Panel Decision for dispute CAC-ADREU-006252

Case number	CAC-ADREU-006252
Time of filing	2012-04-22 14:17:30
Domain names	worldofwarplanes.eu

Case administrator

Tereza Bartošková (Case admin)

Complainant

Organization	WARGAMING.NET LLP

Respondent

Name	Irina Zapolsky

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

There are no other legal proceedings of which the Panel is aware.

FACTUAL BACKGROUND

1. The Complainant is the proprietor of the community trademark n° 9915414, "WORLD OF WARPLANES" registered April 21, 2011.

2. The respondent registered the domain name "worldofwarplanes.eu" on June 7th 2011.

3. The disputed domain name resolves to the wesbite www.waroftanks.tv.

A. COMPLAINANT

The Complainant has made the following submissions.

1. The Complainant is the proprietor of the community trademark n° 9915414, "WORLD OF WARPLANES" registered april 21th 2011.

2. The respondent registered the domain name "worldofwarplanes.eu" on June 7th 2011, the day after the complainant has announced the release of it's new online videogame called "World of Warplanes".

3. The respondent uses the domain name to host a website which only includes a static page, without any rubrique, and without any element related to war or any planes.

4. The Complainant requests the transfer of the disputed domain name and submits that the disputed domain name is a speculative and abusive registration and satisfies the requirements of Article 21 of Regulation (EC) No. 874/2004 of 28 April 2004 (the Regulation) and Rule B11(d)(1) of the ADR Rules on the following grounds.

5. First the disputed domain 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. The disputed domain name is identical or confusingly similar to the WORLD OF WARPLANES trade marks since the domain name consists of the WORLD OF WARPLANES terrms in its entirety and differs from the WORLD OF

WARPLANES trade mark only by the necessary addition of the .eu TLD suffix.

6. Secondly, the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name. The Respondent has no rights or legitimate interest in the disputed domain name, whether by virtue of the circumstances set out in Rule B11(e) of the ADR Rules (corresponding to Article 21(2) of the Regulation)or in any way at all. Indeed, there is no link between the meaning of the terms "WORLDOFWARPLANES" and the site content.

7. Thirdly, the disputed domain name has been registered or is being used in bad faith. It has been registered on June 7th 2011, which is when the complainant has announced the release of its game.The respondent, by registering and/or using the disputed domain name, knowingly created a confusion between the name of the video game, protected as a trade mark, and the domain name. This is an unauthorized way to to divert those seeking information regarding the complainant's new video game.

8. Upon these elements, the complaint satisfies the requirements of Rule B11(d)(1) of the ADR Rules and Article 21 of the Regulation.

B. RESPONDENT

The Respondent has made the following submissions.

1. The Respondent does not agree with the submissions of the Complainant.

2. As to the allegation that the respondent registered the domain name "worldofwarplanes.eu" on June 7th 2011, the day after the complainant has announced the release of it's new online videogame called "World of Warplanes", the Respondent says that the Complainant has to prove that allegation. The Respondent registered the disputed domain name because she had heard rumours 2 months ago about a game dealing with planes. She registered the domain name to create a fan community about the game if it is released someday.

3. As to the allegation that the respondent uses the domain name to host a website which only includes a static page, without any rubrique, and without any element related to war or any planes, the Respondent says that this is not true. The domain name is redirected to another fan project, the Respondent's site, that is also about a game from Wargaming.net. As soon Wargaming.net publishes World of Warplanes the Respondent will also open a community site about that game using the disputed domain.

4.As to the submission that the Complainant has submitted the Complaint requesting the transfer of the disputed domain name, submitting that the disputed domain name is a speculative and abusive registration and satisfies the requirements of Article 21 of Regulation (EC) No. 874/2004 of 28 April 2004 (the Regulation) and Rule B11(d)(1) of the ADR Rules, the Respondent does not agree.

5. As to the allegation that the disputed domain 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 and that it is identical or confusingly similar to the WORLD OF WARPLANES trade marks, since the domain name consists of the WORLD OF WARPLANES terrms in its entirety and differs from the WORLD OF WARPLANES trade mark only by the necessary addition of the .eu TLD suffix, the Respondent says :
of course the disputed domain name looks similar to the name of the Wargaming.net game. That is so because there is going to be a fancommunity site about this game, as soon as the game is released.

6. As to the allegation that the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and that the Respondent has no rights or legitimate interest in the disputed domain name, whether by virtue of the circumstances set out in Rule B11(e) of the ADR Rules (corresponding to Article 21(2) of the Regulation) or in any way at all and that there is no link between the meaning of the terms "WORLDOFWARPLANES" and the site content, the Respondent says: This is not true. The Respondent has an intrest in the disputed domain name and it is already redericted to another website that contain fan material and a large comunity

that is also a part of Wargaming.net.There is also going to be a fancommunity site about the game to which the disputed domain name relates, as soon as the game is released.

7. As to the allegation that the disputed domain name has been registered or is being used in bad faith and that it was registered on June 7th 2011, which is when the complainant announced the release of its game, the Respondent says : there is nothing "BAD" in registering the disputed domain name. There is no anti Wargaming content in it or something that can hurt Wargaming.net or the game. Moreover, the Respondent has an intrest in the domain name and has already redericted to a another site, the Respondent's own site that contain fanmaterial and a large comunity that is also a part of Wargaming.net.Furthermore, there is going to be a fancommunity site about the game to which the disputed domain name relates, as soon as the game is released.

8.As to the allegation that the Respondent, by registering and/or using the disputed domain name, knowingly created a confusion between the name of the video game, protected as a trade mark, and the domain name and that this is an unauthorized way to divert those seeking information regarding the complainant's new video game, the Respondent says :there is no confusion at all because she has an interest in the domain name and it is already redirected to another site that is the Respondent's site that contains fan material and a large community that is also a part of Wargaming.net.Also there is going to be a fan community site about this game, as soon as the game is released.

9. The Respondent notes that Wargaming.net is the only party that shows bad manners and wants to damage its true fan who has been spending money and time to create a fan community website about a game that is only in plans and even now not released.

The Respondent therefore submits that the Panel should give her the right to retain her domain name. She has done nothing wrong and is the rightful holder of it.

DISCUSSION AND FINDINGS

The legal framework

It is first necessary to state the legal framework within which this dispute comes before the Panel. Fortunately, that framework has been set out in a recent decision, Case No. 06199, REMARKABLE EUROPE v. Markus Jank and, as the observations of the panel are clear and concise, it is proposed to repeat them here. The panel said:

"According to Article 1 thereof, Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain (OJ 2002 L 113, p. 1) sets out general rules for the implementation of the .eu Top Level Domain, including the designation of a Registry, and establishes the general policy framework within which that Registry is to function.
…
Article 5(1) (b) of Regulation No 733/2002 provides that 'the Commission shall adopt … rules concerning [inter alia] … public policy on speculative and abusive registration of domain names, including the possibility of registrations of domain names in a phased manner to ensure appropriate temporary opportunities for the holders of prior rights recognised or established by national and/or Community law and for public bodies to register their names'.

It was pursuant to that provision that the Commission adopted Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration ("Regulation 874/2004"). A claim for the transfer of the Domain Name to the Complainant requires according to Art. 21(1), 22(11) of the Regulation 874/2004 that the Panel finds that the Domain 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 rights mentioned in Art. 10(1) of the Regulation 874/2004 and that the Respondent has registered the Domain Name without rights or legitimate interests in the domain or that the Respondent has registered or is using the Domains in bad faith."

The ADR Rules

The proceedings now under consideration are brought pursuant to Regulation 874/2004 and are governed by the .eu Alternative Dispute

Resolution Rules (the "ADR Rules") and the Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic.

Rule B 1(b) (10) of the ADR Rules provides that the Complainant in initiating the proceedings shall

“(10) Describe, in accordance with these ADR Rules, the grounds on which the Complaint is made including, in particular,
(i) In case of an ADR Proceeding against the Domain Name Holder in respect of which domain name the Complaint is initiated:

A. why the domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or Community law (as specified and described in accordance with Paragraph B 1 (b)(9)); and,
either

B. why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint; or

C. why the domain name should be considered as having been registered or being used in bad faith. “

Article B11(d) of the ADR Rule provides that , "The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves

(1) in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated that:

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) The domain name has been registered or is being used in bad faith.”

As it will be seen later in this decision that this proceeding is particularly concerned with rights and legitimate interests, it is appropriate to see what the ADR Rules say about that expression.

Rights or Legitimate interests

Guidance on the meaning of the expression “without rights or legitimate interests” is to be found in Rule 11 (e), which provides:

“(e) 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 B11 (d) (1) (ii):

(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;

(3) the Respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law.”

That paragraph of the Rules echoes Art. 21(2) of the Regulation 874/2004.

It is also important to note the following provisions on bad faith.

Bad Faith

Paragraph B11 (f) of the ADR Rules provides that "the following circumstances, in particular but without limitation, if found by the Panel

to be present, may be evidence of the registration or use of a domain name in bad faith:

(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or

(2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or Community law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

(3) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered."

That paragraph of the Rules echoes Art. 21(3) of Regulation 874/2004.

Identical or confusingly similar

The first question that arises for decision is whether the disputed Domain 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. Clearly the threshold question is whether there is in this case a name that meets this description. The Complainant relies on the name WORLD OF WARPLANES and has adduced evidence showing that this is community trademark number 9915414 that was registered on April 21, 2011 of which the Complainant is the proprietor. The Panel accepts that evidence and accordingly the Panel finds that WORLD OF WARPLANES is a name recognised or established by Community law and that that right is vested in the Complainant.

As to whether the disputed domain name is identical or confusingly similar to the trademark, the Panel finds that it is identical. The two expressions, that in the domain name and that in the trademark are clearly the same and if the top level domain ".eu" in the domain name and gaps between the words in the trademark are ignored, as they must be when the comparison is being made, it is clear that they are identical. In fact, the Respondent does not really oppose that conclusion. Her case is directed to more substantial matters, as we shall see.

The Complainant has thus made out the first of the two elements that it must establish

Rights or Legitimate Interests

The second question is whether the disputed domain name was registered by the Respondent without rights or legitimate interest in the name. The essence of this case is that the Complainant says that the domain name was registered without any right or legitimate interest in the name.The Respondent says that there is a very clear right and legitimate interest that she had and has in the name and that that right or legitimate interest is that she intends to use the domain name to resolve to a webs site of the sort popularly known as a fan site, i.e. a site where fans, supporters or aficionados of the field covered by the domain name may express their support and interest in the field and exchange news and opinions and obtain information on their area of interest.

As has been noted, that question is to be decided within the ambit of Paragraph B11(e) of the ADR Rules , which provides , "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 B11(d)(1)(ii): (1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so; (2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law; (3) the Respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law."

It is now well established under the Uniform Domain Name Dispute Resolution Policy (the "UDRP") and by analogy under the .eu Regulation, that the onus is on the Complainant to make out a prima facie case and that if it does so, the onus then shifts to the Respondent to show that it in fact has a right or legitimate interest in the disputed domain name.

It is also to be noted that the criteria set out in the Rule just quoted are "without limitation" and that even if a respondent cannot bring itself within any one or more of those criteria, it may validly rely on any other consideration to show a right or legitimate interest.

The prima facie case

In the present case, the Panel finds that the Complainant has made out a prima facie case, by virtue of the fact that the domain name consists of the entirety of the trademark and that the Respondent has not been authorized by the Complainant to use its trademark in a domain name or anywhere else and by virtue of the fact that, prima facie, it is difficult to conceive of any legitimate reason why the Respondent should be registering such a domain name.

It then becomes a question of whether the Respondent has been able to rebut the prima facie case against her.

It is clear that the Respondent could not bring herself within either of the first two of the criteria set out in Paragraph B11 (e) of the ADR Rules and, indeed, she does not claim to be able to do so.

Rather, the Respondent's claim is that she has a right or legitimate interest in the domain name because she intends to use the domain name to set up a fan community site devoted to the game World of Warplanes when the game is actually released to the public. In other words she wants to establish what is more commonly referred to as a fan site. This is clearly put on the basis that it will give rise to a right or legitimate interest under the .eu Regulation or that it will constitute a right or legitimate interest within the generally accepted meaning of that expression.

It is therefore necessary to decide whether the facts as they are known bring the case within the third criterion, namely that "(3) the Respondent is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name in which a right is recognized or established by national law and/or Community law."

The issue is essentially whether a fan site may give rise to a legitimate interest and, as with many questions in this field, the answer is not uniform. However, it is reasonably clear that, if the totality of the facts show that the Respondent is operating a non-commercial site and if it is acting fairly, the fan site may give rise to a legitimate interest. There are certainly prior UDRP decisions to that effect, although there are also cases to the contrary; see, for instance, E-Resolution Case No AF-0348a (tupac.com and tupac.net) and Estate of Gary Jennings and Joyce O. Servis
v.Submachine and Joe Ross WIPO Case No D2001-1042. See also: Torsten Bettinger, Domain Law and Practice, pp1100-1103; David Lindsay, International Domain Law –ICANN and the UDRP, PP347-3542; and WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Second Edition ("WIPO Overview 2.0"), where this question is discussed.
For the purposes of this decision, however, the Panel has to decide on the evidence and in particular on the balance or probabilities whether the Respondent has made out a case to rebut the prima facie case against her and to show that she has a right or legitimate interest in the domain name because of the proposed fan site.
Taking everything into account, the Panel finds that the Respondent has not rebutted the prima facie case. That is so for the following reasons.
It is clear from the provision in the .eu Regulation quoted above that to be a fan site giving rise to a legitimate interest, the site must be non-commercial and the Panel has serious reservations as to whether the Respondent is proposing a non-commercial site. This element is important, not just because the word "non-commercial" is used in the provision, but for two other reasons.
First, when it is said that a fan site may be legitimate, it is meant that the site must be a genuine fan site and not just one that is claimed to be so, but which in reality is not. There are many UDRP decisions to this effect and it is not necessary to cite them here. An alleged fan

site that includes commercial content loses the educative and public interest nature that is the basis for allowing a fan site to be held out as legitimate.
Secondly and probably more importantly, the fan site relies on and actually uses in the domain name the complainant's trademark and it should always be remembered that the trademark owner has the basic right to control its use and particularly how it is used to market its goods and services. It also has a direct interest in preventing its trademark being used against its will to sell other goods under the pretext created by others that those goods are endorsed by or affiliated with the trademark owner. Thus, the more the site moves away from being a "pure" fan site, the less the trademark owner's rights are being protected. The Panel must therefore be confident that it is dealing with a genuine fan site and not one that is a subterfuge for commercial exploitation.
This notion is applicable to fan sites, as was noted in one of the more significant fan site cases concerning the internet game The Legend of Zelda, Nintendo of America Inc. v. Alex Jones, WIPO Case No. D2000-0998 where the panellist said:
"A Complainant has the right to decide how its mark will be used in the context of the product or products associated with the mark. A fan-club does not exist in a vacuum; it promotes the product for which it is named. It may, and in this case does, lead people to commercial outlets for the product. Insofar as a domain name which is identical to a name or mark is used solely in the context of the product of the owner of the name or mark and the owner objects to the use, it is not legitimate. The Complainant has the right to decide how its mark will be used in the promotion of its product. Although the Respondent may have a genuine desire to support the Complainant's products, he does not have a legitimate interest in the subject domain name which is identical to the Complainant's mark."
Applying those general comments to the facts of the present case, the Respondent says that "The domain name is redirected to another fan project, the Respondent's site, that is also about a game from Wargaming.net. As soon Wargaming.net publish World of Warplanes the Respondent will also open a community site about that game using the disputed domain. "
The site referred to and to which the disputed domain name is now linked is World of Tanks, to be found at www.worldof tanks.tv. Although the Respondent does not say so expressly, the implication in her submission is that the proposed website for War of Warplanes will be the same or similar to World of Tanks.
The Respondent also does not say expressly that she is the registrant of the domain name <worldoftanks.tv>, but as she relies on the website to which it resolves and refers to it in the Response as "another site (My site)", the Panel decided that it was legitimate to see who is the registrant of that domain name. The WHOISLOOKUP service shows that the registrant is Irina Zapolsky, Markgraf-Albrecht-Str. 1, 10711, Berlin, Germany, who is apparently the Respondent in the present proceedings and she is thus responsible for the content on www.worldof tanks.tv.
To re-capitulate, the Respondent's argument is that she will set up a fan site with <worldofwarplanes.eu> and that if we want to see what sort of fan site, we need only go to www.worldoftanks.tv, because she has already directed the disputed domain name to that web site and it is the same or similar to the site she will establish when the Complainant launches World of Warplanes.
Looking through the World of Tanks website to see what sort of site awaits the internet community when World of Warplanes is released, we see that it contains live internet games involving tank battles that are certainly dramatic and not for the faint-hearted and that it also contains commentary and discussion that one could reasonably conclude were broadly legitimate and appropriate for a genuine fan site.
The Panel's concern, however, is that the site also contains advertisements and, more importantly, it contains links to commercial sites that advertise a range of goods relating to internet games and associated requisites , equipment and clothing. It is also reasonably clear, although most of the text is in the Russian language, that these goods are for sale and are being actively promoted for sale on other websites to which the World of Tanks site is linked.
It is appropriate to give some more particulars of this situation and what is in store for World of Warplanes if and when a website is set up that is the same as or similar to the website for World of Tanks, as proposed by the Respondent.
The homepage of the World of Tanks website carries the notice: "On the issue of advertising contact:promo@worldof tanks.tv". That is an ominous start, as it is apparent that the website is actually looking for advertisements, which gives a distinctly commercial tone to the site. But it already carries advertisements by way of links prominently displayed on the site.

First, one of the most prominent features of the site is an advertisement and link that is apparently a play on words for an obscene word and, clicking on its logo takes the user to a series of advertisements for products under the names Jinx, Razer, Steel Series, Roccat, TTe Sports and DC Universe and promotes computer keyboard mice, Keyboards, headphones, T shirts and other items. The site also apparently sells other games, particularly by Diablo.

Secondly, the site has a link to Electronic Sports League (ESL) Shop described as a "partner". ESL's site contains substantial commercial content. It carries such statements as: "ESL Shop","Finest Sports Gear", "ESL Int."and "If you reside Outside of germany just Switch to our International ESL Shop".
That site promotes many commercial articles by their brand names. It also promotes goods under generic headings such as gaming gear, gaming equipment, hardware, notebooks, PC-Systems, audio and hi-fi.One item is promoted as "Top Bestseller."
It is true that on some occasions, panelists have accepted that a genuine fan site may carry advice or information as to where goods related to the subject matter of the site may be bought. That is so because such peripheral content does not prevent the substance of

the site from still being a fan site, devoted to the exchange of information and news. But in the present case, the distinct impression given to the user and in particular to the user who follows links to other sites is that this is, in a substantial way, a commercial site. Moreover, the areas of the site devoted to commercial sales is not minor, but extensive.
The precise wording of the content of the site is not always clear because of the extensive use of the Russian and, on the site linked from World of Tanks, the German language, but the obligation on the Respondent is to persuade the Panel on the balance of probabilities that the site is essentially a non-commercial site and that ,on that basis, that the prima facie case has been rebutted.
The Respondent has not persuaded the Panel of this. If anything, the balance of probabilities is that the site is a site devoted in part to information and games, but in a substantial part to commercial activities. Moreover, it is open to the interpretation that the trademark owner of World of Tanks in some way endorses the range of goods and services being advertised on or through the site. It should also be said that there is no disclaimer on the site (at least not in the English language or not translated into English) to make it plain that the site is not associated with the trademark owner. It is possible that the translation facility on the site has not translated some of the Russian language, but that, again, is the responsibility of those who rely on the content of the site to justify using the Complainant's trademark in their domain name and on their site. As such it is not a fan site that can be said to give rise to a legitimate interest.
Whether by design or not, the World of Tanks site is in effect giving the impression that World of Tanks or its owners or trademark owners are endorsing or affiliated with the suppliers of the other products widely promoted on it. This takes the present case well outside those cases dealing with a substantially fan or community site with peripheral advertising as a service to aficionados, to one that has heavy promotion of commercial activity.
Conclusion
The Respondent's case is that when World of Warplanes is launched she will set up a website similar to or the same as the World of Tanks site and link the disputed domain name to it. If that is so, she will not succeed and be able to retain the disputed domain name because the site would not be a genuine fan site. The World of Tanks site is not "non-commercial" within the meaning of Paragraph B11 (e) of the ADR Rules and, apart from the provisions of that paragraph and looking at the matter "without limitation", the World of Tanks site is, to a significant degree, a commercial site where the Complainant's trademark is being used to sell other goods and in some cases competing goods. If the proposed World of Warplanes site were to be established and if it were the same as or similar to the World of Tanks site, it too would not qualify as a fan site and for the same reason.
In addition to all of this, the requirement of the .eu Regulation is that the Respondent "is making" a legitimate use of the domain name, i.e. is currently doing so, not that it will endeavour to do so in the future, which is the contention of the Respondent.
Finding
The Panel therefore finds that the Respondent is not making a legitimate and non-commercial or fair use of the domain name.

The Complainant has thus made out the second of the two elements that it must establish.

Bad Faith

In view of the finding that the Panel has made on the issue of Rights or Legitimate Interests is not necessary for the Panel to make a finding on whether the domain name was registered or used in bad faith.

However, it would be apparent to the reader that the Panel has reached the conclusion that the Respondent is not as altruistic in this matter as she claims and has concluded that her intention was to set up a website that is, at least to a substantial extent, a commercial site trading on the Complainant's name as she did in the case of World of Tanks. That being so, if the matter had to be decided on the issue of bad faith, the Panel would decide that the domain name has been both registered and used in bad faith, as it has been, within the meaning of paragraph B11(f) (4) of the ADR Rules "… intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; …"

By way of contrast, in The Legend of Zelda Case, the Panel found that the Respondent had not registered and used the domain name in bad faith (although it had also found that he did not have a right or legitimate interest in the domain name) because as it put it:

" The evidence is clear that the Respondent has not sought commercial gain. Although his website contains links to commercial outlets, he states that he derives no personal gain.
The circumstances in the Policy from which evidence of bad faith can be inferred are not present. Taking the evidence as a whole, there is no other basis on which the Administrative Panel could find bad faith."
In the present case, the Respondent has not denied commercial gain and the evidence as a whole suggests that the case falls into the criteria of bad faith within the meaning of paragraph B11(f) (4) of the ADR Rules. If the issue were to arise , the Panel would thus decide it in favour of 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 WORLDOFWARPLANES be transferred to the Complainant

PANELISTS

Name	**Neil Anthony Brown**

DATE OF PANEL DECISION 2012-04-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: worldof warplanes.eu

II. Country of the Complainant: United Kingdom, country of the Respondent: Germany

III. Date of registration of the domain name: 07 June 2011

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. word trademark registered in the European Community, reg. No. 99154.14 for the term WORLD OF WARPLANES, registered on 21 April 2011]

V. Response submitted: Yes.

VI. Domain name is identical to the protected right of the Complainant

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. Why the Complainant considers the Respondent to lack the rights and legitimate interests:because the domain name has been registered and is not being used in an active website.
2. Rights or legitimate interests the Respondent claims to have:the right or legitimate interest created by intending to use it for a fan community website and already linking it to another fan community site.
3. Does the Panel consider the Respondent to have no rights or legitimate interests: No rights or legitimate interest.

1. Why the Complainant considers the Respondent to have registered or used the domain name/s in bad faith:It is alleged that the respondent, by registering and/or using the disputed domain name, knowingly created a confusion between the name of the video game, protected as a trade mark, and the domain name. This is an unauthorized way to to divert those seeking information regarding the complainant's new video game.

2. How the Respondent rebuts the statements of the Complainant: by stating that there is nothing "BAD" in registering the disputed domain name. There is no anti Wargaming content in it or something that can hurt Wargaming.net or the game. Moreover, the Respondent has an intrest in the domain name and has already redericted to a another site, the Respondent's own site that contain fanmaterial and a large comunity that is also a part of Wargaming.net.Furthermore, there is going to be a fancommunity site about the game to which the disputed domain name relates, as soon as the game is released.

3. Does the Panel consider the Respondent to have registered or use the domain name/s in bad faith: Yes.

IX. Other substantial facts the Panel considers relevant : none

X. Dispute Result: Transfer of the disputed domain name.

XI. Procedural factors the Panel considers relevant:none.