Panel Decision for dispute CAC-ADREU-000387

Case number	CAC-ADREU-000387
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Domain names	gnc.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Global Network Communication - Information Technology Forschung und Entwicklung GesmbH

Respondent

Organization / Name	HOLLAND AND BARRETT HOLDINGS LIMITED, HOLLAND AND BARRETT HOLDINGS 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 any other legal proceedings related to the disputed domain name gnc.eu, hereafter the Domain Name.

FACTUAL BACKGROUND

The Complainant, abbreviated Global Network Communication, is an information technology company established since 1999. The Complainant asserts that it is part of the so called GNC-Group, together with three other companies which all have the words “Global Network Communication” or “GNC” in their names: the GNC Global Network Communication GmbH, the GNC Akademie GmbH and the GNC Holding Limited.
The Complainant is the proprietor of the Community Trademark “GNC”, number 2535326. The word mark was filed on 3 January 2002 and is registered since 8 January 2004 for products and services of classes 9, 16, 35, 36, 37, 38, 41 and 42.
The Complainant is also the proprietor of the domain names gnc.at and gnc.co.at and uses these domain names for websites presenting its business on the web.
The Complainant tried to register the Domain Name gnc.eu during the first phase of the Sunrise Period, on 20 December 2005, but the registration failed because the Respondent had already applied for the Domain Name. Eventually the Domain Name was registered on the name of the Respondent on 22 March 2006.

A. COMPLAINANT

The Complainant asserts that the Respondent does not use the Domain Name gnc.eu, neither to publish information on the internet about its company or to promote its products or services. Visitors who search the website of the Respondent, accessible via the URL www.hollandandbarrett.com, for the word GNC will not find any information or news. On its website, the Respondent offers a variety of information about the nutrition products that it is offering for sale, including via ordering on-line.

According to the Complainant, the Respondent registered the Domain Name to prevent the use of it by its competitor General Nutrition Investment Company, which is the proprietor of the domain name gnc.com and of several Community Trademarks, including the word mark GNC with number 183533, filed on 1 April 1996 and registered since 23 April 2001 for products and services of classes 3, 5 and 42.
Therefore, the Complainant concludes that the Domain Name has been registered by the Respondent without rights or legitimate interests. The Complainant claims the transfer of the Domain Name and affirms that it meets the general eligibility criteria set out in article 4(2)(b) of the Regulation N° 733/2002. Alternatively, the Complainant claims the revocation of the Domain Name.

B. RESPONDENT

The Respondent did not file any response.

DISCUSSION AND FINDINGS

Under article 22(1)(a) of the Regulation 874/2004, the Complainant may initiate an alternative dispute resolution (ADR) procedure where the registration of a .eu domain name is speculative or abusive within the meaning of Article 21 of the Regulation 874/2004.
Under article 21(1) a registered domain name shall be subject to revocation, as a speculative and abusive registration, using an appropriate extra-judicial or judicial procedure, if two requirements are cumulatively met:
1. “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
2. “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.”

(1) With regard to the first requirement, the Complainant must demonstrate 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 the rights mentioned in Article 10(1) of the Regulation 874/2004.
The Complainant is the proprietor of the Community Trademark “GNC”, number 2535326, which was registered on 8 January 2004 for several products and services. A Community Trademark is listed in article 10(1) of the Regulation 874/2004 and thus constitutes a valid right within the meaning of article 21(1) of the Regulation 874/2004.
The Complainant’s Community Trademark is identical to the Domain Name, except for the .eu extension. This extension, however, is irrelevant in the appreciation of the identity or the confusing similarity between the Domain Name and the name in respect of which the Complainant has a right (see ADR.EU, case n° 596, restaurants.eu).
The Panel concludes that the Community Trademark of the Complainant and the disputed Domain Name of the Respondent are identical. Therefore, the first requirement is met.

(2) With regard to the second requirement, the Complainant must demonstrate that the domain name has been registered by the Respondent without rights or legitimate interest in the name, or has been registered or is being used in bad faith.

In its Complaint, the Complainant did not refer to the registration or use of the Domain Name in bad faith. The Complainant merely alleged in the Complaint that the Respondent registered the Domain Name without rights or legitimate interest in the name. The Complainant developped the following arguments:
• The Respondent does not use the Domain Name, neither to publish information on the internet about its company or to promote its products or services. No product or service or division of the Respondent seems to be known as GNC, according to a search on Respondent’s website.
• The Respondent registered the Domain Name to prevent the use of it by its competitor General Nutrition Investment Company, which is the proprietor of the domain name gnc.com and of several Community Trademarks, including the word mark GNC.

These arguments reasonably show that the Respondent registered the Domain Name without rights or legitimate interest. Since the Respondent did not file a Response, the allegations of the Complainant are sufficient to reach the conclusion that also the second requirement is met.

DECISION

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

the Domain Name GNC.EU be transferred to the Complainant.

PANELISTS

Name	Tom Joris Jan Heremans

DATE OF PANEL DECISION 2006-07-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the proprietor of the Community Trademark GNC which is identical to the Domain Name GNC.EU. The .eu extension is irrelevant in the appreciation.

The Complainant showed that the Domain Name has been registered without rights or legitimate interest.
The Respondent does not use the Domain Name, neither to publish information on the internet about its company or to promote its products or services. No product or service or division of the Respondent seems to be known as GNC. The Respondent registered the

Domain Name to prevent the use of it by a competitor which is the proprietor of the domain name gnc.com and of several GNC trademarks.

Since the Respondent did not file a Response, the allegations of the Complainant are sufficient to reach the conclusion that the Domain Name must be transferred to the Complainant.