

Panel Decision for dispute CAC-ADREU-000982

Case number **CAC-ADREU-000982**

Time of filing **2006-06-21 11:45:56**

Domain names **smartmachine.eu**

Case administrator

Name **Tereza Bartošková**

Complainant

Organization / Name **Smartmachine B.V., Rob Rijsenbrij**

Respondent

Organization / Name **NameBattery.com, Domain Handler**

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 in relation to the domain name <smartmachine.eu>

FACTUAL BACKGROUND

The Complainant has sought a transfer of the domain name <smartmachine.eu> to the Complainant by initiating ADR proceedings.

The Complainant, Smartmachine B.V., is a company incorporated in the Netherlands. It is the proprietor of the trade name Smartmachine B.V. registered on 9 August 2005 at the Chamber of Commerce in the Netherlands and the proprietor of a Benelux trademark registration no. 794727 for a figurative mark comprising the word element Smartmachine. The application for the said trademark was filed on 17 February 2006 and the trademark was registered on 5 May 2006.

The Respondent, Domain Handler, according to application data situated in Sweden, applied for and registered the disputed domain name <smartmachine.eu> on 7 April 2006.

The Complainant sent a letter to the Respondent on 13 April 2006 requesting the Respondent to transfer the disputed domain name to the Complainant based on the Complainant's prior rights to the name Smartmachine. The Respondent did not reply to the letter.

The Complaint was filed on 19 June 2006 and the Respondent did not file a Response to the Complaint.

A. COMPLAINANT

The Complainant seeks a transfer of the disputed domain name <smartmachine.eu> and makes the following contentions:

The Complainant contends that it has rights in the name SMARTMACHINE under Dutch law as it is the proprietor of the trade name Smartmachine B.V., used in business and registered on 9 August 2005 at the Chamber of Commerce in the Netherlands, and that it is also the owner of the domain names smartmachine.nl, smartmachine.net, smartmachine.de and smartmachine.co.uk via several affiliated companies.

The Complainant contends further that it is the proprietor of the Benelux trademark registration for the figurative mark comprising the word element Smartmachine, filed on 17 February 2006 and registered on 5 May 2006.

The Complainant argues that the disputed domain name <smartmachine.eu> is identical to the aforementioned trade name and trademark held by the Complainant and that the Complainant thus has prior rights over the Respondent.

The Complainant submits that the Respondent has not proven any rights or legitimate interest in the disputed domain name, even though it was given the chance to do so by replying to the letter sent by the Complainant prior to filing the Complaint.

The Complainant finally submits that it believes that the Respondent has registered the disputed domain name in bad faith. In order to support this claim the Complainant attaches a printout from the website www.enom.com where it is possible to make an offer for the disputed domain name and

states that the Registrar for the disputed domain name, Dagnabit, Inc., holds domain name auctions on the said websites. The complainant also states that the domain name is not in use at the time of filing the Complaint.

B. RESPONDENT

The Respondent did not file a response to the Complaint.

DISCUSSION AND FINDINGS

First of all, the Panel notes that the Respondent is in default in the meaning of Paragraph B 10 (a) and (b) of the .eu Alternative Dispute Resolution Rules (hereinafter "the ADR Rules"), which state that the Panel may consider the failure by the Respondent to comply with the time limits for filing a Response as grounds to accept the claims of the Complainant and that the Panel shall draw such inferences from the default as it considers appropriate.

According to Articles 21 (1) and 22 (11) of the Commission Regulation (EC) No 874/2004 and Paragraph B 11 (d) (1) of the ADR Rules the Complainant bears the burden of proof in proving the following:

- (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.

The first requirement is that 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. The Panel finds as follows:

- The disputed domain name is <smartmachine.eu>. The Complainant is the holder of the trade name Smartmachine B.V. used in business and registered at the Chamber of Commerce in the Netherlands and the proprietor of a Benelux trademark registration no. 794727 for a figurative mark comprising a clear and predominant word element Smartmachine.
- At the time when the Respondent registered the disputed domain name, the Complainant's Benelux trademark was still in the application phase and not yet published as a registration.
- The disputed domain name is identical to the trade name to which the Complainant holds rights to and which right is recognized by the national law of a Member State. The disputed domain name is also identical to, or at least confusingly similar to the trademark to which the Complainant holds rights to and which right is recognized by the national law of a Member State, even though yet in application phase at the time when the disputed domain name was registered.

The second (alternative) requirement is that the domain name has been registered by the Respondent without rights or legitimate interest in the name. The Panel finds as follows:

- The Complainant has made a fair effort to establish a prima facie lack of rights or legitimate interest in the disputed domain name on the part of the Respondent.
- The Respondent neither replied to the letter sent by the Complainant nor filed a Response to the Complaint. The Respondent has thus failed to present any evidence of rights or legitimate interest in the domain name, although it was given more than one chance to do so.
- As the Complainant has made a fair effort to establish a prima facie lack of rights or legitimate interest in the disputed domain name on the part of the Respondent and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence of its rights or legitimate interest in the disputed domain name, the Panel must come into conclusion that the Respondent has registered the disputed domain name without rights or legitimate interest in the name.

The third (alternative) requirement is that the domain name has been registered or is being used in bad faith. The Panel finds as follows:

- The disputed domain name is not in use by the Respondent, neither is there any evidence of the Respondent's intention or plans to make use of the domain name.
- According to the information the Complainant has provided to the Panel and in accordance with the Panel's own investigations, the disputed domain name is put on a list by certain service providers who offer a co-branded service, which enables interested parties to make offers for the domain names listed on the service provider's database.
- The Panel regards the aforementioned as an indication of that the domain name was registered primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a corresponding name, in respect of which a lawfully recognized right exists.

- The Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent has registered the domain name in bad faith.

- Subsequently, as the criteria of bad faith required by Article 21 (1) (b) of the Commission Regulation (EC) No 874/2004 and Paragraph B 11 (d) (1) (iii) of the ADR Rules is already met, and the domain name is not in use by the Respondent, the Panel does not find it relevant with respect to the decision in this case to proceed to consider whether the disputed domain name 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 domain name <smartmachine.eu> be transferred to the Complainant.

PANELISTS

Name	Sanna Aspola
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DATE OF PANEL DECISION 2006-09-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant sought transfer of the domain name <smartmachine.eu> to the Complainant by initiating ADR proceedings.

The Complainant, Smartmachine B.V., is a company incorporated in the Netherlands. It is the proprietor of the trade name Smartmachine B.V. registered on 9 August 2005 at the Chamber of Commerce in the Netherlands and the proprietor of a Benelux trademark registration no. 794727 for a figurative mark comprising the word element Smartmachine. The application for the said trademark was filed on 17 February 2006 and the trademark was registered on 5 May 2006.

The Respondent, Domain Handler, applied for and registered the disputed domain name <smartmachine.eu> on 7 April 2006. The Respondent did not file a Response to the Complaint.

The Panel made the following discussions and findings:

The disputed domain name is identical to the trade name to which the Complainant holds rights to and which right is recognized by the national law of a Member State. The disputed domain name is also identical to, or at least confusingly similar to the trademark to which the Complainant holds rights to and which right is recognized by the national law of a Member State, even though yet in application phase at the time when the disputed domain name was registered.

As the Complainant has made a fair effort to establish a prima facie lack of rights or legitimate interest in the disputed domain name on the part of the Respondent and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence of its rights or legitimate interest in the disputed domain name, the Panel concludes that the Respondent has registered the disputed domain name without rights or legitimate interest in the name.

The Panel considers that the Complainant has established a prima facie evidence of the Respondent's bad faith and the Respondent has failed to deny or contest the Complainant's claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent has registered the domain name in bad faith.

For all the foregoing reasons, the Panel orders the Disputed Domain Name <smartmachine.eu> to be transferred to the Complainant.
