Panel Decision for dispute CAC-ADREU-001975

Case number	CAC-ADREU-001975
Time of filing	2006-08-29 11:39:59
Domain names	newwave.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	New Wave 2002, a.s., Pavel Strejček

Respondent

Organization / Name	Computer Futures Solutions 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 pending or decided legal proceeding which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complaint is against Computer Future Solutions Ltd., a holder of the domain name newwave.eu, registered in its favor on May 29, 2006.

There is no Response filed by the Respondent.

A. COMPLAINANT

First of all, the Panel must state that the arguments presented by the Complainant are extremely short - there is only one sentence in the Complaint “On 9. August 2005 we have registered our NEW WAVE registered trademark and we have requested about the newwave.eu domain in November 2005.“

B. RESPONDENT

The Respondent did not provide the Panel with its response, despite reminders.

DISCUSSION AND FINDINGS

The disputed domain name has been registered and activated in accordance with Section B 1(a) of the ADR Rules.

The Complainant argued that the name "NEW WAVE" is its registered trademark, and, therefore, should be transferred to New Wave 2002, Inc. (i.e., to the Complainant, as it is understood by the Panel that the abbreviation "Inc." is just an English equivalent of "a.s.", a joint stock company, akciová společnost).

The Panel understands this claim as a matter of the revocation of a domain name under Article 21/1 of EC Regulation no. 874/2004 ("Regulation"). Pursuant to Article 21/1 of the Regulation, 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 recognised or established by national and/or Community law, and where it: (i) has been registered by its holder without rights or legitimate interest in the name; or (ii) has been registered or is being used in bad faith.

The Complainant did not file any document proving that the name "NEW WAVE" is confusingly similar or identical to a name in which

prior rights exists, as required by the above mentioned Article of the Regulation.

According to Article 21/2 of the Regulation, a legitimate interest within the meaning of the above-mentioned Article 21/1 of the Regulation may be demonstrated where: (i) prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain 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; (ii) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law; (iii) the holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.

According to Article 21/3 of the Regulation, bad faith, within the meaning of Article 21/1 of the Regulation, may be demonstrated, where: (i) circumstances indicate that the domain name was registered or acquired 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 or to a public body; or (ii) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that: a pattern of such conduct by the registrant can be demonstrated; or the domain name has not been used in a relevant way for at least two years from the date of registration; or in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated; (iii) the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor; or (iv) the domain name was intentionally used to attract Internet users, for commercial gain, to the holder of a domain name website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognised or established by national and/or Community law or a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the holder of a domain name; or (v) the domain name registered is a personal name for which no demonstrable link exists between the domain name holder and the domain name registered.

However, again, the Complainant did not provide the Panel with any evidence proving the lack of legitimate interest or bad faith of the Respondent.

The Complainant further argues that it applied for the newwave.eu domain in November 2005, i.e., before the beginning of the Sunrise Period, which only started on December 7, 2005. Again, this statement, even though it seems irrelevant, still was not supported by any evidence.

As it is apparent from Section B 11(a)(1)(i) of the ADR Rules, the Panel issues a decision in the event that the Complainant proves that the 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 a Member State and/or Community law.

Thus, it is the Complainant's duty to prove its priority right by any and all documentary evidence, as it may find necessary to support its arguments. This principle cannot be substituted by any reminders or other activity of the Panel.

If there is no documentary evidence on the priority right of the Complainant, the Panel concludes that there is no priority right. The same conclusion applies to the alleged prior registration of the domain name in the name of the Complainant. As the Complainant did not argue the Respondent's lack of legitimate interest or bad faith regarding the domain name, the Panel did not deal with this issue. From all the above-mentioned reasons, the Complaint is therefore rejected.

DECISION

If there is no documentary evidence on the priority right of the Complainant, the Panel concludes that there is no priority right. The same conclusion applies to the alleged prior registration of the domain name in the name of the Complainant. As the Complainant did not argue the Respondent's lack of legitimate interest or bad faith regarding the domain name, the Panel did not deal with this issue. From all the above-mentioned reasons, the Complaint is therefore rejected.

PANELISTS

Name	Pavel Safar

DATE OF PANEL DECISION 2006-12-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant argued that the name "NEW WAVE" is its registered trademark, and, therefore, should be transferred to the Complainant.

The Complainant did not file any document proving that the name "NEW WAVE" is confusingly similar or identical to a name in which prior rights exists, as required by the above mentioned Article of the Regulation.

The Complainant did not provide the Panel with any evidences proving the lack of legitimate interest or bad faith of the Respondent.

It is the Complainant's duty to prove its priority right by any and all documentary evidence, as it may find necessary to support its arguments. This principle cannot be substituted by any reminders or other activity of the Panel. If there is no documentary evidence on the priority right of the Complainant, the Panel concludes that there is no priority right. The same conclusion applies to the alleged prior registration of the domain name in the name of the Complainant. As the Complainant did not argue about the Respondent's lack of legitimate interest or bad faith regarding the domain name, the Panel did not deal with this issue. From all the above mentioned reasons, the Complaint is therefore rejected.