Panel Decision for dispute CAC-ADREU-006950

Case number	**CAC-ADREU-006950**
Time of filing	**2015-06-23 12:33:07**
Domain names	**flirt4free.eu**

Case administrator

Lada Válková (Case admin)

Complainant

Organization

Respondent

Name	**W.A. Vyent**

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 any other legal proceedings relating to the disputed domain name ("the Domain Name").

FACTUAL BACKGROUND

The Complainants in this ADR Proceeding are VS Media, Inc. of the USA (“the Complainant”) and Flirt4Free EU Limited of Ireland (“the Second Complainant”). The Complainant operates a website at flirt4free.com (“the Website”) which provides platforms for member performers to offer live webcam services to consumers. The domain name flirt4free.com was registered by the Complainant on 10 February 1999. The Complainant’s services are provided throughout Europe and the Website has received millions of unique hits from European users. It also features member performers who are resident or domiciled in Europe.

The Complainant has operated an affiliate marketing program since 1999 which today allows some 45,000 webmasters including 5,000 in Europe to participate in traffic sharing with the Complainant, for which the participating webmaster is paid. The Second Complainant is the Complainant’s authorised agent in Europe and manages the European transactions for the Website. Prior to 7 April 2006 the revenue generated by such webmasters for the Complainant was almost USD 50 million and has since exceeded hundreds of millions.

The Complainant is the owner of US trade mark 2684274 for the mark FLIRT4FREE registered on 4 February 2003 covering in part entertainment services including adult-oriented entertainment. The Complainant also claims a common law trade mark for the mark FLIRT4FREE based on the extent to which its services are known and used in the European Union. The Complainant produces evidence showing that the Website received over 388 million hits from the European Union between 2007 and 2014, over 223 million of which were unique visitors. The Complainant also produces a sworn declaration from its President stating that it has spent in excess of USD 25 million in marketing, including marketing in Europe since April 7, 2006. Such marketing includes monthly advertisements which the Complainant placed in magazines having a distribution of at least 13,000 copies per year in Europe throughout the years 2000-2010.

The Complainant has received awards or nominations for awards for the Website including nominations for Best Overall Live Cam Site, Best Live Cam Site, and Live Cam Company of the Year at the Barcelona Spain Summit in 2014 and an award win at the 2013 YNot Awards in Prague for the Best Live Cam Site.

The Respondent appears to be a natural person with an address in the Netherlands. The Complainant states, and the Respondent does not deny, that the Respondent registered as an affiliate of the Complainant’s affiliate program on 23 February 2005 and agreed in that process to webmaster terms which required that the affiliate would not include any of the Complainant’s trade marks as its website or as the content of its website. The Domain Name was created on 7 April 2006 and was used between the date of creation and about March 2012 to redirect traffic to the Website of the Complainant. Since March 2012, the Domain Name has been used for a website featuring a marriage/dating agency specialising in “Russian brides”.

No Whois record has been made available to the Panel which would show the identity of the registrant of the Domain Name at around the date of its creation. This is relevant because the evidence shows the existence of a third party registrant as at 12 March 2012, namely a Mr. Alexander Bontenbal. The evidence also shows that at some point since 2012 the Domain Name was transferred to the Respondent. The Panel notes that it is a matter of admission by the Respondent that he registered the Domain Name on 7 April 2006. The Complainant contends, and the Respondent does not deny, that the Respondent transferred the Domain Name to Mr. Bontenbal and received a transfer back from him in due course. The Complainant also contends that such transfers were made by the Respondent in bad faith in an attempt to thwart the Complainant's action to recover the Domain Name or have it revoked.

On 8 December 2011, a representative of the Complainant wrote to the Respondent by email indicating that the Domain Name violated the Complainant's terms and conditions and requesting that the Domain Name be transferred to the Complainant. On 14 December 2011, the Respondent replied proposing that the Complainant purchase the Domain Name through a broker with a minimum bid of EUR 12,000 and subject to a limited time offer expiring in 24 hours.

The Complaint was filed on 25 March 2015. The Czech Arbitration Court acknowledged receipt of the Complaint and issued a Request for EURid Verification for the Domain Name on 2 April 2015. On 2 April 2015, EURid replied in a non-standard communication confirming that the Domain Name flirt4free.eu was registered with AXC, that the current Registrant of the Domain Name was the Respondent, that the Domain Name would remain locked during the pending ADR Proceeding and that the specific language of the registration agreement as used by the Registrant for the Domain Name was English. It also provided the full details from the WHOIS database for the registrant and registrar technical contacts.

On 3 April 2015, the Czech Arbitration Court conducted a formal compliance review in respect of the Complaint and found it to be deficient. Accordingly, on the same date, the Czech Arbitration Court notified that the Complaint had various deficiencies. On 7 April 2015, the Complainants requested that certain details of the Complainant be amended, which request was granted by the Czech Arbitration Court on 10 April 2015. Also on 7 April 2015, the Complainants filed an amended Complaint which was duly submitted to a formal compliance review by the Czech Arbitration Court on 10 April 2015 and found to be in compliance. Accordingly, the formal date of commencement of the ADR Proceeding was therefore 10 April 2015 and a Notification of Complaint and Commencement of ADR Proceeding was issued to the Respondent on that date. This stated that a Response was to be submitted within 30 working days. On 13 April 2015, the Czech Arbitration Court filed a nonstandard communication noting that the Respondent had logged on to the online platform on 10 April 2015 and that the deadline for filing of the Response would be 27 May 2015. On 14 April 2015, the Respondent filed a nonstandard communication containing the terms of its response to the Complaint. On 15 April 2015, the Czech Arbitration Court filed a nonstandard communication confirming that there had been an error in the calculation of the deadline for a Response and that the correct date was 28 May 2015. On 18 May 2015, the Czech Arbitration Court filed a nonstandard communication reminding the Respondent of the deadline for the Response. No formal Response was filed and on 29 May 2015, the Czech Arbitration Court issued the Notification of Respondent's Default. This stated, inter alia, that the Czech Arbitration Court would proceed to appoint an ADR Panel, that the Panel and the Complainant would be informed of the Respondent's default and that the ADR Panel would decide in its sole discretion whether or not to consider the Respondent's defective Response. It also stated that the Respondent had a right to challenge the said Notification. On 29 May 2015 the Respondent filed a Challenge of Notification of Respondent Default which was acknowledged by the Czech Arbitration Court on 1 June 2015.

Following an invitation to serve on the Panel in this dispute, the Panel accepted the mandate and submitted the Declaration of Impartiality and Independence in due time. The Czech Arbitration Court duly notified the parties of the identity of the appointed Panel on 3 June 2015, in accordance with paragraph B4(e) of the .eu Alternative Dispute Resolution Rules ("ADR Rules") and the date by which a decision on the matter was due, which was specified as 29 June 2015.

In the absence of a challenge to the Panel's appointment by either Party according to Paragraph B5(c) of the ADR Rules, the Czech Arbitration Court transmitted the case file to the Panel on 8 June 2015.

A. COMPLAINANT

The Complainants seek a decision transferring the Domain Name to the joint Complainant Flirt4Free EU Limited of Ireland or alternatively, if this is not possible, for the Domain Name to be revoked.

The Complainant asserts that the Domain Name is identical and confusingly similar to its FLIRT4FREE trade mark. The Complainant submits that the Respondent has no rights or legitimate interests in the Domain Name and that the Respondent registered and uses the Domain Name in bad faith.

The Complainant relies on its registered US trade mark and also contends that it has a common law trade mark in the mark FLIRT4FREE.

The Complainant contends that its common law rights have been established since 10 February 1999 and are based on continuous and extensive use and promotion of the mark including in the European Union. The Complainant contends that its trading goodwill and reputation is capable of protection in Europe in jurisdictions such as Ireland and the United Kingdom under the law of passing off. The Complainant asserts that the use of its mark within the Domain Name to redirect traffic to the Complainant's Website was an intentional misrepresentation which was likely to lead the public into believing that the Complainant's services were affiliated with the Respondent's activities and to cause damage to the Complainant, including the fact that the Complainant paid the Respondent for the traffic generated by the Domain Name.

The Complainant argues that the Respondent was placed on notice in 2005 of the Complainant's rights when the Respondent joined the Complainant's affiliate program and thus was not using the Domain Name in connection with any bona fide offering of goods and services prior to any notice of the dispute. The Complainant submits that the only rationale for the original registration of the Domain Name was to capitalize on the consumer's awareness of the FLIRT4FREE trade mark and its goodwill and that the current use of the Domain Name is merely a continuation of that activity.

The Complainant asserts that the Respondent has not been commonly known by the Domain Name. The Complainant submits that the current use of the Domain Name was commenced only after the Complainant notified the Respondent that the Domain Name violated the Complainant's webmaster terms and demanded its transfer. The Complainant adds that the temporary transfer of the Domain Name between the Respondent and Mr. Bontenbal is of no significance to the question of rights and legitimate interests in that the illegitimate use of a Domain Name cannot be converted into a legitimate use by transfer of such Domain Name to a third party after notification of a party's rights. The Complainant notes that post-transfer the use and technical configuration of the Domain Name did not change, demonstrating a connection, affiliation or agreement between those persons. The Complainant contends that the Respondent cannot claim nor demonstrate any legitimate noncommercial or fair use of the Domain Name.

The Complainant contends that the Respondent acquired the Domain Name primarily for the purpose of selling it to the Complainant and that by using it, the Respondent has intentionally attempted to attract, for commercial gain, Internet users to its website by creating a likelihood of confusion with the Complainant's mark as to source, sponsorship, affiliation or endorsement of the Respondent's website. As regards sale of the Domain Name, the Complainant points to the correspondence between the Parties in which the Respondent stated that the only way to acquire the Domain Name was to bid on it in association with a minimum bid of EUR 12,000. As regards registration and use of the Domain Name, the Complainant points to the Respondent's original purpose of use in connection with the Complainant's affiliate scheme. The Complainant notes that such use will have conferred commercial benefit on the Respondent based on the likelihood that users will have confused the Domain Name as being affiliated with or sponsored by the Complainant. The Complainant contends that the Domain Name was registered with actual knowledge of the Complainant's rights and with intent to disrupt the professional activities of a competitor.

B. RESPONDENT

In the nonstandard communication, the Respondent makes the following contentions:-

The Respondent submits that there is no abuse of any kind arising from the dating website which he operates. The Respondent asserts that the services provided at the Domain Name are totally different services from those of the Complainants. The Respondent says that the website associated with the Domain Name is a well-known Russian dating website hosted on multiple dedicated servers and that most traffic comes from the Respondent's network of sites and search engines regarding Russian dating and other relevant keywords. The Respondent contrasts his use of the Domain Name for dating services with the webcam sex entertainment services provided by the Complainants, which he states are totally different.

The Respondent explains that the Complainants were never interested in the Domain Name because they should have known about and acted upon the sunrise period regarding such names from December 2005 to February 2006. The Respondent adds that the Complainants showed no interest in the Domain Name in the second stage of the sunrise period which closed in April 2006. The Respondent explains that he registered the Domain Name thereafter because he liked the name and did nothing abusive or bad. The Respondent adds that he told the Complainants about the Domain Name in April 2006 via instant messaging and that the Complainants "didn't care about that until December 2011". The Respondent says that he had no contact from the Complainants regarding the Domain Name between February 2012 until receipt of the Complaint in 2015.

DISCUSSION AND FINDINGS

1. Preliminary - Challenge of Notification of Respondent Default

The Czech Arbitration Court notified the Respondent's Default on 29 May 2015 based on the fact that the Respondent failed to comply

with the deadline for the submission of a Response. The Respondent challenged such notification in terms of the paragraph B3(g) of the ADR Rules. The terms of the Respondent's challenge stated that he had accidentally entered his answer on the wrong form on 27 May 2015, that he had attempted to provide his answer in a timely fashion and that he apologised for misunderstanding the forms and any inconvenience caused.

Paragraph B3(g) of the ADR Rules provides that the Respondent's challenge shall be considered by the Panel in its sole discretion as part of its decision making and that if the Panel confirms that the Response is administratively deficient, the Panel may decide the dispute based upon the Complaint only.

In strict terms the Response in the present case is administratively deficient. However, the Panel notes that the Respondent appears to have made a good faith effort to file a compliant Response in good time and has simply failed to use the correct form.

While this is not a belated response issue per se, the Panel considers that some guidance may be taken from the approach of previous panels to respondents' attempts to file late responses, namely that these have typically been accepted if sufficient reasons for their lateness have been tendered (see section 21 of the Overview of CAC panel views on several questions of the alternative dispute resolution for .eu domain name disputes ("CAC Overview")). Equally, in reserving discretion over this issue to the Panel, paragraph B3(g) might be thought of as somewhat similar to a court's dispensing power to correct administrative or procedural deficiencies arising from non-material error, with a view to doing substantial justice between the parties. The use of such power is generally employed where a reasonable excuse has been given for the error or omission concerned and it seems fair to the court to order a correction.

In the present case, the Panel considers that a sufficient excuse has been given for the Respondent's default and accordingly proposes to allow the challenge and to treat the Response as though it had been filed on the correct form. In so doing, the Panel also notes that the challenge document already contains the statements which must be included in the Response in accordance with paragraph B3(b)(7) of the ADR Rules including, importantly, the warranty that the information provided is complete and accurate and the Panel will therefore give due weight to this. The Panel does not identify any prejudice to the Complainant's case arising from this preliminary decision.

2. Applicable provisions

This Complaint is brought under the auspices of Regulation (EC) 874/2004 ("Regulation 874") and the ADR Rules. Article 22(1)(a) of Regulation 874 allows any party to initiate an ADR procedure where the registration is speculative or abusive within the meaning of Article 21.

Article 21(1) states that a registered domain name may be subject to revocation where that 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.

Article 21(2) provides examples whereby the Respondent's legitimate interest may be demonstrated (echoed in Paragraph B11(e) of the ADR Rules), while Article 21(3) provides examples whereby bad faith may be demonstrated (similarly echoed in Paragraph B11(f) of the ADR Rules).

Article 10(1) states that:

"[…]

"'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."

Article 22(11) states that in the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. Furthermore, the domain name is to be

transferred to the complainant if the complainant applies for it and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002 (“Regulation 733”).

Article 4(2)(b) of Regulation 733 provides the following general eligibility criteria:

(i) undertaking having its registered office, central administration or principal place of business within the Community, or

(ii) organisation established within the Community without prejudice to the application of national law, or

(iii) natural person resident within the Community.

Paragraph B11(d)(1) of the ADR Rules provides as follows:-

"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."

It is clear from the applicable provisions that the burden of proving that the .eu domain name registration in question is speculative or abusive lies with the complainant. Accordingly, the first question for the Panel in the present case is whether the Complainants have proved 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.

3. Rights - identical or confusingly similar

Article 21(1) of Regulation 874 requires that the Domain Name be identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law. The Complainant’s US trade mark does not correspond to that definition. However, the Complainant has anticipated this by claiming a common law trade mark by reference to the goodwill and reputation in the mark FLIRT4FREE that it has built up in such jurisdictions as the United Kingdom and Ireland, both of which recognise a right to protect such goodwill and reputation under the law of passing off. The Complainant has demonstrated to the Panel’s satisfaction that it is in receipt of considerable traffic from Internet users in the United Kingdom in particular and that its substantial advertising spend is directed at least in part to that jurisdiction, thus giving substance to the assertions of goodwill and reputation. The Respondent does not seek to challenge the Complainant’s submissions and evidence on this topic.

Accordingly, the Panel finds that FLIRT4FREE is a name in respect of which a right is recognised by Community law and which is clearly identical to the Domain Name, disregarding the top level domain '.eu' as is customary for the purposes of comparison.

4. Respondent's Rights or Legitimate Interest

Article 21(2) of Regulation 874 and paragraph B11(e) of the ADR Rules provide non-exhaustive examples of how a Respondent may demonstrate a legitimate interest. These may be summarised as where (a) prior to notice of the dispute the Respondent has used (or made demonstrable preparations to use) the domain name in connection with the offering of goods or services; (b) the Respondent has been commonly known by the domain name; or (c) the Respondent is making a legitimate, non-commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under national or Community law.

The Panel considers that the Complainant has made out a prima facie case that the Respondent has no rights or legitimate interest in the Domain Name based on the fact that the Respondent was a registered user of the Complainant’s affiliate scheme from 2005 and

subsequently used the Domain Name from April 2006 for the next six years to refer traffic to the Complainant's Website, for which the Respondent was paid. In these circumstances, the Respondent was clearly on notice as to the Complainant's rights in the mark FLIRT4FREE when he registered the Domain Name. The Panel also accepts the Complainant's contentions that the Respondent has not been commonly known by the Domain Name and that the Respondent has not made a legitimate and non-commercial or fair use of the Domain Name without intent to mislead consumers.

The Response focuses on the fact that the Complainant and Respondent provide different services. The Respondent describes the Domain Name as "the 9 year old dating domain". In the Panel's opinion, however, the characterisation of the Domain Name as a "dating domain" is disingenuous. The Respondent is faced with clear evidence, which it does not dispute, that the Domain Name has been used to forward traffic to the Complainant's Website in terms of the Complainant's affiliate scheme for the vast majority of its existence to date. It has only recently begun to be used for the Respondent's dating website.

The Panel accepts the Complainant's submissions that given the Respondent's past use of the Domain Name, and the terms of the Complainant's strong reputation and goodwill in the FLIRT4FREE mark, the Respondent cannot claim to have acquired rights or legitimate interests simply by way of the relatively recent change of use of the Domain Name for a dating site. On the contrary, the Panel considers that the Respondent continues to benefit unfairly from the goodwill and reputation in the Complainant's FLIRT4FREE mark, which the evidence shows to be substantial, and which has been generated by the Complainant over a considerable period of time including a number of years pre-dating the creation of the Domain Name.

Accordingly, the Panel finds that there are no circumstances corresponding to those in Article 21(2) of Regulation 874 nor any other facts or circumstances in the present case indicating that the Respondent has any rights or legitimate interests in the Domain Name. The Domain Name registration is therefore speculative or abusive, and should be subject to revocation under Article 21(1)(a) of Regulation 874. While, in view of this finding, it would not be necessary for the Panel to consider whether the Domain Name is also subject to revocation under Art 21(1)(b) of Regulation 874 (which requires a finding that the Domain Name was registered or is being used in bad faith) the Panel will consider this question for completeness.

5. Registration or use in bad faith

The Panel notes that while the Complainant raises the question of the temporary transfer of the Domain Name to a third party, the Respondent does not engage directly with this matter in the Response. In particular, the Respondent does not argue that the transfer and return of the Domain Name should be considered to affect the timing of the assessments for bad faith registration or bad faith use. The Respondent appears instead to be content to set out the circumstances of its registration of the Domain Name in April 2006 and to describe it as a "9 year old dating domain", thus impliedly accepting that he has no issue with the brief interregnum. Accordingly, the Panel accepts the general thrust of the Complainant's submissions that the transfer is of no particular significance and that the Respondent may be treated effectively as the continuous registrant of the Domain Name over the entire period of its existence.

It is an undisputed fact in these proceedings that the Respondent was a member of the Complainant's affiliate scheme before he registered the Domain Name in 2006 and that, having effected such registration, the Respondent went on to use it for a lengthy period to redirect traffic to the Complainant's Website, for which the Respondent was paid. It is also an undisputed fact that at the time of registration of the Domain Name the Respondent had actual notice of the Complainant's rights in the mark FLIRT4FREE by way of the terms and conditions of the affiliate scheme. Furthermore, it has been demonstrated to the Panel's satisfaction that such terms and conditions contained a specific prohibition on the registration of domain names corresponding to the Complainant's mark. The Panel finds nothing in the Response which contradicts or places any alternative construction to that of the Complainant upon any of these facts.

The Respondent's explanation that the Complainant was not interested in the Domain Name does not advance his case. The failure of a party such as the Complainant to register a domain name in a sunrise period does not mean that such party has relinquished any rights it may have in a corresponding trade mark. Nor does any such failure entitle a third party such as the Respondent to register and use a domain name corresponding to such mark in a manner which targets or otherwise takes unfair advantage of the mark owner's rights.

While the Respondent claims to have told the Complainant about his having registered the Domain Name, no evidence has been produced to support the alleged contact between the Parties, nor is there any evidence before the Panel that the Complainant gave permission for the Respondent's registration and use of the Domain Name. Indeed, the mere fact that the Respondent claims to have contacted the Complainant about the Domain Name after he had registered it confirms and reinforces the notion that the Respondent had the Complainant and its rights firmly in mind when effecting such registration.

In light of the above circumstances, the Panel is satisfied that the Domain Name was intentionally used to attract Internet users, for

commercial gain, to an on-line location by creating a likelihood of confusion with a name on which a right is recognised or established by national law. Accordingly, the Panel finds that the Domain Name has been registered and is being used in bad faith.

6. Remedy

The Complainants have requested transfer of the Domain Name to the Second Complainant, Flirt4Free EU Limited. Pursuant to Article 22(11) of Regulation 874 a complainant must satisfy the general eligibility requirements set out in Article 4(2)(b) of Regulation 733 before it may be found entitled to a transfer of the Domain Name. It appears to the Panel that Flirt4Free EU Limited satisfies such criteria and that the Panel may order transfer to this Complainant further to the decisions of the panels in both Turkcell Iletisim Hizmetleri AS v. dilek TANIK, CAC 5837 and AKBANK TURK A.S. v. Gizem Yapakci, CAC 5117 and likewise further to the decision of this Panel in Monsanto Technology LLC v. Zhoujingjing, Zhou Jingjing, CAC 6417.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name FLIRT4FREE be transferred to the Complainant Flirt4Free EU Limited.

PANELISTS

Name	**Andrew D S Lothian**

DATE OF PANEL DECISION 2015-06-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

I. Disputed domain name: FLIRT4FREE

II. Country of the Complainant: : USA / Ireland, country of the Respondent: The Netherlands

III. Date of registration of the domain name: 7 April 2006

IV. Rights relied on by the Complainant (Art. 21 (1) Regulation (EC) No 874/2004) on which the Panel based its decision:
Common law trade mark for the mark FLIRT4FREE recognised in Ireland and the United Kingdom under the laws of passing off.

V. Response submitted: Yes

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

VII. Rights or legitimate interests of the Respondent (Art. 21 (2) Regulation (EC) No 874/2004):
1. No
2. Why: The record showed no indication of any rights or legitimate interest on the part of the Respondent in the Domain Name and the Complainant had made out a prima facie case on this point arising from longstanding use of the Domain Name by the Respondent in connection with the Complainant's affiliate scheme.

VIII. Bad faith of the Respondent (Art. 21 (3) Regulation (EC) No 874/2004):
1. Yes
2. Why: The Panel determined that the past use of the Domain Name in connection with the Complainant's affiliate scheme and the Respondent's actual knowledge of the Complainant's rights at the time of registration of the Domain Name demonstrated registration and use in bad faith.

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: Challenge to the Notification of Default. The Respondent made a challenge under paragraph B3(g) of the ADR Rules on the basis that he had inadvertently selected the wrong form but had filed his Response timeously. The Panel allowed the Respondent's challenge as he had made a good faith effort to file a compliant Response before the deadline and

had merely made a minor error during such filing.

XII. Is Complainant eligible? Yes, noting that only the Second Complainant, being the Irish affiliate of the USA registered Complainant was eligible in terms of Article 4(2)(b) of Regulation (EC) No 733/2002.