Panel Decision for dispute CAC-ADREU-001304

Case number	**CAC-ADREU-001304**
Time of filing	**2006-06-06 12:00:57**
Domain names	**kemet.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Kemet International Limited, Dr Andrew George Riedl**

Respondent

Organization / Name	**Vinitsia Ltd, Unknown Unknown Unknown**

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 legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is Kemet International Limited, a company registered and based in the United Kingdom. The Complainant has been trading under the KEMET name since 1991. The Complainant has subsidiary companies in the Netherlands and other countries.

2. The Complainant is, and has been for several years, the proprietor of numerous trade mark registrations for the word KEMET, including registrations in Austria, Benelux, the Czech Republic, Germany, Spain, France, the United Kingdom, Hungary, Italy and Slovakia.

3. The Complainant maintains that on 26 October 2006 it made an application for registration of <kemet.eu> (the "Domain Name") at eurodns.com, the website of the registrar 000domains, LLC. It is not clear what happened to this application.

4. On 7 April 2006, the first day of the Land Rush period, the Domain Name was registered in the name of the Respondent.

5. These ADR proceedings were formally commenced by the Complainant on 13 June 2006 and on 7 August 2006 Matthew Harris was appointed as the panelist in this matter having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence.

A. COMPLAINANT

The Complainant contends as follows:

(a) The Complainant has worked hard to build up brand loyalty and recognition throughout Europe and has invested much time and money creating several different KEMET branded websites. The KEMET branded websites and the name KEMET are important to the Complainant.

(b) The Complainant has “tried to come to an agreement” with the Respondent without success. In support of this assertion the Complainant provides a copy of an email sent to it by the Respondent. It comprises a single sentence as follows:

“We are not interested in selling our name, perhaps at a later date if we fail to put our website online.”

Presumably there was other email correspondence or discussions between the Complainant and the Respondent in relation to the

Domain Name, but this is not provided.

(c) By holding the Domain Name, the Respondent is causing confusion in the marketplace as the Domain Name is identical to the Complainant's name (reference to ADR Rule B.11(d)(1)(i) - reproducing Article 21(1) of Commission Regulation (EC) No.874/2004 (the "Regulation")).

(d) The Complainant believes that the Domain Name was registered without legitimate interest in the name (reference to ADR Rule B.11(d)(1)(ii) - reproducing Article 21(1)(a) of the Regulation).

(e) The Complainant can find no obvious connection between the Respondent and the Domain Name. As far as the Complainant can determine, the Respondent does not have a web presence and does not sell KEMET branded products.

(f) The Complainant is known throughout the world by the name KEMET and has 34 registered trade marks for "KEMET". Therefore the Complainant believes that the name has been registered in bad faith (reference to ADR Rule B.1(b)(10)(i)(A), (B) and (C) - equivalent to Article 21(1) of the Regulation).

(g) The Complainant believes that the Domain Name was registered to attract Internet users to the Respondent's website or other on-line location by creating a likelihood of confusion (reference to ADR Rule B.11(f)(4) - equivalent to Article 21(3)(d) of the Regulation).

(h) There is no demonstrable link between the Respondent and the Domain Name (reference to ADR Rule B.11(f)(5) - equivalent to Article 21(3)(e) of the Regulation).

Accordingly, the Complainant requests the transfer of the Domain Name from the Respondent to the Complainant.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

1. In order to succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Regulation have been complied with. That paragraph reads as follows:

" 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), and 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."

2. Article 21(2) and (3) contain a list of examples of circumstances which may demonstrate the existence of a legitimate interest within the meaning of Article 21(1)(a) and of bad faith within the meaning of Article 21(1)(b) but these examples are non-exhaustive.

3. Paragraph B.10(a) of the ADR rules provides that:

In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

4. However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

5. With this in mind I deal with each of the three constituent parts of Article 21(1) of the Regulation in turn:

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

6. The Complainant has asserted that it is the proprietor of (and has provided details of) numerous registered trade marks in the name KEMET, including several in EU member states. Whilst the Complainant provides a long list of registrations and renewal dates, it somewhat unhelpfully does not provide copies of any registration certificates nor does it even provide the registered numbers of the relevant marks. However, the Complainant's assertions in this respect are not contradicted by the Respondent. Further, I am entitled at my absolute discretion to conduct my own investigation on the circumstances of the case under paragraph 7(a) of the ADR Rules.

7. Care should be taken in engaging in an investigation of matters which are not addressed before a panel. It is for the Complainant and not the panel to prove the Complainant's case. Nevertheless, I believe that it is legitimate for me, if I so wish, to verify the Complainant's assertions as to trade mark rights by reference to publicly accessible databases. This is what I have done in this case. An online search of the United Kingdom Patent Office's trade mark database shows that the Complainant is, for example, the owner of registered United Kingdom trade mark no 908230 for the word "KEMET" in class 7, which was initially registered in 1967.

8. In the circumstances, it is clear that the Complainant has trade mark rights in a name that is identical to the Domain Name (without the <.eu> suffix, which it will usually be appropriate to discount for these purposes - see, for example, Helsingin Kaupunki v Traffic Web Holding BV, CAC Case No. 00475; Global Network Communication v Holland and Barrett Holdings Ltd, CAC Case No. 00387; and Nicolas De Borrekens v Van der Velden Beheer BV, Stephan Van der Velden, CAC Case No 00597). The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

9. Showing that a domain name has been registered by an entity without rights or legitimate interest in a domain name can potentially present a complainant with some difficulty in that it might be said to involve proving a negative. However, where a complainant:

(i) can satisfy a panel that it has undertaken at least some degree of investigation into the respondent's activities;

(ii) has provided a description of the use (or lack of use) of the relevant name and the domain name by the respondent; and

(iii) credibly and expressly asserts that in the circumstances described the respondent has no legitimate interest in the name;

then it is likely to have prima facie satisfied this test. In the absence of a satisfactory response from the respondent, the complainant is then likely to succeed under this heading.

10. In this case the Complainant asserts that:

"We can find no obvious connection between Vinitsia and the www.kemet.eu. As far as we can determine, they do not have a web presence and do not sell Kemet branded products" and that "[t]here is no demonstrable link between Vinitsia and www.kemet.eu".

Whilst I would have preferred the Complainant to explain in greater detail the investigations it has undertaken in this regard, it is apparent that the Complainant has undertaken at least some investigation into the Respondent's activities. I also note that at the date of this decision no website is operating either from the Domain Name or "vinitsia.com", which is the domain name that forms part of the email address that the Respondent has used in its email correspondence with the Complainant.

11. The email of the Respondent also to a limited degree seems to support the Complainant's position in this respect. It at the most hints at the possibility of use of the Domain Name by the Respondent for a future website but provides no further explanation as to what form that website will take. Indeed, it seems to positively contemplate that there may not be any future use of the Domain Name at all.

12. In the circumstances, the Complainant has made out a prima facie case that the Domain Name has been registered by the Respondent without rights or legitimate interest in the name "KEMET". In the absence of any submission on the issue from the Respondent, the Complainant has therefore satisfied the requirements of Article 21(1)(a).

BAD FAITH REGISTRATION OR USE

13. In contrast to ADR procedures that apply in relation to some other TLDs (i.e. top level domains), a Complainant needs to show either a lack of rights or legitimate interest on the part of the Respondent OR bad faith registration or use. Therefore, given the finding on rights and legitimate interests set out above it is not necessary in this case to go on to consider the Complainant's assertions in relation to bad faith registration or use.

REMEDY

14. The Complainant, having satisfied the requirements of the first paragraph of Article 21(1) and of Article 21(1)(a) is entitled to obtain revocation of the Domain Name. However, it instead seeks transfer of the Domain Name into its name.

15. Under Article 22(11) of the Regulation (mirrored in paragraph B11(b) of the ADR Rules) a panel may only order the transfer of a disputed domain name to a successful complainant where that complainant can also show that it satisfies at least one of the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002.

16. The first of those criteria is that the registrant is an: "undertaking having its registered office, central administration or principal place of business within the Community". It is clear that the Complainant, being a company registered and based in the United Kingdom, satisfies this criterion. It is therefore entitled to transfer of the Domain Name.

DECISION

For all the foregoing reasons the Panel orders that the domain name KEMET be transferred to the Complainant.

In accordance with Paragraph B.12(d) of the Rules, the Panel hereby declares that this decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutal Jurisdiction.

PANELISTS

Name	Matthew Harris

DATE OF PANEL DECISION 2006-08-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings against the Respondent under Article 22(1)(a) of Commission Regulation (EC) No.874/2004 alleging that the Respondent's registration of the Domain Name (i.e. <kemet.eu>) was speculative or abusive.

The Complainant maintained that it was the proprietor of, inter alia, various European trade mark rights incorporating or comprising the word KEMET.

The Respondent had registered the Domain Name on the first day of Land Rush. As far as the Complainant could determine, there was no obvious connection between the Respondent and the KEMET name. The Respondent did not have a web presence and did not sell KEMET branded products.

The Respondent failed to file a Response

The Panel held:

(1) Notwithstanding the Respondent's failure to file a response, the Complainant was not entitled to a default judgment and it was for the Complainant to prove to the Panel that the requirements of Article 21 of the Regulation were satisfied in this case.

(2) The Panel was entitled (although not obliged) to verify independently the Complainant's assertions as to the ownership of registered trade mark rights by reference to publicly available trade mark databases. Having done so, it was clear that the Complainant was the owner of registered European trade mark rights in a name that was identical to the Domain Name.

(3) In the circumstance of this case, the Complainant had managed to make out a prima facie case that the Respondent had no legitimate rights or interests in the Domain Name.

(4) Given the Panel's finding on the question of rights and legitimate interests, it was not necessary to address the Complainant's allegation of bad faith registration. The Complainant had satisfied the requirements of Article 21 of the Regulation.

(5) The Complainant, being a UK registered company, also satisfied the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of

regulation (EC) No. 733/2002.

Accordingly, the Panel ordered the transfer of the Domain Name to the Complainant.