Panel Decision for dispute CAC-ADREU-001129

Case number	CAC-ADREU-001129
Time of filing	2006-05-19 09:43:47
Domain names	energylinx.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Energylinx Limited, Mr Ken Geddes

Respondent

Organization / Name	Gumshoe Research Limited, Jason Frost

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 has is not a aware of other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

Complainant, Energylinx Limited, is a UK registered company offering energy price comparison services.

Complainant is the proprietor of the trademark “Energylinx” registered in the UK for goods and services in classes 1, 4, 35 and 36.

Since Respondent is in default the Panel has not been provided with specific information on Respondent and Respondents activities, apart from those information put forward by the Complainant as stated below.

The disputed domain name was regsitered on 10 April 2006, and the complaint was filed on 15 May 2006. After having approved the Complaint the ADR Center initiated the ADR proceedings on 24 May 2006. On 17 August 2006 a notification of Respondent Default was issued. After having received his declaration of independence and impartiality the ADR Center appointed Knud Wallberg to serve as Panelist on 28 August 2006.

The contested domian name is currently being used for a "parking site" hosted by the Registrar of the domain name, Netnames.

A. COMPLAINANT

Complainant elleges that the domain name energylinx.eu has been registered by the holder without any rights or legitimate interest in the name and that the domain has been registered primarily to disrupt the professional activities of the Complainant.

Complainant, Energylinx is one of 10 accredited UK based energy price comparison services. These 10 companies are accredited by a government body, Energywatch, but are nevertheless direct competitors.

One of Energylinx’s competitors is a company who trades as www.theenergyshop.com. www.theenergyshop.com is owned and operated by Energy Services Online Limited, whose registered no is 03798799 has its registered office at 14 Marchwood Crescent, London, W5 2DZ. The WHO IS information for www.theenergyshop.com details: Energy Services Online Limited Joe Malinowski (joe@malinowski.co.uk) +44.7970160541 Fax: n/a 14 Marchwood Crescent London, W5 2DZ GB.

The contested domain name has been registered by a company called Gumshoe Research Limited. According to the UK Companies House Gumshoe Research Limited has the same registered office as Energy Services Online Limited. Gumshoe Research is noted as being a dormant company who has not registered in company accounts since 30th October 2004. 5. The WHO IS information for

www.energylinx.eu details: Jason Frost Gumshoe Research Limited 14 Marchwood Crescent London W5 2DZ Te: +44.7970160541.

Based on the above the Complainant alleges that Gumshoe Research Limited is controlled by the same director, Mr Joe Malinowski, and as such the registration of energylinx.eu has been carried out by a direct competitor to Energylinx with the sole purpose of disrupting its professional activities. Interestingly the same telephone number is noted for both companies and the telephone belongs to Joe Malinowski.

Since Complainant holds the trademark on the name “Energylinx” Respondent hereby infringes the rights of Energylinx.

Taking all of the above into account Complainant claims that the registration has been made for the sole purpose of disrupting our activities and seeks to confuse the public, and consequently request the Panel to transfer the domain name energylinx.eu to Complainant.

B. RESPONDENT

Respondent did not file a response in the matter

DISCUSSION AND FINDINGS

According to article 21,1 of the Public Policy Rules (Commisssion Regulation (EC) No 874/2004 and paragraph B 11 (d) of the ADR Rules a registered domain name shall be subject to revocation provided that each of the three following elements are satisfied:

(A) The domain name is identical or confusingly similar to a trademark or service
mark in which the Complainant has rights that are recognised or established by national a
and/or Community law; and
(B) Respondent has no rights or legitimate interests in respect of the domain name; and
(C) The domain name has been registered or is being used in bad faith.

The Respondent is in default and paragraph B 10 (a) of the ADR Rules states that the Panel may consider the failure to comply with the time limits for filing a Response as grounds to accept the claims of the Complainant. Paragraph B 10 (b) of the ADR Rules further states that if a party does not comply with any provision of, or requirement under, the Rules or the Supplemental Rules or any request from the Panel, the Panel shall draw such inferences there from as it considers appropriate.

A. Identical or Confusingly Similar

The domain name energylinx.eu contains Complainant’s distinctive and protected trademark ENERGYLINX in full. The Panel notes that the inclusion of the TLD denomination “.eu” shall be disregarded for the purpose of these proceedings.

Consequently, the Panel finds that the disputed domain name is identical to a mark in which the Complainant has rights.

B. Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interests in the domain names. The Respondent has not rebutted this allegation, nor is there material before the Panel demonstrating that such rights or interests may exist.

The Panel therfore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Used in Bad Faith

The burden of proof that all the requirements of Article 21, 1 of the PPR are fulfilled lies with the Complainant.

Complainant’s trademark is registered in the home country of the Respondent, the United Kingdom. Further, the Panel finds that Complainant has furnished such proof that there is a rebuttable presumption that the Respondent is de facto a competitor to Complainant.

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The Respondent has not rebutted the substantiated allegations put forward by the Complainant. The Panel finds that it is unlikely that

the contested domain name has been registered without prior knowledge of Complainant and Complainants rights and further finds that the registration and use of the domain name is suitable of disrupting or otherwise harm the business interests of the Complainant.

The Panel is therefore satisfied that the domain name has been registered in bad faith.

In conclusion, considering all the facts and evidence, the Panel finds that all the requirements of paragraph 21, 1 of the PPR and of paragraph B 11(d) of the ADR Rules are met.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B 11 (b) and (d) of the ADR Rules, the Panel orders that the domain name ENERGYLINX.EU be transferred to the Complainant.

PANELISTS

Name	**Knud Wallberg**

DATE OF PANEL DECISION 2006-09-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The contested domain name - energylinx.eu - was registered on 10 April 2006. Complainant, who holds rights in the name ENERGYLINX, filed a complaint alleging that the the domain name is identical or confusingly similar to a trademark or service mark in which the Complainant has rights, that Respondent has no rights or legitimate interests in respect of the domain name; and that the domain name has been registered or is being used in bad faith. The Respondent was in default and did thus not rebut the allegations put forward by the Complainant. Since the allegations were substantiated in the Complaint the Panel found that all the requirements of Paragraph 21, 1 of the Public Policy Rules and Paragraph B 11 (b) and (d) of the ADR Rules were met and thus decided that the contested domain name should be transferred to the Complainant.