Panel Decision for dispute CAC-ADREU-001580

Case number	CAC-ADREU-001580
Time of filing	2006-07-28 12:00:57
Domain names	auntminnie.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	AuntMinnie.com, Ms. Maury Morse

Respondent

Organization / Name	Jeffrey Leichter

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 a no other legal proceedings of which the Panel is aware which are pending ore decided related to the disputed domain name.

FACTUAL BACKGROUND

The domain name Auntminnie.eu has been registered, for the Respondent on April 7, 2006.

EURid confirmed that the Respondent is the current registrant of the domain name AUNTMINNIE.EU and provided the full contact details that are available in its WHOIS database for the domain name.

The domain name is locked during the pending ADR Proceeding.

The Complainant seeks ther remedies of revocation of registration by Respondent of the domain name auntminnie.eu, and the transfer of said domain name to Complainant.

A. COMPLAINANT

The Complainant contends, that:
AuntMinnie.com was granted Service Marks registrations by the U.S. Patent and Trademark Office for the AuntMinnie name and such marks are current in every respect.

Prior to any notice of an alternative dispute resolution (ADR), AuntMinnie.com has used similar domain name(s) in connection with the offering of goods or services. In addition to the registration of the auntminnie.com name in the United States, Complainant has registered AuntMinnie in the countries listed below. Accordingly, Complainant has a recognized right to the common use of “auntminnie” both by national and/or community law and by those persons familiar with the international market within which Complainant operates.

auntminnie.be Belgium
auntminnie.de Germany
auntminnie.dk Denmark
auntminnie.co.nz New Zealand
auntminnie.jp Japan
auntminnie.cn China
auntminnie.gen.in India
auntminnie.com.au Australia

Complainant represents that Respondent is not eligible for registration of the domain name because:

• The name is identical and confusingly similar to the name being used by Complainant which right of Complainant is recognized or established by national and/or Community law.

• Respondent has registered the name without rights or legitimate interest in the name.

• Respondent has registered the name in bad faith as is displayed by the fact that Respondent contacted Complainant and offered to sell the name to Complainant. This is evidence that Respondent registered the name primarily for the purpose of selling the domain name to Complainant who has already established in several providers' jurisdiction the right to the domain name utilizing the words "auntminnie".

• Respondent does not have a legitimate interest in the domain name because, prior to any notice of an ADR, Respondent has not used the name or a name corresponding to the domain name, in connection with the offering of goods or services or has made demonstrable preparation to do so

The Complainant seeks the remedies of revocation of registration by Respondent of the domain name auntminnie.eu, and the transfer of said domain name to Complainant.

Complainant certifies that it satisfies the eligibility criteria for registration set out in Paragraph 4(2)(b) of
Regulation (EC) no. 733/2002.

The Complainant further contends it has been notified by FedEx that the address listed by Respondent in his registration of the auntminnie.eu, is an incorrect address. Complainant therefore provided notification to Respondent of the Complaint via email to jeffreyleichter@yahoo.com.

B. RESPONDENT

The Complaint and other documents sent to the Respondent by registered mail.
On August 21, 2006, the Case administrator (Czech Arbitration Court) sent the “Commencement of ADR Proceeding”, 1 copy of the “Complaint” and a “document containing the user name and password for the access to the online platform” to the Respondent by registered postal service.

It was not possible to deliver this letter to the Respondent due to a nonexistent address.

The delivery of the Complaint, Commencement and the above mentioned document has thus been deemed to be delivered, in accordance with subparagraph A 2 (e) (3) of the ADR Rules, on September 2, 2006.

On September 22, 2006, an e-mail with the Commencement of the ADR Proceeding and the codes enabling to the Respondent to access the online platform was sent to the e-mail address of the Respondent stated in the Verification from EURid.

On September 25, 2006, the Commencement of ADR Proceeding, 1 copy of the Complaint and a document containing the user name and password for the access to the online platform was again sent to the Respondent to avoid any omission caused by the postal service during the delivery – this letter was returned back again due to a nonexistent address – see Annex 2.

The Term of thirty (30) working days for submitting the Response thus started on September 3, 2006 and lapsed on October 13, 2006.

The Respondent failed to submit the Response.

DISCUSSION AND FINDINGS

The Panel finds that, the Repondent is deemed to have been duly notified of the proceedings and to have failed to respond. Therefore, although the Complainant has provided no evidence to support any of its assertions, the Panel is entitled to accept Complainant's plausible assertions and any inferences that may reasonably be drawn from them.

The uncontradicted assertion of the Complainant that, in the relatively short time between registration of the domain name and lodgement of the Complaint, Respondent contacted Complainant and offered to sell the domain name to Complainant justifies the Panels finding of registration in bad faith,cf. Paragraph 11 (d)1, iii of the ADR Rules.

The Panel discussed if a U.S. registered service mark qualifies under ADR Rule 11(d)(1)(i) as a 'name in respect of which a right is recognized...by the national law of a Member State and/or Community law'. The Panel Finds, that national laws usually recognize rights which exist under the laws of other countries (without extending their scope beyond those countries) and it would be consistent with the UDRP to accept that a non-European trademark or service mark qualifies for protection.

The Panel discussed if the right to use domain name registered in Member States arising from contract between registran and registrar, the contractual right to use a domain name could be a right ‘recognized or established’ by the national laws of the Member States and/or Community Law, even without evidence, that through use, the domain name has become distinctive as a ‘common law’ trade mark.

Complainant declares in the Complaint: “Complainant certifies that it satisfies the eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) no. 733/2002.” The panel finds that except of the above mentioned declaration, Complainant did not provide any evidence to document how the Complainant, based in Tuscon, United States, satisfies the general eligibility criteria in Paragraph 4(2)(b) of Regulation EC 733/2002, i.e. that the Complainant is an (i) undertaking having its registered office, central administration or principal place of business within the Community, or (ii) organisation established within the Community without prejudice to the application of national law, or(iii) natural person resident within the Community. Therefore the Panel can not order to transfer the domain name AUNTMINNIE to the Complainant.

Taking in consideration all the foregoing reasons, the Panel orders that the domain name AUNTMINNIE be revoked.

DECISION

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

PANELISTS

Name	**Kim G. Hansen**

DATE OF PANEL DECISION 2006-11-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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