Panel Decision for dispute CAC-ADREU-002300

Case number	CAC-ADREU-002300
Time of filing	2006-07-28 11:11:35
Domain names	7forallmankind.eu

Case administrator

Name	Kateřina Fáberová

Complainant

Organization / Name	SEVEN FOR ALL MANKIND LLC, SEVEN FOR ALL MANKIND LLC

Respondent

Organization / Name	Riazul Quadir

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, Mr. Raizul Quadir, based in France, registered the domain name “7forallmankind” on 9 April 2006. On 6 June 2006, the Complainant, SEVEN FOR ALL MANKIND LLC, based in the United States, sent a letter to the Respondent requesting the Respondent to immediately terminate use of the domain name and transfer it to the Complainant. The Complainant further informed that if the Respondent did not provide any acceptance confirmation within the set deadline, it would then take all necessary steps to protect its rights and interests, including initiation of ADR proceedings.

In a response to that letter, on 13 June 2006, the Respondent advised that it might consider transferring the domain name to the Complainant for a compensation of EUR 5,000.

On 28 July 2006, the Complainant submitted its Complaint to the ADR Court claiming that the Respondent registered the “7forallmankind” domain name without rights or legitimate interest in the name, 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”). As a remedy, the Complainant seeks revocation of the domain name.

The Respondent failed to provide its Response.

A. COMPLAINANT

The Complainant contends that the disputed domain name is identical or confusingly similar to different trademarks registered by the Complainant:

- The Complainant is a company based in the United States, which established the brand “7 for all mankind” for premium denim products in 2000 and since then has acquired a good reputation resulting in excellent sales results;

- The Complainant is the owner of the domain name “7forallmankind.com” and of the following trademarks:

· French trademark “7 FOR ALL MANKIND & device” registered under No. 023142589 since January 2002
· German trademark “7 FOR ALL MANKIND & device” registered under No. 30466710 since February 2005
· German trademark “SEVEN FOR ALL MANKIND” registered under No. 30466711 since January 2005
· Community trademark “FOR ALL MANKIND” registered under No. 2677821 since September 2005;

· Community trademark “FOR ALL MANKIND” registered under No. 4144135 since March 2006;

- In addition, the Complainant has filed several community trademarks applications for 7 FOR ALL MANKIND and SEVEN FOR ALL MANKIND, currently under examination by the OHIM;

- The Complainant has further provided a brief analysis of the visual, phonetic and conceptual similarity of the domain name with the Complainant’s trademarks.

Furthermore, the Complainant contends that the Respondent does not have any rights or legitimate interest in the domain name:

- Registration of the Complainant’s trademark rights preceded registration of the domain name;

- The Respondent has no prior trademark right or company name that would constitute legal grounds for legitimate registration of the domain name;

- The disputed domain name registered by the Respondent contained, for a certain period of time, links directing Internet users to websites selling, inter alia, products of the Complainant’s competitors. A clothing service provider could not use the domain name in good faith and with legitimate interest.

Moreover, the Complainant contends that the Respondent registered or uses the domain name in bad faith:

- The Responded had to be aware of the Complainant’s trademarks since these are prior to the domain name registration. Moreover, the disputed domain name contained links to Internet sellers including the Complainant’s competitors and to a seller of the Complainant’s jeans; after the letter the Complainant addressed to the Respondent, the Respondent then modified the appearance of the www.7forallmankind.eu website. The Respondent, thus, tried to capitalize on the Complainant’s reputation in order to attract Internet users (consumers) using an identical name;

- As a follow up to the Complainant’s letter, the Respondent agreed to transfer the domain name to the Complainant for a compensation of EUR 5,000, which proves that the domain name was registered for the purpose of selling, renting or otherwise transferring the domain name to the Complainant.

The Complainant insists that the Respondent registered the domain name without rights and legitimate interest and in bad faith within the meaning of Article 21 of the Public Policy Rules and requests revocation of the domain name.

B. RESPONDENT

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

In the communication of 13 June 2006 addressed to the Complainant, the Respondent stated that he and his colleagues were non-profit writers who had chosen the name for their global social project. As the domain name is not absolutely critical to their project, they would consider changing to another name and transfer the domain name to the Complainant for a compensation of EUR 5,000.

DISCUSSION AND FINDINGS

The Respondent has failed to provide a Response and, thus, missed the opportunity to rebut the Complainant’s allegations.

The Complainant has sufficiently proved that the disputed domain name is identical or confusingly similar to a name in respect of which the Complainant’s rights are recognized by both national law of two EU Member States (through prior registration of the abovementioned national trademarks) and Community law (through prior registration of the abovementioned community trademarks; additional CTM applications were filed).

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

The Complainant has stated that registration of the trademarks listed above prior to registration of the domain name established a lack of rights or legitimate interest on the side of the Respondent.

However, as a general note, the Panel would like stress here that the objective of provisions of Article 21 of the Public Policy Rules (Speculative and Abusive Registrations) is not to automatically secure .eu domain names for those who have “better,” “stronger” or, in

this case, “more senior” rights to the name corresponding to the domain name in question (case No. 00131, MINITEC). As a result, the mere existence of the Complainant’s more senior trademarks (or other prior right, as the case may be), that is identical or confusingly similar to the disputed domain name, does not necessarily constitute a “lack of rights or legitimate interest” element of the Respondent’s domain name registration and therefore cannot, in itself, serve as grounds for revocation of that domain name. Given the foregoing, it is always necessary for the Panel to carefully ascertain whether all necessary prerequisites (as stipulated in Article 21, para 1 of the Regulation) of a speculative and/or abusive registration are present.

As the Complainant has indicated, and brief research carried out by Panel has confirmed, the Respondent is not the owner of any CTM, national or international trademark based on a “7forallmankind” denomination and, obviously, the Respondent’s name is not either related to such denomination.

According to Article 21, paragraph 2 of the Public Policy Rules, a legitimate interest may be demonstrated where (a) prior to any notice of 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.

According to the Complainant, a website available at the disputed domain name contained for a certain period of time links to sellers of Internet jeans, including those offering products of the Complainant’s competitors, with no references to the goods or services (if any) offered by the Respondent. The Panel has observed that the website still contains links to a range of Internet sellers offering various brands of jeans, including “7forallmankind” products.

In the letter of 13 June 2006, the Respondent informed the Complainant as being a non-profit writer working on a global social project for which the Respondent, Mr. Riazul Quadir and his colleagues, had chosen the “7forallmankind” name. Despite best efforts, the Panel has not been able to sense any connection between the current content of the www.7forallmankind.eu website and the alleged project of Mr. Quadir´s team.

With regard to the aspect of legitimate interest as set forth in a letter (b), as far as the Panel is aware, the Respondent, Mr. Riazul Quadir, is not commonly known under the “7forallmankind” name.

Furthermore, it is not probable that the Respondent chose a domain name identical to a well known brand name and a reputable trademark of famous jean designers and manufacturers for a website providing sponsored links to various sellers of various brands of jeans without the intent to mislead consumers and attract Internet users.

Therefore, in the light of the foregoing, the Panel holds that the Respondent registered the domain name without rights or legitimate interest within the meaning of Article 21, paragraph 1, letter a) of the Public Policy Rules since registration of the domain name by the Respondent does not satisfy any of the conditions for legitimate interest within the meaning of Article 21, paragraph 2 of the Public Policy Rules.

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

The Complainant also argues that the Respondent has registered the disputed domain name in bad faith, namely, in order to (i) attract Internet users (consumers) using the domain name identical to the Complainant’s brand name and to (ii) sell, rent or otherwise transfer the domain name to the Complainant.

As to the claim under (i):

The Respondent has placed on the website available at the domain name “sponsored” links to websites of a range of jeans sellers offering various brands of jeans. The Respondent, thus, without any authorisation uses a domain name identical to trademarks, protected both by both national and Community law, of one of the well-known jean designers and manufacturers. Inclusion of the disputed domain name into the website address and various references to various e-shops selling the Claimant’s products create a general confusion that the website is the Claimants’ official website for Europe or, at least, a website authorised by the Complainant.

The Panel finds this fact sufficient to declare that that the domain name was used to attract Internet users by creating a likelihood of confusion (by misleading consumers about the origin of the goods advertised or offered through the website) with an identical brand name of the Complainant, for either direct or indirect commercial gain of the Respondent.

As to the claim under (ii):

Upon the Complainant's request to transfer the domain name, the Respondent agreed to do so without insisting on its rights (if any such rights existed) for a compensation of EUR 5,000, which might indicate that the Respondent intended to sell the domain name sometime in the future and probably to the Complainant. However, the Panel would like to point out that the Claimant is based in the United States and, therefore, as such would not fulfil eligibility criteria for .eu domain name registration. Therefore, it is arguable whether the Respondent actually registered the domain name for purposes of selling the domain name to the Claimant. Nevertheless, from the provided correspondence of the parties, it seems apparent that neither party was aware of such limitations.

At any event, since the Panel already considers it proven (based upon other grounds as stipulated above) that the domain name registration is speculative and abusive within the meaning of Article 21 of the Public Policy Rules (which constitutes sufficient grounds for the Panel to render its decision), it has decided not to elaborate on this element of bad faith registration in more detail.

For the foregoing reasons, the Panel holds that the Respondent registered the "7forallmankind.eu" domain name also in bad faith within the meaning of Article 21, paragraph 3, letter d) of the Public Policy Rules, namely, in order to attract Internet users for commercial gain to the Respondent's website or other on-line location.

3. Conclusion

Given the foregoing, the Panel holds that evidence and indications 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 revocation of the domain name. The Panel orders revocation of the domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name 7FORALLMANKIND be revoked.

PANELISTS

Name	Jiri Cermak

DATE OF PANEL DECISION 2006-10-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Respondent, Mr. Raizul Quadir, based in France, registered the domain name "7forallmankind" on 9 April 2006. The Complainant, SEVEN FOR ALL MANKIND LLC, based in the United States, invited the Respondent to immediately terminate use of the domain name and transfer it to the Complainant. The Respondent offered transfer of the domain name for a compensation of EUR 5,000.

The Complainant initiated the ADR proceedings claiming that the Respondent registered the "7forallmankind" domain name without rights or legitimate interest in the name and in bad faith, namely, in order to (i) attract Internet users (consumers) using the domain name identical to the Complainant's trademark and to (ii) sell, rent or otherwise transfer the domain name to the Complainant. The Respondent failed to provide its Response.

The Complainant has sufficiently proved that the disputed domain name is identical or confusingly similar to the name in respect of which the Complainant's rights are recognized by both national law of two EU Member States (through prior registration of the abovementioned national trademarks) and Community law (through prior registration of the abovementioned community trademarks; additional CTM applications were filed).

The Respondent is not the owner of any registered formal rights to the "7forallmankind" denomination and the Respondent's name is not also related to such denomination. The Respondent, Mr. Riazul Quadir, is not commonly known under the "7forallmankind" name.

In addition, the disputed domain name contained links to various Internet sellers offering various brands of jeans including "7forallmankind," with no references to offering goods or services provided by the Respondent. On the balance of these probabilities, the Panel contends that the Respondent chose a domain name identical to a brand name and a reputable trademark of one of the well-known jean designers and manufacturers for a website providing sponsored links to various sellers of various brands of jeans with the

intent to mislead consumers and attract Internet users.

Moreover, the Respondent agreed to transfer the domain name for a compensation of EUR 5,000, which might indicate that the Respondent registered the domain name with an intention to sell the domain name sometime in the future and probably to the Complainant;, however, the Panel has decided not to further develop this assertion.

This Panel holds that the domain name was registered, or is being used, without rights or legitimate interest in that name and in bad faith and, thus, the domain name shall be revoked.