Panel Decision for dispute CAC-ADREU-002651

Case number	**CAC-ADREU-002651**
Time of filing	**2006-12-05 11:17:05**
Domain names	**antag.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**LEGUIDE.COM SA, Raphael Loucheux**

Respondent

Organization / Name	**Zheng Qingying**

FACTUAL BACKGROUND

LEGUIDE.COM SA (hereafter the Complainant) is a company incorporated under French law. The Complainant operates a number of Internet portals for online shopping and online purchasing guides. The Complainant is the owner of the following registered trademark:
French trademark n° 3421930 filed on April 7, 2006 (published on September 8, 2006) for services in classes 35, 36, 38 and 41.
Swiss trademark n° 533071 registered on September 29, 2004 for services in classes 35, 36, 38 and 41.
In addition, the Complainant is the owner of the following domain names:
- Antag.com - Antag.mobi - Antag.it - Antag.ch - Antag.de - Antag.at - Antag.fr - Antag.be - Antag.co.uk - Antag.es - Antag.pl - Antag.ie - Antag.co.ee - Antag.cz - Antag.dk - Antag.hu - Antag.li - Antag.lu - Antag.lv - Antag.lt - Antag.ro - Antag.ru - Antag.se - Antag.sk.
On August 2, 2004, The Complainant filed a CTM application for the trademark ANTAG. Said application was rejected on August 15, 2005.
On February 8, 2006, Complainant filed an application for the Domain Name <antag.eu> (hereinafter: "Domain Name"). The application was made under .eu Registration Policy and Terms and Conditions for Domain Name Applications made during the Phased Registration Period (hereinafter: "Sunrise Rules").
The Complainant’s application for the Domain Name has been rejected by EURid for failure to file the Documentary Evidence within the deadline.
On June 7, 2006 Mr Zheng Qingying (hereafter the Respondent) registered the Domain Name.

A. COMPLAINANT

The Complainant substantially claims that the registration of the disputed Domain Name <antag.eu> is speculative and abusive.

Pursuant to the Complainant, the disputed Domain Name is identical to its French registered trademark ANTAG.
In addition, the Complainant claims that the Respondent has no rights or legitimate interest in the disputed Domain Name.
The Complainant contends that the Registration agreement of the Domain Name was in Latvian and that Eurid compelled

the Respondent to change the registration agreement into English as it failed to prove that it speaks Latvian. According to the Complainant, Respondent's behavior to register the Domain Name in Latvian constitutes an evidence of bad faith. Furthermore, the Complainant indicates that the Domain Name does not direct to any active website. The Complainant argues that said passive use of the Domain Name is to be considered as an element of bad faith.

B. RESPONDENT

The Respondent considers that the French trademark ANTAG has been registered on September 8, 2006, therefore after the registration of the Domain Name.
The Respondent states that in order to comply with article 21 (1) of European Regulation n° 874/2004, the Complainant has to demonstrate a prior right in accordance with article 10 of the European Regulation n° 874/2004.
Regarding the Swiss trademark ANTAG, Respondent considers that said trademark does not comply with article 21 (1) of European Regulation n° 874/2004 as Switzerland is not a member of the European Community.
Moreover, according to Respondent, the Complainant did not provide any evidence showing that the trademark ANTAG is well-known.

DISCUSSION AND FINDINGS

Pursuant to article 21 (1) of the European Regulation n° relating to the Speculative and abusive registrations: "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; or
(b) has been registered or is being used in bad faith"
Article 10 of European Regulation n° 874/2004 relating provides that "prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works".
As a result, in order to dispute the registration of a Domain Name the Complainant has to demonstrate that:
The Domain 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.
The Domain Name has been registered by its holder without rights or legitimate interest in the name; or
The Domain Name has been registered or is being used in bad faith
1 - Regarding the first condition:
The Complainant has provided evidence that it is the owner of the French trademark's registration ANTAG n° 3421930 filed on April 7, 2006 (officially published on September 8, 2006) for services in classes 35, 36, 38 and 41.
Respondent contends that the Complainant's French trademark ANTAG was not registered when it registered the Domain Name.
In order to comply with the requirements of article 21 (1) of European Regulation n° 874/2004, it is not necessary to provide evidence of "prior right" but it is sufficient to prove a right "recognized or established by national and/or Community law".
The reference made by article 21 (1) of the European Regulation n° 874/2004 to article 10 is an example and it does not tie the Complainant to prove a "prior right".
However, the Panel finds that Complainant's French trademark registration constitutes a valid prior right regarding the Domain Name registration:
The Complainant provided evidence of a French trademark's registration filed on April 7, 2006 and duly published on September 8, 2006.
According to article L172 of French Intellectual Property code, "The effects of registration shall begin on the filing date of the application". As the Domain Name has been registered on June 7, 2006 and considering that the Complainant's trademark protection date is April 7, 2007, said trademark constitutes a prior right compared to the Domain Name registration.
2 - Regarding the Second condition:
Complainant contends that Respondent does not currently own any trademark, either National or Community, stemming from the Name ANTAG.
The Respondent did not dispute the Complainant contentions. In addition, it has not established any rights or legitimate

interests in respect of the Domain Name.
In the absence of apparent right or legitimate interest and as the Respondent did not provide any evidence demonstrating a legal right or legitimate interest, the Panel finds that Respondent has no rights or legitimate interests in respect of the Domain Name.
3 - Regarding the third condition:
In order to comply with article 21 (1), the Complainant has to demonstrate that the Domain Name has been registered or is being used in bad faith.
The Panel finds that some elements may be put forward to support the finding that the Respondent has registered the Domain Name in bad faith:
- The Domain Name's application made by the Complainant during the phased registration period is still available on the Whois database of EURid. Said registration contains the Name of the Complainant. As a result, Respondent can not pretend that he does not know the Complainant.
- A quick research on Google demonstrates that Complainant's websites relating to ANTAG are displayed as one of the first results.
- The Domain Name has been released on June 7, 2006 and it was registered by the Respondent exactly on the same day that is to say on June 7, 2006.
- The Complainant stated that the Domain Name's registration agreement was in Latvian and that EURid compelled the Respondent to change the registration agreement to English as it failed to prove that it spoke Latvian. Complainant did not provide evidence regarding the first registration agreement. However, as the Respondent did not dispute the Complainant's contention, it indirectly admitted that it is correct.
Considering that Complainant's language according to the Domain Name application made during the phased registration period was English and as the Respondent did not establish any relationship with the Latvian Language, the Panel finds that Respondent has chosen Latvian for the sole reason to make it more difficult and costly for the Complainant to file the Complaint as it had to bear additional translation fees.
As a result, the Panel finds that the Domain Name has been registered in bad faith

DECISION

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

PANELISTS

Name	**Nathalie Dreyfus**

DATE OF PANEL DECISION 2007-02-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a publisher of shopping search engines and online purchasing guides. It owns a French trademark registration n° 3421930 filed on April 8, 2006 and duly published on September 8, 2006.
On February 8, 2006, Complainant filed an application for the Domain Name <antag.eu> during the Phased Registration Period. Said application has been rejected by EURid for failure to file the Documentary Evidence within the deadline.
On June 7, 2006 the Respondent registered the disputed Domain Name.
Pursuant to the Complainant, the disputed Domain Name is identical to its French trademark's registration ANTAG.
Moreover, the Complainant claims that the Respondent has no rights or legitimate interest in the disputed Domain Name.
The Respondent is of the opinion that in order to comply with article 21 (1) of European Regulation n° 874/2004, the Complainant has to demonstrate a prior right as stated by article 10 of the European Regulation n° 874/2004.
In order to dispute the registration of a Domain Name the Complainant has to demonstrate that:
1- The Domain 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.
2- The Domain Name has been registered by its holder without rights or legitimate interest in the name; or
3- The Domain Name has been registered or is being used in bad faith

In order to comply with the requirements of article 21 (1) of European Regulation n° 874/2004, it is not necessary to provide evidence of “prior right” but it is sufficient to prove a right “recognized or established by national and/or Community law”.
The reference made by article 21 (1) of the European Regulation n° 874/2004 to article 10 is an example and it does not tie the Complainant to prove a “prior right”.
The Panel considers that the Complainant complies with the first condition as it has provided evidence that it is the owner of the French trademark’s registration ANTAG.
Regarding the second condition, in the absence of apparent right or legitimate interest and as the Respondent did not provide any evidence demonstrating a legal right or legitimate interest, the Panel finds that Respondent has no rights or legitimate interests in respect of the Domain Name.
Regarding the third condition, the circumstances of this case do not leave a doubt that Respondent has known the Complainant when it registered the Domain Name. The Complainant’s application for the Domain Name <antag.eu> is available online. A quick research on Google demonstrates that Complainant’s websites relating to ANTAG are in first results.
As a result, the Panel finds that the Domain Name has been registered in bad faith
For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <antag.eu> be transferred to the Complainant