Panel Decision for dispute CAC-ADREU-001644

Case number	**CAC-ADREU-001644**
Time of filing	**2006-06-08 12:40:00**
Domain names	**dk-hostmaster.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Dansk Internet Forum, Manager Per Koelle**

Respondent

Organization / Name	**Zhonglan**

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 names.

FACTUAL BACKGROUND

The present case arises further to a complaint filed by the Danish Association Dansk Internet Forum (DIFO), an association designated to administer the country code top level domain ".dk".

The Respondent, Zhonglan, registered the domain name "dk-hostmaster" on 7 April 2006 in the so called "landrush period". EURid activated and registered the respective domain name for the Respondent according to its rules.

DIFO being aware of this registration filed a complaint on 31st May 2006 complaint which was received on 8th June 2006.

According to paragraph A 2 (k) of the ADR rules, Eurid transmitted the relevant information on the registrant revealing in particular the identity and address of the physical body owner of the contested domain name.

In the light of this further and new information, the ADR Centre requested the complainant to amend its complaint. This was done accordingly on 21st June 2006.

On 2nd August 2006, the Respondent filed his response.

On even date, the ADR Centre informed the Respondent that the hard copy of the response was not received and issued therefore a "notification of deficiencies in response". The Respondent was properly notified that the document was to be received within seven days from the delivery of the notification. The Respondent was also properly notified that, should it fail to send the Response within such period of time, the Respondent would be considered in default, that an ADR Panel would still be appointed to review the facts of the dispute and to decide the case, and that this Panel would not be required to consider a Response filed late, but would have the discretion to decide whether to do so and might draw such inferences from the default as it would consider appropriate, as provided for by ADR Rules, Paragraph B10. Finally, the notification mentioned the Respondent was entitled to challenge the Notice of Respondent Default according to Paragraph B 3 (g) of the ADR Rules. The respondent did not remedy the deficiencies.

On 14th August 2006, the ADR Centre issued a "notification of Respondent's default" informing the Respondent that he failed to comply with the ADR Centre's request. One of the consequences is that the ADR Panel and the Complainant are informed of the default, and that “the ADR Panel will decide in its sole discretion whether or not to consider your defective Response in deciding the case.” Respondent

was also notified of its right to challenge the Notification in a written submission to the Court filed within three days from receiving the Notification

The Panelist was therefore appointed, and has duly filed the "statement of acceptance and declaration of impartiality and independency".

A. COMPLAINANT

The Complainant requested the disputed domain name “dk-hostmaster" to be transferred to the Complainant. This request is based on the fact that it is the association that has been designated by the Danish Government to administer the country code top level domain (ccTLD) “.dk” and that it is the owner trade mark rights and in particular Danish Trademark Registration n° VR 2002 01860 DK Hostmaster and a Community trade mark registration n° 002622819.

Furthermore the Complainant, due to the lack of information on the whois database concerning the registrant of the challenged domain name was doubtful as to whether the eligibility criteria set out in Article 4 (2) (b) of Regulation (EC) No 733/2002 was fulfilled.

The Eurid, in the process of the Complaint, provided the ADR Centre and the Complainant with information on the Registrant. In the subsequent amended complaint, the Complainant maintained the argument based on the eligibility criteria on the basis that “the Registrant is however still just indicated as Zhonglan and the indicated telephone number has the Chinese prefix + 86”.

The Complainant went on developing, based on the rules of Article 21 EU Regulation 874/ 004, the reasons why the domain name should be transferred to the Complainant and in particular:

1/ The disputed domain name is identical to Complainant’s trade mark DK Hostmaster; the space between DK and Hostmaster in the trademark is replaced by a hyphen for technical reasons since domain name registration system for does not allow empty spaces.

2/ The Complainant owns prior trade mark rights and the Registrant does not possess any right or legitimate interest in the name.

3/ The Complainant indicated the “DK hosmaster”, “being a neologism it has no generic or secondary meaning it is inconceivable that Respondent registered the domain name without prior knowledge of Complainant activities and of complaints name. The Complainant thus claims that the contested domain name was registered in bad faith”. Further on the Complainant specified that “bad faith” means, according to Article 21 (3) of EU Regulation 874/ 2004, the domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law. The Complainant mentioned that this was realised as one can see on the pages of the website “dk-hostmaster.eu” a clear indication “this domain name is for sale”.

B. RESPONDENT

Respondent submitted a Response but not in the compliance with the procedural rules. The Respondent did challenge the notification of default.

DISCUSSION AND FINDINGS

Before deciding on the merits of the Complaint, the Panelist has to rule on how the documents submitted by the Respondent must be processed.

Paragraph B. 3 (f) of the ADR Rules states that “if a Respondent does not submit a Response or submits solely an administratively deficient Response, the Provider shall notify the Parties of Respondent’s default. The Provider shall send to the Panel for its information and to the Complainant the administratively deficient Response submitted by the Respondent.” Accordingly, the Response was sent to the Panel for its information, and the Panel will use this administratively deficient Response only for informational purposes.

Paragraph 10 (a) of the ADR Rules states that in case of default of one of the Parties, the Panel may consider this failure to comply as grounds to accept the claims of the other Party. The fact that the Respondent did not challenge the annexes attached to the Complaint will be taken into account.

The Panelist has now to assess whether the registration of domain name “dk-hostmaster” is to be considered as a speculative and abusive registration and falls within the provisions of Article 21 of EU Regulation 874/ 2004.

In the administratively deficient response sent by the Respondent, the Panel read that the right on the term DK and HOSTMASTER

“cannot be used exclusively by the Complainant” as they consist respectively of “the country code for Denmark and [hostmaster is] a universal word just like webmaster”.

The Respondent also wrote that anyone can register a trade mark “dk hostmaster” or use said terms for goods and services in other classes than those claimed by DIFO. Moreover, the website has no intention to mislead consumers or harm the reputation of the Complainant.

Finally, the Respondent pointed out that “.dk” registry may be well known in Denmark but not in the United Kingdom (country of residence of the Respondent) or other countries.

In the view of the foregoing, the main question for the decision is whether the Complainant has proven that the registered domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of member state and the domain name has been registered by the Respondent without rights or legitimate interest in the name or used in bad faith. The Panelist will thus examine each point:

1/ Identical or Confusingly Similar: The domain name dk-hosmaster reproduces identically the Complainant’s distinctive and protected trademark DK HOSTMASTER. The argument of the Respondent consisting of indicating that these terms cannot be exclusively used by the Complainant cannot be prosperous as the heart of the trade mark protection is to give an exclusive right to the proprietor on a trade mark.

2/ Rights or Legitimate Interests: Complainant alleges that Respondent has no rights or legitimate interests in the domain names. The Respondent has not rebutted this allegation, nor is there material before the Panelist demonstrating that such rights or interests may exist.

The sole fact that the Respondent is based in the United Kingdom would not be sufficient to prove that the “website has no intention to mislead consumers or harm the reputation of the Complainant” as stated the Respondent. Moreover, several links on the webpages of the disputed domain name redirect to registrars for domain name under the ccTLD “.dk” making the consumer believe that they are recognised by DIFO as approved registrars in Denmark. Again, it has to be noted that it is frequent that “parking” a domain name generates a financial compensation.

The Respondent’s arguments cannot fall within the scope of Article 21 2 (c) of the EU Regulation 874/ 2004.

The Panelist therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

3/ Registered and used in Bad Faith: Although this criteria is alternative and not cumulative to the legitimate rights or interests, it would be examined for completeness.

The Complainant indicated that the provisions of Article 21 (3) (a) which state that “the domain name was registered […] primarily for the purpose of selling, renting, […] the domain name to the holder of a name of which a right is recognised or established by national and/or community law” should be understood as being applicable when the offer for sale is made to the public at large.

In the administratively deficient Response, the Respondent challenged the interpretation made by the Complainant and in particular on the interpretation of the term “primarily”. Yet, the term “primarily” means “mainly” and should not be construed as meaning “exclusively”. Therefore, the Panelist finds that in the present circumstances, it ought to be considered that the offer for sale to the public at large, including necessarily the Complainant, would fall within the definition set by Article 21 (3) (a) and that the domain name has been registered in “bad faith”.

To conclude, the Panelist decides that the domain name shall be transferred to the Complainant.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 of the ADR Rules and B11 (b) of the ADR Rules, the Panelist orders that the domain name DK-HOSTMASTER 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 in accordance.

PANELISTS

Name	David Irving Tayer

DATE OF PANEL DECISION 2006-09-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant requested the disputed domain name “dk-hostmaster" to be transferred to the Complainant based on the existence of prior rights on the terms DK HOSTMASTER and further argued that (i) the domain name was identical to their trade mark rights, (ii) the domain name was register with no rights or legitimate interests and (ii) in bad faith.

The Panelist first dealt with the question arising from the administratively deficient response filed by the Respondent and concluded that the document would be used for informational purposes.

The Panelist then examined whether the Complainant has proven that the registered domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of member state and the domain name has been registered by the Respondent without rights or legitimate interest in the name or used in bad faith.

The Panelist considered that all three conditions were met and decided to transfer the domain name dk-hostmaster to the Complainant.