Panel Decision for dispute CAC-ADREU-002606

Case number	CAC-ADREU-002606
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Domain names	iparos.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	ALTITUDE DEVELOPPEMENT, RIVIERE

Respondent

Organization / Name	Buycool Ltd, Tech Dept.

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 other legal proceedings which are pending or decided and which relate to the disputed domain name

FACTUAL BACKGROUND

All capitalized terms not defined herein are used by reference to the various regulations and rules identified in this decision.

This complaint arises out of the interpretation and application of Commission Regulation (EC) No 874/2004 of 28 April 2004 (“Regulation”), European Parliament and Council Regulation (EC) No 733/2002 of April 22, 2002 (“EU Regulation”) and the .eu Domain Name ADR Rules and the Terms and Conditions (the “Rules” and “Conditions”).

1. The Domain name application proceeding and the ADR proceeding

ALTITUDE DEVELOPPEMENT, "the Complainant" has its offices in France.
ALTITUDE DEVELOPPEMENT is the registered holder of the trademark “iparos” delivered by the Institut National de la Propriété Intellectuelle of France (“INPI”) under the national number 01 311 60 91. This trademark was transferred by Altitude Telecom SA to ALTITUDE DEVELOPPEMENT on December 2005.

The current Registrant of the domain name IPAROS.EU (the “Domain Name”) registered on 18 July 2006 is Zheng Qingying, “the Respondent”.

2. The ADR proceeding

On 26 August 2006, the Complainant submitted a Complaint to the Czech Arbitration Court (“ADR Center”) filed in French language to ask for the transfer of the domain name “IPAROS.eu”.

On 29 August 2006, the ADR Center confirmed the receipt of the Complaint and requested verification information from EURID, the official registry of .EU domain names, about the Respondent.

On 1 September 2006, EURID answered in a non-standard communication providing the information as requested.

On 5 September 2006, the ADR Center notified defaults in the Complaint.

On 12 September 2006, the Complainant filed an amended Complaint.

On 2 October 2006, the ADR Center notified that the Complaint conformed to the Regulation, the EU Regulation and Rules and notified the Respondent that an ADR Proceeding has been commenced against it pursuant to Regulations (EC) No. 733/2002 and No. 874/2004.

On 22 November 2006, the ADR Center notified the Respondent's default.

On 30 November 2006, the ADR Center notified the appointment of the ADR Panel and the projected decision date.

On 4 December 2006, the case 2026 was transmitted by the ADR Center to the ADR Panel.

A. COMPLAINANT

The Complaint is set-out below.

Article 4 paragraph 2 b) i) of Regulation (EC) No 733/2002 of the European Parliament and of the Council of 22 April 2002 on the Implementation of the .eu Top Level Domain provides that the Registry shall "register domain names in the .eu TLD through any accredited .eu Registrar requested by any: undertaking having its registered office, central administration or principal place of business within the Community ()."
Under Article 10, paragraph 1 of Commission Regulation (EC) No 874/2004: "Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. Eu domain starts".
Article 10, paragraph 2: "'Prior rights' shall be understood to include, inter alia, registered national and community trademarks (…)".
Firstly, it is in fact the case that the registered office of Altitude Développement is located in Paris at La Défense as is shown by the company registration document "K bis" appended hereto. Consequently, the registered office of Altitude Développement is certainly located within the Community.
Secondly, from 8 December 2005 Altitude Développement has been the registered holder of the brand "iparos" despite the fact that this brand was initially registered by Altitude SA on 11 December 1996 (see appended the Iparos brand registration document).
This is so because following a restructuring of the Altitude group, Altitude Développement, a telecommunications operator as defined by Articles L.33-1 and L.34-1 of the French Code des Postes et Communications Électroniques [Code of Postal and Electronic Communications Law], took over certain activities previously conducted by Altitude SA.
A partial transfer of corporate assets effective as of 1 January 2005, as evidenced by the extract from the corporate registration document "K bis" appended hereto, was carried out by Altitude SA in favour of Altitude Développement. This partial transfer of assets comprised the assets and associated liabilities linked to the activities conducted under the "Iparos" brand, and it was for this reason necessary for us to legalise the change in registered holder of that same brand. You will also find appended hereto the INPI document placing on formal record the transfer of ownership of the "Iparos" brand to Altitude Développement.
Altitude Développement has therefore been the holder of the "Iparos" brand since 8 December 2005, and has prior rights thereto.
Consequently, the Complainant is entitled to seek transfer of the domain name iparos.eu.

B. RESPONDENT

No response or other communication has been received from the Respondent in respect of the Complaint.

DISCUSSION AND FINDINGS

Article 10 (a) of the ADR Rules states that "In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint or may consider this failure to comply as grounds to accept the claims of the other Party".

The Panel is in this case prepared to accept the claims of the other Party; that is the Complainant.

The Panel is nevertheless bound by Article 22(11) of the Regulation, which states that in the case of a procedure against a domain name holder, the Panel shall decide that the domain name shall be revoked, if it finds that the registration is contrary to Article 21 of the Regulation and that the domain name shall be transferred to the complainant if the complainant applies for this name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

Complainant's claim to the domain name is based solely on Article 10 of the Regulation.

According to Article 21(1) of the Regulation, a domain name shall be subject to revocation, 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) of the Regulation.

Article 10(1) of the Regulation states that “prior rights” shall be understood to include registered national and community trademarks, geographical indications or designations of origin, unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works.

Complainant shows clearly that it is the owner of a trademark. However, the demonstration of the rights of Complainant is not sufficient in this case for the Panel to accept Complainant’s request for the transfer of the Domain Name to it.

Relying on Article 10 solely as the basis for a Complaint under the Regulation is possible only within the context of the phased registration defined in such Regulation under Article 12 and implemented through the Sunrise Periods Rules as adopted by EURID.

The phased registration period ran from December 7, 2005 to April 7, 2006. The Domain Name was registered in July 18 2006; post phased registration period. Article 10 thus cannot be the sole basis for a Complaint here. Domain names registered after April 7, 2006 are registered on a first come first serve basis. Complainant’s Complaint can not rely on “prior rights” but should rather rely on (i) its rights in the Domain Name, (ii) the absence of rights or a legitimate interest in the domain name by the current holder of the domain name, (iii) and the registration or use of such Domain Name by the Respondent in bad faith.

Complainant does not properly establish a claim to the domain name as under Article 21 of the Regulation.
Article 21 imposes that TWO conditions are met for a domain name to be revoked and/or transferred. It states that “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 of; or
(b) has been registered or is being used in bad faith.”

Complainant basically claims a right to the trademark IPAROS in France. Although, the Panel can deduce that the Domain Name is identical or confusingly similar to such trademark, it is unable to determine whether the second condition is fulfilled. The Complainant does not claim that the holder is without rights or legitimate interest in the name and does not even claim that the domain name has been registered or is being used in bad faith.

Complainant’s Complaint does not even contain the requirements of Article B12(g) which would enable the Panel to issue an interim decision to suspend the proceedings until more light is shed on the intended use of the Domain Name.

Considering that the Complainant does not presently claim or demonstrate the lack of a legitimate interest in the Domain Name by the Respondent, the bad faith of the Respondent or the infringement of the trademark IPAROS by the Respondent as a basis to obtain the revocation and/or transfer of the Domain Name and considering that, according to first come first serve criteria, the Domain Name holder was the first to apply for the domain name “IPAROS.eu”, the Panel dismisses the Complaint with leave for the Complainant to re-lodge a claim in the event new evidence or circumstances in relation to the registration or use of the Domain Name comes to hand.

DECISION

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

the Complaint is Denied

PANELISTS

Name	Jean Albert

DATE OF PANEL DECISION 2006-12-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant does not properly establish a claim to the Domain Name as under Article 21 of the Regulation. The Complainant does not claim that the Respondent is without rights or legitimate interest in the name and does not even claim that the domain name has been

registered or is being used in bad faith.

Article 21 imposes that TWO conditions are met for a domain name to be revoked and/or transferred. It states that “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 of; or
(b) has been registered or is being used in bad faith.”

As a result the Complaint is presently dismissed. However, the Panel grants leave for the Complainant to re-lodge a claim in the event new evidence or circumstances in relation to the registration or use of the Domain Name comes to hand.