Panel Decision for dispute CAC-ADREU-001328

Case number	CAC-ADREU-001328
Time of filing	2006-06-09 12:10:42
Domain names	tse-systems.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	TSE Systems GmbH, Jens-Uwe Engler

Respondent

Organization / Name	Fienna, Ltd.

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 other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is one of the leading developers and manufacturers worldwide of state-of-the-art measuring systems as well as methods and procedures for biological, clinical and pharmaceutical research.

2. The name of the Complainant's company is "TSE Systems GmbH".

3. On 7 april 2006, the first day of the Land Rush period, the <tse-systems.eu> domain name was registered by the Respondent, Fienna Limited.

4. The Complainant requested the transfer of the domain name <tse-systems.eu>.

5. The Respondent did not submit a response by the required deadline or at all.

A. COMPLAINANT

6. The Complainant contends as follow:

The Complainant is the holder of the name “TSE Systems”, which is recognized as a commercial designation of its company name "TSE Systems GmbH", according to Section 1 no. 2, Section 5 of the German Trademark Act. "GmbH" is solely the denomination of the Complainant's legal form.

7. According to Section 1 no. 2 of the German Trademark Act, commercial designations are protected under the German Trademark Law.

8. According to Section 5 clause 1 of the German Trademark Act, company symbols and titles of work shall be protected as commercial designations. Company symbols are signs used in the course of trade as names, firm names or special designations of business establishments or enterprises (section 5 clause 2 German Trademark Act).

9. According to Section 5 clause 2 of the German Trademark Act, firm names are protected when the firm name is suited to designate the merchant and is distinctive. A firm name is suited to designate the merchant and is distinctive when they are not devoid of any distinctive character.

10. According to the Complainant, "the firm name “TSE Systems” is suited to designate the merchant and is not devoid of any distinctive character".

11. The Complainant adds (i) the domain name <tse-systems.eu> is identical to the Firm name "TSE Systems" and (ii) the domain name has been registered by the Respondent without rights or legitimate interest.

12. The Complainant doesn't know of any circumstances which shall demonstrate the Respondent's rights or legitimate interests according to B11(e) of the ADR Rules.

13. The Complainant finally underlines that "the Respondent doesn't use the domain name <tse-systems.eu> until now".

B. RESPONDENT

14. The Respondent did not submit any Response.

DISCUSSION AND FINDINGS

15. In consideration of the Factual Background, the Parties’ Contentions stated above and its own web searches, the Panel comes to the following conclusions:

Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004 (hereafter “the Regulation”) states that "a registered domain name shall be subject to revocation [...] where the 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".

16. The rights mentioned in Article 10 (1) of the Regulation shall be understood to include as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers or company names.

17. As a consequence, this Panel is of the view that:

(i) The documentary evidence provided by the Complainant shows this latter owns a company name in respect of which a right is recognised by German national law, as required by Article 10(1) of the Regulation.

(ii) The domain name <tse-systems> is confusingly similar to the company name of the Respondent.

18. The remaining issue is then to decide wether the domain name <tse-systems> has been registered by the Respondent without rights or legitimate interest or wether it has been registered or used in bad faith by the Respondent.

19. In this respect, the first point on which the Panel would like to draw the attention is that the Respondent did not submit any Response and did not comply with its obligation and time periods under the ADR Rules.

20. The second point is that the Respondent, Fienna Limited, does not exploit any web site in connection of goods or services linked with the "tse-systems" name, neither using the <tse-systems.eu> domain name nor using the <fienna.com> domain name.

21. As the Respondent did not submit any Response, the Panel has done some searches on web databases. However, the Panel did not find any element (as described in Article 21(2) of the Regulation) which may have been called upon by the Respondent.

22. On the other hand, the Panel found a Decision of the Arbitration Center for <.eu> domain names where the Respondent already did not reply at all (see Case n° 2235, PALMERSCOCOABUTTER) after having registered the trademark of another Complainant as a <.eu> domain name, on the first day of the Land Rush period.

23. Therefore it is the Panel's opinion that the behaviour of the Respondent, who is obvioulsy used to registering <.eu> domain names based on Prior rights belonging to third parties, constitutes bad faith.

24. Morever, considering all the above elements in the present Case and Paragraph B10 of the ADR Rules, the Panel considers the failure

of the Respondent to comply with its obligation and time periods under the ADR Rules as grounds to accept the claims of the Complainant.

25. As the Complainant, a German registered company, satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) n° 733/2002, and have applied for the domain name <tse-systems.eu>, this domain name is transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name TSE-SYSTEMS be transferred to the Complainant.

PANELISTS

Name	**Frédéric Sardain**

DATE OF PANEL DECISION 2006-10-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

As the Complainant's company name is "TSE Systems GmbH", the Complainant requested the transfer of the domain name <tse-systems.eu>, registered by the Respondent on the first day of the Land Rush period.

The Panel rules that :

(i) The documentary evidence provided by the Complainant shows that he owns a company name in respect of which a right is recognised by German national law, as required by Article 10(1) of the Regulation;

(ii) The domain name <tse-systems> is confusingly similar to the company name of the Complainant, as required by Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004;

(iii) The behaviour of the Respondent, who is obvioulsy used to registering <.eu> domain names based on Prior rights belonging to third parties, constitutes bad faith;

(iv) The failure of the Respondent to comply with its obligation and time periods under the ADR Rules shall be considered, in the present Case, as grounds to accept the claims of the Complainant.

The domain name is transferred.