Panel Decision for dispute CAC-ADREU-002123

Case number	CAC-ADREU-002123
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Domain names	unibail.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	UNIBAIL HOLDING SA, Raphaël Moreno

Respondent

Organization / Name	OVIDIO LIMITED, OVIDIO UNIBAIL OVIDIO LIMITED

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 Respondent has informed the Panel that an action is pending in Brussels brought by EURid against the registrar who registered this domain name on behalf of registrant/respondent (EURid Action). However, Respondent is not a party to the EURid Action. In connection with the EURid Action EURid placed a hold on this and other domain names wihtout notice to Respondent or an opportunity to respond or discuss. The registrant used by Respondent to register the domain herein (along with other registrars) has filed suit against EURid seeking various remedies (Registrar Action). The Respondent has joined in the Registrar Action.

FACTUAL BACKGROUND

The Complainant is UNIBAIL HOLDING SA, a company registered under the laws of France. The Complainant is a land company which acts on three major segments of commercial real estate, i.e. shopping centers, corporate buidings and exhibition spaces. The Complainant could not register <unibail.eu> (hereinafter referred to as the “Domain Name”) for it had already been registered by OVIDIO LIMITED (hereinafter referred to as the “Respondent”).

The Respondent is Ovidio Limited, a company registered under the laws of Cyprus. The Respondent is in the “Direct Navigation” business and it owns a portfolio of domain names and operates corresponding websites offering product and services information through sponsored links. The Respondent has registered the Domain Name.

A. COMPLAINANT

The Complainant states that Respondent has registered the Domain Name on 2006-06-07 but has no rights or legitimate interests to it. The Complainant states that the Respondent has never been known by the Domain Name and does not hold any trade mark or company name under the name <unibail>, whereas the Complainant has been developing its commercial business under the company name and trade name UNIBAIL for almost forty years and has four subsidiaries whose company names are UNIBAIL DEVELOPPEMENT, UNIBAIL MANAGEMENT, UNIBAIL INVESTISSEMENTS II and UNIBAIL MARKETING & MULTIMEDIA. <unibail.eu> web site is a mere page of commercial links.

The Complainant also claims that the Domain Name has been registered and is being used in bad faith, as set out in article 21(3)(b)(i) of Commission Regulation (EC) No 874/2004 of 28 April 2004. According to the Complainant it is obvious that the Respondent has registered the Domain Name to prevent the Complainant from reflecting its trade marks, trade name and company name in a corresponding domain name. The Respondent has engaged in a pattern of such conduct since several articles have been published on websites denouncing the Respondent’s behaviour.

The Complainant requests that the Domain Name is transferred to its profit, since it is a company having its registered office within the Community and hence satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No

733/2002.

The Complainant has informed the Panel that no agreement has been entered into between the Parties regarding the transfer of the Domain Name by way of a settlement.

B. RESPONDENT

The Respondent is on the opinion that the mutual agreement of the parties is found in the fact that both parties have agreed to the same relief as the Complaint makes the following specific request for relief in its Complaint: “[T]he Complainant requests that the Domain Name is transferred to its profit, since it is a company having its registered office within the Community and hence satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.” and the Respondent in turn has agreed that the Domain Name be transferred to the Complainant. The Respondent refers to Section 4(a) of the ADR Rules that stipulate that the ADR Proceeding will be understood to be concluded once the Panel has received confirmation from both Parties that an agreement has been entered into by the Parties concerning the object of the dispute. Thus the Respondent is on the opinion that it is both appropriate and required that the panel issue an order that merely acknowledges the parties’ agreement that the Domain Name be transferred and thereby terminate the proceedings.

The Respondent further states that it is not admitting the facts set forth in the Complaint other than Complainant’s assertion that it is eligible to hold the registration for the Domain Name.

The Respondent does not agree that the Respondent has registered the Domain Name to prevent the Complainant from reflecting its trade marks, trade name and company name in a corresponding domain name. The Respondent says that the Complainant ignores the fact that the Domain Name was registered during the “Landrush” period and that during the Landrush period, any person or entity satisfying the general eligibility criteria could register any domain name. The Respondent reminds the Panel that prior to the Landrush only companies with “prior rights” had the exclusive right to register .EU domain names and that the Complainant did not use that possibility.

The Respondent states that it has legitimate interests to the Domain Name as the Respondent is in the “Direct Navigation” business and uses the Domain Name in that legitimate business.

The Respondent also provides an explanation of Direct Navigation - Direct Navigation is a recognized search method used by approximately 15% of Internet users wherein a constructed search phrase is entered in the form of a domain name in the browser rather than in a search engine such as Google. When a user enters a domain that is used in Direct Navigation, the domain name is parsed by a third party entity (in this case Sedo.com). In the parsing process, the search company’s software separates the domain name into logical words. Using the logical words, the service provider then performs a specialized search of the directories of either Google or Yahoo (by contract). The resulting information is automatically generated by the service provider in the form of a webpage. The contents of the webpage is comprised of links or other information related to companies and others offering goods, services and information most directly related to the contextual meaning of the word(s) used to form the domain name.

The Respondent also claims that it did not register and it is not using the Domain Name in bad faith.
As noted above, Respondent selected and registered the Domain Name for use in Direct Navigation. Domain name selection was undertaken as noted above and not with any knowledge of Complainant or intention to interfere with its rights. The Respondent states that it did not register any the Domain Names for purposes of resale and has no intention of offering any of the Domain Names for sale.

Respondent seeks the following:
1. That the Panel order the Domain Name be transferred to Complainant pursuant to Agreement and in accordance with
2. That such order be accomplished without need of any findings of fact.

In the event the Panel deems itself required to render findings of fact, Respondent requests that the findings be that Respondent has established a legitimate interest in the Domain Name and has not acted in Bad Faith; but that notwithstanding such findings, Respondent requests that the Domain Name be transferred to the Complainant.

DISCUSSION AND FINDINGS

1. Influence of an other legal proceeding on the ADR proceeding

The Respondent has informed the Panel that an action is pending in Brussels brought by EURid against the registrar who registered this domain name on behalf of registrant/respondent (EURid Action).

Paragraph A4 (c) of the ADR Rules states that “The Panel shall terminate the ADR Proceeding if it becomes aware that the dispute that is the subject of the Complaint has been finally decided by a court of competent jurisdiction or an alternative dispute resolution body.”

To the Panel’s best knowledge no final decision was issued in the aforesaid EURid Action. Therefore a decision shall be issued in the present ADR proceeding.

2. Possibility of concluding the ADR proceedings due to an agreement concluded by the parties

The Respondent is on the opinion that the mutual agreement of the parties is found in the fact that both parties have agreed to the same relief - the transfer of the Domain Name to the Complainant. The Complainant denies concluding an agreement with the Responent regarding the transfer of the Domain Name.

The Panel is on the opinion that mere fact that the Complainant asks for the transfer of the Domain Name in the Complaint and the Respondent asks the Panel to decide to transfer the Domain Name to the Complainant does not mean that the parties have entered into an agreement concerning the object of the dispute. As the Panel has not received confirmation from both parties about entering into the agreement, the ADR proceedings will not be understood to be concluded according to Section 4 (a) of the ADR Rules. Therefore a decision shall be issued in the present ADR proceeding.

3. Findings of fact

The ADR Rules stipulate circumstances when the Panel can issue a decision granting the remedies requested under the Procedural Rules and according to the ADR Rules it is not possible to order the transfer of the Domain Name without findings of fact.

According to the ADR Rules the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated that
1) 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 and; either
2) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or
3) The domain name has been registered or is being used in bad faith.

The Panel finds that it is proven that the Domain Name is identical to the Complainant's trade name.

Regarding the Respondent's rights or legitimate interests the ADR Rules state that any of the following circumstances, in particular but without limitation, if found by the Panel to be proved based on its evaluation of all evidence presented, shall demonstrate the Respondent’s rights or legitimate interests to the domain name:
1) prior to any notice of the dispute, the Respondent 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;
2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;
3) the Respondent 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 in which a right is recognized or established by national law and/or Community law.

The Panel finds that the Respondent's explanation regarding the legitimate use of the domain name is not plausible considering the nature of the Domain Name. Unlike the keyword "traveltickets" in the domain name "traveltickets.com" that was used as an example of the Direct Navigation business in the Response, the keyword "unibail" in the Domain Name does not constitute in the Panel's opinion a keyword that could actually be used for searching information by Direct Navigation search method. Therefore the Panel is on the opinion that evidence presented to the Panel does not demonstrate the Respondent’s rights or legitimate interests to the Domain Name. The Panel is on the opinion that the lack of Respondent's interests to the Domain Name is also demonstrated by the fact that the Respondent disabled the Domain Name upon receipt of notice that any issue existed in relation with the Domain Name and the Respondent has asked the Panel to transfer the Domain Name to the Complainant.

Regarding the Complainant's opinion that the Respondent has registered the Domain Name and is using the Domain Name in bad faith the Panel finds that based on the evidence presented to the Panel it is not proven that the Respondent has registered the Domain Name or is using the Domain Name in bad faith. Information provided in the article published on internet is according to the Panel's opinion not sufficient proof of the Respondent's bad faith.

The Panel also finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

DECISION

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

the domain name UNIBAIL be transferred to the Complainant

PANELISTS

Name	**Viive Naslund**

DATE OF PANEL DECISION 2006-10-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Respondent has registered domain name unibail.eu.

The Complainant seeks for the transfer of the Domain Name as the Domain Name is identical to the Complainant's trade name and the Complainant claims that the Respondent has no rights or legitimate interests to the Domain Name and that the Respondent has registered the Domain Name and is using the Domain Name in bad faith.

The Responent asks the Panel to transfer the Domain Name to the Complainant but does not admit the lack of rights or legitimate interests to the Domain Name as the Respondent is using the Domain Name in Direct Navigation Business. The Respondent also denies registering or using the Domain Name in bad faith.

The Panel finds that evidence presented to the Panel does not sufficiently prove that the Domain Name has been register or is being used in bad faith.

The Panel is on the opinion that the Respondent's explanation regarding the legitimate interests to the Domain Name are not plausible and therefore the Respondent does not have any legitimate rights or interests to the Domain Name. As the Domain Name is identical to the trade name of the Complainant and the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, the Panel decides that the domain name UNIBAIL shall be transferred to the Complainant.