Panel Decision for dispute CAC-ADREU-003239

Case number	**CAC-ADREU-003239**
Time of filing	**2006-10-03 12:55:56**
Domain names	**eurosuisse.eu**

Case administrator

Name	**Josef Herian**

Complainant

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

Respondent

Organization / Name	**Lehigh Basin 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 that relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is Euro Suisse International Ltd and its given address is in Hong Kong.

2. The Respondent is Lehigh Basin Ltd and its given address is in Hull, United Kingdom.

3. The Complainant maintains (although no evidence is provided) that on 9 September 2005 it applied for <eurosuisse.eu> (the “Domain Name”) at europeregistry.com, the website for Europe Registry Ltd. It is not clear what happened to this application; however, on 7 April 2006, the first day of the Land Rush period, the Domain Name was registered to the Respondent.

4. The Complainant commenced these ADR proceedings, seeking a transfer of the Domain Name to the Complainant, on 29 September 2006.

5. On 3 October 2006, in accordance with Paragraph B2 (b) of the .eu Dispute Resolution Rules (the “ADR Rules”), the Case Administrator notified the Complainant that the Complaint it had submitted was deficient on the following three grounds:

(a) The original of the Complaint together with 3 copies had not been submitted as required by the Supplemental ADR Rules of the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the “ADR Supplemental Rules”), Paragraph B1 (c).

(b) The Complaint did not specify a Mutual Jurisdiction, as required by the ADR Rules Paragraph B1 (b) (14).

(c) The Complaint was not signed, as required by the ADR Rules Paragraph B1 (b) (15).

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

7. On 11 October 2006, the Case Administrator confirmed that the amended Complaint was compliant and the Respondent was notified of these proceedings against it.

8. The Respondent filed its Response on 21 December 2006.

9. On 12 January 2007 Matthew Harris was appointed as the panellist in this matter having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence.

10. By virtue of Article 22 of Commission Regulation (EC) No 874/2004 (the "Regulation"), a panel is required to issue its decision "within one month from the date of receipt of the response by the ADR provider" (reflected in the ADR Rules at Paragraph B12 (b)). Application of this Rule to this case results in a deadline of 21 January 2007. I comment upon this further later on in this decision.

A. COMPLAINANT

The remedy sought by the Complainant in this case is the transfer of the Domain Name to it from the Respondent. The substance of the Complaint is very short and does not incorporate or attach any supporting evidence.

It is reproduced in full below:

"The Complainant is Euro Suisse International Ltd. We have been trading under EUROSUISSE brand since 1999. We have this EUROSUISSE trade mark registered in Australia, China, Hong Kong, EU, Hungary, New Zealand, Romania and Turkey.

We have applied for this .eu domain through Europe Registry Ltd (www.europeregistry.com) on 9 Sep 2005. The status of this application was showing under processing until 7 April 2006. We have not heard any news about this application from anyone else. We had sent several emails to Europe Registry Ltd but no reply was received so far. We then found the EUROSUISSE domain name was registered under the name of Lehigh Basin Ltd on 7 April 2006.

We have been using "eurosuisse" as our website and email address since 1999. We have put a lot of time and money to develop and maintain our eurosuisse website. It will cause confusion to our customers and we don't think the Domain holder is trading any products in EUROSUISSE brand. The Domain holder does not have any connection to EUROSUISSE."

B. RESPONDENT

The Response is even shorter and is reproduced in full below. Again, no evidence was submitted in support of the Respondent's submission:

"The complainant has never tried to contact my client directly before initiating this ADR.

My client has registered the domain name in good faith. My client has made clear to me that should the complainant hold a trademark my client would be willing to transfer the name to the complainant for the standard retail rate of 30€."

DISCUSSION AND FINDINGS

WHAT NEEDS TO BE SHOWN

1. The second paragraph of the Complainant's Complaint refers to alleged difficulties that it encountered with an application made through Europe Registry Ltd on 9 September 2005. It was not possible to make an application for a .eu domain name until 7 December 2006. However, many "registrars" (of which Europe Registry Ltd is one) accepted applications prior to that date in anticipation of the Sunrise process. Therefore, it is probably this to which the Complainant is referring. The Complainant says that the status of its application was "showing under processing until 7 April 2006". Therefore, it appears that a Sunrise application may indeed have been made. Why it is that this application did not succeed is not explained. If the Complainant believes that lack of sucess was due to the alleged actions or inactions of its registrar, then this is something for the Complainant to take up with its registrar. If the Complainant believes that its application was wrongly rejected by the Registry (i.e. EURid), then it would have been open to the Complainant to commence ADR proceedings against EURid under Article 22(1)(b) of the Regulation.

2. However, the Complainant has not in this case brought proceedings under Article 22(1)(b) of the Regulation against EURid. It has instead brought proceedings against Article 22(1)(a) of the Regulation against the current registrant of the Domain Name, i.e. the Respondent. For a domain name in the hands of the current registrant to be subject to revocation, the requirements set down in Article 21(1) of the Regulation must be met. Article 21(1) reads:

"(1) 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:

(a) has been registered by its holder without rights or legitimate interest in the name; or
(b) has been registered or is being used in bad faith."

3. The .eu ADR process is, in common with other ADR processes applying to other types of domain name, intended to provide a relatively informal, quick and inexpensive process to resolve domain name disputes. There are, for example, no strict rules of evidence to be complied with. Whilst panelists must conduct proceedings in accordance with the Rules, they nevertheless have a fair degree of discretion as to how this is done and have a positive obligation to ensure that the parties to any proceedings are treated "fairly and with equality" (see paragraph 7 of the Rules).

4. Nevertheless, Paragraph B.11(d) of the ADR Rules, makes it clear that ultimately the burden of proving the requirements of Article 22(1) of the Regulation rests upon a complainant. A complainant must at a bare minimum put forward a prima facie case to the effect that a domain name should be subject to revocation. It is not sufficient for a complainant merely to assert that the requirements of Article 22(1) have been satisfied and to leave it to the panel to investigate whether or not this is correct.

5. It would appear from the contents of the Response that provided the Complainant can show trade mark rights the Respondent is willing to transfer the Domain Name to the Complainant in return for a payment of €30. However, there is nothing to suggest that the Complainant has accepted this offer and in the absence of the parties having reached a settlement in these proceedings I must go on to consider whether the Complaint has proved its case.

6. Unfortunately for the Complainant, the Complainant's submissions (reproduced above) are quite inadequate in this respect. The Complainant has not properly identified the trade marks upon which it relies. Further no attempt has been made to identify or explain in what manner Article 21(1) of the Regulation has been satisfied and such statements that are made are not supported by any evidence. However, I deal with the Complainant's contentions in this respect by reference to each element of Article 22(1) of the Regulation in greater detail below.

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

7. The Complainant asserts that: its name is Euro Suisse Limited; it has traded under the EUROSUISSE brand since 1999; and, it has EUROSUISSE trade mark registrations in Australia, China, Hong Kong, EU, Hungary, New Zealand, Romania and Turkey. There is also mention of a "eurosuisse" website and email address.

8. From this, it is apparent (although it is not expressly asserted) that the name in respect of which the Complainant claims rights recognized or established by the national law of a Member State and/or Community law is EUROSUISSE. However, whilst the Complainant makes reference to registered trade marks in various territories around the world, it does not describe what form those trade marks take nor identify them by reference to their registered numbers. No trade mark certificates, nor any other evidence that these trade marks exist, is provided. In the circumstances, arguably the Complaint has failed to prove that the Complainant has trade mark rights in a name identical to the Domain Name.

9. Nevertheless a panel is permitted, in its sole discretion, to conduct its own investigations on the circumstances of a case (ADR Rules Paragraph B.7(a)). Although I have reservations as to whether it was appropriate to have done so, I have undertaken some limited independent investigations in this case. In particular, on the somewhat speculative assumption that the Complainant's claim to a registration "in [the] EU" was a reference to a Community Trade Mark, I have conducted a search of the publicly available database of Community Trade Marks provided online by the Office for Harmonisation in the Internal Market ("OHIM"). From this it is apparent that there does exist a Community Trade Mark for the word mark EUROSUISSE (No.001973387). That mark was registered on 12 April 2002 in classes 9, 11 and 12 in the name of Complainant.

10. In the circumstances, it is clear that the Complainant does have relevant rights in the name EUROSUISSE and this decision proceeds on the basis that the Complainant has shown that it has sufficient rights for the purposes of Article 21(1) of the Regulation.

NO RIGHTS OR LEGITIMATE INTERESTS - OR - BAD FAITH REGISTRATION OR USE

11. The finding above in relation to the Complainant's rights in EUROSUISSE is not on its own sufficient. The Complainant must also prove at least one of the two requirements set out at Article 21(1)(a) and (b) of the Regulation. Namely; that the Respondent has no rights or legitimate interests in respect of the Domain Name; OR, that the Domain Name was registered or is being used in bad faith. For reasons that will become apparent, it is convenient to deal with these two alternative requirements together under a single heading.

12. The Complainant fails to expressly assert either that the Respondent has no rights or interests in the Domain Name or that the

Domain Name was registered or used in bad faith. Rather it expresses an opinion, “we don’t think the Domain holder is trading any products in EUROSUISSE brand”, and an assertion, “[t]he Domain holder does not have any connection to EUROSUISSE.” No evidence is offered in support of these contentions nor any factual background provided so as to put them in context. The Complaint contains no explanation of the Respondent’s or the Complainant’s business or activities. No attempt is made to explain how, the extent to which and for what purposes the Respondent is using the Domain Name.

13. In the circumstances, the Complainant has not even put forward a prima facie case that the Respondent has no rights or legitimate interests or has acted in bad faith.

14. It might be said that these difficulties could be addressed by independent investigation by the Panel under Article 7 of the ADR Rules. I think that it would be inappropriate for me to attempt to do this in this case. It is one thing to independently verify an assertion made in a submission by limited reference to a publicly available database (something that I have done, albeit with reservation, on the question of the existence of trade mark rights). It is quite another to make the Complainant’s case for it under the guise of Paragraph B.7(a) of the ADR Rules. That is not the role of the panel.

15. In the circumstances, I find that the Complainant has not satisfied the requirements of either Article 21(1)(a) or (b).

ELIGIBILITY CRITERIA

16. Pursuant to Paragraph B.11(e) of the ADR Rules:

“The remedies available pursuant to an ADR Proceeding where the Respondent is the Domain Name Holder in respect of which domain name the Complaint was initiated shall be limited to the revocation of the disputed domain name(s) or, if the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002, the transfer of the disputed domain name(s) to the Complainant.”

17. The general eligibility criteria set out in Paragraph 4(2)(b) require a .eu domain name registrant to be at least one of the following:

(i) undertaking having its registered office, central administration or principal place of business within the Community, or
(ii) organisation established within the Community without prejudice to the application of national law, or
(iii) natural person resident within the Community.

18. In its Complaint the Complainant seeks a transfer of the Domain Name but does not set out in what manner it satisfies the eligibility criteria. Indeed, the Complainant’s Hong Kong address and its alleged application for <eurosuisse.eu> in September 2005, suggests that the Complainant may not in fact be eligible for a <.eu> domain name.

19. Therefore, even if I had decided this case in favour of the Complainant (which I do not), it seems likely that I could not have complied with the Complainant's request that the Domain Name be transferred to it. The sole remedy available would have been the revocation of the Domain Name.

TIMING OF THIS DECISION

20. As I have stated above, under Article 22 of the Regulation this decision should be issued by Sunday 21 January 2006. I accepted this appointment as a panellist on Friday 12 January 2007. However, paragraph B5 of the ADR rules provides for a two day period in which either party can challenge the appointment of the panelist. Accordingly, the matter was only formally transmitted to me late in the afternoon of Tuesday 16 January 2007.

21. At present, the Czech Arbitration Court are proposing to make changes to the ADR Rules so that if any time period provided for in the Rules comes to an end on a non-working day, the time period shall be extended automatically to include the next working day; although at present this amendment does not appear to have come into force. Consequently, I have had three working days in which to prepare this decision.

22. This case has been relatively straightforward and so it has been possible to produce a decision in this tight timetable. However, in a more complex case it is likely to be wholly unrealistic to expect a panel to produce a decision in three days (particularly if the panel consists of three persons). This is far from an ideal state of affairs. It would be preferable if time for provision of a decision were to run from the appointment of the panel (which is the procedure that has been adopted by other domain name ADR systems). Unfortunately, this is not the approach which was adopted in the Regulation.

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	**Matthew Harris**

DATE OF PANEL DECISION 2007-01-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings against the Respondent as it is entitled to do pursuant to Article 22(1)(a) of Commission Regulation (EC) No 874/2004 (the "Regulation") where a respondent's registration of a domain name is speculative or abusive.

The domain name at issue in this case is <eurosuisse.eu>. The Respondent registered <eurosuisse.eu> on the first day of Land Rush.

The Complaint is extremely brief and poorly drafted. The Respondent filed an even briefer Response.

The Panel held:

1. It was for the Complainant to prove to the Panel that the requirements of Article 21(1) of the Regulation were satisfied in this case.

2. The Complainant submited that it held registered trade mark rights in the EUROSUISSE mark but provided no evidence in support of this. The Panel was entitled (but not obliged) to independently verify the Complainant's submission in this respect. The Panel chose to do so and searched the publicly available on-line trade mark database of the Office for Harmonisation in the Internal Market ("OHIM").

3. On the basis of the search results the Panel was satisfied that the Complainant owned registered European trade mark rights in EUROSUISSE, a name identical to the domain name at issue. The Panel therefore concluded that the Complainant had satisfied the rights requirement of Article 21(1).

4. The Complainant omitted in its Complaint any reference to the nature of its, or the Respondent's, business or activities. No attempt was made to explain how, the extent to which and for what purposes the Respondent is using the Domain Name. The Complainant merely containned the statement "we don't think the Domain holder is trading any products in EUROSUISSE brand. The Domain holder does not have any connection to EUROSUISSE."

5. As a result, the Complainant had failed to make out even a prima facie case that the Respondent either has no rights or legitimate interests in <eurosuisse.eu> or had registered or is using <eurosuisse.eu> in bad faith. The Panel therefore concluded that the Complainant had failed to satisfy either of the remaining requirements of Article 21(1).

Accordingly, the Panel rejected the Complaint.