Panel Decision for dispute CAC-ADREU-002781

Case number	**CAC-ADREU-002781**
Time of filing	**2006-08-18 13:43:35**
Domain names	**koeln2010.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Stadt Koeln**

Respondent

Organization / Name	**Tempus Enterprises 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

No other legal proceedings concerning the disputed domain name are currently pending.

FACTUAL BACKGROUND

- The domain name koeln2010.eu was registered by the Respondent on 7 June 2006.

- The koeln.2010.eu domain name currently gives access to a website with no apparent content of its own. Rather, it simply contains links to third-party websites corresponding to different categories: finance, electronics, travel, gambling, etc. It also displays notices reading "this domain may be for sale by its owner!" and "the owner of koeln2010.eu is offering it for sale for an asking price of 500 EUR !".

- The Complainant, the city of Cologne, Germany, filed its complaint on 17 August 2006, claiming that the domain name in dispute infringed its rights as legitimate proprietor of the geographical name Köln or Koeln as well as its rights as well-known user of the expression Koeln 2010 in relation to various events to take place in the city in 2010. The Complainant states that the Respondent has no rights or legitimate interests in the domain name and that it registered it in bad faith. As a result, 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 petitions that the domain name be transferred to it because it fulfills the general eligibility criteria for the registration set out in article 4(2)(b) of EU Regulation No. 733/2002.

- The Respondent failed to provide its Response.

A. COMPLAINANT

- The Complainant states in its complaint that it is the German city of Cologne and that Köln or Koeln is precisely the name of the city in German. It likewise states that it enjoys renown and prestige among the general public and it submits documentation in evidence of this.

- The city of Cologne is the owner of numerous domain names, among which koeln.de, koeln.eu, koeln2010.de and köln2010.de can be highlighted.

- The Complainant claims that the domain name in dispute is confusingly similar to Koeln, a term in which it claims rights as a geographical and political term, pursuant to article 10(1), Commission Regulation No. 874/2004.

- In particular, the Complainant claims that the city of Cologne submitted its candidacy as European Capital of Culture for 2010 and launched a substantial campaign precisely under the slogan "Köln 2010". Likewise, it states that different sports events will be held in the

city in 2010 and they too will be referred to as Köln 2010 within their corresponding fields.

- The Respondent holds no rights or legitimate interests in the term koeln2010 and, furthermore, has no national, international or Community trademark registration for the term.

- The Respondent registered or used the domain name in dispute in bad faith. It follows from the Respondent's website itself that the domain name was acquired for the purpose of selling it, something article 21 of Commission Regulation No. 874/2004 considers to be a circumstance evidencing bad faith.

- The Complainant further submits evidence to the effect that the Respondent's use of the name Fletcher Kennedy could be irregular and could likewise constitute additional evidence that it is not acting in good faith.

- The Complainant claims it complies with the eligibility requirements set out in article 4(2)(b) de la EU Regulation No. 733/2002. It therefore petitions that, in view of the circumstances, the domain name in dispute be transferred to it.

B. RESPONDENT

The Respondent did not reply to the complaint.

DISCUSSION AND FINDINGS

When regulating ADR proceedings, article 22, paragraph 10, of Commission Regulation No. 874/2004 states the following:

"10. Failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty."

The fact that the Respondent did not submit a reply could lead directly to acceptance of the Complainant's claims. However, in the interest of equity, the undersigned panelist will reach his decision after assessing the circumstances surrounding the case.

Pursuant to article 11, paragraph (d)(1), the .eu Alternative Dispute Resolution Rules, the Panel shall grant the remedies requested if the Complainant proves "in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated that

(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

(ii) The domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) The domain name has been registered or is being used in bad faith."

1. Domain name identical or confusingly similar to a name in respect of which a right is recognized.-

The term Koeln is a geographical indication in the sense of article 10, paragraph 1, of Commission Regulation No. 874/2004. The Respondent simply added the number 2010 to the word and, as the Complainant states, Internet users will logically interpret the koeln2010.eu domain name as indicating the events or activities to be held in the city of Cologne in the year 2010. Therefore, the mere addition of the number 2010 to the Complainant's name does not rule out the possibility of confusion.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2000-1493:

"Prior ICANN panels have, also, found that use of a company's entire trademark with non-distinctive and descriptive matter creates confusion. See ISL Marketing AG et al v. J.Y. Chung et al, WIPO Case No. D2000-0034 (February 18, 2000) (finding worldcup2002 [.com, .org and .net] to be confusingly similar to the WORLDCUP mark.); see also The Price Company v. Price Club, WIPO Case No. D2000-0664 (June 6, 2000) (finding priceclub2000.com to be confusingly similar to the PRICE CLUB mark)."

Consequently, the first of the requirements for the Complaint to be accepted has been met.

2. Absence of Rights or Legitimate Interest

The Respondent has not submitted any reply. Therefore, it has submitted no information on possible rights or legitimate interests in might hold. On its part, the Complainant has submitted information and arguments which allow it to be reasonably assumed that the Respondent has no rights or legitimate interest in the name in dispute since the name clearly refers to the complainant city and to the events to take place there in 2010.

As the WIPO Arbitration and Mediation Center pointed out in UDRP case No. D2002-0856:

“As mentioned above in section 3, the Respondent has not filed a Response and is therefore in default. In those circumstances when the Respondent has no obvious connection with the disputed Domain Names, the prima facie showing by the Complainant that the Respondent has no right or legitimate interest is sufficient to shift the burden of proof to the Respondent to demonstrate that such a right of legitimate interest exist. WIPO Case No. D2002-0273 <sachsen-anhalt>; WIPO Case No. D2002-0521 <volvovehicles.com>”

The Panel therefore considers that the Respondent has not evidenced legitimate rights.

3. Bad Faith

As the Complainant claims and as is set out in the Factual Background, the domain name in conflict is for sale and, in fact, the corresponding website expressly displays the following: "The owner of koeln2010.eu is offering it for sale for an asking price of 500 EUR!"

Therefore, the first of the circumstances set out in article 11(f) of the ADR Rules as indicative of bad faith is clearly present, namely:

(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body.

The fact that the corresponding website has no content of its own but rather contains only a series of links to other sites is also an indication that the sole reason for the Respondent's registering the domain name was in fact to offer it for sale, there being no circumstances in these proceedings which would allow it to be assumed that the Respondent has made or will make legitimate use of the domain name.

Thus, the third circumstance for accepting the complain is present.

Finally, with respect to the Complainant's claim that the domain name be assigned to it, as it states in its complaint, the fact that it is a public body holding the capacity to administer the city of Cologne accords it eligibility pursuant to the criteria set out in article 4(2)(b) de la EU Regulation No. 733/2002.

DECISION

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

the domain name KOELN2010 be transferred to the Complainant

PANELISTS

Name	**Luis de Larramendi**

DATE OF PANEL DECISION 2006-10-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant in the proceedings is the German city of Cologne. It claims that the domain name corresponds to the name of the city, Koeln, and the term koeln2010 in fact refers to various well-publicized events to take place in the city in the year 2010. The domain name in dispute is for sale and the Respondent has not replied to the complaint.

The Panel considers it proven that the domain name koeln2010 corresponds to the rights of the city of Cologne in its name. It holds that the rights or legitimate interests of the Respondent (who did not reply to the complaint) have not been evidenced and it finds that the offer to sell the domain name constitutes a circumstance evidencing bad faith pursuant not the ADR Rules. As a result, it rules that the

domain name koeln2010.eu must be transferred to the Complainant as it fulfills the eligibility requirements.