Panel Decision for dispute CAC-ADREU-006704

Case number	CAC-ADREU-006704
Time of filing	2014-08-01 00:40:44
Domain names	dnhost.eu

Case administrator

Lada Válková (Case admin)

Complainant

Organization	UBAVICIUS ANT. - FARAZOUMIS IOAN. O.E. (DNHOST)

Respondent

Organization	S. Madariotakis - M. Chrisomallos Co

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

No other pending proceedings are known to the Panelist.

FACTUAL BACKGROUND

As evidenced by the document EURid's verification – ADR case nr. 06704 DOMAIN NAME DNHOST.eu, dated from May 28, 2014, the Respondent has registered the disputed domain name on June 7, 2006. The Complainant is a company incorporated on September 20, 2000, under the laws of Greece, with its seat in Athens, and with main activities the registration of domain names, hosting services and e-commerce solutions.

A. COMPLAINANT

The Complainant's line of argument goes as follows:

The Complainant is the proprietor of the Greek trademark registration No. 174796 "DNHOST ΥΠΗΡΕΣΙΕΣ ΔΙΑΔΙΚΤΥΟΥ" (translated into English as DNHOST INTERNET SERVICES) filed on July 16, 2004, in classes 38 and 42. Said trademark has recently been renewed for a further decade, i.e. until July 16, 2024. The Complainant submitted the renewal certificate and a translation in English.

The Complainant claims to be the registrant of the following domain names:

a. <dnhost.gr> registered on July 31, 2001;

b. <dnhost.com.gr> registered on November 12,2004;

c. <dnhost.net.gr> registered on December 1, 2004.

The Complainant contends to operate its business website under <dnhost.gr>. The Complainant asserts that the web pages for the domain names <dnhost.com.gr> and <dnhost.net.gr> are used by the Complainant for internal use of its company.

The above .gr domain names of the Complainant are also available on the .gr WhoIs. Since April 19, 2004, the Complainant has been and still is an accredited Registrar in Greece for the [.gr] gTLD, as shown in the list of Accredited Registrars in Greece, a copy of which was submitted with the Complaint. The Complainant's domain names were filed with the company of the Complainant itself, Registrar "DNHOST". In addition, the Complainant is an accredited EURid registrar since July 20,2005.

The Complainant asserts that it is one of the most popular registrar and web hosting companies in Greece. The complainant ranks Nr 5

out of 428 active .GR registrars and reaches 9,49% market shares (March 2014) in Greece in terms of .EU domain names registration volume. In addition, the Complainant provides web hosting services to more than 35.000 websites through 3 data centre facilities located in Athens (Greece), Amsterdam (The Netherlands) and Nuremberg (Germany). The Complainant claims that the website DNHOST.GR gets an extremely good ranking on Google organic searches for the keywords "domain names", "domains", "hosting" and "web hosting".

The Complainant directs its complaint against Miltiadis Chrisomallos of the company S. Madariotakis – M. Chrisomallos Co, as referred to in the .eu WebWhoIs. According to the Complainant the latter is an entity located in Thessaloniki, Greece. The Respondent registered the disputed domain name <dnhost.eu> on June 7, 2006, and the Registrant's Email address recorded is "info@webers.gr". The company WEBERS is also a company of the Respondent, as shown in the Greek business catalogue vres.gr in the category of "provider of Internet services". The same company is also listed in the e-openit.eu's WhoIs Information. WEBER is operating the webpage <www.webers.gr>, the home page of which presents the company as providing "01. Development of research; 02. Creation of web site; 03. Internet Promotion" and also the service of registering .eu domain names through the PICKEU.COM "OFFICIAL REGISTRAR .EU" with a button that resolves to an "Untrusted Connection". Said company of the Respondent was also a .eu accredited registrar in Greece in the period June 1, 2006 –June 30, 2006, together with the company of the Complainant, as shown in the letter by EURID on May 26, 2014. Therefore, the Complainant draws a conclusion that it is supported that the Respondent knew about the Complainant's business as a .eu Registrar before filing the disputed domain name.

The Complainant asserts that the Respondent, knowing that DNHOST (the Complainant) was running a business of domain name registrations filed in bad faith the disputed domain name <dnhost.eu> and is re-directing the corresponding website <www.dhnost.eu> to the webpage of the website http://luckycloverweb.com/shop/homepage.php which is offering similar services to the services of the Complainant, i.e. amongst others, registration of domain names and hosting services. The Complainant claims that the Respondent was certainly aware of the Complainant's business and website, as well as of its registered trademark, which is not being used in the above-referenced website, to which the disputed domain name points.

The Complainant asserts that the disputed domain name is identical or confusingly similar to the prior Greek trademark registration of the Complainant, to the company name used by the Complainant and in general to the name DNHOST in respect of which the Complainant has both long recognized and established rights.

The Complainant asserts that it asked to purchase the disputed domain name and found that it was registered by the Respondent. It has contacted the Respondent several times asking that he withdraws the disputed domain name, because the Complainant clearly has prior rights in the trademark DNHOST, in the company name DNHOST and the domain name <dnhost.eu>.

The Complainant wishes to have the disputed domain name <dnhost.eu> transferred, so that the webpage operated under this domain name is directed to its webpage, as it is expected by the consuming public, who expect to visit the Complainant's page when typing www.dnhost.eu, as the internet address in question is directly associated with the Complainant and its activity in the business field of web hosting and domain name registration. As the Complainant states, several clients of the Complainant have already been misled believing that the operator of the disputed domain name was the Complainant.

The Complainant asserts that it has spent high amounts of money in investing and promoting the [.eu] gTLD in Greece. Notably, in the year 2013 in order to finance advertising of the registration of [.eu] domains, a campaign co-funded by both the EURid and the Complainant was launched, on the Greek popular KISS FM radio station.

Further, according to the Complainant's view, it is obvious, that the Respondent has registered the disputed domain name without any legitimate interest and in bad faith as the Respondent already knew the business of the Complainant from 2006 as they both were .eu registrars. It is clear that the Respondent filed the domain name in order to try and mislead the public to think that it's activity is similar or it is part of the Complainant's activity and/or in order to unlawfully try to cause customers of the Complainant to register their domain names through the platform http://luckycloverweb.com/shop/homepage.php, to which the <dnhost.eu> redirects them, to enjoy the Complainant's huge efforts and investments in the brand name DNHOST and to enjoy the traffic created as a result of such efforts and investments. It is also possible that the Respondent has purchased the disputed domain name in order to try and sell it later on to the Complainant. It follows that the Respondent has registered the disputed domain name without any legitimate interest and in bad faith.

B. RESPONDENT

The Respondent failed to file any response.

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's trademark and domain name registrations in Greece are (wholly or partly) identical to the domain name under dispute. The above facts are leading to the conclusion, that the Complainant satisfies the general eligibility criteria set out in Article 4(2) (b) of the Regulation (EC) 733/2002, and is entitled to ask for the transfer of said domain name in accordance with Article 21(1) of the Regulation (EC) 874/2004.
On July 14, 2014, the Court issued a Notification of Respondent's default.

Pursuant to Articles 22 (10) of the Regulation 874/2004 and B10(a) of the ADR Rules, the Panel may consider the absence of response as an acceptance of the Complaint. Although no response was filed, the Panel will nevertheless examine whether the Regulation 874/2004 applies to the case at hand.

A. ON THE IDENTITY OF THE RESPONDENT
The Complainant directs its complaint against Miltiadis Chrisomallos of the company S. Madariotakis – M. Chrisomallos Co, as referred to in the .eu WebWhoIs. Pursuant to Art. 16(1) of the Regulation 874/2004, 'the purpose of the WHOIS database shall be to provide reasonably accurate and up to date information about the technical and administrative points of contact administering the domain names under the .eu TLD'. Furthermore, according to Art. B1(b)(5) of the ADR Rules, the complaint filed shall provide the name of the Respondent and, in case of an ADR Proceeding against a Domain Name Holder provide all information (including any postal and e-mail addresses and telephone and fax numbers) known to the Complainant on how to contact the Respondent or any representative of the Respondent. Finally, Art. 2.3 of the .eu Domain Name WHOIS Policy, states that: 'Those requesting to register a .eu Domain Name are required to provide certain information through an accredited .eu Registrar. In respect of the name of the Registrant there are two fields: The first is 'Name' and the second is 'Company'. Both fields may be completed or just the 'Name' field. If only the first field is completed, it is assumed that the registration is in the name of a private individual (natural person). If the 'Company' field is completed, it is assumed that the company is the Registrant.

In the case at hand, the Complainant followed the exact order as shown in the WHOIS database. In particular, it directs the complaint against the natural person Miltiadis Chrisomallos, whereas it adds the company S. Madariotakis – M. Chrisomallos Co, whose name is included in the 'organization' field. Hence, by virtue of Art. 2.3 .eu Domain Name WHOIS Policy, the complaint is filed against the domain name holder, namely S. Madariotakis – M. Chrisomallos Co (as evidenced in the document EURid's verification – ADR case nr. 06704 DOMAIN NAME DNHOST.eu, dated from May 28, 2014), even if the Complainant chose to state the natural person Miltiadis Chrisomallos as the Respondent in its complaint. In addition, the complaint fulfils the requirements set by Art. B 1(b)(5) of the ADR Rules, and the Respondent received notice of the .eu ADR proceedings in accordance with the provisions of the .eu ADR Rules, as evidenced in the file of the dispute.

B. ON THE RIGHTS OF THE COMPLAINANT TO THE DOMAIN NAME
The Complainant's fundament for seeking the transfer of the domain name dnhost.eu lies on his claimed right according to Art. 10(1) Para. 2, in conjunction with Art. 21(1) of the Regulation 874/2004. Article 21(1) of the 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 the 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) of the 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,… 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) Para. b, in conjunction with Art. 10(2) of the Reg. 874/2004. The Complainant is the holder of prior rights. Trademarks, company and trade names of legal entities, constitute prior rights pursuant to Art. 10(1) and 10(2) of the 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. B1(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. It has indeed demonstrated that it has rights to the domain name, since it is identical to a part of his trademark and three domain names registered in Greece, as evidenced by the certificates of registration produced. Hence, the requirement set under Art. 10(1) Para. b has been met.

For all the above reasons, the Panel decides that the Complainant is the holder of prior rights in respect of the domain name "dnhost.eu".

C. ON THE BAD FAITH OF THE RESPONDENT
The complaint is based on Art. 21(3) of the Reg. 874/2004. 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, it clearly failed to show any demonstrable link between himself and the domain name it 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. B10(a) of the ADR Rules.

Beyond the above, the complaint is to be accepted on the grounds of Art. 21(3)(a) and (d), and Art. B11(f)(1) and (4) of the ADR Rules. As evidenced by the complaint and its Annexes, the sole purpose of registration was clearly to attract users for commercial gain to the Respondent's web sites or other on-line locations, and potentially to benefit from its future sale or auction.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name DNHOST be transferred to the Complainant

PANELISTS

Name	Apostolos Anthimos

DATE OF PANEL DECISION 2014-08-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: [dnhost]

II. Country of the Complainant: [Greece], country of the Respondent: [Greece]

III. Date of registration of the domain name: [07 June 2006]

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
1. [word/combined] trademark registered in [Greece], reg. No. [174796], for the term [ten years], filed on [16 July 2004], registered on [16 July 2004] in respect of goods and services in classes [38 & 42]
2.
3.
4.
5.
6.
7.
8. business identifier:
9.
10.
11.
12. other: domain name registrations: dnhost.gr, dnhost.com.gr, dnhost.net.gr

V. Response submitted: [No]

VI. Domain name is [confusingly similar] 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: No prior use by the Respondent / Respondent no commonly known by the domain name

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

2. Why: domain name was intentionally registered to attract Internet users for commercial gain / domain name registered with the purpose of selling, renting or otherwise transferring the domain name.

IX. Other substantial facts the Panel considers relevant:

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

XI. Procedural factors the Panel considers relevant: Verbatim copy of the WHOIS info regarding the data of the Respondent in the complaint. By virtue of Art. 2.3 .eu Domain Name WHOIS Policy, the Respondent is the entity filed under 'Organization'. Complaint fulfills the requirements according to ADR Rules.

XII. [If transfer to Complainant] Is Complainant eligible? [Yes]