Panel Decision for dispute CAC-ADREU-002798

Case number	**CAC-ADREU-002798**
Time of filing	**2006-10-31 15:03:52**
Domain names	**dvd-quelle.eu, moebel-quelle.eu, moebelquelle.eu, quelle-sammelbesteller.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Quelle GmbH**

Respondent

Organization / Name	**Comp, Domain Escrow**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other proceedings between the parties pending the Panel is aware of.

FACTUAL BACKGROUND

Complainant is a known mail order house with costumers from all over Europe respectively all over the world. Complainant is the successor of Quelle AG and proprietor of several trademarks “quelle”, inter alia the German Trademark DE 770134 “quelle” registered for numerous goods in classes 1 to 33 and CTM 3281722 “quelle” registered for services in class 36. Complainant and his subsidiaries own over 100 department stores in Germany and Europe and are active in the internet primarily under www.quelle.com and www.quelle.de. Amongst many other goods and services, Complainant offers inter alia dvds and furniture and services such as photo developing under “photo quelle” or kitchen furniture under “küchen-quelle” (In English: “kitchen-quelle”). It is the owner of the domain names “dvd-quelle.de” and “moebel-quelle.de” (the latter in English “furniture-quelle.de”). Complainant has provided a survey carried out by a leading German institute showing an awareness of German consumers of the Complainant of at least 85%. The trademark “quelle” is used intensively at least on the German market. Complainant spent on average 411 Million Euro for advertising every year in the last ten years.

The Respondent registered the domain names in question on June 7, 2006 and did not file a response in these proceedings.

A. COMPLAINANT

Complainant claims that the registered domain names are confusingly similar to the term “quelle” protected as a trademark and trade name and being famous.

Complainant is of the opinion that the words “dvd”, “moebel” and “sammelbesteller” are descriptive since they refer to the products digital versatile disc and furniture as well as to customers who collect orders from friends and relatives in the case of “sammelbesteller” (English: "accumulative orderer"). Accordingly, the distinctive element in all the domain names shall be “quelle”.

Respondent has no rights or legitimate interests in these domain names since he is not known as “quelle” or has used the domain names. Furthermore, the domain names have been registered in bad faith since the address of the Respondent and address of the registrar are identical. Furthermore these domain names can be intentionally used to attract internet users, for commercial gain, to the holder of a related website by creating a likelihood of confusion as to the source, sponsorship, affiliation or endorsement of the website. Since the Respondent is domiciled in Munich, Germany, he was also aware of the Complainant and his rights to “quelle”.

Complainant requests the transfer of the domain names.

B. RESPONDENT

The Respondent did not file a response.

DISCUSSION AND FINDINGS

According to Art 21 No. 1 of the Regulation (EC) No. 874/2004 of April 28, 2004, a registered 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 recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

Complainant is proprietor of inter alia the German Trademark DE 770134 “quelle” registered for numerous goods in classes 1 to 33 and CTM 3281722 “quelle” registered for services in class 36.

The trademarks of Complainant and the domain names in question only differ in the additional elements “dvd”, “moebel” and “sammelbesteller” which are German words descriptive for digital versatile discs, furniture and accumulative orderer. The addition of such purely descriptive elements does not have a relevant influence on the similarity of signs or on the distinctiveness of the main element “quelle” which clearly carries the weight of the designation in the domain names. As far as the panel is aware of, such assessement of confusing similarity was so far not subject of the panel decisions for .eu domain names. However, this is widely acknowledged by panel decisions under the UDRP (see only Advanced Micro De-vices, Inc. ./. Dimitry, WIPO Case No. D2000-0530, WIPO case D2003-0888, Porsche AG ./. Vasiliy Terkin, WIPO Case No. D2003-0696, Pepsi Co.,Inc. ./. Pepsi, srl) which can be relied upon also in proceedings for .eu domain names in sofar since the requirement of being confusingly similar is available in the UDRP as well as in the Regulation (EC) No. 874/2004 of April 28, 2004. In addition the panel considers the trademark “quelle” as of increased distinctiveness due to its significant market position in Germany. There is a high danger that an average consumer will confuse the domain names in question with the claimed rights.

The domain names have been registered by the Respondent without rights or legitimate interest in the names since neither a right nor a legitimate interest in accordance with article 21 No. 2 of the Regulation (EC) No. 874/2004 of April 28, 2004 was demonstrated by the Respondent or is otherwise apparent.

Therefore, the panel must not examine whether or not the domain names have been registered or are being used in bad faith in accordance with article 21 No.1(b), No. 3 of the Regulation (EC) No. 874/2004 of April 28, 2004.

The Complainant satisfies the eligibility criteria set out in article 4 (2) (b) of Regulation (EC) 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 names DVD-QUELLE, MOEBEL-QUELLE, MOEBELQUELLE, QUELLE-SAMMELBESTELLER be transferred to the Complainant.

PANELISTS

Name	**Dietrich Beier**

DATE OF PANEL DECISION 2007-02-16

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant is a known mail order house inter alia in Germany and proprietor of several trademarks “quelle”, inter alia the German Trademark DE 770134 “quelle” registered for numerous goods in classes 1 to 33. Complainant offers inter alia dvds and furniture and ser-vices such as photo developing under “photo quelle” or kitchen furniture under “küchen-quelle” (In English: “kitchen-quelle”). It is the owner of the domain names “dvd-quelle.de” and “moebel-quelle.de” (the latter in English “furniture-quelle.de”).

The Respondent registered the domain names in question on June 7, 2006 and did not file a response in these proceedings.

The trademarks of Complainant and the domain names in question only differ in the additional elements “dvd”, “moebel” and “sammelbesteller” which are German words descriptive for “digital versatile discs”, “furniture” and “accumulative orderer”. The addition of such purely descriptive elements does not have a relevant influence on the similarity of signs or the distinctiveness of the main element “quelle” which clearly carries the weight of the designation in the domain names. Since the requirement of being confusingly similar is available also in the UDRP, panel relies also on related panel decisions under the UDRP (see only Ad-vanced Micro Devices, Inc.

./. Dimitry, WIPO Case No. D2000-0530, WIPO case D2003-0888, Porsche AG ./. Vasiliy Terkin, WIPO Case No. D2003-0696, Pepsi Co.,Inc. ./. Pepsi, srl) for this assessment.

The domain names have been registered by the Respondent without rights or legitimate interest in the names since neither a right nor a legitimate interest in accordance with article 21 No. 2 of the Regulation (EC) No. 874/2004 of April 28, 2004 was demonstrated by the Respondent or is otherwise apparent.