Panel Decision for dispute CAC-ADREU-002695

Case number	CAC-ADREU-002695
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Domain names	bunac.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Wildbore & Gibbons, Stephen Kinsey

Respondent

Organization / Name	Giedrius Mazurka

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 that the Panel is aware of.

FACTUAL BACKGROUND

The Complainant, Bunac Travel Services Limited ('Bunac'), is a British company incorporated on 26 September 1978 and registered under Company number 1391030.

The Complainant is the owner of the trade mark BUNAC. The BUNAC name is an invented word that was coined by the Complainant's predecessor business when it was founded in 1962, as a non-profit organisation committed to providing affordable international work and travel opportunities for students. Since that date, the trade mark BUNAC has been used continuously by the Complainant in relation to those services.

The Complainant is the proprietor of numerous trade mark registrations around the world for, or which incorporate, the word BUNAC. In particular, the Complainant owns European Community Trade Mark registration 3865318 for the word mark 'BUNAC' in Classes 16, 35 & 39 (the Complainant's 'CTM'). Further, the Complainant is the proprietor of various domain names incorporating its BUNAC name including 'bunac.co.uk', 'bunac.org.uk', 'bunac.net' and 'bunac.org'.

The Respondent is an individual called Mr. Giedrius Mazurka.

The Respondent is the Managing Director of a UK based company called Global Choices Limited ('Global'). Global competes directly with the Complainant's business. However, the Respondent states that he personally owns the disputed Domain Name and that it is nothing to do with Global.

The Respondent registered the domain name 'bunac.eu' (the 'Domain Name') on 8 April 2007, the second day of the .eu Land Rush period.

The Complainant's intention was to apply to register the Domain Name during the Sunrise Period but due to a clerical error, this was overlooked.

On 2 May 2006, as soon as the Complainant became aware that Domain Name had been registered by the Respondent, the Complainant's web developer wrote to the Respondent (using the Respondent's generic Global company contact address info@globalchoices.co.uk – which was provided in EURid's whois database at that time) and enquired about the transfer of the Domain Name to the Complainant.

On 12 May 2006 the Complainant's trade mark agents wrote to the Respondent seeking the transfer of the Domain Name on the basis of the Complainant's prior rights in the BUNAC name. In that letter, the Respondent was put on notice of the Complainant's intention to pursue .eu ADR proceedings.

On 15 May 2006, the Respondent replied directly to the Complainant's web developer. In that email, the Respondent said "…I could transfer this domain name to you. What is your offer?". The Panel is told that the Complainant subsequently offered to purchase the Domain Name from the Respondent but that this was rejected. However, no evidence of this further correspondence was adduced by the Complainant.

On 31 May 2006 the Respondent applied to register BUNAC as a trade mark in Lithuania.

On 15 June 2006 the Respondent attached a website to the Domain Name offering real estate services under the name BUNAC (BUto NAmo Centras).

Also on 15 June 2006, the Respondent sent an email to the Complainant's trade mark agents (in reply to their letter) stating, inter alia, '… there are no intentions to advertise services similar to BUNAC on bunac.eu website or use this domain name in bad faith… I never knew that trademark BUNAC is registered in the UK… I already invested quite a lot…and I am not in a position to sell this domain name to anybody'.

The Complainant filed its complaint against the Respondent with the Czech Arbitration Court on 23 October 2006.

On 27 October 2006, the case administrator with the Czech Arbitration Court sent a notification to the Complainant asking it to address a minor deficiency in the Complaint. This deficiency was addressed by the Complainant, and on 22 November 2006, the ADR proceedings were formally commenced and a notification of such was sent to the Respondent.

On 31 January 2007, the Respondent submitted its response to the Complaint.

On 12 February 2007, having received a Statement of Acceptance and Declaration of Impartiality, the Czech Arbitration Court appointed Steve Palmer as the Panel in these ADR proceedings.

A. COMPLAINANT

The Complainant seeks revocation of the Domain Name under Art 21(1) of Regulation 874/2004 ('Public Policy Rules') and the transfer of the Domain Name to the Complainant.

It is submitted that the Domain Name is identical to the Complainant's registered rights in the name BUNAC; and/or confusingly similar to the Complainant's registered trade marks which incorporate, as a prefix, the name BUNAC; and/or identical to the first part of the Complainant's company name; and/or identical to the name BUNAC, by which the Complainant's company is commonly abbreviated and referred to.

The Respondent is an individual called Mr Gedrius Mazurka who is the Managing Director of a company called Global. Global operates in a directly competing field to that of the Complainant. In the same way that BUNAC is fully aware of the activities of Global (as its competitor), there is no doubt that the Respondent (as Managing Director of Global) would have been aware of the existence of the company BUNAC and its reputation in that name.

The Respondent lacks legitimate interest:-

The Respondent was first put on notice of the Complainant's intention to apply to revoke the Domain Name under Art 21 Public Policy Rules on 12 May 2006. For the purposes of Art 21(2)(a) it is this date that should be considered as the relevant date on which prior notice of an ADR procedure was given to the Respondent. As at this date the Respondent had not used the Domain Name nor a name corresponding to the Domain Name.

The Respondent has not made a legitimate and non-commercial or fair use of the Domain Name at all. Indeed, the very fact that the Respondent was willing to transfer the Domain Name to the Complainant in exchange for a fee is an indication of his limited interest in the Domain Name. Indeed, evidence adduced indicates that the Respondent has not made any use of the Domain Name during the period 30 May 2006 to 4 August 2006 (this evidence was disputed by the Respondent – who said the website printouts provided only evidenced the state of the website on these two specific dates and not across the period claimed).

Further, or alternatively, the Domain Name has been registered in bad faith:-

The Domain Name has been registered primarily for the purpose of disrupting the professional activities of the Complainant, the owner of numerous rights in the name BUNAC and which is used extensively by the Complainant to promote its services. The Complainant is in the business of international employment and travel agency services, including children's camps and work exchanges. Much of their business is in the European Union. The Domain Name would be invaluable to the Complainant in promoting its services within the EU.

There is no reason why a third party would choose a name consisting of the Complainant's invented trade mark BUNAC, whether in relation to identical or dissimilar goods or services.

Prior to any notice of the ADR procedure (i.e. on 12 May 2006) the Respondent had no legitimate interest in the Domain Name, and that the Domain Name had been registered in bad faith.

B. RESPONDENT

The first requirement is that the Domain Name must be identical or confusingly similar to a protected name.

The Complainant's evidence includes trade mark registrations which incorporate the word BUNAC in combination with other words. Therefore, there is no identity between the Domain Name and such registrations, nor has the Complainant proved there is any confusing similarity with such marks.

In respect of those trade marks which consist the sole word BUNAC:

- The Complainant misleads by providing irrelevant information, including trade marks from Iceland (this country does not belong to EU), and a registration in Swedish (this document should be disregarded as it was not accompanied with a translation).

- There are only two documents which confirm the Complainant's rights under Article 10(1) of the Regulation: a trade mark for BUNAC registration in Great Britain (reg. No. 1547552) for the classes 35 (Employment agency services; provision of counsellors and temporary staff for children's camps; administration of work exchange and exchange employment programmes) and 39 (Travel agency services; arranging of exchange visits, work adventure holidays, tours, day trips and weekend trips; arranging transportation of passengers by road, rail, sea and air; advisory services relating to travel; visa, ticket and seat reservation services); and the a Community Trade Mark for BUNAC (reg. No. 3865318) for the classes 16 (printed matter related to employment and travel), 35 and 39. However, it should be stressed that the Domain Name 'bunac.eu' is used by the Respondent in respect of completely different services, namely real estate business, which belongs to class 36 of the Nice Classification.

- The numerous domain names which the Complainant states it owns are irrelevant – as they could not be considered as the rights pursuant to Art 10(1) Public Policy Rules.

- The Domain Name is not identical to the Complainant's company name, nor has the Complainant proved there is confusing similarity between these names.

Registered without rights or legitimate interest in the name:-

The Complainant states that the Respondent registered the Domain Name without rights or legitimate interest in the name. The Complainant argues that, for the purposes of Art 21(2)(a) Public Policy Rules, the date of 12 May 2006 should be considered as the relevant date on which prior notice of an ADR procedure was given to the Respondent. However, the Complainant misinterprets this provision. Notice of an ADR procedure is the date on which the Respondent was notified that an ADR Proceeding had actually been commenced (not the date when the Complainant or his representative warns of a possible intention to apply to revoke the Domain Name). Accordingly, notice under Art 21(2)(a) Public Policy Rules was not given to the Respondent until 22 November 2006. In the circumstances, the Respondent has a legitimate interest in the Domain Name for the following reasons:

- On 31 May 2006 the Respondent made demonstrable preparations to use the Domain Name by applying to register the a trade mark for the word BUNAC in class 36 (insurance; financial affairs; monetary affairs; real estate affairs) in the State Patent Bureau of the Republic of Lithuania.

- Further, a website offering real estate services has been attached to the Domain Name since 15 June 2006.

The Domain Name has been registered or is being used in bad faith:

- The fact that the Respondent's email of 15 May 2006 stated that he could transfer his Domain Name and asked what the offer would be, does not mean that he registered domain primarily for the purpose of selling (as per Art 21(3)(a) Public Policy Rules). This email cannot be considered as a serious offer to sell the Domain Name as it was written in an unofficial way. Further, the Respondent's subsequent emails clearly indicated that the Respondent did not want to sell the Domain Name and he rejected all subsequent offers made by the Complainant.

- The Complainant uses the Domain Name to offer real estate services, whereas the Complainant provides international work and travel opportunities for students.

- The Complainant has not submitted any evidence to support the argument that the Domain Name has been registered primarily for the purpose of disrupting the professional activities of the Complainant (Article 21(3)(c) Public Policy Rules). There is nothing to prove that the Respondent uses the Domain Name to compete with the Complainant.

The word BUNAC was chosen by the Respondent as an abbreviation for the Lithuanian title "BUto ir NAmo Centras", which literally means "The Center of Apartments and Houses". It should also be noted that, despite the fact that BUNAC is an invented word, is not very distinctive therefore there is possibility that other person could coincidentally chose the same word for his domain.

The Complaint should be denied.

DISCUSSION AND FINDINGS

This Complaint has been brought under Article 22(1)(a) of the Public Policy Rules which addresses domain name registrations which are 'speculative or abusive within the meaning of Article 21'.

*** Identical or confusingly similar Domain Name ***

The first requirement of Art 21(1) Public Policy Rules is, in the Panel's view, satisfied. The Domain Name is identical to the Complainant's CTM registration for the word BUNAC. The '.eu' suffix serves no relevant distinguishing purpose. As such, the Panel does not need to consider whether or not the Domain Name is identical or confusingly similar to the myriad of other rights which were put forward in evidence by the Complainant's representatives (this amounted to over 140 pages of evidence).

*** No rights or legitimate interest ***

The Domain Name shall be subject to revocation if it has been registered by the Respondent without rights or legitimate interest in the name (Art 21(1)(a) Public Policy Rules).

Art 22(2) Public Policy Rules sets out a list of factors which may demonstrate a legitimate interest (the mirror provisions at B.11(e) of the ADR Rules). This list includes, inter alia, situations where the domain name holder is commonly known by the name corresponding to the domain name, and where the domain name holder is making legitimate non-commercial fair use of the domain name without intending to mislead the consumers. Neither of these two factors have been relied upon by the Respondent. However, the Respondent does specifically rely upon the legitimate interest factor contained in Art 21(2)(a) "…prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name 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".

The Complainant argues that the relevant date for 'notice' under Art 21(2)(a) is the date when the Respondent was first put on notice of the Complainant's intention to apply to revoke the Domain Name under Art 21 Public Policy Rules i.e. when the Complainant's representatives wrote to the Respondent on 12 May 2006. The Respondent has not tried to argue that there was any use of the Domain Name (or any demonstrable preparation to do so) prior to the 12 May 2006. In fact, the first date given for any 'demonstrable preparation' to use was the Respondent's application for BUNAC trade mark in Lithuania, filed by the Respondent on 31 May 2006. Following that, on 15 June 2006 the Respondent attached a website to the Domain Name (offering real estate services) under the BUNAC name. If the Complainant's view of the date for 'notice' is correct, then these latter activities by the Respondent must be disregarded for the purposes of Art 21(2)(a).

However, the Respondent argues that the relevant date for 'notice' under Art 21(2)(a) is the date of notification of commencement of the

ADR proceedings – being 22 November 2006, and as a result the Respondent's activites prior to this date (but after 12 May 2006) would create a legitimate interest and therefore a shield to any claim by the Complainant for revocation on the basis of the Respondent's lack of legitimate interest.

The Panel finds the wording of Art 22(2)(a) unclear, and can see there is scope for debate (and as an aside – it is not just the 'notice' date that is unclear, but also whether the 'use' should be in connection with a 'bona fide' offering of goods or services in order to demonstrate a legitimate interest notwithstanding the absence of the words 'bona fide').

If the wording of Art 22(2)(a), as per the Respondent's interpretation, was intended to mean that the relevant 'notice' date is when notification of the commencement of ADR proceedings is issued to the Respondent, then this would leave the system open to abuse - whereby Respondents, irrespective of any real interest in a name, could simply begin using a domain name as soon as they are put on notice of a dispute (but prior to proceedings being commenced) and thereby create a shield to ADR proceedings based on a lack of legitimate interest. This would, in the Panel's view, not be a logical interpretation of the provision and would inevitably lead to problems. The Panel's view is that the 'notice' date commences when the Respondent is given notice by the Complainant of a dispute between the parties concerning the domain name in issue, and that the Complainant intends to pursue ADR proceedings. The Panel's view is supported by the interpretation of Art 22(2)(a) given in the equivalent provision in the ADR Rules (Rule B.11(e)(1)), which states 'prior to any notice of the dispute' (the use of the word 'dispute' here brings the wording closer to a similar provision found in the UDRP at Para 4(c)(i)).

Whether or not a communication constitutes 'notice' will, of course, be a question of fact. A notice issued by a potential Complainant will usually be contained in the form of a letter before action. A mere basic inquiry to purchase a domain name, without reference to the Complainant's relevant rights would be unlikely to suffice as such a 'notice'. In this regard, the Panel is satisfied that the Complainant's letter of 12 May 2006, which had express reference to their intention to pursue ADR proceedings, suffices as notice under Art 21(2)(a).

Accordingly, the Panel disagrees with the Respondent's interpretation and favours the Complainant's interpretation of Art21(2)(a) i.e. that the relevant date under this provision was 12 May 2006. As such, the Respondent's actions subsequent to the 12 May 2006 are to be disregarded by for the purposes of any application of Art 22(2)(a). Accordingly, as the Respondent has not provided any evidence of use the Domain Name or demonstrable preparations to use the Domain Name prior to 12 May 2006, Art 21(2)(a) does not apply to the Respondent.

For the sake of completentess, and in view of the findings of bad faith below, the Panel doubts whether the Respondent's activities after 12 May 2006 but before 22 November would have been sufficient to provide the Respondent with an Art 21(2)(a) shield to a claim of a lack of legitimate interest.

In the circumstances, the Panel finds that, on the balance of probabilities, the Respondent registered the Domain Name without legitimate interest in the name. The Domain Name should therefore be subject to revocation under Art 21(1)(a).

Bad Faith

As the drafting of Art 22(2)(a) is unclear and open to interpretation, the Panel has also considered whether or not the Domain Name should be subject to revocation under Art 21(b) Public Policy Rules - whereby the Domain Name shall be subject to revocation if it has been registered or is being used in bad faith.

Relevant to a finding of bad faith is the issue of whether or not the Respondent had knowledge of the Complainant and its BUNAC trade mark, when he registered and used the Domain Name:

- First, the Respondent is the Managing Director of Global, a competitor of the Complainant's business. The Panel is of the view that prior to his registration and use of the Domain Name, an individual with the Respondent's position at Global would certainly have had a good personal knowledge of the Complainant's business, and also its widespread use and promotion of the BUNAC name.

- Whilst the Respondent claims that "…there is no connection between Global Choices Company and/or globalchoices.co.uk website and bunac.eu website…" (stated in an email from the Respondent to the Complainant's representatives of 15 June 2006), the fact remains that the Respondent is Global's Managing Director and he has an interest in the success of that company, and in turn, the activities of its competitors. Also, the Respondent fails to explain why he did not use his personal email address from the outset, but rather he decided to list Global's generic contact address 'info@globalchoices.co.uk' on EURid's whois database when the Domain Name was first registered.

- The Respondent claims that he never knew '…that BUNAC is registered trademark in the UK'. Whilst such a statement seems surprising to the Panel, the Panel has no doubt that given the long standing history and repute of the BUNAC name in the industry in which both parties operate, the Respondent should have, at the very least, known that the Complainant would be the owner of substantial goodwill in the BUNAC name, giving rise to common law trade mark rights.

- The Panel disagrees with the Respondent's further statement, that the term BUNAC is not very distinctive and that there is possibility that third parties could coincidentally chose the same word. It is the Panel's view that the BUNAC trade mark is a distinctive invented word, which would be unlikely to be chosen by a third party by coincidence. In this regard, the Panel's view is that on the balance of probabilities the Respondent chose to register the name BUNAC deliberately in the knowledge of the Complainant's prior rights in that name.

Art 21(3) (the equivalent provisions are found in B.11(f) ADR Rules) sets out a non-exhaustive list of circumstances, which if found by to be present shall be evidence of 'bad faith' within the meaning of Art21(1)(b). The Panel notes that the Complainant need only prove one of these grounds in order to succeed in demonstrating that the Respondent had registered or used the Domain Name in bad faith.

In the Panel's view, there are circumstances which indicate that, on the balance of probabilities, the Domain Name was registered primarily for the purpose of disrupting the professional activities of the Complainant, being a direct competitor to the Respondent's company (bad faith factor Art 21(3)(c)). Disruption is inevitable, the domain name is an exact match to the Complainant's BUNAC trade mark, and valuable web traffic is likely to be lost when ever internet users, seeking out the Complainant, end up at the Respondent's website in error.

It is also the Panel's view that, along with the Respondent's primary purpose to disrupt the professional activities of the Complainant, the Respondent also registered the Domain Name with a subsidiary purpose of selling, renting or otherwise transferring the Domain Name to the Complainant. As evidenced by the Respondent's email of 15 May 2006 in which he replied to the Complainant's Web Developer (presumably having been prompted by the formal trade mark agent's letter which he would also have received by then). In his communication, the Respondent's stated '…I could transfer this domain name to you. What is your offer ? Giedrius'. This is a clear offer to sell. Whilst it is accepted that the Respondent's offer to sell was then subsequently withdrawn, the withdrawal is hardly surprising in view of the fact that the Respondent was faced with possible ADR proceedings.

Whist the bad faith factor found in Art 21(3)(a) requires the Domain Name registration to be 'primarily… for the purpose of selling…', the factors in Art 21(3) are given as non-exhaustive examples. As such, it is the Panel's view that the Respondent's intention to sell in conjunction with its strategy to disrupt the business of the Complainant (in direct competitor with the Respondent's business) is a clear example of bad faith for the purposes of Art 21(b).

Finally, the Panel also finds bad faith factor in Article 22(3)(d) to be present. In this regard, it is the Panel's view that on the balance of probabilities any intentional use of the Domain Name by the Respondent has also been to attract Internet users to his website for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement. In this regard, initial interest confusion would be relevant here. This would occur where the Respondent still materially or financially gains by trading in on the value of Complainant's BUNAC mark to initially attract customers to his website, even if once they arrive at 'bunac.eu', they realise it does not belong to the Complainant.

In conclusion, and in addition to the finding that the Respondent has no legitimate interest in the name, the Panel also finds that the Domain Name 'bunac.eu' was registered and has been used by the Respondent in bad faith. The registration of the Domain Name by the Respondent is therefore speculative or abusive within the meaning of Art 21 Public Policy Rules, and the Complainant is entitled to succeed in its Complaint. The Panel orders that the Domain Name be revoked from the Respondent and transferred 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 BUNAC.EU be transferred to the Complainant

PANELISTS

Name	**Steve Palmer**

DATE OF PANEL DECISION 2007-03-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a UK company which owns a Community Trade Mark registration for the word BUNAC under number 3865318 ('CTM'). Further, the BUNAC name is an invented word that was coined by the Complainant's predecessor business when it was founded in 1962, as a non-profit organisation committed to providing affordable international work and travel opportunities for students. Since that date, the trade mark BUNAC has been used continuously by the Complainant in relation to those services.

The Respondent is an individual called Mr. Giedrius Mazurka. The Respondent is the Managing Director of a UK based company called Global Choices Limited ('Global'). Global competes directly with the Complainant's business.

The Respondent registered the domain name 'bunac.eu' (the 'Domain Name') on 8 April 2007, the second day of the .eu Land Rush period. Following this the Complainant contacted the Respondent requesting the transfer of the Domain Name on the basis of its prior rights in BUNAC. The Respondent initially offered to sell the Domain Name. However, following a threat from the Complainant's representatives to pursue .eu ADR proceedings (on 15 May 2006), the Respondent's offer to sell was withdrawn. Further, the Respondent then applied to register BUNAC as a trade mark in Lithuania and attached a website to the Domain Name offering real estate services under the name BUNAC (BUto NAmo Centras). The Complainant filed its ADR complaint against the Respondent on 23 October 2006, and the Respondent received the notification of commencement of ADR proceedings on 27 October 2006.

The Complainant sought revocation of the Domain Name under Art 21(1) of Regulation 874/2004 ('Public Policy Rules') and the transfer of the Domain Name to the Complainant.

The first requirement of Art 21(1) Public Policy Rules was satisfied, as the Domain Name is identical to the Complainant's CTM registration for the word BUNAC.

The Panel assessed whether or not the Domain Name had been registered by the Respondent without rights or legitimate interest in the name (Art 21(1)(a) Public Policy Rules). The Respondent argued he had had a legitimate interest in the Domain Name under Art 21(2)(a) and that the relevant date for 'notice' under Art 21(2)(a) was the date of notification of commencement of the ADR proceedings – i.e. 22 November 2006. The Respondent therefore argued that its acitivites prior to this date (but after 12 May 2006) created a legitimate interest, and therefore a shield to the claim for revocation on the basis of the Respondent's lack of legitimate interest.

However, the Panel found in favour of the Complainant's interpretation, that the relevant date for 'notice' under Art 21(2)(a) was the date when the Respondent was first put on notice of the Complainant's intention to apply to revoke the Domain Name under Art 21 Public Policy Rules. This date was 12 May 2006. As there was no use of the Domain Name (or any demonstrable preparation to do so) prior to the 12 May 2006, the Panel found that on the balance of probabilities the Respondent registered the Domain Name without legitimate interest in the name. The Domain Name was therefore subject to revocation under Art 21(1)(a).

The Panel then considered whether or not the Domain Name should be subject to revocation under Art 21(b) Public Policy Rules as having been registered or used in bad faith.

The Panel found that the Respondent, being the Managing Director of Global, a competitor of the Complainant's business, would certainly have had a good personal knowledge of the Complainant's business and also its widespread use and promotion of the BUNAC name. Notwithstanding the Respondent's claim that "…there is no connection between Global Choices Company and/or globalchoices.co.uk website and bunac.eu website…". He would personally have an interest in the success of Global, and in turn, the success or otherwise of its competitors.

It was the Panel's view that were circumstances which indicated that, on the balance of probabilities, the Domain Name was registered primarily for the purpose of disrupting the professional activities of the Complainant, being a direct competitor to the Respondent's company (bad faith factor Art 21(3)(c)). Disruption would be inevitable, the domain name is an exact match to the Complainant's BUNAC trade mark, and valuable web traffic is likely to be lost when internet users, seeking out the Complainant, end up at the Respondent's website in error.

It was also the Panel's view that there was a subsidiary purpose to sell, rent or otherwise transfer the Domain Name to the Complainant. This was evidenced by the Respondent's email of 15 May 2006 in which he stated '…I could transfer this domain name to you. What is your offer ? Giedrius'.

The offer to sell, in conjunction with his strategy to disrupt the business of the Complainant (in direct competitor with the Respondent's business) was a clear example of bad faith, and could be considered as the Art 21(3) factors provided are non-exhaustive examples.

Finally, the Panel also found bad faith factor in Article 22(3)(d) to be present. Any intentional use of the Domain Name by the Respondent would also have been to attract Internet users to his website for commercial gain, by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement.

In conclusion, and in addition to the finding that the Respondent had no legitimate interest in the name, the Panel also found the Domain Name BUNAC to have been registered and used by the Respondent in bad faith.

The registration of the Domain Name ‘bunac.eu’ by the Respondent was speculative or abusive within the meaning of Art 21 Public Policy Rules the and the Complaint succeeded. The Panel directed that the domain name ‘bunac.eu’ be transferred to the Complainant.