Panel Decision for dispute CAC-ADREU-003773

Case number	CAC-ADREU-003773
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Domain names	monot.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Merck Santé, Jonas Kölle

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

The Complainant is the French company Merk Santé, a subsidiary of the German company Merk KGaA, one of the largest pharmaceutical groups in Europe. Merk Santé is incorporated in France and has its address at 37, rue St Romain, 69008 Lyon, as shown in the extract from the companies' register annexed to the Complaint.

The Complainant is the owner of the French trademark registration MONOT No. 97 709 372, filed on December 12, 1997.

The Respondent, Mr Zheng Qingying, is an individual, located in London, UK. The respondent registered on August 2006 the disputed domain name MONOT.EU, through a registrar located in China.

A. COMPLAINANT

The Complainant argues that:

(1) the Respondent has filed a domain name identical to its trademark MONOT;

(2) trademark MONOT is well known in France, as it has been used for decades as a company name for the companies Laboratoires Monot, Monot-Liphaderm, Monot SARL and Monot SAS. Such a use as a company name ceased since 2002. Trademark MONOT is now used in relation with various pharmaceutical products;

(3) the Respondent has no prior rights on the name MONOT or legitimate interests in this name . In effect the Respondent does not have any trademark right, and is not commonly known under this name. Complainant has never authorized the respondent to file or use the name MONOT;

(4) the Respondent has registered the name in bad faith, the very same day when the domain name was first released for public registration, the Complainant 's request during the sunrise period having been rejected for formal reasons. Moreover, the Respondent has never used the name MONOT for any legitimate commercial or non commercial activities;

(5) the Respondent has registered other domain names corresponding to third parties trademarks , such circumstances constituting evidence of bad faith , i.e. in the Case N° 01412.

Being eligible for registration of a eu. domain name according to the Paragraph 4(2)(b) of regulation (EC) N° 733/2002, the Complainant requests the transfer of the domain name.

B. RESPONDENT

The Respondent debates the Complainant's arguments considering that the Complainant did not produce any complete and relevant evidence of its prior trademark rights.

He denies the assertions of Merk Santé as to its bad faith behaviour, arguing that anyone can register a domain name, when a domain is released for public registration.

According to the Respondent, there is no evidence that he intends to prevent the complainant from reflecting the name MONOT in his domain name. His sole purpose is to use the domain name for “future project”.

No evidence shows that he has no rights on the other domain names mentioned in the complaint. The circumstances of the case N° 0 1412 differ from those of the present case.

DISCUSSION AND FINDINGS

The Panel shall examine the Complaint and issue a decision on the basis of Article 4.2(b) of Regulation (EC) No. 733/2002, articles 10.1, 21 .1 .2 .3, 22.11 of (EC) Regulation N°874/2004, and according to Art 11 of the ADR rules.

In accordance with Article 21.1 of (EC) Regulation No. 874/2004,

“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 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.”

Substantiation of earlier rights and comparison of signs

The Respondent alleges that the Complainant has not substantiated its earlier right on the sign MONOT. The Complainant has submitted as Annex 2 of its Complaint a copy of the SAEGIS database evidencing that he is the present owner of French trademark registration No. 97 709 372, which is currently in force. This database is commonly used by trademark practitioners, including this panel, and is an acceptable means of evidence of trademark rights. All the data concerning the earlier right can be verified by the Respondent on any database which would contain French trademarks. Nor the Regulation, nor the rules, require the submission of copies of the original certificate of registration. The Complainant’s trademark is a pure word mark but, in any event, should it have contained figurative elements, this would not have been relevant for the purpose of a comparison with a domain name, as MONOT is inherently highly distinctive.

The contested domain name is MONOT.EU, and the earlier registered trademark is MONOT. The signs compared are strictly identical, as the top level domain is not taken into consideration.

Rights or legitimate interests of the Respondent over the contested domain name

The Complainant alleges that its trademark MONOT is well-known in France, but the Complaint does not contain any evidence in this respect. However, the Panel concurs with the Complainant’s allegation regarding the inherent high distinctive character of the word MONOT, which has no meaning in French.

The Complainant asserts that the Respondent does not have any right or legitimate interest in the domain name and, in its response, the Respondent solely mentions that its domain name registration is to be used for “future projects”. Such an allegation is obviously insufficient to establish a right or legitimate interest under the Regulation, in particular if we rely on the open list contained in its Article 21.2. Respondent does not explain why it precisely chose to register the domain name MONOT, while this word has no particular

meaning, and is clearly not, for example, an English word (Respondent is located in London). Besides, the contested domain name was inactive when the Complaint was filed, and the Respondent and his business are not known under this name.

As Respondent has failed to establish rights or legitimate interest in the disputed domain name, the Complaint is well-founded in accordance with Article 21.1.(a) of the Regulation.

Registration or use of the domain name in bad faith

For reasons of procedural economy, as the Complaint is already well-founded, this Panel does not need to assess a possible bad faith of the Respondent in the registration or use of the contested domain name.

Nonetheless, the Panel will merely mention that the Respondent has manifestly engaged in a pattern of registering domain names consisting of third parties' trademarks. In this respect, the Panel refers to the following ADR decisions issued against the Respondent: Decision No. 3588 concerning the domain names XIRONA and LEVOTHYROX, which were transferred to Merk KGaA, the mother company of Merk Santé; Decision No. 3510 concerning the domain name BIGDUTCHMAN; Decision No. 2986 concerning the domain name TERXON; and Decision No. 3444 concerning the domain name OCUNET.

This conduct amounts to bad faith and is mentioned as such in the non exhaustive list contained in Article 21.3 of the Regulation.

Remedies sought

The Complainant has requested the transfer of the disputed domain name.

In accordance with Article 22.11 of (EC) Regulation No. 874/2004, "the domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4.2(b) of Regulation (EC) No. 733/2002 are fulfilled". The Complainant is a company incorporated in France, as shown in annex 1 of the Complaint (extract from the Companies' register), is the owner of a trademark registration over the disputed sign, and is therefore allowed to claim the transfer of the domain name MONOT.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name MONOT be transferred to the Complainant

PANELISTS

Name	**Martine Dehaut**

DATE OF PANEL DECISION 2007-02-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complaint is directed against the owner of the domain name MONOT, which is identical to an earlier French registered trademark. The Panel is satisfied that a private database commonly used and known in trademark practice is sufficient to substantiate the earlier rights of the Complainant. The earlier trademark is inherently highly distinctive, and the Respondent has failed to establish any right or legitimate interest over the disputed domain name. A mere reference to "future projects" is clearly insufficient to establish a right or legitimate interest in the domain name. In addition, the contested domain name was registered in bad faith, as the Respondent has engaged in a pattern of registering domain names strictly identical to trademark rights of third parties. The disputed domain name is transferred to Complainant.