Decision for dispute CAC-UDRP-100578

Case number	**CAC-UDRP-100578**
Time of filing	**2013-03-27 12:40:54**
Domain names	**crewsaver.com**

Case administrator

Name	**Lada Válková (Case admin)**

Complainant

Organization	**Survitec Service and Distribution Ltd**

Complainant representative

Organization	**Mathisen & Macara LLP**

Respondent

Name	**Abedellatif Shatila**

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 names.

IDENTIFICATION OF RIGHTS

The present complaint has been filed by the company Survitec Service and Distribution Ltd, (hereafter referred to as “the Complainant”).

The Complainant sells a range of marine equipment such as lifebelts and dinghies.
The Complainant is the owner of:

- UK trademark registration CREWSAVER n° 1106962 registered on December 29, 1978;
- UK trademark registration CREWSAVER n° 1337109 registered on October 21, 1994;
- UK trademark registration CREWSAVER n° 2364753 registered on December 3, 2004;
- UK trademark registration CREWSAVER (and design) n° 1106963 registered on December 29, 1978;
- UK trademark registration CREWSAVER DRY TOWEL n° 2361119 registered on December 3, 2004;
- UK trademark registration CREWSAVER (and design) n° 2365565 registered on January 7, 2005;
- German trademark registration CREWSAVER n° 2912777 registered on February 14, 1996;
- Benelux trademark registration CREWSAVER n° 0550852 registered on September 22, 1993.

In addition to these registrations, Complainant claims to be the registered owner of the domain name <crewsaver.co.uk>, resolving to the Complainant’s website.
It also claims that the CREWSAVER trademarks have been used by the Complainant’s predecessors since 1957.

FACTUAL BACKGROUND

The Complainant and its predecessors have been using the mark since 1957. Crewsaver's history goes back more than 50 years to 1957 when it was first incorporated as a company under the name of Crewsaver Marine Equipment Ltd.

The Respondent, Mr Adebellatif Shatila, registered the domain name <crewsaver.com>, using a privacy shield service.
According to the Whois, the disputed domain name was created on December 10, 1998. It resolves to a parking website.

PARTIES CONTENTIONS

PARTIES' CONTENTIONS:

COMPLAINANT:

a) Confusing similarity

The Complainant contends that the domain name <crewsaver.com> is identical or confusingly similar to its trademarks.
The difference between the Complainant’s mark and the disputed domain is simply the non-distinctive extension .com.
Accordingly, the disputed domain is identical or confusingly similar to a trademark in which the Complainant has rights.
b) Right or legitimate interests
The Respondent has registered the domain name without the Complainant’s authorization.
The registration was made during a short period where another company in the Complainant’s group allowed the registration to lapse.

The domain was registered anonymously via Protected Domain Services Inc. No information is available about the Respondent or about any other domain names which it may have registered.
The Complainant’s representative wrote to the Respondent at the email address given in the WHOIS abstract on May 23, 2012. No response has ever been received.
It is submitted that the Complainant has demonstrated that it has rights in a trademark identical to or confusingly similar to the disputed domain name. Therefore, the burden of proof should shift to the Respondent. The Complainant relies on WIPO Decisions D2004-0025 (http://www.wipo.int/), D2010-0532 (http://www.wipo.int/).
Accordingly, it is submitted that the Respondent does not have any right or legitimate interest in the domain name.
c) Registered and used in bad faith

It is submitted that there is no reason why the Respondent would select the domain name <crewsaver.com> other than to profit of the goodwill in the CREWSAVER trademark.
It is reasonable to suppose that anyone seeking information about the Complainant’s products would enter CREWSAVER.COM into a web browser.
Again, it is submitted that the burden of proof should shift to the Respondent.
The Complainant asserts that the domain name resolves from time to time to different web pages and that the Respondent will gain revenue from click through advertising for the marine and life-saving search terms which appear on the Respondent’s website parking page.
Furthermore a review of the source code of the website reveals as a metatag the string <meta name="description" content="Crewsaver.com offers Dry Suit, Crewsaver, Life Jackets, and Sailing Clothing. Crewsaver - your number one choice for Crewsaver Life Jackets and Online Shop."/>.

The Complainant further asserts that the source code includes the strings DisplayKeywordsList:"Dry Suit|Crewsaver|Life Jackets|Sailing Clothing|Crewsaver Life Jackets|Online Shop|Crewsaver 150n|Henri Lloyd|Life Jacket|Crewsaver Buoyancy Aids|Immersion Suits|Crewsaver Lifejackets" and OneClickKeywords:["Dry Suit","Crewsaver","Life Jackets"],RelatedKeywords:["Dry Suit","Crewsaver","Life Jackets","Sailing Clothing","Crewsaver Life Jackets","Online Shop","Crewsaver 150n","Henri Lloyd","Life Jacket","Crewsaver Buoyancy Aids","Immersion Suits","Crewsaver Lifejackets"],MissingAdvertisementsKeywo rds:["Crewsaver","Life Jackets","Sailing Clothing","Online Shop","Henri Lloyd","Life Jacket","Crewsaver Lifejackets","Sailing Boots","Buoyancy Aids","Buoyancy Aid","Inflatable Lifejackets","Safety Harness","Crewsaver Lifejacket","Dinghy Sailing","Co2 Cylinder","Extra Large","Lifesaving Equipment","Safety Equipment","Sailing Gloves","Magic Marine","Marine Safety","Pvc Foam","Safety Line","Thigh Straps","Automatic Inflation","Closed Cell Foam","Freedom Of Movement","Mailspeed Marine","Mumby Road","Rash Vests"].
These words do not appear in the text of the website as seen by a visitor but will be used by search engines in ordering results.
A number of features show that the use of the domain name is in bad faith. Perhaps one of the clearest is the reference to “Mumby Road”. Mumby Road is the address from which the Complainant does business. It is almost impossible to conceive of a legitimate reason why the Respondent would want to include a reference to the Complainant’s address. It is submitted that it is far more likely that the words have been used to ensure that a search for “CREWSAVER MUMBY ROAD” ranks the Respondent’s web page highly in the search results.
Accordingly, the Complainant requests that the domain name should be transferred to the Complainant.

RESPONDENT:

The Respondent submitted a response, to declare “Thanks for letting me write my response here .
first Im not using crewsaver.com in bad faith , you can check site .
I want to include here that Complainant’s has bought crewsaver.com from afternic, and open UDRP case same time.
to insure if he lose case domain name with be for him .
Thanks,
Abedellatif Shatila”

The Respondent produced one piece of evidence consisting of a screenshot from Afternic with the mention: "Escrow started: March 28, 2013, (…) price $1,750.00 USD (…) Transfer CrewSaver.com to Apollo. We have received payment from Apollo, so it’s time to transfer t the domain. Shortly you will be receiving transferring instructions from our Escrow Department”

RIGHTS

To prevail in the proceedings under the Uniform Domain Name Dispute Resolution Policy, the Complaint must show that the three requirements set forth in paragraph 4(a) of the Policy are met. Those requirements are:

(i) the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights;

(ii) the Respondent has no rights or legitimate interests in respect of the domain name; and

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

As indicated under Paragraph 4 (a) of the Policy, the Complainant must prove that each of these three elements is present.

Likewise, under Paragraph 4 (c) of the Policy, the Respondent can demonstrate its rights and legitimate interests in the disputed domain name in his response to the complaint by proving, among others, the circumstances mentioned under this paragraph of the Policy.
A. Domain name is identical or confusingly similar to a trademark of the Complainant
The Complainant has established prior rights in the trademarks CREWSAVER by appending evidence of several UK trademark registrations, as well as Benelux trademark registration and German trademark registration. The trademarks CREWSAVER are notably registered for life-saving apparatus for use on water in international class 9 and are used to designate such products, notably online on the <crewsaver.co.uk> website.

The disputed domain name incorporates the Complainants' trademarks CREWSAVER in its entirety.

The generic tld ".com" cannot be taken into consideration when judging identity or confusing similarity (see e.g. Hay & Robertson International Licensing AG v. C.J. Lovik, WIPO Case D2002 0122).

Therefore, the Panel finds that the disputed domain name is identical to the Complainant's trademark. The condition of the paragraph 4(a)(i) of the Policy has been satisfied.

NO RIGHTS OR LEGITIMATE INTERESTS

As set forth by Paragraph 4 (c) of the Policy, any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name for purposes of Paragraph 4(a)(ii):

(i) before any notice to the Respondent of the dispute, its use of, or 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 (as an individual, business, or other organization) have been commonly known by the domain name, even if you have acquired no trademark or service mark rights; or

(iii) the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue.
There is no evidence that the Respondent has any connection of affiliation with the Complainant.
The Respondent has not provided any evidence or circumstances to establish that he has rights or legitimate interests in the disputed domain name, according to Parapraph 4 (c) of the Policy.

On the contrary, the Respondent merely submitted a short response to declare that "first Im not using crewsaver.com in bad faith , you can check site .I want to include here that Complainant's has bought crewsaver.com from afternic , and open UDRP case same time .to insure if he lose case domain name with be for him".
There is no evidence that the Complainant bought the disputed domain name from afternic. The piece of evidence that has been produced by the Respondent does not give any useful information. The Complainant is currently not the registrant of the domain name. Therefore the response is not relevant.
There is nothing that indicates that the Respondent is commonly known as "CREWSAVER".
In addition, there is no evidence that the Respondent makes a non-commercial and fair use of the disputed domain names without intention to divert consumers, as addressed under paragraph 4(c) (iii) of the Policy.

On the opposite, the Respondent makes an unfair use of the disputed domain names since it resolves to a parking website including links to websites that are mainly devoted to apparatus for use on water, notably "kayak paddling jacket". In other words, it is resulting in a connection to goods or services competitive with those of the rights holder.

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 trademarks CREWSAVER are widely protected and used for designating notably life-saving apparatus for use on water.
The source code of the Respondent's website www.crewsaver.com includes words that do not appear in the website, in relation with the Complainant's products and the Complainant's address "Mumby Road".
Therefore, it appears that the Respondent was perfectly aware of the existence of the Complainant and that he could not ignore his rights on the prior trademarks CREWSAVER when registering the disputed domain name.
The Panel finds that the disputed domain name was registered intentionally to misdirect customers looking for the Complainant'

website to the Respondent’s website.
This constitutes bad faith registration.
The Complainant’s evidence shows that the disputed domain name resolves to web pages relating notably to products for water use.
The evidence submitted by the Complainant adequately support its assertions and show that the Respondent’s only reason for registering the disputed domain name is to illegitimately trade upon the goodwill associated with the Complainant’s trademarks, through a parking website links to the Complainant’s competitors websites.
Using the opposed trademarks as metatags in order to ensure that a search for Crewsaver ranks the Respondent website highly in the search results, is another proof of the Respondent’s strategy to trade upon the goodwill associated with the trademarks.
The response does not contest any of the arguments raised by the Complainant.
It refers to the fact that the domain name <crewsaver.com> was bought by “Appolo”.
This is not relevant for the present dispute.
The Panel is of the opinion that the links are based on Complainant’s trademark value and that this practice constitutes an unfair use resulting in misleading diversion.
The Panel is satisfied by the Complainant’s unchallenged evidence that the Domain Names are being used to attract internet users to the Respondent’s web page by creating a likelihood of confusion with the Complainant’s marks for the purpose of commercial gain in the form of click-through commissions on the sponsored links (see L'Oréal, Biotherm, Lancôme Parfums et Beauté & Cie v. Unasi, Inc. WIPO Case No. D2005-0623).
Thus it creates confusion for consumers with the Complainant’s trademarks as to the source, affiliation, or endorsement of the websites operated at the disputed domain names, as addressed within the meaning of paragraph 4(b)(iv) of the Policy.
This constitutes bad faith use within the meaning of paragraph 4(b)(iv) of the Policy.

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

The disputed domain name is identical to the prior opposed trademark.

The Respondent has no legitimate right or interest in the domain name. He is not wellknown under the domain name, he had no authorization to register it, he is not an affiliate of the Complainant and he does not make a non-commercial or fair use of the disputed domain name.

The Respondent could not ignore prior Complainant's rights and makes an unfair use of the disputed domain names since it resolves to a parking website including links to websites that are mainly devoted to apparatus for use on water, notably “kayak paddling jacket”. In other words, it is resulting in a connection to goods or services competitive with those of the rights holder.

Thus it creates confusion for consumers with the Complainant’s trademarks as to the source, affiliation, or endorsement of the websites operated at the disputed domain names, as addressed within the meaning of paragraph 4(b)(iv) of the Policy.
This constitutes bad faith use within the meaning of paragraph 4(b)(iv) of the Policy.

Based on all the above the Panel considers that the Complaint must be accepted, and the disputed domain name transferred to the Complainant.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **CREWSAVER.COM**: Transferred

PANELLISTS

Name	**Marie Emmanuelle Haas**

DATE OF PANEL DECISION 2013-05-14

Publish the Decision