# Panel Decision for dispute CAC-ADREU-000306

| | |
|---|---|
| Case number | **CAC-ADREU-000306** |
| Time of filing | **2006-04-04 15:46:53** |
| Domain names | **mediation.eu** |

## Case administrator

| | |
|---|---|
| Name | **Josef Herian** |

## Complainant

| | |
|---|---|
| Organization / Name | **Aleid Belksma-Koopmans** |

## Respondent

| | |
|---|---|
| Organization / Name | **Traffic Web Holding BV** |

FACTUAL BACKGROUND

The Respondent has registered the domain name mediation.eu. The Complainant requests transfer of the domain name on the basis that she has a prior right to the domain name in question based on a registered business name and trade name and on the allegation that the Respondent is a domain name hijacker. The Complainant has also provided evidence that the Respondent has registered a large number of generic domain names. The Respondent has failed to submit its response within the provided deadline.

Section 11 of the Sunrise Rules provides for an application for a .eu domain name based on prior rights.

Section 16(5) of the Sunrise Rules provides that where a prior right is claimed in a domain name based on a trade name or business identifier the following should be provided as evidence of this prior right:

“a. an extract from that official register, mentioning the date on which the trade name was registered; and
b. proof of public use of the trade name or business identifier prior to the date of Application”

Regulation 874/2002 Article 21(1) provides 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 recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1)” 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”

A legitimate use includes a “non-commercial or fair use of the domain name”

Regulation 874/2002 Article 21(3) provides that an application has been made in bad faith where “the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that;

(i) a pattern of such conduct by the registrant can be demonstrated

A. COMPLAINANT

The Complainant contends that the Respondent is a domain name hijacker and that it has misused Article 11 for the purpose of registering the domain name mediation.eu. The Complainant requests, that the domain name mediation.eu be transferred to her.

B. RESPONDENT

The Respondent submitted its Response after the deadline provided. However, the Respondent submits that its' Response should be accepted. It claims that under the ADR rules, when notice of a complaint is delivered by registered post, this is deemed to be received by the date marked on the receipt of delivery. However, if no receipt is given, as in this instance, the notice is deemed to be delivered on the expiry of 12 days from the handing over of this communication to the postal service. The Respondent claims that no receipt was given and they should have been declared to have notice of the Complaint from the 13th day after the notification letter was handed to a postal service or courier. On this basis, the 30 day response period would have ended on 15 November, 2006.

The Respondent goes on to provide a Response to the Complaint in which they contend that the Complainant has not provided adequate documentary evidence of a prior right to the domain name mediation.eu. The Respondent suggests that the Complainant has not provided sufficient proof that she conducts a business under the name "mediation" and it further argues that no one can prevent another from using a generic term in a descriptive manner. The Respondent claims that descriptive names are very popular as domain names and this is why Regulation 874/2004 operates on a "first come first served" basis.

Finally, the Respondent contends that it has not registered the Disputed Domain Name in a manner that is speculative and unlawful. The Respondent submits that it has rights in the name "mediation" which demonstrate a legitimate interest in the Disputed Domain Name and it has not, therefore, registered the domain name in bad faith.

DISCUSSION AND FINDINGS

Firstly, the Panel accepts the Respondent's submission that, in the absence of any date marked on a receipt of notice, the date of notification of the Complaint runs from 12 days after the date that the notice was handed to the postal service. In this case the 13th day after the date of posting the notification was October 4, 2006 and thirty working days running from that date would mean a Response was due on November 14, 2006. As this is the case here the Respondent did submit its' Response within the prescribed timeframe by submitting a response on November 11, 2006. However, even if this was not the case, the Panel submits that it may still, at its sole discretion, consider the Response as part of its decision making process, as provided for under the ADR Rules B3(g).

The Panel considers that the Complainant has satisfied the requirements of Section 16(5) of the Sunrise Rules in relation to proof of a prior right in the domain name mediation.eu. The Complainant has provided evidence that it has a registered business name for "mediation" and that it uses the business name in the course of trade.

The Panel finds that there is no misuse of Article 11. Article 11 of Regulation 874/2004 is in relation to special characters and the Disputed Domain Name has no special characters in it.The Complainant may have intended to argue that the Respondent's registration of mediation.eu was a misuse of Section 11 of the Sunrise Rules which provides that during the first phase of the Phased Registration Period, domain names that correspond to a "geographical indication or designation of origin" can be registered. However, it is unclear if this was actually the intention in the Complaint.

The Panel agrees that the domain name mediation.eu is identical to the Complainant's registered business name. However, the Panel also accepts that the Disputed Domain Name resolves to a website that provides information in relation to mediation. There is no indication that the Respondent is providing services, nor is there evidence that it is providing any advertising on the website. In the Panel's view this suggests that the Respondent has registered the Disputed Domain Name for a non-commercial legitimate purpose or fair use, as permitted under Article 21(2)(c) of Regulation 874/2004.

Finally, the Panel concludes that the Respondent has not registered mediation.eu in bad faith. Although it appears that the Respondent has registered a large number of generic domain names, which constitute a pattern of conduct, it is not clear, on the basis of the Complainant's submissions and the Respondent's current use, that the Respondent has registered the disputed domain name in order to prevent a legitimate rights holder from using the domain name. Without any evidence of this intention and due to the fact that the domain name is being used for a non-commercial purpose the Panel does not find that the domain name was registered or is being used in bad faith.

DECISION

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

## PANELISTS

| Name | **Alistair Payne** |
|---|---|

DATE OF PANEL DECISION 2006-11-27

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel accepts that the Complainant has prior rights in the name "mediation". However, the Panel has denied the Complaint based on the fact that the Respondent is making a legitimate non-commercial fair use of mediation.eu. Furthermore, there is no evidence provided in the Complaint to suggest that the Dispute Domain Name was registered in bad faith to prevent a legitimate rights holder from using the domain name.