Panel Decision for dispute CAC-ADREU-002219

Case number	**CAC-ADREU-002219**
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Domain names	**altova.eu**

Case administrator

Name	**Kateřina Fáberová**

Complainant

Organization / Name	**Altova Ges.m.b.H.**

Respondent

Organization / Name	**ALTRA - NS 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

None

FACTUAL BACKGROUND

The Respondent registered the domain name “altova.eu” on 7 April 2006.

On 2 June 2006, the Complainant sent a letter to the Respondent inviting the Respondent to agree to the transfer of the domain name to the Complainant, with a required acceptance confirmation by 14 June 2006. The Complainant also informed the Respondent that it would initiate ADR proceedings if the acceptance was not provided. The Respondent did not respond and instead offered the domain name for sale at afternic.com.

The Complainant, Altova Ges.m.b.H., represented by Deissenberger & Partners law office, submitted a Complaint against the Respondent, ALTRA – NS LTD, on 19 July 2006 claiming that the Respondent registered the “altova.eu” domain name without rights or legitimate interest in the “altova” name and in bad faith and that, therefore, the registration should be declared speculative and abusive within the meaning of Article 21 of EC Regulation No. 874/2004 (hereinafter “Public Policy Rules”).

In a nonstandard communication of 14 September 2006, the Respondent agreed to transfer the domain name immediately to the Complainant and suggested termination of the ADR proceedings. The same day the Respondent addressed another nonstandard communication to the Panel requesting additional time to assess whether negotiation with the Claimant was achievable and, if not, requesting additional time to finalize its Response.

The ADR Court did not receive any Complainant’s communication confirming its consent with the termination of the ADR proceedings within the deadline of 24 September 2006 and the Respondent was finally notified to submit its Response by 1 October 2006. Also, the ADR Court invited the Respondent to formally file its request for an extension of the deadline due to serious reasons.

The Respondent did not provide any additional nonstandard communication in this regard.

A. COMPLAINANT

The Complainant contends as follows:

- The Complainant is a limited liability company registered in the Austrian companies´ registry under No. FN 50760 y and is the holder of the word Community trademark “ALTOVA” registered under No. 1848803 with filing date and priority since September 2000.

- The name “ALTOVA” is protected in favor of the Complainant by Austrian national law (Article 9 of the Unfair Competition Act, Article 43 of the Civil Code) based upon the registration of the company in the Austrian companies´ registry since November 2000 and as a result of use of the name. The Complainant infers that the domain name “altova.eu” is identical to the name in respect to which the complainant has prior rights established, both by Community law (due to prior registration of the abovementioned Community trademark) and by Austrian law (through the company name ALTOVA).

- The Respondent registered the disputed domain name on the first day after the phased registration without rights and legitimate interest in the name and established a website without relevant content (but with several links including one to the Complainant’s homepage).

- The Respondent did not respond to the Complainant’s letter of 2 June 2006 requesting agreement to the transfer of the domain name to the Complainant and later offered the domain name for sale at www.afternic.com.

- As a reaction to the abovementioned letter, the Respondent modified the appearance of the website by implementing advertisements, general links and RSS-feeds, but failed to include information on the goods and services offered by the Respondent. Some sections of this website, including “More” and “Contact us”, were noted as being “Under Construction”.

The Complainant insists that the Respondent registered the domain name without rights and legitimate interest and in bad faith and that, therefore, such registration is speculative and abusive within the meaning of Article 21 of the Public Policy Rules. Intention of the Respondent to sell the domain is obvious.

The Complainant attached to its Complaint all relevant documentation supporting and proving its arguments.

B. RESPONDENT

The Respondent failed to provide its Response within the required deadline.

In its first nonstandard communication, the Respondent agreed to transfer the domain name immediately to the Complainant and suggested termination of the ADR proceedings. The Respondent herein indicated that the Respondent never intended to abuse the “first-come first-served” principle to infringe the Complainant’s rights, about which it was not aware of at time of the registration.

The second Respondent’s nonstandard communication related entirely to its request for extension of the deadline.

DISCUSSION AND FINDINGS

1. Alleged Registration of Domain Name without Rights and Legitimate Interest

With respect to the alleged registration of the Domain Name without rights or legitimate interest, the Panel holds as follows:

A. Rights

Brief research showed that the Respondent is not the owner of any Altova CTM or international trademark and its company name is not based on an Altova denomination. The Respondent did not prove any other formal right to an Altova denomination.

B. Legitimate Interest

According to Article 21, paragraph 2 of the Public Policy Rules a legitimate interest may be demonstrated where (a) prior to any notice of the ADR proceedings, 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; (b) the Respondent, 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; (c) 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 on which a right is recognised or established by national and/or Community law.

The Panel consulted the www.altova.eu website and observed that there were no references to the goods or services offered by the Respondent. As proved by the Complainant (with copies of the www.altova.eu website both before and after modification thereof by the Respondent) no such references to the goods or services offered by the Respondent existed at all, even before commencement of the ADR proceedings. The fact that the Respondent put the domain name up for sale indicates that the Respondent did not intend to further develop the website in connection with the offering of its good and services (if any).

With regard to letter (b) in the preceding paragraph above, as far as the Panel is aware, the Respondent, ALTRA – NS LTD, is not commonly known under the Altova name.

Therefore, the Panel holds that the Respondent registered the altova.eu domain name without rights or legitimate interest. within the meaning of Article 21, paragraph 1, letter a) of the Public Policy Rules. ”Legitimate interest” cannot be presented within the meaning of Article 21, paragraph 2, letter a) and b) of the Public Policy Rules; letter c) is not applicable in this case.

2. Alleged Registration and Use of Domain Name in Bad Faith

The Complainant also argues that the Respondent registered the disputed domain name in bad faith, namely, in order to sell the domain name. The Complainant submitted a copy of the record available on the afternic.com website, offering the domain name “altova.eu” for sale.

The Panel would like to point out that the altova.eu domain name was registered by the Complainant with Mr. Kurt Janusch (this name appears in all relevant databases including EURid; Mr. Kurt Janush’s name appears as the signature in the two Respondent’s nonstandard communications) (hereinafter “Mr. Kurt Janusch”) acting on behalf of the Complainant.

The Panel carried out a brief research of afternic.com and the Whois databases. The Panel realized that the altova.eu domain name was offered for sale on afternic.com for the minimum price of USD 100. Further, there were almost 3,000 other eu. domain names registered and offered for sale by the same “seller”, Mr. Kurt Janusch who, nevertheless, acts on behalf of various companies in this regard.

The Panel further observed that the abovementioned domain names offered for sale have the same website format with the same content structure, including general links to various information sources, with no information on the goods or services provided by the Respondent. For example, the content of the altova.eu website is almost identical to that of the plb.eu website, also registered and offered for sale by Mr. Kurt Janusch.

Naturally, the question then arises as to why the Respondent, being an entity that has neither relevant rights nor legitimate interest to the name “altova”, would register such fabricated domain name with no concrete meaning and which has no relation to its undertaking, for other than speculative purposes?

For the foregoing reasons, the Panel holds that the Respondent registered the altova.eu domain name in bad faith within the meaning of Article 21, paragraph 3 a) of the Public Policy Rules, for the purpose of selling, renting or otherwise transferring the domain name to the Complainant.

3. Conclusion

Given the foregoing, the Panel holds that indications and evidence exist that the disputed domain name was registered, or is being used, without rights or legitimate interest in the name and in bad faith.

As a remedy sought under the Complaint, the Complainant requires the disputed domain name to be transferred from the Respondent to the Complainant. The Complainant has proved satisfaction of the general eligibility criteria set out in Article 4, paragraph 2, letter b) of EC Regulation No 733/2002. Moreover, the Complainant provided the Panel with evidence proving that the Complainant uses a company name identical to the disputed domain name and that it owns the “ALTOVA” Community trademark - with rights established both by Community law (due to prior registration of the abovementioned community trademark) and Austrian law (through the company name).

As the Complainant meets the requirements for the transfer of the disputed domain name, as defined within Article 22, paragraph 11 of the Public Policy Rules and, consequently, in Article 4, paragraph 2, letter b) of EC Regulation No 733/2002 and has also provided evidence that substantiates the formal rights of the Complainant, with regard to the disputed domain name, the Panel orders the transfer of the domain name altova.eu from the Respondent to the Complainant.

DECISION

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

PANELISTS

Name	Jiri Cermak

DATE OF PANEL DECISION 2006-10-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, Altova Ges.m.b.H., filed a Complaint against the Respondent, ALTRA – NS LTD, claiming that the Respondent registered for the “altova.eu” without rights or legitimate interest in the name and in bad faith. The Respondent failed to provide its Response.

1. Alleged Registration of Domain Name without Rights and Legitimate Interest

A. Rights

The Respondent did not prove any formal right to an Altova denomination.

B. Legitimate Interest

The www.altova.eu website does not contain any references to goods or services offered by the Respondent. The fact that the Respondent has offered the domain name for sale excludes any demonstrable preparation to use the domain name in connection with the offering of good and services. In addition, the Respondent, ALTRA – NS LTD, is not commonly known as Altova.

2. Alleged Registration and Use of Domain Name in Bad Faith

The altova.eu domain name was registered by the Complainant, with Mr. Kurt Janusch acting on behalf of the Complainant. Mr. Kurt Janusch offered the disputed domain name for sale at afternic.com, together with almost 3,000 other eu. domain names. These domain names have same website format with same contend structure; no information on goods or services provided by the Respondent is included.

3. Conclusion

The Panel holds that there are indications and evidence that the disputed domain name has been registered without rights or legitimate interest in the name and in bad faith.

As the Complainant (i) applied for the transfer of the domain name, (ii) meets the requirements as defined within Article 22, paragraph 11 of the Public Policy Rules and, consequently, in Article 4, paragraph 2, letter b) of EC Regulation No 733/2002 and also (iii) provided evidence that substantiates the formal rights of the Complainant with regard to the disputed domain name (the Complainant uses a company name identical to the disputed domain name and owns the “ALTOVA” Community trademark), the Panel orders the transfer of the domain name altova.eu from the Respondent to the Complainant