Panel Decision for dispute CAC-ADREU-003044

Case number	**CAC-ADREU-003044**
Time of filing	**2006-10-02 10:20:17**
Domain names	**contrinex.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Contrinex GmbH**

Respondent

Organization / Name	**Martin Writh**

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

FACTUAL BACKGROUND

On October 2, 2006 the company Contrinex GmbH (Complainant) filed a complaint against the holder of the domain name CONTRINEX.EU alleging that the holder Martin Wright (Respondent) must not register and use the name CONTRINEX because the word is protected as a trademark.

The Complainant has submitted annexes to the complaint showing that the Respondent on May 6, 2006 by e-mail approached the Complainant in order to sell the domain name to the Complainant. The Complainant refused this offer in a letter dated July 3, 2006 which is attached as Annex 2 and instead initiated this ADR-proceeding.

The Complainant has stated the name of the Respondent in the submitted complaint as “Martin Writh” and not as the correct name of the domain holder as it is “Martin Wright”.

The Respondent registered the domain name CONTRINEX.EU on April 8, 2006 and it was thus registered in the “Land Rush”-period of the registration of .eu-domains.

The Respondent has submitted a Response to the complaint in which it is stated that “Martin Writh” is not the legal or registered owner of the domain name CONTRINEX.EU. The correct name of the holder of the domain name is “Martin Wright”. In the Respondent’s view the Complainant therefore has no claim regarding the domain name CONTRINEX.EU against the Respondent.

The Respondent requests that the complaint is denied by the Panel.

DISCUSSION AND FINDINGS

First of all the Panel must note that in this case the material submitted by the Complainant and the Respondent are exceptionally short. Consequently, the complaint consists of only three lines and the response of five lines.

The domain name is registered and activated according to Section B 1(a) of the ADR-Rules.

The Complainant alleges that the name CONTRINEX is trademarked and may therefore not be registered or used by the Respondent.

The Panel understands this allegation from the Complainant as being a matter of revocation of the domain name according to Art. 21,1

of Regulation EC 874/2004 (hereinafter the Regulation).

Art. 21,1 states that “A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, 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),…”.

The Panel has not been presented to any documents showing that the name CONTRINEX is confusingly similar or identical to a name in which prior rights exists.

The Panel is obliged to make its decision on basis of an adversarial process in which the parties to the dispute have the responsibility for finding and presenting the evidence. This principle is apparent from Section B 11(a) of the ADR-Rules.

The Panel therefore has no duty to make inquiries or to compensate for the absence of information provided by the Complainant cf. e.g. case no. 339 (UNITECH.EU) and Paragraph 21,3 of the Sunrise-Rules.

The Complainant has stated that the name is “trademarked in the whole EU” but has submitted no documentary evidence proving this statement. Moreover, the Complainant has not provided documentation for any trademark right not even in the form of a national registration.

The Complainant has to prove that the name is identical or confusingly similar to a name in respect of which the Complainant has rights under national and/or Community law, see e.g. case no. 2888 (GERMANWINGS.EU).

It seems likely that the Complainant holds a prior right to the name CONTRINEX as a company name. Once again this, however, has not been proven by the Complainant, who has not even referred to this in the complaint.

Since the burden of proof in this matter lies on the Complainant the Panel cannot on basis of the presented material assume that the Complainant owns rights in the name CONTRINEX. This would rely solely on speculation on the part of the Panel and the Respondent would not have had an opportunity to respond to such an assessment.

For the sake of order the Panel has made its own brief investigations in order to examine if the Complainant does in fact hold a right to a Community Trademark Registration. By inquiring OHIM’s on-line register the Panel found no trademark registered by the Complainant identical with the name CONTRINEX.

The Panel finds that the Complainant has not provided documentation for a prior right to the name CONTRINEX and must once again stress that the complaint is extremely short. Therefore the Panel is compelled to base its decision on the fact that the Complainant has no prior right to the name CONTRINEX.

It requires that the Complainant has proven a prior right to the name before the Panel can consider the arguments concerning the Respondent’s bad faith or illegitimate interest in relation to the name, cf. Art. 21,1(a)-(b) of the Regulation. This is not the case in the matter at hand.

The Complainant has submitted a letter received from the Respondent in which he offers to sell the domain name to Complainant. However, to establish bad faith the Complainant must show that the Respondent registered the domain name knowing that another party owned rights in the name, cf. for instance case no. 283 (LASTMINUTE.EU). This is not established or even mentioned by the Complainant but would ,however, not effect the decision in this case, cf. the Panel’s remarks above.

In relation to the Respondent’s allegation that “…“Martin Writh” is not the legal or registered owner of the domain name”… as it is “Martin Wright” the Panel finds that this mistake made by the Complainant is a simple spelling-mistake and this had no influence on the Panel’s decision.

Since the Complainant has failed to show evidence that he is the holder of a prior right to the name CONTRINEX and has not provided any evidence to support the bad faith allegations, the Panel must reject the complaint.

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	**Jakob Plesner Mathiasen**

DATE OF PANEL DECISION 2006-12-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel must stress that the material in this case is exceptionally short.

The Complainant alleges that the name CONTRINEX is trademarked and may therefore not be registered or used by the Respondent.

It requires that the Complainant has proven a prior right to the name before the Panel can consider the arguments concerning the Respondent's bad faith or illegitimate interest in relation to the name, cf. Art. 21,1(a)-(b) of the Regulation. This is not the case in the matter at hand.

Since the Complainant has failed to show evidence that he is the holder of a prior right to the name CONTRINEX and has not provided any evidence to support the bad faith allegations, the Panel must reject the complaint.