Panel Decision for dispute CAC-ADREU-006038

Case number	CAC-ADREU-006038
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Domain names	hellas-sat.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	HELLAS SAT SOCIETE ANONYME SATELLITE SYSTEMS AND COMMUNICATIONS SERVICES

Respondent

Name	KONSTANTINOS MARKETOS

FACTUAL BACKGROUND

The domain name hellas-sat.eu is registered by the Respondent. The Respondent has demanded from the Complainant to buy said domain name. The Complainant is a legal entity, which belongs to the Hellenic Telecommunications Organization (OTE S.A.) Group of Companies. It is a subsidiary, by 99.9%, of the Cypriot limited liability company under the corporate name “HELLAS SAT CONSORTIUM LIMITED”, which is a subsidiary, by 99.05% of the Hellenic Telecommunications Organization (OTE S.A.). The Complainant is established and operates since 2001 under the corporate name “HELLAS SAT SOCIETE ANONYME SATELLITE SYSTEMS AND COMMUNICATIONS SERVICES”, using the distinctive title “HELLAS SAT”.

A. COMPLAINANT

The complainant claims a legitimate interest regarding registration of the above domain name as a holder of "prior rights", within the meaning of paragraph 1, Article 10 of Regulation (EC) No. 874/2004, given that the domain name in question is identical not only to its corporate name and distinctive title, but also its registered Community Trade Marks as well as several relevant domain names, i.e., domain names of different suffixes but of the same variable field, to the registration of which the Complainant proceeded years ago. The Complainant supports his legitimate interest by the registration (already since 2003), on the part of its parent company “HELLAS SAT CONSORTIUM LIMITED”, of the Community Trademark “HELLAS SAT” and its respective graphic representation(CTM numbers: 002997948 and 003051729 respectively, attached as Annexes 3 and 4). The license to use the aforementioned Registered Trademarks was granted to the Complainant by its parent company in 2005, by virtue of a relevant agreement “regarding the concession of community trade mark license of use”, which was signed between the two companies on the 13/12/2005 (attached to the complaint as Annex 5, along with its official translation in English, attached as Annex 6) and remains still in force. The above agreement was officially notified to and registered with the Community Trademarks Register of the Office of Harmonization for the Internal Market (OHIM), pursuant to the relevant EU Regulations (Article 22 of the Council Regulation (EC) No 40/94 on the Community Trademark, as well as Title V of the Commission Regulation (EC) No. 2868/95 on implementing the Council Regulation (EC) No. 40/94 on the Community Trademark). Additionally, in 2005 the Complainant proceeded to file a registration application to the Community Trademarks Register of the Office of Harmonization for the Internal Market (OHIM) of the commercial trademark “HELLASSATnet! 2-way satellite solutions” (both the text and the respective graphic representation) (CTM number: 004828828, as Annex 9 in the complaint). Finally, the Complainant has already registered a number of similar domain

names, such as: hellassat.com.gr, hellas-sat.com.gr, hellas-sat.gr, broadband.hellas-sat.net and hellassat.eu, while, respectively, its parent company “HELLAS SAT CONSORTIUM LTD” registered the domain name hellas-sat.net.
During the “Sunrise Period” (20/12/2005) the Complainant’s parent company submitted an application for the registration of the disputed domain name “hellas-sat.eu” (attached as Annexes 10 and 11 in the complaint), given its prior right deriving from the registration of the aforementioned trademarks thereof. The domain name under dispute was registered in the name of “HELLAS SAT CONSORTIUM LIMITED”, which the Complainant believed to be the owner thereof to this day.

The Complaint is based, on the one hand, on the fact that such domain name is identical not only to its corporate name and distinctive title, but also to its registered Community Trade Marks, as well as to the registered domain names aforementioned, and, on the other hand, the absence of any legitimate interest on the part of the Respondent in such domain name, as well as the abusive, clearly speculative and bad-faith registration and use of such domain name. According to the Complainant, the current holder of the domain name “hellas-sat.eu” has never, as of the day of its registration and until today, used such domain name or any other name(s) corresponding to the disputed domain name in connection with the provision of any goods or services, nor has said holder ever made demonstrable preparation to do so, given that he does not conduct, nor has ever conducted, any activity, be it commercial or of other type, to which the disputed domain name could refer, and most importantly, any such case would constitute a material violation of Greek as well as EU legislation on unfair competition and industrial property, since the Complainant has established itself on the global satellite communications market for the last decade under the identical name (HELLAS SAT S.A.), distinctive title (HELLAS SAT), and its respective trade marks and domain names (http://www.hellas-sat.net/, http://broadband.hellas-sat.net/, etc.). Furthermore, the registration by the Respondent of the disputed domain name is undoubtedly a bad faith registration case, given that it fulfils the majority of the conditions described in paragraph 3 of Article 21 of the Commission Regulation 874/2004.
As evidenced by the conduct of the Respondent, the disputed domain name was registered primarily for the purpose of its sale, as proved by the fact that all its related notices and warnings towards the holder of the disputed domain name regarding the initiation of arbitration proceedings were met with the persistence of the holder to sell said domain name to the Complainant. In addition, the Complainant considers the disputed registration as “preventive”, within the meaning of subparagraph (b), paragraph 3 of Article 21 of Regulation 874/2004, given that said domain name was registered as to prevent the Complainant from reflecting this name in a corresponding domain name, such intent being also apparent from the fact of non-use of the disputed domain name in any relevant way for at least two years from registration date.
Following the foregoing and on the basis of the above-mentioned factual and legal grounds, the Complainant requests the revocation and transfer to our Company of the disputed domain name “hellas-sat.eu”.

B. RESPONDENT

The Respondent failed to file any response (see Notification of Respondent's Default, dated from 12-10-2011).

DISCUSSION AND FINDINGS

The Complainant has paid the procedural fee as well as the Single Panelist fee of the Czech Arbitration Court, as evidenced by the case file.
The Complainant is a legal entity registered in Athens Greece (see Annexes 1 and 2: Hellenic Government Official Gazette, Issues regarding the Establishment and Legal Representation of the Company, as well as Annexes 7 and 8: Official Translation of Annexes 1 and 2, all attached to the complaint), which satisfies the general eligibility criteria set by EC Regulation 733/2002 article 4.2.b, and entitles the Complainant to ask for the transfer of said domain name to it in accordance with article 22 § 11 of Regulation 874/2004.
In response to the Complainant’s application for the disclosure of personal data, EURID replied on the 25/02/2011 (Annex 14, attached to the complaint), disclosing the contact details of the Respondent. As evidenced by Non Standard Communication, dated from 30-09-2011, 11:27:52, the Case Administrator informed the interesting parties that “neither the written notice of the Complaint sent out on 17 August 2011 nor the advice of delivery thereof was returned to the Czech Arbitration Court. The CAC is therefore unaware if the written notice was received by the Respondent or not. In accordance with Art. 2 (e) (3) of the ADR Rules we consider the written notice to be delivered on 29 August 2011. Therefore the term for submitting the Response to Complaint will expire on 10 October 2011. According to our records the Respondent has never accessed the online platform”. The same information was delivered by the Case Administrator on the 17-10-2011, 08:45:20.
Pursuant to Articles 22 § 10 Regulation 874/2004 & B 10 (a) of the ADR Rules, the Panel may consider an absence of

response as an acceptance of the Complaint. Although no response was filed, the Panel will nevertheless examine whether Regulation 874/2004 applies to the case and prior to this whether the pieces of evidence brought by the Complainant are admissible.

A. ON THE RIGHTS OF THE COMPLAINANT TO THE DOMAIN NAME

The Complainant's fundament for seeking the transfer of the domain name hellas-sat.eu lies on its claimed right, according to Art. 10.1 in conjunction with Art. 21.1 Regulation 874/2004. Article 21.1 Regulation 874/2004 stipulates that a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in article 10.1 of EC Regulation 874/2004, and where it (a) has been registered by its holder without rights or legitimate interest in the name; or (b) has been registered or is being used in bad faith. The issue in need of verification is whether the Complainant actually has a right recognized or established by national and/or Community law, falling within the ambit of Art. 10.1 Regulation 874/2004. Art. 10.1 provides that (§1): Holders of prior rights recognized or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts. "Prior rights" shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works... (§2): The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists.
The Complainant is entitled to ask for the transfer of the domain name under dispute, because it fulfils the requirements according to Art. 10.1, in conjunction with Art. 10.2 Reg. 874/2004. The complainant is the holder of prior rights. Registered national or Community trade marks, or trade names of legal entities, constitute prior rights pursuant to Art. 10.1 and 10.2 Reg. 874/2004. Beyond any doubt, it is the duty of the complainant to describe exactly the type of rights claimed, and specify the law or the laws as well as the conditions under which the right is recognized and/or established. The wording in Art. B 1 b (9) of ADR Rules is clear in this respect. The Complainant has met with those requirements, as evidenced by the complaint filed and the contentions included in the present decision. For all the above reasons, the Panel decides that the complainant is the holder of prior rights in respect of the domain name hellas-sat.eu.

B. ON THE BAD FAITH OF THE RESPONDENT

The complainant invokes Art. 21.3 Reg. 874/2004, in order to demonstrate the respondent's bad faith. Bearing in mind the respondent's reluctance to access the online platform, read the Complainant's statement of facts, communicate any information to the CAC or its Case administrator, and state any response to the complaint, he clearly failed to show any demonstrable link between himself and the domain name he registered, thus leaving to the Panel no other way as to deem the above failures as full acceptance of the complainant's argumentation in regard to his bad faith, pursuant to Art. 21.3, combined with Art. 22 § 10 Reg. 874/2004 and Art. B 10 (a) ADR Rules.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that
the domain name HELLAS-SAT be revoked
the domain name HELLAS-SAT be transferred to the Complainant

PANELISTS

Name	**Apostolos Anthimos**

DATE OF PANEL DECISION 2011-12-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a Greek legal entity bearing the trade name HELLAS SAT SOCIETE ANONYME SATELLITE SYSTEMS AND COMMUNICATIONS SERVICES, and using the distinctive sign "hellas sat". The domain name hellas-sat.eu is registered by the Respondent. The Respondent did not participate in the proceedings, nor did he contact the CAC in any means of communication available. Given the fact that the Complainant has demonstrated the existence of prior rights in the form of trade marks, distinctive signs and trade names, coupled with the absolute defiance of the present proceedings by the Respondent, the Panel decides in accordance to Art. 22 § 10 Reg. 874/2004 and Art. B 10 (a) ADR Rules, to order the revocation and the transfer of the domain name in dispute to the Complainant.