Decision for dispute CAC-UDRP-100589

Case number	CAC-UDRP-100589
Time of filing	2013-04-17 15:16:46
Domain names	METAXASWINEESTATE.COM

Case administrator

Name	Lada Válková (Case admin)

Complainant

Organization	REMY COINTREAU LUXEMBOURG S.A.

Complainant representative

Organization	Nameshield (Laurent Becker)

Respondent

Name	Sun Nagoya

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

The Complainant registered, inter alia, the domain names <metaxa.asia>, <metaxa.org>, <metaxa.info>, <metaxa.fr>, <metaxa.es>, <metaxa.com.au>, <metaxa.co.in>, <metaxa.ca>, <metaxa.at>, <metaxa.us>.
Furthermore, the Complainant owns, inter alia, the following trademark registrations:
- International Registration no. 783527 "METAXA & design" in class 33 - registered on May 6, 2002 (duly renewed);
- International Registration no. 994886 "METAXA & design" in class 33 - registered on February 12, 2009;
- International Registration no. 466654 "METAXA" in classes 32 and 33 - registered on February 18, 1982 (duly renewed);
- International Registration no. 998435 "METAXA & design" in class 33 - registered on February 12, 2009;
- Chinese Registration no. 707408 "METAXA & Chinese characters" in class 33 - registered on September 28, 1994 (duly renewed);
- International Registration no. 958278 "METAXA & design" in classes 16, 25 and 33 - registered on February 21, 2008.

FACTUAL BACKGROUND

The disputed domain name incorporates the trademark "METAXA" in its entirely (simply adding the letter -s), together with generic terms (WINE and ESTATE). Therefore, the Complainant contends that the disputed domain name is confusingly similar to its older registered trademarks.

Respondent has no rights or legitimate interests in the word "METAXA"; furthermore the Respondent is not related in any way to the Complainant. In particular the Complainant does not carry out any activity for, nor has any business with, the Respondent. Neither licences nor authorizations have ever been granted by the Complainant to the Respondent for the use and/or the registration of domain names including the word "METAXA". Therefore the Complainant contends that the Respondent has no rights or legitimate interests in respect of the domain name in dispute.
The Respondent registered the disputed domain name on March 1, 2013; therefore the rights of the Complainant in the word METAXA are older with respect to the registration date of the domain name <metaxaswineestate.com>.
"METAXA" represents the first and dominant element of the disputed domain name; furthermore such a word corresponds to a trademark widely-known and recognizable as it has been used in connection with alcoholic products marketed in many countries for many years; in addition it must be considered that the website corresponding to the disputed domain name has been used only for displaying commercial links. Therefore, Complainant contends that the Respondent registered the disputed domain name for the only purpose of disrupting the business of the Complainant and in order to prevent the Complainant from reflecting its trademark in a corresponding domain name.
WIPO's decisions in the following complaint proceedings support the case:
- Telstra Corporation Limited v. Nuclear Marshmallows, WIPO Case No. D2000-0003;
- CBS Broadcasting, Inc. v. Dennis Toeppen, WIPO Case No. D2000-0400.

PARTIES CONTENTIONS

NO ADMINISTRATIVELY COMPLIANT RESPONSE HAS BEEN FILED.

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).

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) In the Panel's view the domain name <metaxaswineestate.com> is very similar to the Complainant's trademark METAXA since the disputed domain name incorporates the trademark "METAXA" in its entirely (simply adding the letter -s), together with generic terms (WINE and ESTATE). The mere addition of the descriptive wording "wineestate" does not negate the confusingly similarity created by Respondent's complete inclusion of the METAXA 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 the Respondent's lack of rights or legitimate interests, the Panel finds that the Japanese name of the Respondent "Sun Nagoya" does not indicate that the Respondent is known by consumers by METAXA, METAXAS or similar commercial signs. In these circumstances, the Respondent would have been obliged to demonstrate an existing right, or interest, in said signs. The above demonstration was never submitted since no response has been filed in the present case.

3) The Panel, through searches on the Internet, found out that, as per the Complainant's assertions, METAXA is a renowned trademark in the alcoholic sector. In addition such notoriety is confirmed by the circumstance that the Complainant's trademarks have been registered in many countries of the world for a long time. Therefore the Panel considers that it is unlikely that the Respondent could have ignored said trademark when the domain name (which includes generic terms largely used exactly in the alcoholic sector) was registered on March 2013. Furthermore, the website corresponding to the domain name in dispute, as shown by the Complainant, consists of a simple web page containing links also related to Complainant's business. The Panel considers that such use of the disputed domain name made by the Respondent is not a bona fide offering of goods or services. On the contrary, Respondent has clearly used the domain name for commercial gain by diverting consumers seeking the Complainant's website to the Respondent´s web page by creating a likelihood of confusion with the Complainant's marks and taking advantage of the goodwill associated to the trademark METAXA owned by the Complainant. In addition, as already pointed out, the Respondent has not demonstrated any right or interest to use the sign METAXA. Therefore, the Panel finds that the Respondent has used the domain name to attract internet users to its web page for commercial gain by creating a likelihood of confusion with the Complainant's trademark as to the source of its web page. According to paragraph 4 (b) (iv) of the UDRP this constitutes evidence of bad faith registration and use. In consideration of the above, the Panel deems that the domain name in dispute was registered and used in bad faith.

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **METAXASWINEESTATE.COM**: Transferred

PANELLISTS

Name	**Avv. Guido Maffei**

DATE OF PANEL DECISION 2013-05-29

Publish the Decision