

Decision for dispute CAC-UDRP-100397

Case number	CAC-UDRP-100397
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Time of filing	2012-02-21 09:55:27
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Domain names	ECCOSTOVLER.NET
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Case administrator

Name	Tereza Bartošková (Case admin)
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Complainant

Organization	ECCO Sko A/S
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Complainant representative

Organization	Chas. Hude A/S
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Respondent

Name	huangchen
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OTHER LEGAL PROCEEDINGS

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

IDENTIFICATION OF RIGHTS

Complainant has cited multiple trademarks "ECCO" registered amongst others for footwear, including Community Trademark Reg. Nos. 001149871 and 179317; U.S. Reg. No. 1,935,123; Canadian Reg. No. 280654; Australian Reg. No. 375267A; and Chinese Reg. No. 208743.

FACTUAL BACKGROUND

FACTS ASSERTED BY THE COMPLAINANT AND NOT CONTESTED BY THE RESPONDENT:

Language

Notwithstanding the fact that it is not clear whether the Registration Agreement is in English or Chinese (the registrar verification being unclear on this point), for the following reasons the Complainant respectfully request that the language of the proceedings be English:

The text displayed on the Respondent's website is partly in Danish and partly in English. In particular, Complainant filed evidence whereas the "Return & Exchange Policy", the "FAQ" page and a part of the text displayed on the website are in English. These circumstances show that the Respondent has a good command of the English language and would not be

disadvantaged if the proceedings were conducted in English.

Legal Basis:

The disputed domain name contains Complainant's trademark ECCO in full. The addition of the generic term STOVLER does not preclude but even enhance the risk of confusion / likelihood of association with the Complainant's trademark and company name. 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. Accordingly, Respondent has no rights or legitimate interests in respect of the domain names (policy, Par. 4 (a)(11)).

The fact that the Complainant's trademark ECCO constitutes the dominant element of the disputed domain name, and that the Complainant's logo and pictures are used by the Respondent without the rightful owner's authorization constitute strong evidence of the fact that the Respondent is attempting to divert Internet users to his domain name by creating a likelihood of confusion with the Complainant's trademarks, company name and domain names. The Respondent's use of the trademark ECCO to sell counterfeit/fake ECCO shoes is further evidence of the abusive registration and use of the disputed domain name.

For all these reasons, Complainant finds that the disputed domain name was registered and is used in bad faith (Policy, Par. 4(a)(iii)).

The CAC decision in the Case No. 100357, ECCO-STOVLER.COM, concerning an almost identical domain name, as well as the following decisions, support the case:

CAC:

Case No. 100259, ECCOSHOESSHOP.COM
Case No. 100278, ECCOSHOESUK.NET
Case No. 100311, UKECCOSHOES.NET
Case No. 100321, ECCOSKOUDSALG.COM
Case No. 100312, ECCOSALEONLINE.COM
Case No. 100305, ECCOONLINESALE.COM
Case No. 100327, ECCOONLINESALEUSA.COM

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.

RIGHTS

The Complainant has, to the satisfaction of the Panel, shown that 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 that 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

1. 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.
2. With regard to the language, the Panel exercises its authority pursuant to Paragraph 11(a) of the Rules, having regard to the circumstances of the administrative proceeding, to allow these proceedings to occur in English.

In this regard, the Panel notes that the registrar verification did not clearly confirm whether or not the language of the registration agreement is Chinese or English. Furthermore, Complainant has stated that the FAQ page and the "Return & Exchange Policy" under the disputed domain name is in English and the text of the website is partly in English too. These circumstances show that the Respondent has a good command of the English language and would not be disadvantaged if the proceedings were conducted in English. Allowing this proceeding to occur in English is consistent with numerous decisions under the UDRP, i.e. ECCO SKO A/S v. linlin, CAC Case No. 100278 (transfer of <eccoshoesuk.net>) and ECCO SKO A/S v. linmaojian CAC Case No. 100357 (transfer of <ECCO-STOVLER.COM>, <ECCOUDSALG.NET>).

PRINCIPAL REASONS FOR THE DECISION

1. Based on the undisputed multiple trademark registrations cited by Complainant (listed above) as well as previous relevant UDRP decisions in which the same trademarks were at issue, the Panel is convinced that Complainant has rights in and to the trademark ECCO for use in connection with footwear. See, e.g. ECCO SKO A/S v. linmaojian CAC Case No. 100357 (transfer of <ECCO-STOVLER.COM>, <ECCOUDSALG.NET>) and ECCO SKO A/S v. linlin, CAC Case No. 100278 (transfer of <eccoshoesuk.net>).
2. The disputed domain name is identical confusingly similar to the ECCO trademark, as according to the Complainant's undisputed allegation, the term "STOVLER" is a misspelling of the Danish descriptive term "støvler" meaning "boots". Accordingly, this word actually increases the confusing similarity between the Disputed Domain Name and Complainant's trademark ECCO, see e.g. ECCO SKO A/S v. linmaojian CAC Case No. 100357 (transfer of <ECCO-STOVLER.COM>, <ECCOUDSALG.NET>) and ECCO Sko A/S v. Jacklee, WIPO Case No. D2011-0800 (transfer of <eccoshoesaustralia.com>).
3. Furthermore, as a result of Complainants' allegations and without any evidence from Respondent to the contrary, the Panel is satisfied that Complainant has also proven the second element of the UDRP. Indeed, Complainant has stated that Respondent has no rights in the trademark ECCO and is not a reseller/licensee of Complainant, that use of the trademark ECCO by Respondent has never been authorized by Complainant.
4. Finally, the Panel is satisfied that Complainant has proven the third element of the UDRP and that bad faith exists pursuant to paragraph 4(b)(iv).

Complainant has stated that the Respondent uses Complainant's logo and pictures without the rightful owner's authorization. This constitutes strong evidence of the fact that the Respondent is attempting to divert Internet users to his domain name by creating a likelihood of confusion with the Complainant's trademarks, company name and domain names. The Respondent's use of the trademark ECCO to sell counterfeit/fake ECCO shoes "is strong evidence of bad faith" (see ECCO SKO A/S v. linmaojian CAC Case No. 100357 (transfer of <ECCO-STOVLER.COM>, <ECCOUDSALG.NET> with further references).

FOR ALL THE REASONS STATED ABOVE, THE COMPLAINT IS

Accepted

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

1. **ECCOSTOVLER.NET**: Transferred

PANELLISTS

Name	Dr. Tobias Malte Müller
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DATE OF PANEL DECISION	2012-04-02
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Publish the Decision	
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