Panel Decision for dispute CAC-ADREU-002928

Case number	**CAC-ADREU-002928**
Time of filing	**2006-08-30 12:35:21**
Domain names	**prada.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Dr Massimo Introvigne**

Respondent

Organization / Name	**Maurizio Lussetti**

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 legal proceedings

FACTUAL BACKGROUND

Complainant, Mr Massimo Introvigne, states he acts on his name (see also the power of attorney filed by Mr Introvigne on January 3rd 2007, but on behalf of Prada SA, a Swiss company with registered office in Via Cattori 11, Paradiso, Lugano (Switzerland), which apparently is the Swiss-based subsidiary of the Italian fashion giant Prada.
Respondent is an Italian individual domiciled in Trieste who registered the domain name in reference on 11th July 2006.

A. COMPLAINANT

Complainant provides evidence of the fact that Prada SA owns a number of trademarks "Prada" worldwide.
He states that Prada is one of the best known trademarks in the world and makes reference to the existence of the novel "The Devil wears Prada" (now also a picture) to demonstrate that "Prada" has worldwide reputation.
According to Complainant, Respondent makes a commercial use of the domain name in reference, since he offers a software for sale on the website he manages under the domain name prada.eu.
As a consequence, in Complainant's opinion, the domain name prada.eu should be transferred to Prada SA for use within its regular business.

B. RESPONDENT

Respondent preliminarily challenges the right of Mr Introvigne (the Complainant) to represent Prada SA, to which the domain name in reference should be transferred according to Complaint. More specifically, Respondent underlines that no document has been filed to provide evidence of the appointment of Mr Introvigne as Prada's representative to the purposes of this ADR procedure.
Respondent further raises a number of issues in respect of Mr Introvigne personally as well as in respect of the actual reputation of the Prada trademark worldwide.
As far as the use of the website under the domain name prada.eu is concerned, Respondent clarifies that the software named "PhpNUKE" may not be offered for sale since it is a freeware software.
He requests Complaint to be rejected.

DISCUSSION AND FINDINGS

As a preliminary point Panelist must emphasize that Complainant is Massimo Introvigne, who filed Complaint claiming to act on his name but on behalf of Prada SA, a swiss company belonging to the Italian fashion group Prada.

Originally Mr Introvigne did not file any document nor provided any other evidence supporting the existence of a legal relationship between himself and Prada.
Panelist is well aware of the fact that this ADR procedure shall be conducted informally, but holds that this does not mean that basic principles of law could be overturned.
In particular, the point under discussion in this case refers to whether, or not, Complaint shall be filed in the name of a legal entity (corporate or individual) who has the right to become holder of the domain name in question.
Panelist holds that the answer to the above question shall be positive: Complaint must necessarily be filed in the name of the legal entity who claims to have the right to become holder of the domain name. Panelist reached this conclusion after having considered that, should Complaint be filed in the name of an entity who may not become holder of the domain name (because he has no right or interest to the domain name), the Panel may not issue a decision ordering transfer of the domain name to the "natural holder", since the latter would not be (by definition) a party to the ADR procedure. In other words, such decision would not be enforceable against the "natural holder".
In this case Mr Introvigne expressly recognizes he filed the Complaint under his name, but in the interest of Prada SA. Mr Introvigne has no personal interest or right to the domain name prada.eu.
In the Panelist's opinion this makes impossible issuing a decision in favour of Complainant. As already stated, Mr Introvigne is legally the Complainant, but he has no right or interest to the domain name prada.eu.
On the basis of this reasoning, Panelist issued the following order on 30th December 2006:

QUOTE
The undersigned Panelist, on the basis of nonstandard communications exchanged in the last few days, orders that Complainant files a document confirming that:
(i) he has been appointed as legal representative of Prada SA to the purposes of this procedure and
(ii) should Complaint be accepted, the domain name prada.eu shall be transferred to Prada SA and not to Mr Massimo Introvigne.
The above document shall be filed within Tuesday 9th January 2007.
The decision will then be rendered by Friday 11th January 2007.
Panelist anticipates that, should the above document be filed, he will ask this ADR center to change the identity of Complainant, stating expressly that the Complaint has been filed by Prada SA, acting through its legal representative Mr Massimo Introvigne.
UNQUOTE

On 3rd January 2007 Complainant filed a new document, the following letter sent by a Luxembourg-based company, Prada SA with registered office at 23 Rue Aldringen, Luxembourg:

QUOTE
As legal representative of Prada SA I hereby confirm that Mr Massimo Introvigne, a member of Studio Legale Jacobacci e Associati of Torino, Italy, has been authorized by us to act on his name but on our behalf in the case of the domain name prada.eu.
Obviously, should Complaint be accepted, the domain name prada.eu shall be transferred to Prada SA and not to Mr Massimo Introvigne.
Sincerely,
Murielle Vincenti
Prada Group Intellectual Property Manager
UNQUOTE

On the basis of this document, Panelist must reject Complaint.

There are two reasons for this decision:

1. Absence of Complainant's interest to domain name
The letter sent by Prada SA of Luxembourg confirms that Mr Introvigne has no power to represent the company in this ADR procedure. Mr Introvigne acts under his own name and only in the interest of Prada SA of Luxembourg. As a consequence, any legal effect of the Panelist decision would "obviously" affect Mr Introvigne, not Prada SA.
Prada SA should have appointed a legal represtantive in connection with this procedure. The procedure would have been conducted in the name of Prada SA and the domain name could have been transferred to Prada SA by a decision of the Panel.
Since this was not the case, Complaint may not be accepted.

2. Uncertainty as to the identity of the Prada group company on whose behalf Complainant is acting

There is a further reason for rejecting the Complaint.

The letter dated 3rd January 2007 is sent by a Prada SA based in Luxembourg. This company is not the same company (Prada SA of Switzerland) on whose behalf Mr Introvigne filed his Complaint.

Should this letter have contained an express confirmation of the appointment of Mr Introvigne as the legal representative of Prada SA of Luxembourg, Complaint should have been rejected, since it was originally filed in the interest of a third party (Prada SA of Lugano (Switzerland)).

DECISION

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

the Complaint is denied.

PANELISTS

Name	Riccardo Roversi

DATE OF PANEL DECISION 2006-12-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant may be represented by a third party (a lawyer, a patent attorney and, in general, any third party) in ADR procedure, but a valid power of attorney should be issued in favour of such third party.
The power of attorney should authorize the appointed representative to act in the name and on behalf of Complainant.
A power of attorney which authorizes the third party to act under its own name, although on behalf of the entity which has an interest to the domain name, would not allow Panel to issue a decision in favour of such entity, since there would be no legal relationship between Panel and the entity having an interest to the domain name.