Panel Decision for dispute CAC-ADREU-002791

Case number	**CAC-ADREU-002791**
Time of filing	**2006-10-03 13:27:32**
Domain names	**messe-stuttgart.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Stuttgarter Messe- und Kongress GmbH**

Respondent

Organization / Name	**Lehigh Basin, 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

1. None that the Panel is aware of.

FACTUAL BACKGROUND

2. The Complainant is doing business in the field of hosting exhibitions and stages more than 30 self-organized trade fairs and exhibitions every year and approximately 20 guest events. Its “Stuttgart trade fair centre” has an area of 54,500 square metres and is suited for any kind of exhibition, trade fair, congress, seminar, company presentation and various other events.

The Complainant currently stages a number of first-class international trade fairs, attends to more than 2.500 exhibitors from abroad and approximately 150.000 international visitors in Stuttgart every year and has a worldwide network of at present 32 foreign representatives and information offices.

3. The Complainant is the registered owner of the German trademark registration No. 30576564.7 “Messe Stuttgart” & device, applied for on December 27, 2005 and registered on March 15, 2006 for goods and services in intl. classes 16, 35, 38 and 41 and the Community trademark application No. 005094396 “Messe Stuttgart” & Device applied for on May 4, 2006 for goods and services in intl. classes 16, 35, 38 and 41.

4. Furthermore, the Complainant is the holder of the domain names <messe-stuttgart.de>, <messe-stuttgart.info> and <messe-stuttgart.com>.

5. The Respondent did not provide any information concerning its business.

A. COMPLAINANT

6. Complainant asserts that each of the elements specified in Article 21 (1) of the Regulation (EC) No. 874/2004 has been satisfied.

7. In reference to Article 21 (1) of the Regulation (EC) No. 874/2004 the Complainant argues that the disputed domain name “messe-stuttgart” is confusingly similar to the Complainant’s internationally well known company name and registered trademark “Messe Stuttgart”.

8. In reference to the element specified in Article 21 (1) (a) of the Regulation (EC) No. 874/2004, Complainant states that the Respondent has no rights or legitimate interests with regard to the domain name.

In support of this assertion Complainant argues that

- “Messe Stuttgart” is not a common generic term or a term that would be natural to chose for any kind of business activity other than that of the Complainant;
- Respondent is not acting on behalf of the Complainant and has no authorisation from the Complainant to act on its behalf;
- Respondent has not used the name “messe-stuttgart” for its business name or services and has not been known by the domain name.

9. In reference to the element in Article 21 (1) (b) of the Regulation (EC) No. 874/2004, the Complainant asserts that

- the disputed domain name was registered primarily for the purpose of selling, renting, or otherwise transferring the domain name registration to the Complainant who is the owner of the above mentioned trademark, for valuable consideration in excess of out-of-pocket costs directly related to the domain name;
- by using the domain name, the Respondent intentionally attempts to attract for commercial gain, Internet users to the Respondent’s web site or other on-line location, by creating a likelihood of confusion with the Complainant’s mark as to the source, sponsorship, affiliation, or endorsement of the Respondent’s web site or location or of a product or service on the Respondent’s web site or location;
- Respondent was aware or should have known of Complainant’s company name and trademark rights at the time he registered the disputed domain name.

B. RESPONDENT

10. The Respondent’s authorized representative did not dispute Respondent’s contentions, but merely stated that “he was prepared to transfer the domain name because of Complainant trademark rights in the name <Messe Stuttgart>”.

DISCUSSION AND FINDINGS

11. The Complaint was filed pursuant to Article 22 (1) (a) of the Regulation (EC) No. 874/2004, which provides that an ADR procedure may be initiated by any party where the registration of a domain name is speculative or abusive within the meaning of Article 21 of the Regulation (EC) No. 874/2004.

12. Accordingly, the Panel’s decision has to be based on the provisions of Art. 21 of the Regulation (EC) No. 874/2004. The domain name has therefore to be transferred if the domain name

i. is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law; and
ii. has been registered by its holder without rights or legitimate interests in the name; or
iii. has been registered or is being used in bad faith.

A. Identity or Confusingly Similarity

13. The test of confusing similarity under the Regulation is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the domain name is used or other marketing and use factors, usually considered in trademark infringement cases.

14. The disputed domain name <messe-stuttgart.eu> wholly incorporates the word element of Complainant’s trademark “Messe Stuttgart”. It is well-established that the specific top level of a domain name <.eu> does not affect the domain name for the purpose of determining whether it is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (EC) No. 874/2004 (See CAC Case. No. 00227 - kunst.eu; CAC Case No. 00387 - gnc.eu; CAC Case No. 00596 - restaurants.eu; CAC Case No. 01584 – ksb.eu; CAC Case No. 02438 – ask.eu; CAC Case No. 00283 – lastminute.eu).

15. Furthermore, the assumption of confusing similarity between trademark and domain name is not refuted by the fact that Complainant’s trademark contains an additional figurative element which can not be reproduced in a domain name (See CAC Case No. 02438 – ask.eu; CAC Case No. 03048 – boscolohotels.eu).

16. The Panel thus finds that the domain name <messe-stuttgart.eu> is identical to Complainant’s trademark “Messe Stuttgart” and that therefore the first requirement of Article 21 (1) of the Regulation (EC) No. 874/2004 is satisfied.

B. Respondent’s rights or legitimate interests with regard to the domain name

17. Article 21 (1) (a) of the Regulation (EC) No. 874/2004 requires the Complainant to prove that the Respondent has no right or

legitimate interest in the disputed domain name. However, as it is often an impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent, it is the Panel's view that if the complainant makes a prima facie case that the Respondent has no rights or legitimate interests, and the Respondent fails to show one of the circumstances under Article 21 (2) of the Regulation No. 874/2004, then the Respondent may lack a legitimate interest in the domain name.

18. The domain name <messe-stuttgart.eu> is identical with the Complainant's trademark. Complainant showed that Respondent has neither a license nor any other permission to use the trademark "Messe Stuttgart" in which the Complainant has exclusive rights. The Panel thus finds that the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name <messe-stuttgart.eu>.

19. Respondent does not dispute these assertions. Before notice of the dispute, there is no evidence of its use, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. Further, nothing in the record suggests that the Respondent trades under the domain name or the name "Messe Stuttgart" or is commonly known by said domain name.

20. The Panel therefore accepts the Complainant's contention that the Respondent has no right or legitimate interest in the domain name and that the requirement of Article 21 (1) (a) of the Regulation (EC) No. 874/2004 is also satisfied.

C. Bad faith registration and use

21. Because Complainant needs to show either a lack of rights or legitimate interest on the part of the Respondent or bad faith registration or use and given the Panel's finding on rights and legitimate interests set out above the Panel need not make a finding concerning bad faith use and registration.

D. Transfer of the domain name

22. The Complainant is a limited partnership incorporated under German law and having its place of business within the European Community, Art 4 (2) (b) (i) of the Regulation (EC) No. 733/2002. Therefore, the requirements for the requested transfer of the domain name to the Complainant are satisfied (Section B No. 1 (b) (12) of the ADR Rules).

DECISION

23. For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name <messe-stuttgart.eu> be transferred to the Complainant.

PANELISTS

Name	**Torsten Bettinger**

DATE OF PANEL DECISION 2007-01-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

24. The Complainant is doing business in the field of hosting exhibitions. It is the registered owner of the German trademark registration "Messe Stuttgart" & device and the holder of the domain names <messe-stuttgart.de>, <messe-stuttgart.info> and <messe-stuttgart.com>. Complainant asserts that each of the elements specified in Article 21 (1) of the Regulation (EC) No. 874/2004 has been satisfied.

25. The Respondent did not dispute Complainant's assertions.

26. The Panel found that the domain name <messe-stuttgart.eu> is identical to Complainant's trademark "Messe Stuttgart".

27. Furthermore, the Panel found that the Complainant has made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name <messe-stuttgart.eu>. As the Respondent did not dispute these assertions, the Panel accepted the Complainant's contention that the Respondent has no right or legitimate interest in the domain name and ordered that the disputed domain name shall be transferred to the Complainant.