

Panel Decision for dispute CAC-ADREU-003589

Case number CAC-ADREU-003589

Time of filing 2006-11-13 10:09:13

Domain names houtland.eu

Case administrator

Name Josef Herian

Complainant

Organization / Name VALCKE BVBA, DIRECTOR GUIDO VALCKE

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

None

FACTUAL BACKGROUND

The Complainant is a Belgian company named VALCKE.

It seems (although the parties are not clear about this) that the same economic entity applied for the domain name "houtland" during the sunrise period. Its application was received on 07/02/2006 11:19:30.651 and ranked # 1 but for an unknown reason it was rejected by the Registry.

On June, 26, 2006, the Complainant wrote to the Respondent to notify its interest in having the domain name.

Respondent answered the same day by a simple "You're the 3rd. Make offer please".

It seems from the documents provided to the Panel that although both parties reached an agreement (500 euros), the transaction hasn't been completed.

A. COMPLAINANT

The arguments of the Complainant are shortly drafted. It refers to the documents related to the (aborted) transaction and states that: "The domain name is exclusively registered for commercials goals (Proof can be found in the annexes). The domain name is being used in bad will".

B. RESPONDENT

The arguments of the Respondent are as shortly drafted as the Complainant's ones: it acknowledges the reality of the factual background but it contends that "I cannot find why the Complainant has a prior right on the name HOUTLAND and what the evidence is".

DISCUSSION AND FINDINGS

Pursuant to article 21 of EC Regulation 874/2004:

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.

Same article also stipulates that:

Bad faith, within the meaning of point (b) of paragraph 1 may be demonstrated, where:

(a) circumstances indicate that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law or to a public body; or (...)

oOo

Article 21 clearly creates a first condition for a successful procedure: the domain name must be identical or confusingly similar “to a name in respect of which a right is recognised or established by national and/or Community law” ...

The Panel may analyze the rights/legitimate interest/bad faith issues if, and only if the first condition is satisfied.

This interpretation is quite unquestionable since article 21 insists on the fact 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), AND WHERE IT [underlined by the Panel]: (...).

oOo

In its complaint, the Complainant states that “Since we were using this name for our business, we would like this name to be given to us”.

There is no evidence provided of the alleged use.

The Respondent formally denies the right of the Complainant. This is how the panel understands the following sentence: “I cannot find why the Complainant has a prior right on the name HOUTLAND and what the evidence is”.

Although the reference to a “prior” right is irrelevant in the context of a landrush registration, it is the panel opinion that the Respondent in fact denies that the 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” to the benefit of the Complainant.

It is the Complainant duty to prove that it satisfies to the first condition of article 21, and to substantiate the alleged right.

There is no element submitted to the Panel from which the Panel could infer that the Complainant has a right on the disputed name (notably, the Complainant is named VALCKE BVBA; no trademark certificate is provided; no evidence of a commercial use is given; etc.).

It doesn't mean that the Complainant hasn't a right on the name, recognised or established by national and/or Community law; it only means that no evidence is provided to the Panel. It is not to the Panel to self-enquiry on this issue, notably because it could lead to a breach of both parties right to a fair trial.

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 | Paul Van Den Bulck |
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DATE OF PANEL DECISION 2007-02-02

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Article 21 clearly creates a first condition for a successful procedure: the domain name must be identical or confusingly similar “to a name in respect of which a right is recognised or established by national and/or Community law” ...

The Panel may analyze the rights/legitimate interest/bad faith issues if, and only if the first condition is satisfied.

This interpretation is quite unquestionable since article 21 insists on the fact 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), AND WHERE IT [underlined by the Panel]: (...).

There is no element submitted to the Panel from which the Panel could infer that the Complainant has a right on the disputed name. It doesn't mean that the Complainant hasn't a right on the name, recognised or established by national and/or Community law; it only means that no evidence is provided to the Panel. It is not to the Panel to self-enquiry on this issue, notably because it could lead to a breach of both parties right to a fair trial.
