Panel Decision for dispute CAC-ADREU-006139

Case number	CAC-ADREU-006139
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Domain names	www.euroclima.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	euroclima SPA

Respondent

Name	World Online Endeavours Ltd.

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

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

FACTUAL BACKGROUND

The Complainant is "euroclima SPA", an Italian company providing technology in the air-handling sector.

The Respondent is "World Online Endeavours", a supposed English company which does not exploit any website offering goods or services.

On 7 april 2006, the first day of the Land Rush period, the <euroclima.eu> domain name was registered by the Respondent.

The Complainant requested the transfer of the domain name <euroclima.eu>.

The Respondent did not submit a response by the required deadline or at all.

A. COMPLAINANT

The Complainant contends as follows:

* The Complainant owns an international well known Company named "euroclima" concerning air conditioning based in Italy since 1963. Since 1972 he is also the owner of a company named "Euroclima Vertriebs GmbH" in 81278 Puchheim near Munich, in Germany.

The Complainant is also owner of several international trademarks named "euroclima" since 1994 in different european countries and is owner of the domain names www.euroclima.com, www.euroclima.de and www.euroclima.it.

The Disputed Domain Name is identical to the Complainant's trademarks, company name and domaine names

* The Complainant also underlines the fact that the Respondent has not legitimate right or interest related to the Disputed Domain Name.

The Respondent has no obvious trade mark rights, company name or any other rights (as mentioned in the Article 10 (1) of the Regulation) which could legitimate Registration of the Disputed Domain Name.

The Disputed Domain name is not used in connection with offering good or services.

The Respondent has not been known under the Disputed Domain Name and the Respondent's Company Name is different from the Disputed Domain Name.

The Complainant´s rights to the trademarks are prior to the Respondent´s right in the Disputed Domain Name.

It is very likely that the Respondent was aware of Complainant´s existence, which is a company well known in Europe.

In addition, to the Complainant´s best knowledge, the Name "euroclima" is not affiliated in any way to the Respondent.

In light of the above mentioned circumstances it is indicated that the Respondent has registered the Domain Name primarily for purposes of selling the Domain.

It is possible that the Respondent tried to take advantage of the Complainant´s reputation in order to attract and mislead consumers who would be confused by the identity of names.

B. RESPONDENT

The Respondent did not submit a response by the required deadline.

DISCUSSION AND FINDINGS

1. In consideration of the Factual Background, the Parties' Contentions stated above and its own web searches, the Panel comes to the following conclusions:

Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004 (hereafter “the Regulation”) states that "a registered domain name shall be subject to revocation [...] where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1) 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".

2. The rights mentioned in Article 10 (1) of the Regulation shall be understood to include national and community trademarks and, as far as they are protected under national law in the Member-State where they are held: trade names, business identifiers or company names.

3. As a consequence, this Panel is of the view that:

(i) The documentary evidence provided by the Complainant shows this latter owns several prior rights, such as the semi-figurative trademarks "EUROCLIMA" protected in several european countries or its company name.

(ii) The domain name <euroclima> is identical to the company name and confusingly similar to the trademarks of the Complainant.

4. The remaining issue is then to decide whether the domain name <euroclima> has been registered by the Respondent without rights or legitimate interest or whether it has been registered or used in bad faith by the Respondent.

5. In this respect, the first point on which the Panel would like to draw the attention is that the Respondent did not submit any Response and did not comply with its obligation and time periods under the ADR Rules.

6. The second point is that the Respondent, World Online Endeavours, does not exploit any web site in connection of goods or services linked with the "euroclima" name, neither using the <euroclima.eu> domain name.

7. As the Respondent did not submit any Response, the Panel has done some searches on web databases. However, the Panel did not find any element (as described in Article 21(2) of the Regulation) which may have been called upon by the Respondent.

8. On the other hand, the Panel found other Decisions of the Arbitration Center for <.eu> domain names where the Respondent already did not reply at all (see for example Case n° 04336, NIMM2-LACHGUMMI ; Case n° 04588, RIEKE) after having registered the trademark of another Complainant as a <.eu> domain name, on the first day of the Land Rush period.

9. Therefore it is the Panel's opinion that the behaviour of the Respondent, who is obvioulsy used to registering <.eu> domain names based on Prior rights belonging to third parties, constitutes bad faith.

10. Moreover, considering all the above elements in the present Case and Paragraph B10 of the ADR Rules, the Panel considers the failure of the Respondent to comply with its obligation and time periods under the ADR Rules as grounds to accept the claims of the Complainant.

11. As the Complainant, an Italian registered company, satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) n° 733/2002, the domain name is transferred to the Complainant.

DECISION

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

PANELISTS

Name	**Frédéric Sardain**

DATE OF PANEL DECISION 2012-01-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant seeks the transfer of the domain name <euroclima.eu>.

The Panel rules that :

(i) The documentary evidence provided by the Complainant shows that he owns trademarks and company name in respect of which a right is recognised by Italian national law, as required by Article 10(1) of the Regulation;

(ii) The domain name <euroclima> is identical to the company name of the Complainant and confusingly similar to the trademarks of the Complainant, as required by Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004;

(iii) The behaviour of the Respondent, who is obvioulsy used to registering <.eu> domain names based on Prior rights belonging to third parties, constitutes bad faith;

(iv) The failure of the Respondent to comply with its obligation and time periods under the ADR Rules shall be considered, in the present Case, as grounds to accept the claims of the Complainant.

The domain name is transferred.