Panel Decision for dispute CAC-ADREU-003024

Case number	**CAC-ADREU-003024**
Time of filing	**2006-10-03 13:01:09**
Domain names	**binatone.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Euro Suisse International Ltd, Mr Disby Tang**

Respondent

Organization / Name	**Vinitsia 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

The Panel is not aware of any other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant states (although no evidence is provided) that it applied for the disputed domain name on September 9, 2005 through Europe Registry Ltd. It is not clear what happened to this application; however, on April 7, 2006 - the first day of the Land Rush period - <binatone.eu> was registered in the name of the Respondent.

Upon receipt of the Complaint, the Case Administrator notified the Complainant of the following Deficiencies in the Complaint: The signed original of the Complaint together with three copies had not been submitted as required by the ADR Supplemental Rules, and the Complaint did not specify a Mutual Jurisdiction, as required by the ADR Rules.

On October 10, 2006, the Complainant submitted a Complaint amended in respect of the deficiencies identified.

The formal date of the commencement of the ADR Proceeding is November 3, 2006.

The Respondent did not respond, and a Notification of Respondent's Default was issued on January 30, 2007.

On February 5, 2007, Mr P-E H Petter Rindforth was appointed as the panellist in this case. The Projected Decision Date was set to March 8, 2007.

On February 12, 2007, having noticed the Complainant’s references to its trademark registrations for the BINATONE trademark, however without any supporting evidence, the Panel requested the Complainant to provide the Panel with evidence of support. The Complainant was given until February 19, 2007 to reply.

On February 13, 2007, the Complainant replied and presented copies of Certificates of Registration for the BINATONE trademark in Lithuania, Latvia and Estonia. The Complainant added that the said registrations were done by Complainant’s agent in Moscow, Interworld Products.

No further information is known regarding the Complainant or the Respondent.

A. COMPLAINANT

The Complainant states that it has traded under the BINATONE trademark since 1993 and used BINATONE for its web site and e-mail

address since 1996. The Complainant claims to have put a lot of time and money in the development and maintenance of the web site.

Complainant also claims to have registered the BINATONE trademark in a number of countries, among them Estonia, Latvia and Lithuania.

The Complainant argues that the Respondent is not trading any products under the BINATONE trade mark, has no connection to BINATONE and that the disputed domain name (in the name of the Respondent) causes confusion among the customers of the Complainant.

The Complainant requests that the Panel issue a decision that the domain name <binatone.eu> be transferred to the Complainant.

B. RESPONDENT

Respondent did not respond.

DISCUSSION AND FINDINGS

The Complaint seems to be based on Complainant's i) registration and use ("since 1993") of the BINATONE trademark, and ii) use ("since 1996") of the domain name BINATONE.

According to Article 21(1) of the Commission Regulation (EC) No 874/2004 ("the Regulation"), "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…"

Aricle 10(1) of the Regulation identifies "prior rights" as, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names and distinctive titles of protected literary and artistic works.

As stated above, the Panel has asked the Complainant to provide evidence supporting the claim of any trademark registrations, in the name of the Complainant, within the European Union.

The Complainant has provided the Panel with copies of three Certificates of Registration. Althogh not supported by any English translation, it is clear to the Panel that the documentation refers to the following trademark registrations:

No 26 964 BINATONE (figurative) in Estonia
No M49555 BINATONE (figurative) in Latvia
No 44 266 BINATONE (figurative) in Lithuania

The registered owner of these three trademark registrations is: Zakrytoe Aktsionernoe Obschestvo "Internetworld Products", Moscow Russia. In its reply, the Complainant simply refers to "Internetworld Products" as "our agent in Moscow".

The Complainant has not provided any other evidence regarding its alledged registration of the trademark BINATONE. The Panel therefore concludes that the Complainant has failed to prove that it is the owner of the BINATONE trademark within the European Union.

Although not specifically stated by the Complainant, it is so understood by the Panel that the Complainant claims to have unregistered trademark rights or trade name / business identifing rights to the word BINATONE, by use in trade since 1993 and since 1996 as a domain name. Again, the Complainant has failed to file any supporting evidence of such use within the EU or any other part of the world.

As the Complainant has failed to prove any prior rights recognized or established by national and/or Community law, it is the Panels decision to dismiss the Complaint.

Accordingly, it is not necessary to proceed to examine whether the Respondent has any rights or legitimate interests in the name or if the domain name has been registered or is being used in bad faith. Nor is it necessary to examine whether the Complainant meets the eligibility criteria set out in Paragraph 4(2)(b)of the ADR Rules.

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	Petter Rindforth

DATE OF PANEL DECISION 2007-02-27

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, a Hong Kong based company, claims to have registered trademark rights for BINATONE in a number of countries – among them Lithuania, Latvia and Estonia. The Complainant further claims to have used the BINATONE mark in trade since 1993 and since 1996 on the Internet.

The Complainant has presented copies of Certificates of Registration for BINATONE in Lithuania, Latvia and Estonia, however the registered owner of these registrations is a Russian company Internetworld Products, referred to as the Complainant's "agent in Moscow".

As the Complainant thus failed to prove any prior rights recognized or established by national and/or Community law, the Complaint is denied.