attraction as a common or generic word. In this case the Respondent asserted that the Disputed Domain Name was used for a parking page that provided links relating to music and stated that it believes that the term “street wave” is suggestive of music. The Panel accepts the Respondent’s explanation as to the reason for choosing the name of the Disputed Domain Name and finds that “streetwave” is a plausible name for a site that primarily provides links to music based websites.

The Complainant further alleges that the Respondent’s site diverts its potential customers to websites of its competitors. However the Panel finds no evidence to validate this claim in circumstances that the Complainant’s business is concerned with skateboards and has no apparent link with the music websites on the Respondent’s website.

Consequently, the Panel finds that the Complainant has not proved that the Respondent registered the Disputed Domain Name in bad faith or that it is being used in bad faith. Therefore the cumulative requirements of paragraph 4(a)(iii) of the Policy have not been met.

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

For all the foregoing reasons, the Panel decides that the Complainant has failed to meet it’s burden of proof under paragraph 4 of the Policy. The Panel therefore denies the Complainant’s request that the Disputed Domain Name be transferred from the Respondent to the Complainant.

The Panel notes as set out above, that Complainant has not provided any evidence of bad faith registration or bad faith use of the Disputed Domain Name. The purpose of the Policy is to deter cybersquatting which necessarily features bad faith registration and use. In these circumstances the Panel finds there was no grounds or justification for the Complainant to bring this Complaint and thus the Complaint amounts to a case of reverse domain name hijacking.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Rejected

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

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

PANELLISTS

Name	**Alistair Payne, Fabrizio Bedarida, Mike Rodenbaugh**

DATE OF PANEL DECISION 2011-04-08

Publish the Decision