Arbitrage-beslissing for dispute CAC-ADREU-001375

Case number	**CAC-ADREU-001375**
Time of filing	**2006-05-19 09:19:25**
Domain names	**rabbin.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Rabbi Guy David Hall, MA**

Respondent

Organization / Name	**UK Domain Developers Ltd, Web Master**

FEITELIJKE SITUATIE

The Complainant, Rabbi Guy David Hall, MA, is a Rabbi, in French Rabbin as in the disputed domain name, offering rabbinical services.

The Respondent registered the disputed domain name on 7 April 2006, which was the first day of the “landrush” period. The Complainant had pre-ordered the domain name from his hosting company on 21 November 2005, but was informed on 28 April 2006 that they had not obtained the domain for him.

The Complainant had sent an e-mail to the Respondent requiring the transfer of the disputed domain name in exchange of registration costs, but did not receive a reply. The Time of Filing of the Complaint was 19 May 2006 and the ADR Proceedings commenced on 1 June 2006.

A. KLAGER

The Complainant has registered the earlier domain name rabbi.eu.com from which he offers his services across Europe as a Rabbi. The Complainant advertises his services using Google search engine and keywords relevant to his profession.

The Complainant believes that he has rights and legitimate interest to the domain rabbin.eu, which right or interest the Respondent does not have. The Complainant has been using the domain rabbi.eu.com, to which the disputed domain name is confusingly similar among his French speaking clients.

The Complainant claims that because he has registered the domain rabbi.eu.com and offered rabbinical services in several languages (including French), he has a better right to the domain name rabbin.eu.

The Complainant also claims that the Respondent does not have legitimate interest in this domain and is not offering goods or services through it, is not commonly known by the name, and is not making legitimate, non-commercial or fair use of the domain.

The Complainant believes the Respondent has registered the domain in a speculative way and in bad faith because judging from the Respondent's website, the domain rabbin.eu was acquired primarily for the purpose of being transferred, rented or sold in all probability to the Complainant.

The Complainant requests the Panel to order to transfer the disputed domain name to the Complainant.

B. VERWEERDER

The Respondent replies that the complaint is neither well-grounded in fact or warranted by existing law because the Complainant has failed to demonstrate a prior right referred to in Article 10(1) of the Commission Regulation (EC) No 874/2004 ("the Regulation")

The Respondent states that the Complainant asserts different prior rights outside Article 10(1) of the Regulation to the generic word "rabbi". According to the Respondent, the Complainant fails to explain why the rights he asserts are particular to him rather than any other rabbi and that the Complainant has failed to demonstrate a prior right recognized or established by national and/or Community law.

Furthermore, the Respondent states that the Complainant has been unable to demonstrate that Respondent has registered the domain without rights or legitimate interest in the name or that it has been registered or is being used in bad faith, as required in Article 21(1)(a) or (b) of the Regulation.

The Respondent states that it is in the beginning stages of utilizing the domain name and that it immediately parked the domain name with an "Under Construction" page containing various links to websites of third parties. This, according to the Respondent, shows "demonstrable preparation" to use the domain name.

BEHANDELING EN VASTSTELLING

The Complainant has requested an opportunity to comment on the Respondent's response. In view of the material available to the Panel, the Panel decides that is it not necessary to obtain further arguments from either of the parties.

The Complainant has based his complaint primarily on the domain name rabbi.eu.com, registered by him on 10 March 2004. According to Article 21(1) of the Regulation, a 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 recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1) of the Regulation.

Article 10(1) of the Regulation states that "prior rights" shall be understood to include registered national and community trademarks, geographical indications or designations of origin, unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.

According to the wording of Article 21(1) of the Regulation, the list in Article 10(1) of the Regulation is not exhaustive in determining whether the Complainant has a valid prior right. However, the prior right invoked by the Complainant must be recognized by national and/or Community law. This means that the Complainant must have enforceable, exclusive prior right to the name or mark on which the complaint is based.

The registration of any domain name does not per se give the holder an exclusive right to the name apart from the domain name. This means that the registrant of any domain name cannot use the registration alone, without more, to prevent a third party from using the very same name in the offering of goods and services, even if these goods and services are similar with or identical to those offered under the domain name.

The above means that the Complainant's prior registration of the domain rabbi.eu.com cannot be regarded as a right within the meaning of Article 21(1) of the Regulation. For the sake of clarity, this finding would not have been different even if the Complainant had registered a top level domain, such as rabbi.com, instead of the second level domain rabbi.eu.com, because neither registration confers exclusive rights to the word "rabbi".

The Complainant states that he has used the word “rabbi” in connection with offering of his services. Unregistered trademarks are specifically acknowledged as a prior right in Article 10(1) of the Regulation and the Complainant’s argument can be understood as a reference to an unregistered trademark.

However, the underlying principle in any trademark law is that the possibility to obtain an exclusive right to a distinctive mark is offset by the fact that no one can obtain exclusive rights to descriptive or generic words, because they must remain free for use for all undertakings.

In this case the Complainant has used the term “rabbi”, and its different translations, in offering rabbinical services. The Complainant has therefore merely used the generic name of the service offered and thus cannot have obtained exclusive rights to the term based on his use of the same.

Because the Complainant has not established a prior right recognized or established by national and/or Community law, the complaint must be dismissed.

It is therefore not necessary to proceed to examine whether the Respondent has registered the domain without rights or legitimate interests in the name or if it has registered or is using the domain in bad faith.

However, for the sake of completeness, the Panel notes the Respondent’s argument that by setting up an “Under Construction” website the Respondent “has made demonstrable preparation” to use the domain name in accordance with Article 21(2) of the Regulation.

The website to which the disputed domain name is directed contains links to several third party websites that offer the goods and services of the third parties, with the words “under construction” on top of the website. The same website can be accessed by entering the domain name of the concerned Registrar, bitliver.com.

This means that the website in question is nothing more than a standard website provided by the registrar as part of the registration process. Registration alone, part of which is the use of the website in question, is not sufficient to demonstrate the Respondent’s use or preparation to use the domain name in accordance with Article 21(2) of the Regulation.

However, because the Complainant has not established a relevant prior right, this finding does not affect the decision of the Panel.

BESLISSING

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the Complaint is Denied

PANELISTS

Name	**Tuukka Ilkka Airaksinen**

DATUM ARBITRAGE-BESLISSING 2006-06-30

Summary

SAMENVATTING ARBITRAGE-BESLISSING IN DE ENGELSE TAAL VORMT DE BIJLAGE 1

The Complainant had registered the domain rabbi.eu.com in 2004 and was using it in offering rabbinical services. The Respondent had registered the domain on 7 April 2006 on first come, first served basis.

The complaint was dismissed because a prior domain name registration is not a prior right within the meaning of Articles 10(1) and 21(1) of the Commission Regulation (EC) No 874/2004 (“the Regulation”) and because the complainant could not

have obtained exclusive rights through use to the generic word “rabbi” for offering of rabbinical services.

Although the complaint was dismissed, the Panel proceeded to assess the Respondent’s argument that setting up an “under construction” website was demonstrable preparation to use the domain name within the meaning of Article 21(2) of the Regulation.

The Panel dismissed this argument because using the “under construction” website provided by the concerned Registrar is nothing more than a part of the registration process, which alone is not sufficient to demonstrate use or preparation to use the domain name.