Panel Decision for dispute CAC-ADREU-003510

Case number	CAC-ADREU-003510
Time of filing	2006-11-02 11:25:36
Domain names	bigdutchman.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Big Dutchman AG, Thomas Prüllage

Respondent

Organization / Name	Zheng Qingying

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 are related to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is Big Dutchman AG, a company registered and based in the Federal Republic of Germany. The Complainant belongs to the Big Dutchman group, a developer, manufacturer and distributor of computer-operated apparatus and instruments. The Complainant operates a business mainly for educational purposes. The Complainant furthermore has over 1000 subidiaries and/or franchisees within the territory of the EU.

2. The Complainant is, and has been for several years, the proprietor of numerous trademark registrations in the sign „Big Dutchman“, which is protected in Germany and other member states of the European Union.

3. The complainant applied for the EU-Domain registration “bigdutchman.eu” during the sunrise period, but was unsuccessful. In July 2006 the complainant had to find out that the respondent applied for the domain “bigdutchman.eu”. The domain was registered for the respondent on 12 September 2006.

4. On 08 July 2006 the representative of the complainant contacted the respondent and explained the trademark rights of the complainant. The representative asked the respondent to withdraw the application for the domain registration “bigdutchman.eu” to avoid legal proceedings, but the respondent refused this request with E-mail of 10 July 2006. He informed the representative of the complainant that he was planning a website under the Domain bigdutchman.eu and that this website would not conflict with the trademark rights of the complainant.

5. The Respondent has not responded to the Compaint.

A. COMPLAINANT

The Complainant contends as follows:

Registration and use of the Domainname “bigdutchman.eu” by the respondent infringes the trademark rights of the complainant. The complainant is the owner of the trademark rights listed above as well as of the company name “Big Dutchman”. It is assumed that the respondent has no proper rights or legitimate interests in the sign “Big Dutchman”. Until the date of the filing of the complaint the website was not in use. It is the opinion of the complainant that the respondent is a so called “domain grabber”, who registered the disputed domain name in bad faith. According to the information provided by EURID, Annex 4, the respondent is living in London, Great

Britain, but it is doubted that the respondent is a resident of the European Union since the telephone number submitted to EURID is a Chinese number.

The complainant seeks the transfer of the domain “bigdutchman.eu” by the respondent according to paragraph B11 (b) ADR Rules, paragraph 4(2)(b) of Regulation (EC) No. 711/2002.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

1. To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Regulation have been complied with. That paragraph reads as follows:

" 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), 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."

2. Paragraph B.10(a) of the ADR rules provides that:

In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

3. However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

4. The panel therefore deals with each of the three constituent parts of Article 21(1) of the Regulation in turn:

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

5. The Complainant has asserted that it is the proprietor of (and has provided details of) numerous registered trademarks in the mark BIG DUTCHMAN.

These assertions are not contradicted by the Respondent.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

6. The Complainant has provided a description of the use of the relevant name and the domain name by the respondent; and expressly asserted that in the circumstances described the respondent has no legitimate interest in the name. Therefore, the Complainat has - prima facie - proven that the Respondent has no rights or legitimate interests in the domain name in issue.

These assertions are not contradicted by the Respondent.

In the absence of any submission on the issue from the Respondent, the Complainant has therefore satisfied the requirements of Article 21(1)(a). Because Complainant needs to show either

- a lack of rights or legitimate interest on the part of the Respondent
OR
- bad faith registration or use and given the finding on rights and legitimate interests set out above it is not necessary in this case to go

on to consider the Complainant's assertions in relation to bad faith registration or use.

DECISION

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

the domain name BIGDUTCHMAN be transferred to the Complainant

PANELISTS

Name	**Friedrich Kurz**

DATE OF PANEL DECISION 2007-01-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings against the Respondent under Article 22(1)(a) of Commission Regulation (EC) No.874/2004 alleging that the Respondent's registration of the Domain Name (i.e. <bigdutchman.eu>) was speculative or abusive, Art. 21(1) a) and b) of Commission Regulation (EC) No. 874/2004..

The Complainant maintained that it was the proprietor of, inter alia, various European trade mark rights incorporating or comprising the word BIG DUTCHMAN.

The Respondent failed to file a Response.

The Panel held:

(1) The Complainant had managed to prove - prima facie - to the Panel that the requirements of Article 21 of the Regulation were satisfied in this case.

(2) That the Complainant has managed to make out a prima facie case that the Respondent had no legitimate rights or interests in the Domain Name.

(3) Given the Panel's finding on the question of rights and legitimate interests, it was not necessary to address the Complainant's allegation of bad faith registration. The Complainant had satisfied the requirements of Article 21 of the Regulation.

(5) The Complainant, being a German registered company, also satisfied the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002.

Accordingly, the Panel ordered the transfer of the Domain Name to the Complainant.