Panel Decision for dispute CAC-ADREU-001185

Case number	**CAC-ADREU-001185**
Time of filing	**2007-03-08 11:56:41**
Domain names	**aqura.eu, chemsite.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Degussa GmbH, Dr. Petra Look-Herber**

Respondent

Organization / Name	**Zheng Qingying**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other proceedings between the parties pending the Panel is aware of.

FACTUAL BACKGROUND

Complainant is a German company and the legal successor of Degussa AG as from January 2, 2007. Complainant is the proprietor of several registered trademarks, among them Community Trademark Registration EU 003920832 for “AQURA – analytical solutions” as well as the International registration 696141 for “CHEMSITE - Your base for chemical production in Europe” + device. Complainant tried to register the domain names in question during the sunrise period, but was rejected for formal reasons, whereas the Respondent registered the domain names promptly after that in the landrush period. Respondent was involved as respondent also in many other ADR proceedings for .eu, among them the cases 02325 (GLENDIMPLEX), 03444 (OCUNET) and 03510 (BIGDUTCHMAN. In all of the mentioned cases the domain names were transferred to the complainants of these cases.

A. COMPLAINANT

Complainant claims that the domain names in question are confusingly similar to his marks, since the elements “AQURA” as well as “CHEMSITE” shall be only the characteristic and distinctive elements of his trademarks.

Since the Respondent has neither used the domain names nor has been offered goods or services nor has made demonstrable preparation to do so nor has been commonly known by the domain names nor does make a legitimate and non-commercial or fair use of the domain names, the Respondent has no legitimate right or interest.

Finally, the Respondent has allegedly been acting in bad faith, since he registered mainly domain names which were rejected during the Sunrise Period in the assumption these domain names are of major interest for the rejected applicants and therefore were registered primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a right. This pattern of conduct is established by the cases cited above.

B. RESPONDENT

The Respondent did not file a response in these proceedings.

DISCUSSION AND FINDINGS

According to Art 21 No. 1 of the Regulation (EC) No. 874/2004 of April 28, 2004, a registered domain name shall 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 has been registered by its holder without rights or legitimate

interest in the name or has been registered or is being used in bad faith.

Complainant is proprietor of inter alia of the Community Trademark Registration EU 003920832 for “AQURA – analytical solutions” as well as of the International registration 696141 for “CHEMSITE - Your base for chemical production in Europe” +device.

The trademarks of Complainant and the domain names in question only differ in the additional elements “analytical solutions” to “aqura.eu” and “Your base for chemical production in Europe” as well as device element to “chemsite.eu” which are purely descriptive elements of these marks without sufficient distinctivness to carry the weight of these trademarks. These elements have accordingly no relevant influence on the similarity of signs or on the distinctiveness of the main elements “AURA” resp. “CHEMSITE”. This principle is acknowledged in panel decisions under the UDRP (see only Advanced Micro De-vices, Inc. ./. Dimitry, WIPO Case No. D2000-0530, WIPO case D2003-0888, Porsche AG ./. Vasiliy Terkin, WIPO Case No. D2003-0696, Pepsi Co.,Inc. ./. Pepsi, srl) which can be relied upon also in proceedings for .eu domain names in sofar since the requirement of being confusingly similar is available in the UDRP as well as in the Regulation (EC) No. 874/2004 of April 28, 2004 and in panel decisions under the .eu regime (See CAC 3650 – quelle-katalog).

The domain names have been registered by the Respondent without rights or legitimate interest in the names since neither a right nor a legitimate interest in accordance with article 21 No. 2 of the Regulation (EC) No. 874/2004 of April 28, 2004 were demonstrated by the Respondent or are otherwise apparent.

Therefore, the panel must not examine whether or not the domain names have been registered or are being used in bad faith in accordance with article 21 No.1(b), No. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004.

The Complainant satisfies the eligibility criteria set out in article 4 (2) (b) of Regulation (EC) No 733/2002.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain names “aqura.eu” and “chemsite.eu” be transferred to the Complainant.

PANELISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2007-06-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant is proprietor of inter alia the Community Trademark Registration EU 003920832 for “AQURA – analytical solutions” as well as of the International registration 696141 for “CHEMSITE - Your base for chemical production in Europe” +device.

These marks are confusingly similar to the domain names in question, since neither the device element nor the purely descriptive elements “analytical solutions” and “Your base for chemical production in Europe” can carry the weight of these combination marks.

The domain names have been registered by the Respondent without rights or legitimate interest in the names since neither a right nor a legitimate interest in accordance with article 21 No. 2 of the Regulation (EC) No. 874/2004 of April 28, 2004 were demonstrated by the Respondent or are otherwise apparent.

Therefore, the panel must not examine whether or not the domain names have been registered or are being used in bad faith in accordance with article 21 No.1(b), No. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004.

The Complainant satisfies the eligibility criteria set out in article 4 (2) (b) of Regulation (EC) No 733/2002.

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain names “aqura.eu” and “chemsite.eu” be transferred to the Complainant.