

Panel Decision for dispute CAC-ADREU-006400

Case number **CAC-ADREU-006400**

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Domain names **BAC.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization **Baltimore Aircoil International nv**

Respondent

Name **Domain Manager Limited**

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 a company incorporated in Belgium. It has produced and sold evaporative heat rejection and thermal storage equipment in Belgium and the rest of Europe since 1968 using, inter alia, the name "BAC".

The Complainant is a wholly owned subsidiary of Baltimore Aircoil Company, incorporated in the United States. The business was started in the 1930s and the group is now the world's largest manufacturer of evaporative heat rejection and thermal storage equipment. Its products are supplied to the commercial, industrial, refrigeration, process and power markets to meet a variety of heat transfer applications.

Baltimore Aircoil Company, Inc owns Community Trade Mark No. 889311 for the word "BAC" dated 22 July 1998 in classes, 11, 37 and 39 as well as national trade marks for "BAC" in various EU countries.

The Respondent registered the disputed domain name on 4 August 2012.

As of November 2012, the website at the disputed domain name resolved to a page inviting bids to purchase the domain name. The Complainant entered the bidding process at 60 Euros. The Respondent countered at 28,800 Euros. The Respondent's final proposal was 27,120 Euros.

At some point thereafter a parking page was set up at the disputed domain name with links to investment and finance-related websites.

A. COMPLAINANT

The Respondent should be considered as having no right or legitimate interest in the disputed domain name for the following reasons:

The disputed domain name is identical to a name in respect of which a right is recognised or established by the national law of a member state and/or community law.

The Complainant has prior rights in the trade mark "BAC" and in the trade name and company name "Baltimore Aircoil Company", which precede the Respondent's registration of the disputed domain name.

The Complainant's trade mark "BAC" is registered and is well-known throughout the world.

The Complainant extensively uses the "BAC" trade name in connection with its business, achieving considerable goodwill in its trade name and company name. The brand "BAC" is very famous throughout the world as well as in Europe.

The disputed domain name incorporates in its entirety the Complainant's registered trade mark.

There is no existing or previous relationship between the Complainant and the Respondent, and there is no licence, permission or authorisation by which the Respondent was authorised to register or use the disputed domain name incorporating the Complainant's mark.

The disputed domain name should be considered as having been registered and used in bad faith for the following reasons:

The Respondent does not hold any right or legitimate interest in the disputed domain name, since the Complainant has not licenced or otherwise authorised the Respondent to use its "BAC" trade mark or to apply for any domain name including such a trade mark.

There is no holder of rights to the name "BAC" other than the Complainant and, therefore, the Respondent has never been entitled to register and use the disputed domain name.

The Respondent uses the disputed domain name for the promotion of other businesses and clearly indicates that the domain name is for sale.

The Complainant tried to contact the Respondent in order to reach an amicable solution but this was difficult as the Whois data did not clearly identify the Respondent. The Respondent was finally contacted through the website at the disputed domain name and the Respondent was invited to bid for the domain name. The final offer was 27,120 euro, which the Complainant believes to be unacceptable. After the bidding, the domain name was activated. This change can be interpreted as an attempt to establish some activity in case of a future dispute.

The obvious connection existing between the disputed domain name and the Complainant's trade mark as well as the evasive attitude of the Respondent constitute clear evidence of a bad faith intent.

The disputed domain name should be transferred to the Complainant.

B. RESPONDENT

The Respondent did not file a Response.

DISCUSSION AND FINDINGS

Introduction

Under Article 21(1) of Regulation (EC) 874/2004 ("the Regulation"), the disputed domain name is subject to revocation if it 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), and where it (a) has been registered by its holder without rights or legitimate interests in the name or (b) has been registered or is being used in bad faith.

Rights

The Complainant must first establish a right that "is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1)".

Article 10(1) of the Regulation refers to: "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...".

The Complainant relies on a Community Trade Mark for "BAC" owned by the Complainant's US parent company, which is not a party to this proceeding. The Complainant has not provided evidence of any licence to it from the US company. However, the Complainant has supplied a company chart showing that it is a 100%-owned direct subsidiary of the trade mark owner. The Complainant has also established that it has traded extensively within the EU under the name "BAC" for many years. In the Panel's view it is reasonable in these circumstances to infer that the Complainant traded under licence from its parent company, the trade mark owner.

Furthermore, the Complainant claims unregistered trade mark, trade name and company name rights. While the Complainant could, and should, have done more to clarify exactly which rights it was claiming under the laws of exactly which countries, the Panel thinks it reasonable to infer that extensive trade under the name "BAC" within many EU countries for many years is very likely to have generated rights in the term "BAC" which are protected under the national law of one or more of those countries in accordance with Article 10(1).

The Panel also notes that the Respondent has not appeared in this proceeding to contest the Complainant's assertion as to trade mark rights.

Taking all of the above factors into account, the Complainant has - very narrowly - established rights in a name which recognized or established by national and/or Community law. Disregarding the domain name suffice, the disputed domain name is identical to that name.

Lack of Rights or Legitimate Interest

Panels have generally held that a complainant is only required to establish a prima facie case of lack of rights or legitimate interest and the burden then shifts to the respondent. If the respondent fails to show evidence of rights or legitimate interests, then it is deemed to have none.

Article 21(2)(a) provides that legitimate interest can be demonstrated by use of the domain name or a name corresponding to the domain name in connection with an offering of goods or services or demonstrable preparations to do so.

Here, the disputed domain name was initially redirected to a page inviting offers to purchase the disputed domain name. In the Panel's view such usage does not qualify as an offering of goods or services.

Thereafter the disputed domain name was used for a parking page. It is conceivable that such use of the disputed domain name would have qualified as a legitimate interest if there were evidence that the disputed domain name had been used descriptively to link to descriptive terms relating to the acronym "BAC". See, eg, case 3949 (ACL). However, the parking page produced to the panel contains links to a range of investment and finance-related websites with no obvious relevance to the acronym "BAC".

There is no other evidence of use of the disputed domain name. Nor is there any evidence that Articles 21(2)(b) or (c) apply.

In the Panel's view, the Complainant has established a prima facie case of lack of rights or legitimate interest and there is no rebuttal by the Respondent.

Accordingly, the Panel concludes that the Respondent lacks rights or legitimate interest in the disputed domain name.

As lack of rights or legitimate interest is an alternative requirement to registration or use in bad faith, there is no need for the Panel to address the latter issue.

Remedy

The Complainant seeks transfer of the disputed domain name.

Article 22(11) of the Regulation states that the Panel shall decide that the domain name shall be revoked if it finds that the domain name is speculative or abusive as defined in Article 21. Article 22(11) further provides that the domain name shall be transferred to the Complainant if the Complainant applies for the domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002.

Those general eligibility criteria are:

1. an undertaking having its registered office, central administration or principal place within the European Community;
2. organisations established within the European Community without prejudice to the application of national law; or
3. natural persons resident within the European Community.

The Complainant satisfies the eligibility criteria as it is incorporated in Belgium.

DECISION

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

PANELISTS

Name	Adam Taylor
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DATE OF PANEL DECISION	2013-03-21
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Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: bac.eu

II. Country of the Complainant: Belgium, country of the Respondent: UK

III. Date of registration of the domain name: 4 August 2012

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
word CTM, reg. No. 889311, for the term BAC, filed on 22 July 1998, registered on 1 March 2000 in respect of goods and services in classes 11, 37 and 39;
unregistered trademark;
business identifier;
company name.

V. Response submitted: No

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):

1. No
2. Why: Only evidence of use of domain name was to offer the domain name for sale and for a parking page with links unrelated to the domain name. Complainant established a prima facie case and no rebuttal by the Respondent.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):

1. N/a
2. Not necessary to consider because of lack of rights or legitimate interest.

IX. Other substantial facts the Panel considers relevant: N/a

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

XI. Procedural factors the Panel considers relevant: N/a

XII. Is Complainant eligible? Yes
