Panel Decision for dispute CAC-ADREU-003149

Case number	**CAC-ADREU-003149**
Time of filing	**2006-09-27 12:01:30**
Domain names	**edscha.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Edscha AG**

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is a corporation (Aktiengesellschaft) registered and based in Germany. It has been registered with the commercial register Wuppertal, Germany with the name “Edscha AG” in 1998 and has been using the name since. Complainant owns the domain names “edscha.de” and “edscha.com”.

The domain name “EDSCHA.eu” has been registered with the Respondent on 7 April, 2006, the first day of the Land Rush period.

On 27 September, 2006 the Czech Arbitration Court (CAC) received Complainant’s Complaint.

The parties exchanged correspondence on a settlement agreement, but, however, did not succeed in agreeing on such settlement until the date of this decision. Moreover, Complainant insisted on a Panel’s decision to secure the transfer of the domain name to the Complainant.

The Complainant requests the Panel to decide:

Transfer of the domain name EDSCHA.eu to the Complainant.

As regards content, Respondent has not disputed Complainant’s contentions. After being informed by CAC that the proceeding would not be suspended, Respondent required an extension to deliver its response to the complaint, which has been granted by CAC. However, as Respondent failed to comply with the deadline set to file its Response, Respondent was notified by CAC of its Default as of 18 December, 2006.

A. COMPLAINANT

“EDSCHA” is a name for which the following rights in favour of Complainant are recognised within the German legal system. The protection of trade names is granted under §§ 5, 15 Markengesetz (Trade Mark Act). The registered name of a company is protected by §§ 17 et seqq. of the Handelsgesetzbuch (German Commercial Code)

The firm name “EDSCHA” is protected under both the Trade Marks Act and the German Commercial Code because it is the Complainant’s trade name and his registered firm name at the same time. Alongside trademarks and other signs, trade names are

subject to protection under the Trade Mark Act. Trade names include all names or other designations of a company used in business. The Complainant makes use of the name “EDSCHA” within the scope of its business. Therefore “EDSCHA” constitutes a trade name in the sense of the Trade Marks Act so that the protective provisions of trade mark law apply. As per the enclosed excerpts from the commercial register, the term “EDSCHA” is also the Complainant’s registered firm name. Therefore, the provisions of the German Commercial Code apply as well.

The Complainant asserts rights acc. to Article 21.1, and 2 of the EC Regulation No. 874/2004.

a) Identity or confusing similarity acc. to Article 21.1 of the EC Regulation No. 874/2004

The domain name “EDSCHA” is identical to the name “EDSCHA” which is protected under German law for Complainant. Even if the full name “EDSCHA AG” would have to be considered, the domain name would still be confusingly similar to the name “EDSCHA AG”. The use of identical or similar terms cause a substantial danger of confusion between the enterprises in question. At any rate, a significant part of the public will presume connections of organisational or of economic kind between the parties, especially since the Complainant uses the domain names “edscha.de” and “edscha.com” extensively for its company presentation (excerpts attached to the Complaint). Such connections between the parties do not exist, however.

b) Registration without rights or legitimate interests, Article 21.1a), 2 of the EC Regulation No. 874/2004

The domain name “EDSCHA” has been registered by the Respondent without rights or legitimate interests in respect of the domain name. There is no indication whatsoever which could prove Respondent’s legitimate interests to the domain name.

In the first place, legitimate interests just to the name "EDSCHA” cannot be concluded from the Respondent’s name “VINITSIA, Ltd.”. It is also not apparent that the Respondent has used the domain name in connection with the offering of goods or services or has made demonstrable preparations to do so prior to any notice of this dispute. Moreover, any indications that the Respondent - being an undertaking - has been commonly known by the domain name are missing. Finally, no kind of non-commercial or fair use of the domain name can be observed from the accessible sources.

By all means accessible to the Complainant, the internet included, no reliable information as to the Respondent is detectable, no matter whether the company itself or the field of activity is concerned. There is no listing of the company on Google. The only evidence results from the Danish websites www.crn.dk and www.comon.dk (excerpts attached), where the Respondent is called a “domain shark” and is regarded as a company regularly registering .eu-Domains for speculation purposes. This is supported by the case ADR 1304 ”KEMET“. According to the Panel, in this case the Respondent also had no rights or legitimate interests in the disputed domain name and did not even respond to the complaint.

B. RESPONDENT

The Respondent has not disputed Complainant’s contentions.

DISCUSSION AND FINDINGS

I.
As the parties did not succeed in agreeing on a settlement and, moreover, Complainant insisted on a Panel decision to secure the transfer of the domain name to Complainant, a suspension or cessation of the proceeding was out of question.

II.
A claim for the transfer of the domain name to Complainant can only be granted in case the requirements of Article 21.1 of the EC Regulation No. 874/2004 (Speculative and abusive registrations) are complied with and Complainant is eligible to register .eu domain names acc. to Article 4.2 b) of the EC Regulation No. 733/2002 (see also Paragraph B.11(b) ADR Rules).

As Respondent has not disputed the facts provided by Complainant with the Complaint, the Panel regards the facts provided by Complainant as given acc. to Paragraph B 10 ADR Rules (see also ADR 2810 “RATIOPARTS”).

1.
Complainant has proved that it is owner of a distinctive trade name right “Edscha” in Germany acc. to § 5 German Trade Mark Act (Markengesetz). Such a trade name is a right acc. to Article 10.1 of the EC Regulation No. 874/2004 (see also ADR 3211 “SCHAPER”).

2.
The domain name “EDSCHA.eu” is identical to the Complainant’s trade name “Edscha”, as the suffix “.eu” is to be disregarded in this respect (see also ADR 475 “HELSINKI”; 387 “GNC”; 596, “RESTAURANT”).

3.
Complainant has argued that Respondent has no rights or legitimate interests in the domain name “EDSCHA.eu”. The burden of proof is on Complainant’s side (see also ADR 1304 “KEMET”). However, Complainant has presented its results of investigation with respect to the negative fact of the missing rights and legitimate interests of Respondent in the domain name “EDSCHA.eu”. Acc. to Paragraph B 10 ADR Rules and in view of the missing material response of Respondent the Panel accepts this presentation as given and bases its decision on this presentation. Also, the panel itself has not found any hint with respect to any rights or legitimate interests of Respondent with respect to the domain name “EDSCHA.eu”.

4.
As Complainant is an undertaking with registered office within the Community acc. to Article 4.2 (b) (i) EC-Regulation 733/2002, Complainant is entitled to request transfer of the domain name “EDSCHA.eu”.

DECISION

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

the domain name EDSCHA be transferred to the Complainant.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2007-01-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is a corporation (Aktiengesellschaft) registered with the company name “Edscha AG” in 1998 in Germany. It is still based in Germany and has been using the name since. The domain name “EDSCHA.eu” has been registered with the Respondent on 7 April, 2006, the first day of the Land Rush period.

Complainant alleges that “EDSCHA” is a trade name under §§ 5, 15 Markengesetz (Trade Mark Act). The Complainant asserts rights acc. to Article 21.1, and 2 of the EC Regulation No. 874/2004 due to a lack of right or legitimate interest of Respondent in the domain name.

As regards content, Respondent has not disputed Complainant’s contentions.

As Complainant’s assertions have not been disputed by Respondent, such assertions have been adopted by the Panel and build the basis of the Panel’s decision.

The parties exchanged correspondence on a settlement agreement, but, however, did not succeed in agreeing on such settlement until the date of this decision. Therefore and because Complainant insisted on a Panel decision to secure the transfer of the domain name to Complainant, a suspension or cessation of the proceeding was out of question.

As the Complainant has proven that it is the owner of a right acc. to Articles 21.1 in connection with 10.1 EC-Regulation 874/2004, and, further, that Respondent has no rights or legitimate interests in the domain name, and as further Complainant is eligible to register domain names acc. to Article 4.2 (b) EC-Regulation 733/2002, the Panel decided to accept the Complaint. Accordingly, the Panel decided to let the domain name “EDSCHA” be transferred to the Complainant.