Panel Decision for dispute CAC-ADREU-001901

Case number	**CAC-ADREU-001901**
Time of filing	**2007-02-06 11:34:16**
Domain names	**carrier.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Carrier SCS, Florian de Joannès**

Respondent

Organization / Name	**Kurt Janusch**

FACTUAL BACKGROUND

CARRIER SCS (hereafter the Complainant) is a limited partnership company incorporated under French law.
The Complainant is the French subsidiary of Carrier Corporation whose central offices and registration is located at Carrier World Headquarters, One Carrier Place, Farmington, Connecticut 6034-4015, United States (hereinafter "Carrier").
Carrier is a world-wide well-known manufacturer and distributor of heating, ventilation and air conditioning systems.
Carrier is the owner of the community trademark n° 83410, filed on April 1, 1996 for goods and services in classes 7, 9, 11 and 37.
Respondent applied for the Benelux trademark CARRIER n° 0789019 on December 7, 2005 for services in class 38. The registration of said trademark was rejected by the Benelux Trademark and Patent Office.
Respondent also applied for 100 other Benelux trademarks during the period between November 2005 and March 2006.
On December 7, 2005, Complainant filed an application for the Domain Name <carrier.eu> (hereinafter: "Domain Name").
Complainant used .eu Registration Policy and Terms and Conditions for Domain Name Applications during the Phased Registration Period (hereinafter: "Sunrise Rules".
Complainant based its application on the Community trademark "CARRIER" owned by its parent company Carrier,
The Complainant's application for the Domain Name was rejected by EURid for failure to file the Documentary Evidence (license declaration) by the deadline.
About February 17, 2006, during the second phase of the Sunrise Period, Respondent also filed an application for the Domain Name. Respondent's application was accepted by EURid.

A. COMPLAINANT

The Complainant substantially claims that the registration of the disputed Domain Name <carrier.eu> is speculative and abusive.

Pursuant to the Complaint, the Respondent's application for the Domain Name is based on the Benelux trademark "CARRIER", no. 0789019. The Complainant states the Respondent used the expedite procedure for the application of said trademark.
The Complainant contends that the disputed Domain Name is identical to the Community trademark CARRIER registered by

its parent company Carrier.
Furthermore, the Complainant claims that the Respondent has no rights or legitimate interest in the disputed Domain Name.
Complainant contends that Respondent is living in Switzerland and is active in various sports trading companies. In particular, the Respondent's expertise is ice-hockey and inline-hockey equipment. There is no evidence on record indicating that the Respondent is involved in telecommunication activities (the industrial sector the Respondent registered their 100 Benelux trademarks including CARRIER within).
Complainant believes that Respondent took advantage of the Benelux expedite procedure take out in order to register the Domain Name during the Sunrise period.
Additionally, the Complainant indicates that the Domain Name directs internet users to a webpage offering various air conditioning products and services.
Moreover, the title of the Domain Name's homepage is "Carrier Corporation". The Complainant argues that the use of this name is evidence of bad faith.

B. RESPONDENT

Respondent failed to provide a timely response to the Complaint.

DISCUSSION AND FINDINGS

Pursuant to article 21 (1) of the European Regulation n° 874/2004 relating to the Speculative and abusive registrations: "a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, 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), and where it:
(a) has been registered by its holder without rights or legitimate interest in the name; or
(b) has been registered or is being used in bad faith"
As a result, to dispute the registration of a Domain Name the Complainant has to demonstrate that:
1- The Domain 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.
2- The Domain Name is registered by the holder without rights or legitimate interest in the name; or
3- The Domain Name is registered or is being used in bad faith.
The above mentioned provisions are valid for domain names registered during the Sunrise period and domain names registered during the land ruche period.
1 - Regarding the first condition: (identical or confusingly similar to a name in respect of which a right is recognized)
The Complainant has provided evidence that it is the licensee of the Community trademark's registration CARRIER n° 83410 registered on April 1, 1996 for services in classes 35, 36, 38 and 41.
The comparison between the disputed domain name and the above mentioned trademark reveals the following:
- The Domain Name is entirely composed of the mark "CARRIER".
- It includes the ".eu" suffix, which is not taken into account.
As a result, the Panel finds that the domain name is identical or at least confusingly similar to the trademark "CARRIER" owned by the Complainant.
2 - Regarding the Second condition: (registered by the holder without legitimate interest in the name)
Respondent based its application on a Benelux trademark.
a) The crucial question in this matter is to determinate whether the mere registration of a trademark is sufficient to grant the Registrant a legitimate interest of a right to a Domain Name. In other words, does the registration of a Domain Name during the Sunrise period automatically grant a legitimate interest to the Respondent?
To register a domain name during the Sunrise period, it is sufficient to demonstrate a prior right. Article 10 of European Regulation n° 874/2004 provides that "prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works".
Prima facially, the Respondent's trademark was registered at the moment that it filed the Domain Name application. This explains why Respondent's application is accepted by EURid.
However, the registration of a domain name during the sunrise period does not mean that the Registrant has a legitimate

interest of the Domain Name. In fact, there is no provision, neither in the sunrise rules nor within the European Regulations disposing that the domain names registered during the Sunrise period have a specific dispute rules or a supplementary protection.
b) The Complainant contends that Respondent has registered its trademark via the expedite procedure of the Benelux Trademark Office. Respondent did not dispute said contention.
The expedite proceeding of the Benelux Trademark Office allows the applicant of the trademark to register the trademark because it satisfies to certain formal conditions. The examination of the trademark occurs after the registration of the domain name.
Several previous decisions held that the registration of Benelux trademarks by expedite procedure for the mere registration of an EU domain name does not grant the Registrant any legitimate interest. The Panel in the case n° 00596 <restaurants.eu> has stated “Although the Panel accepts that an expedite provisional Benelux trademark registration can be a prior right pursuant to Regulation (EC) 733/2002 and the Sunrise rules (cf. Case 0035 in re Leonie Vestering /EURid), this cannot have the consequence that such rights can be used in the Sunrise period in order to register a generic term as a domain name if the prior right was apparently registered for such cause, because the prior right would then be used for speculation, which Regulation (EC) 733/2002 of the Sunrise rules are designed to avoid”.
In the case no. 2438 <ask.eu> the Panel found: " The general thrust of Article 21 of Regulation 874 is that speculative registrations may be subject to revocation and it is difficult to conceive of a more speculative registration than one founded purely upon an expedited Benelux trade mark which the Panel has determined was registered exclusively to obtain the disputed domain name itself and not with any genuine intent to offer the requisite goods and services (particularly bearing in mind the other Benelux marks registered by the Respondent). In making this determination the Panel does not deal with the validity of the Benelux Mark itself, but rather the Respondent's motivation in registering it, which in the Panel's view goes directly to the question of bad faith”
Furthermore, the Complainant provides evidence that Respondent’s trademark was rejected by the Benelux trademark office. Consequently, the right to the Domain Name granted to the Respondent is not valid.
c) Moreover, several Wipo decisions held that once the Complainant files the Complaint, the burden shifts to the Respondent to prove its right and legitimate interest in the name.
The Respondent failed to answer the allegations discussed in the Complaint. Therefore, the contentions in the Complaint are presumed correct.
Because there is an absence of an apparent right or legitimate interest and the failure of the Respondent to provide evidence illustrating that they have a legal right or legitimate interest, the Panel determines that the Respondent has no rights or legitimate interests regarding the Domain Name.
3 - Regarding the third condition: (the domain name is registered or used in bad faith)
To comply with article 21 (1) of the European Regulation n° 874/2004, the Complainant must demonstrate that the Domain Name is registered or used in bad faith.
- The Panel finds that some elements are established to support the finding that the Respondent registered the Domain Name in bad faith:
a) The Complainant’s parent company “Carrier” is a world wide well-known manufacturer and distributor of heating, ventilation and air conditioning systems.
b) When a search is performed quickly using the keyword “carrier” on www.google.com, the primary results reveal links that relate to the Complainant or to the Complainant’s parent company Carrier.
c) The Complainant’s application for the Domain Name during the phased registration period is currently available within the Whois database of EURid. This application contains the name of the Complainant.
For reasons previously discussed, Respondent is unable to prove that it was unaware of Complainant or its well-known trademark CARRIER. Consequently, Respondent has registered the domain name in bad faith since it was aware of the Complainant and/or its parent company.
According to the statute, it is not necessary to prove both registration and use in bad faith but rather it is sufficient if evidence illustrates one of the two elements discussed is met in order to comply with article 21 (1) of the European Regulation n 874/2004.
Nevertheless, the Panel concludes that the domain name is used in bad faith:
- The Complainant provides evidence that the Domain Name is directing Internet users to a webpage proposing sponsored links for products and services in the field of ventilation and air conditioning. The Complainant provides a detailed affidavit for the purposes of proving this allegation. This behavior is clear evidence that the Respondent intends to use the notoriety

of the Complainant and/or the Complainant's parent company for commercial gain. This use is considered in bad faith.
- Further, Respondent uses the name "CARRIER CORPORATION" on its website. This action eliminates any doubt that the Respondent attempts to usurp the Complainant parent company's identity.
Therefore, the Panel concludes that the Domain Name is both registered and used in bad faith

DECISION

For all the foregoing reasons and in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <carrier.eu> be transferred to the Complainant.

PANELISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2007-06-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the French subsidiary of Carrier Corporation which is a world-wide well-known manufacturer and distributor of heating, ventilation and air conditioning systems.
On December 7, 2005, Complainant filed an application for the Domain Name <carrier.eu> (hereinafter: "Domain Name").
Complainant used .eu Registration Policy and Terms and Conditions for Domain Name Applications during the Phased Registration Period (hereinafter: "Sunrise Rules".
The Complainant's application for the Domain Name was rejected by EURid for failure to file the Documentary Evidence (license declaration) by the deadline.
Respondent applied for the Benelux trademark CARRIER.
About February 17, 2006, during the second phase of the Sunrise Period, Respondent also filed an application for the Domain Name. Respondent's application was accepted by EURid.
Complainant believes that Respondent took advantage of the Benelux expedite procedure take out in order to register the Domain Name during the Sunrise period.
Additionally, the Complainant indicates that the Domain Name directs internet users to a webpage offering various air conditioning products and services.
Moreover, the title of the Domain Name's homepage is "Carrier Corporation". The Complainant argues that the use of this name is evidence of bad faith.
The Complainant substantially claims that the registration of the disputed Domain Name <carrier.eu> is speculative and abusive.
The Respondent failed to answer the allegations discussed in the Complaint
The Panel found that the registration of Benelux trademarks by expedite procedure for the mere registration of an EU domain name does not grant the Registrant any legitimate interest.
Because there is an absence of an apparent right or legitimate interest and the failure of the Respondent to provide evidence illustrating that they have a legal right or legitimate interest, the Panel determines that the Respondent has no rights or legitimate interests regarding the Domain Name.
The Panel finds that some elements are established to support the finding that the Respondent registered the Domain Name in bad faith:
a) The Complainant's parent company "Carrier" is a world wide well-known manufacturer and distributor of heating, ventilation and air conditioning systems.
b) When a search is performed quickly using the keyword "carrier" on www.google.com, the primary results reveal links that relate to the Complainant or to the Complainant's parent company Carrier.
c) The Complainant's application for the Domain Name during the phased registration period is currently available within the Whois database of EURid. This application contains the name of the Complainant.
For reasons previously discussed, Respondent is unable to prove that it was unaware of Complainant or its well-known trademark CARRIER. Consequently, Respondent has registered the domain name in bad faith since it was aware of the Complainant and/or its parent company.

Furthermore, the Complainant provides evidence that the Domain Name is directing Internet users to a webpage proposing sponsored links for products and services in the field of ventilation and air conditioning. The Complainant provides a detailed affidavit for the purposes of proving this allegation. This behavior is clear evidence that the Respondent intends to use the notoriety of the Complainant and/or the Complainant's parent company for commercial gain. This use is considered in bad faith.

Therefore, the Panel concludes that the Domain Name is both registered and used in bad faith