Panel Decision for dispute CAC-ADREU-001412

Case number	**CAC-ADREU-001412**
Time of filing	**2006-05-19 09:26:55**
Domain names	**nourkrin.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Pharma Medico UK Ltd., Morten Christensen**

Respondent

Organization / Name	**Vinitsia, 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 any other legal procedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the registration of the domain name NOURKRIN by Vinitsia Ltd. based on the alleged fact that Vinitsia Ltd.'s registration of NOURKRIN.eu had taken place without any right or legitimate interest and in bad faith, as NOURKRIN was a well known trademark belonging to the Complainant. The Respondent has failed to provide a Response that is in accordance with the requreiments of the ADR Rules within the time limits required. The Respondent has, however, provided a response (not fulfilling the formal requirements of the ADR-Rules) in which the Respondent states that it does not wish to challenge the Complainant, whom the Respondent now acknowledges holds a trademark in the EU pertaining to NOURKRIN.

A. COMPLAINANT

The Complainant challenges the registration of the domain name NOURKRIN by Vinitsia Ltd. based on the alleged fact that Vinitsia Ltd.'s registration of "NOURKRIN.eu" has taken place i bad faith, as NOURKRIN is a well known trademark belonging to the Complainant. The Complainant holds the UK trademark NOURKRIN (granted 05.01.1996) and the EU trademark NOURKRIN (granted 05.05.2006). The application for the latter trademark was received by the relevant authorities on 12.04.2005 and the application was published on 17.10.2005. The Complainant additionally informs that the domain name nourkrin.co.uk was registered on 19.08.2002 by Pharma Vita - a company from which the Complainant has acquired its rights to nourkrin.The Complainant further supports its bad faith allegation claiming that a search for "NOURKRIN" on Google on 13 May 2006 resulted in approximately 139,000 hits and that the Respondent has no rights or legitimate interest in the domain name NOURKRIN.

B. RESPONDENT

The Respondent has failed to provide a Response fulfilling the formal requirements of the ADR Rules, cf. Section 3 (b), within the relevant time period, and, consequently, is in default, cf. Section 10 (b) of the same Rules.

The Respondent has, however, provided a response (not fulfilling the formal requirements of the ADR-Rules) in which the Respondent states that is does not wish to challenge the Complainant, who the Respondent now acknowledges holds a trademark in the EU pertaining to NOURKRIN. According to the Respondent a Google search for "NOURKRIN" resulted in over 90,000 hits, many of which - according to the Respondent - describe nourkrin as "a naturally occurring hair loss remedy", but few of which - again according to the Respondent - "use any kind of trademark designation".

DISCUSSION AND FINDINGS

According to Section 3 (b) of the ADR Rules a Respondent shall submit its Response in hard copy and in electronic form. Failing to do so, the Respondent has not submitted a Response in accordance with the requirements of the ADR Rules. This entitles this Panel to consider the Respondents failure to comply with the ADR Rules as grounds to accept the claims of the Complainant, cf. Section 10 (a) of the ADR Rules.

Consequently, this Panel accepts the claims of the Complainant, provided, however, that the Panel is sufficiently satisfied, that the Complainant's claims are correct and that the Complainant fulfils the requirements for being entitled to the domain name NOURKRIN.

The Complainant has provided documentation that it is the holder of the UK trademark NOURKRIN since 05.01.1996 and the the Complainant had applied for the EU trademark NOURKRIN, which application was made public on 17.10.2005 and thus - from that time - available to the public, including the Respondent. Thus, for the purpose of this decision, the Complainant is undisputedly the holder of a right, i.e. the UK trademark, that is established by national law, as required by Article 21.1 of Commission Regulation (EC) No. 874/2004.

The Respondent has, even if not submitting a formal Response, indicated that it will not contest the claims of the Complainant and has, moreover, not attempted to document any rights or interest in the domain name NOURKRIN, cf. Article 21.1 (a) and Article 21.2 of Commission Regulation (EC) No. 874/2004.

Further, in the view of this Panel, the Respondent has - as alleged by the Complainant - registered the domain name "NOURKRIN.eu" in "bad faith", cf. article 21.1 (b) of Commission Regulation (EC) No. 874/2004. This assumption is in the view of this Panel confirmed beyond any reasonable doubt by the documentation supplied by the Complainant and the information found by the Panel (conducting its own investigations cf. article 7 (a) of the ADR Rules) during a Google search for "NOURKRIN" on 28 September 2006. The search resulted in approximately 94.100 hits of which the first one hundred hits are assessed - based on an a superficial prima facie investigation - to pertain to the Complainant's range of products, called "NOURKRIN". Thus, under these circumstances it is in the view of this Panel highly unlikely that, at the time of the Respondent's application for the domain name "NOURKRIN.eu", the Respondent was unaware that "NOURKRIN" was a known trademark, registered or not. This view is supported by the Respondents own observations, in its response, that "few" results from a Google search use a trademark designation. In other words, Respondent was aware - at least at that time - of the trademark designation and ought to have been aware hereof at the time of its application for "NOURKRIN.eu". In the view of this Panel, the registered domain name is identical or confusingly similar to the Complainants trademark.

Consequently, it is in the view of this Panel unobjectionable to assume that the registration of "NOURKRIN.eu" by the Respondent has taken place in bad faith.

Thus, the registration by the Respondent of the domain name "NOURKRIN.eu", shall according to Article 21.1 (a) and (b) of Commission Regulation (EC) No. 874/2004 be revoked.

However, as the Complainant further fulfils the general eligibility requirements for registration, cf. article 4.2 (b) of Regulation (EC) No. 733/2002 of the European Parliament and of the Council, as it has its registered office within the EU, the Complainant is entitled to have the disputed domain name transferred to it, cf. Article B11 (b) of the ADR Rules.

DECISION

For all the foregoing reasons, and in accordance with Article B11 (b) of the ADR Rules, the Panel orders that

the domain name "NOURKRIN.eu" be transferred to the Complainant.

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 Mutual Jurisdiction, cf. Articles B12 (d) and (a) of the ADR Rules.

PANELISTS

Name	**Kim G. Hansen**

DATE OF PANEL DECISION 2006-09-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant contested the registration of the domain name NOURKRIN.eu by the Respondent based on the alleged fact that registration of the domain name, which was identical or confusing similar to trademarks held by the Complainant, had taken place

without any right or legitimate interest and in bad faith, cf. Article 21 of Commission Regulation (EC) No. 874/2004.

The Respondent did not submit a Response, fulfilling the formal requirement of the ADR Rules, but in its defective response, did not want to contest the claims of the Complainant.

Based on the defective response and the evidence presented by the Complainant and having performed it's own investigations, the Panel held that the registration af the domain name, which was held to be identical or confusingly similar to the Complainants trademark, had beyond reasonable doubt taken place without any right or legitimate interest and in bad faith, cf. Article 21 of Commission Regulation (EC) No. 874/2004.

The registration was revoked and the domain name transferred to the Complainant as the Panel was satisfied, that the Complainant fulfilled the general eligibility requirements for registration.