Decision for dispute CAC-UDRP-100312

Case number	CAC-UDRP-100312
Time of filing	2011-08-31 10:18:14
Domain names	ECCOSALEONLINE.COM

Case administrator

Name	Tereza Bartošková (Case admin)

Complainant

Organization	ECCO Sko A/S

Complainant representative

Organization	Chas. Hude A/S

Respondent

Name	Zhixiong Chen

OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant uses, inter alia, the domain names <ecco.com>, <eccoshoe.com>, <eccoshoes.com>, <eccoshops.dk>; all the above domain names are connected to the Complainant's official web site.
Furthermore, Complainant owns, inter alia, the following trademark registrations:
- CTM registration no. 1149871 "ECCO" in classes 3, 14, 18 and 25 - registered on February 6, 2003;
- CTM registration no. 2967040 "ECCO & design" in classes 3, 9, 14, 18, 24, 25, 28. 35, 36 and 41 - registered on May 2, 2007;
- U.S. registration no. 1935123 "ECCO" in class 25 - registered on November 14, 1995;
- U.S. registration no. 3187658 "ECCO & design" in class 25 - registered on December 19, 2006;
- Canadian registration no. 462848 "ECCO" - registered on June 23, 1983 for footwear, namely shoes;
- Australian registration no. 375267 "ECCO" in class 25 - registered on May 10, 1982;
- Chinese registration no. 208743 "ECCO" in class 25 - registered on May 30, 1984.

FACTUAL BACKGROUND

The disputed domain name contains Complainant's trademark ECCO in full, together with generic terms (SALE and ONLINE). Therefore, the disputed domain name is confusingly similar to Complainant's trademark (Policy, Par. 4 (a)(1)).

Respondent has no rights in the trademark ECCO and is not a reseller/licensee of Complainant; use of the trademark ECCO by Respondent has never been authorized by Complainant, and Respondent is using his website to promote the sale goods. Accordingly, Respondent has no rights or legitimate interests in respect of the domain name (policy, Par. 4 (a)(11)).

The disputed domain name was registered on December 13, 2010 and, therefore, the rights acquired by the Complainant are older with respect to the registration date of the domain name <ECCOSALEONLINE>

ECCO constitutes the first and dominant element of the disputed domain name. Complainant’s logo and pictures taken from Complainant's website and catalogue are used by the Respondent, who is attempting to divert Internet users to his domain name by creating a likelihood of confusion with Complainant’s trademarks, company name and domain names. Respondent is exploiting the goodwill attached to Complainant's trademarks for selling goods which are very likely counterfeit. For all these reasons, Complainant finds that the disputed domain name was registered and is used in bad faith (Policy, Par. 4(a)(iii)).

In all the aforementioned circumstances, Complainant finds that the disputed domain name has been registered and is used in bad faith.

CAC’s and WIPO’s decisions in the following complaint proceedings support the case:

CAC:
Case no. 100259, eccoshoesshop.com
Case no. 100278, eccoshoesuk.net

WIPO:
Case no. D2010-2038, eccodiscount.com
(http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-2038)
Case no. D2010-1443, eccobrandshop.com, ecooshop.com
http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-1443)
Case no. D2010-1113, 51ecco.com
(http://www.wipo.int/amc/en/domains/search/text.jsp?case=D2010-1113)
Case no. D2010-0650, eccoshoesoutlet.com, eccoshoesoutlets.com, eccoshoesoutlets.net
(http://www.wipo.int/amc/en/domains/decisions/text/2010/d2010-0650.html)

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

PARTIES' CONTENTIONS:

COMPLAINANT:

See above.

RESPONDENT:

No response has been filed

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown the disputed Domain Name is confusingly similar to the previous trademarks and domain names 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 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 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

1) The Domain Name in dispute is confusigly similar to Complainant's registered trademarks and domain names; The Complainant's rights were acquired well before the registration made by Respondent for the Domain Name <ECCOSALEONLINE.COM>. The Panel believes that the addition of the descriptive wording “saleonline” does not negate the confusing similarity created by Respondent’s complete inclusion of the ECCO trademark in the disputed Domain Name. (cfr. Giata Gesellschaft für die Entwicklung und Vermarktung interaktiver Tourismusanwendungen mbH v. Keyword Marketing, Inc., WIPO Case No. D2006-1137; Hoffmann-La Roche Inc. v. Aneko Bohner, WIPO Case No. D2006-0629).

2) Regarding Respondent's lack of rights or legitimate interests, the Panel finds that the name of Respondent "Zhixiong Chen" does not indicate that Respondent is known by consumers with ECCO or similar commercial signs. In these circumstances, Respondent would have been obliged to demonstrate an exsisting right, or interest, on said sign. The above demonstration was never submitted since no response has been filed in the present case.

3) By failing to file a response, the Respondent has done nothing to contest the allegations of the Complainant according to which Respondent has registered and is using the Domain Name in bad faith. Based on the facts the registration and use of the Domain Name by Respondent in bad faith is evident. The Respondent has copied the Complainant’s trademark ECCO (also reproducing its graphic feature) in its website and has registered an identical domain name, save for adding generic terms (SALE and ONLINE). This, for the sole purpose to attract for commercial gain internet users to the Domain Name by creating a likelihood of confusion with the Complainant’s marks, domain names and products. Therefore, the Panel believes that the only intention the Respondent could have, is to have internet users think that they are dealing with the Complainant's commercial activity. This clearly indicates bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ECCOSALEONLINE.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2011-10-03

Publish the Decision