Panel Decision for dispute CAC-ADREU-003650

Case number	**CAC-ADREU-003650**
Time of filing	**2006-11-09 14:15:36**
Domain names	**quelle-katalog.eu, quelle-kataloge.eu, quellekataloge.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Quelle GmbH**

Respondent

Organization / Name	**Bernadette Selim Abou Zakhm**

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 relating to the disputed domain names.

FACTUAL BACKGROUND

The Complainant challenges the registration of three domain names “QUELLE-KATALOG”, “QUELLE-KATALOGE” and “QUELLEKATALOGE” by the Respondent.

The Complainant, Quelle GmbH, is a German based mail order house serving customers from all over Europe and all over the world. It results from the excerpts of the commercial register filed by the Complainant that the activities under the company name “Quelle” are production of and trade with goods of any kind. A major advertising device for the Complainant is its main catalogue (German: “KATALOG”; plural “KATALOGE”). The Complainant’s “QUELLE” catalogue has a world wide circulation twice a year of between 10 and 15 million copies.

The Complainant owns numerous registered trademarks consisting of the word “QUELLE”, among others German word mark 770 134 “Quelle” registered in classes 1 to 33 on 02.02.1963. It has been evidenced that this trademark is extensively used. According to a research report dated April 1996 filed with the Complaint, 99 % of the consumers know “Quelle”.

Therefore, OHIM (decision No. 1749/2003, dated 25.08.2003) states that the word QUELLE has acquired a higher degree of distinctiveness. Pursuant to a WIPO-Panel (decision D2001- 1036, quelle.net, dated 16.10.2001) “QUELLE” is a well-known trademark and trade name.
The foregoing results from the undisputed submissions brought forward and evidenced by the Complainant.

The disputed domain name “QUELLE-KATALOG” is currently used for a Website listing numerous links ordered by topics like “Homes for sale”, “Airline tickets”, “Computers” “Electronics” but also “Quelle Katalog”. By clicking on the latter link, users are confronted with further links, in particular a link to the Complainant’s website “quelle.de”. The same content is shown on the Websites presented under the other two domain names “QUELLEKATALOGE” and “QUELLE-KATALOGE”.

A. COMPLAINANT

The Complainant substantially claims that the registration of the disputed domains name “QUELLE-KATALOG”, “QUELLE-KATALOGE” and “QUELLEKATALOGE” is speculative and abusive.

Pursuant to the Complainant, the disputed domain names are confusingly similar to the name “Quelle”. Furthermore, the Complainant claims that the Respondent has no rights or legitimate interest in the disputed domain names and that the domain names have been

registered and are used in bad faith. This is supported by Complainant's allegation claiming that the Respondent will be granted a financial benefit from the companies actually linked on the websites in dispute if consumers use these presented links.

Accordingly, the Complainant requests the transfer of the three domain names from the Respondent to the Complainant.

B. RESPONDENT

The Respondent did not submit any response to the Complaint.

DISCUSSION AND FINDINGS

1. According to Article 22 (11) of the Commission Regulation (EC) No 874/2004 an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 or the decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002.

In the present case, the Complaint has been brought against the Registrant, not the Registry. Therefore, the only question is whether the registration is speculative or abusive within the meaning of Article 21. According to this disposition and Paragraph B 11 (d) (1) of the ADR.eu Alternative Dispute Resolution Rules (the "ADR Rules") the Complainant bears the burden of proving the following:

(i) The domain names are identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law and; either

(ii) The domain name were registered by the Respondent without rights or legitimate interest in the names; or

(iii) The domain names were registered or are being used in bad faith.

2. The Respondent did not file any Response to the Complaint. This entitles the Panel to proceed to a decision on the Complaint and to consider this failure to comply as grounds to accept the claims of the Complainant, paragraph B. 10 (a) of the .eu Alternative Dispute Resolution Rules (ADR Rules). Consequently, the Panel accepts the claims of the Complainant, provided however, that these claims are coherent and that the Complainant fulfils the eligibility criteria for who can register a .eu domain name as established by Article 4 (2) (b) of Regulation 733/2002:

3. The domain names are identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law

The Complainant has evidenced being the owner of numerous registered trademarks consisting of the word "QUELLE", in particular German word mark 770 134 "Quelle" registered in classes 01 to 33 on 02.02.1963. Consequently, this trademark has been registered much earlier than the disputed domain names. It also results from the documentation provided and the further researches undertaken by the Panel that this trademark has been and is currently used and it has been renewed in 2005.
The domain names are not identical but confusingly similar with said German word mark. As the Complainant correctly points out, the domain names are combining the trade mark "QUELLE" with the term "KATALOG(E)", describing the Complainant's major advertising device, the "catalogue". Therefore, these purely descriptive terms are not capable to exclude confusing similarity between the domain names and the trademark (see ADR.eu Nr. 02832 – SABANCIHOLDING).

4. The domain names were registered by the Respondent without rights or legitimate interest in the names

It results from the Complaint that prior to any notice of the dispute, the Respondent used and has currently been using the disputed domain names for presenting Websites with commercial links ordered by different topics like "Homes for sale", "Airline tickets", "Computers" "Electronics". The Panel, however, has doubts as to whether Respondent's interest in using the domain names for such purposes does constitute a legitimate interest in the sense of Article 21. Actually, neither has the Respondent exposed why it should be necessarily her using the disputed domain names, nor are such reasons evident to the Panel.

Yet, considering that the Respondent has registered and is using the disputed domain names in bad faith, the Panel has not to decide this issue:

5. The domain names were registered or are being used in bad faith

The Panel considers that the Respondent uses the domain names intentionally to attract Internet users, for commercial gain to her

websites, by creating a likelihood of confusion with the Complainant's trademark. Actually, internet users searching the Complainant's Website and catalogue on the web by typing "QUELLE-KATALOG" directly into their internet browser will not be confronted with the product they search, but with the Respondent's website. The same applies for the other two domain names. Therefore, the Respondent speculates on these users in order to attract them to her own websites and to disrupt them from the Complainant. By presenting a link to the Complainant on the websites under the disputed domain names, the Respondent acknowledges the Complainant's existence and the "QUELLE KATALOG".

6. Finally, the Complainant is entitled to have the disputed domain names transferred to. The Complainant has demonstrated fulfilling the eligibility criteria for who can register .eu domain names as established by Article 4 (2) (b) of Regulation 733/2002 as Quelle GmbH is established in Germany.

DECISION

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

the domain name QUELLE-KATALOG, QUELLE-KATALOGE, QUELLEKATALOGE be transferred to the Complainant.

This decision shall be implemented by the Registry within thirty (30) days after notification of this decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, Articles B12 (d) and (a) of the ADR Rules.

PANELISTS

Name	**Dr. Tobias Malte Müller, Mag. iur.**

DATE OF PANEL DECISION 2007-02-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. The Respondent did not file any Response to the Complaint. Therefore, the Panel accepts the claims of the Complainant, provided however, that these claims are coherent and that the Complainant fulfils the eligibility criteria for who can register a .eu domain name as established by Article 4 (2) (b) of Regulation 733/2002.

2. The domain names "QUELLE-KATALOG", "QUELLE-KATALOGE" and "QUELLEKATALOGE" are confusingly similar with the German word mark "QUELLE". The purely descriptive terms "KATALOG(E)" (English: catalogue[s]) are not capable to exclude confusing similarity between the domain names and the trademark.

3. By using the disputed domain names for presenting Websites with commercial links ordered by different topics like "Homes for sale", "Airline tickets", "Computers" "Electronics", the Respondent intents to attract Internet users, for commercial gain to her websites, by creating a likelihood of confusion with the Complainant's trademark.