Panel Decision for dispute CAC-ADREU-001652

Case number	CAC-ADREU-001652
Time of filing	2006-06-05 12:54:32
Domain names	shopping.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Axel Arnulf Pfennig

Respondent

Organization / Name	Online Shopping Limited, Michael Bahlitzanakis

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None.

FACTUAL BACKGROUND

The domain name was first applied by a Schaffeld Bodo on 7 December 2005. He was granted the domain name based on a German trade mark registration for SHopping. The domain was subsequently assigned to the Respondent on 13 April 2006.

The Complaint was filed on 5 June 2006 and the proceedings initiated on 22 June 2006.

A. COMPLAINANT

The Complainant claims that the domain has been registered in bad faith. According to the Complainant, the underlying German trade mark registration is not valid because it has been obtained in bad faith merely for securing a corresponding domain registration instead of the registrant's bona fide intent to use the mark for the concerned goods (apparently oven gloves).

The Complainant also argues that the Respondent is not entitled to register .eu domains because he is not resident in the Community, which is shown by the fact that the Respondent appears to employ only a general mail forwarding service at the location of the address given in the registration details, from which his mails are forwarded to him in New York.

B. RESPONDENT

The Respondent states that this Complaint has been brought against the domain name holder rather than the Registry, EURid, and therefore the Complainant must show a prior right as defined in Article 21(1) of the Commission Regulation (EC) No 874/2004 ("the Regulation").

The Respondent also states that the Complainant does not claim to have a prior right within the meaning of Article 21(1) of the Regulation. Also the Complainant's claims concerning the original registrant's right to register the domain name are beyond the jurisdiction of the Panel.

Because the Complainant has not demonstrated a prior right in the term, the Complaint must fail.

DISCUSSION AND FINDINGS

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 Complainant has explained in length why he is generally allowed to register domain names. However, the Complainant has not established, nor even claimed, to own a prior right recognized by national and/or Community law to this specific name, SHOPPING. The Complainant has merely argued on what grounds the original registrant, and hence also the Respondent, must be deemed to have acquired the trade mark and the domain in bad faith and that the Complainant is entitled to register .eu domains in general whereas the Respondent is not.

This Complaint is brought against the domain name holder. The Panel is therefore bound by Article 22(11) of the Regulation, which states that in the case of a procedure against a domain name holder, the Panel shall decide that the domain name shall be revoked, if it finds that the registration is contrary to Article 21 of the Regulation.

In other words, in proceedings against the registrant, the Panel can only revoke the registration if the Complainant establishes that he has a prior right to the name, such as a trade mark registration, and that the registrant lacks rights or legitimate interests in the name or there is bad faith on part of the registrant.

Were the Complaint brought against the Registry, the Panel could decide whether the decision to register the domain conflicts with the legal framework concerning .eu domain names.

Because the Complaint has been brought against the registrant and 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.

DECISION

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**

DATE OF PANEL DECISION 2006-08-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The domain name was registered on 7 December 2005 on the basis of an identical German trade mark registration. On 13 April 2006 the domain name was assigned to the Respondent. The Complainant claims that the respondent has obtained the domain in bad faith and as an American is not entitled to register .eu domains in the first place.

However, the Complainant failed to demonstrate a prior right to the term as provided in Article 21(1) of the Commission Regulation (EC) No 874/2004 (“the Regulation”). The Complaint must therefore fail and it is not necessary to proceed to examine the other allegations put forward by the Complainant.