Panel Decision for dispute CAC-ADREU-003971

Case number	CAC-ADREU-003971
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Domain names	atlasprofilax.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	ATLASPROFILAX, S.A., RENÉ CLAUDIUS SCHÜMPERLI

Respondent

Organization / Name	Name Redacted

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 parties dispute this point. See Discussion and Findings below.

FACTUAL BACKGROUND

The Complainant filed a complaint regarding the domain name <atlasprofilax.eu> (the "domain name") on 2006-12-14. The domain name was registered by the Respondent on 2006-06-07, as confirmed by Eurid verification.

According to the Complainant, ALTLASPROFILAX is a natural technique through a deep massage to reposition the atlas vertebra. The technique has been developed by Mr. Schümperli, the Complainant's Director General, and has been taught to a number of students currently practicing as ATLASPROF (title granted after successfully completing the course) in several countries inside and outside the European Union.

In order to enroll in the course, the student must sign a contract acknowledging the intellectual property disclosed in the course, including the name ATLASPROFILAX (Article III) and committing to "keep silence about the knowledge received as well as the non divulgation to a third party and not to make it public" (Article IV). The contract also includes the following reference "Rene C. Schumperli … is the owner of the [name] ATLASPROFILAX ….".

The Respondent enrolled in the course on 14 October 2004 (as per the date of the contract) and seems to be running a business by the name of ATLANTOTEC, which appears to be for similar activities.

A. COMPLAINANT

Complainant's contentions are as follows:

1. The domain name is almost identical to the Complainant's trademark: ATLASPROFILAX is protected by, among others, International Registration No. 694,822, class 42, valid in a number of countries in the European Union.

2. The Respondent has no right or legitimate interest to the domain name: The Respondent does not have any registered mark for ATLASPROFILAX nor is commonly known by it.

3. The domain name has been registered and is being used in bad faith, in breach of the training contract that the Respondent signed at the time of enrolling. The Complainant also claims that the Respondent's bad faith conduct is evidenced by the fact that the domain name automatically redirects users to the website www.atlantotec.com, owned by the Respondent and also, by the use by the Respondent of advertising brochures of its ATLANTOTEC method which are very similar to the advertising brochures released by the

Complainant of its ATLASPROFILAX method.

B. RESPONDENT

The Respondent's complete response to the complaint (except for the annex mentioned below) is the following:

"The domain name www.atlasprofilax.eu has been registered by me after the privileged period reserved for the trademark owners. So I do have all rights to possess this domain name although obviously not having any trademark rights on "Atlasprofilax". At the time of registration, I have been a member of the Atlasprofilax association - and I have studied the Atlasprofilax method to apply it like other therapists as well - see also www.atlasprofilax.lu as example.

Since months, there has been no forwarding of the domain www.atlasprofilax.eu to my own website www.atlantotec.com - and I do not intend to re-install such a forwarding. I either intend to sell the domain to another Atlasprofilax therapist or use the domain name as pledge against the compainant and his organisation(s) and a leading member of the "Atlas Academy Switzerland", Mrs Heike Göring, has registered the domain www.atlantotec.de even BEFORE I had registered www.atlasprofilax.eu.

You may see her function in the annex, complainant No. 2 in the Swiss court case.

As offered in the Swiss court case, I will immediately transfer the requested domain www.atlasprofilax.eu to the complainant as soon as I have received the domain www.atlantotec.de without any costs for me. "Atlantotec" is my registered trademark in Switzerland, and any use of this name by the complainant or Mrs Heike Göring is considered as hostile or even illegal. "

DISCUSSION AND FINDINGS

A) Procedural question

The Respondent filed the Response to the Complaint on 2007-03-01 by email. A request was sent by the Case Administrator to the Respondent requesting him to cure some deficiencies in the Response. On 2007-03-23, the Case Administrator sent a Notification of Respondent's Default for failing to cure the deficiencies.

The whole Response is the text reproduced above (see Parties' Contentions, B. Respondent), to which was annexed a Decision of a Swiss Court of 29 December 2006 in German.

As per Non-standard communication of 2007-04-23 and pursuant to ADR Rules A3(d), the Panel requested from the Respondent the translation of the Decision into the language of the proceedings i.e. English or alternatively, the translation of the relevant paragraphs of the Decision making a direct reference to the domain name <atlasprofilax.eu> and an explanation of how the mentioned Decision was relevant to this case.

Since the above court proceedings were initiated by the Complainant and therefore it was expected to have thorough knowledge of the Decision (even if the Decision was in German), the Panel also requested the Complainant to briefly submit comments regarding whether or not such court decision was relevant to the present case. The Complainant submitted its comments on 2007-05-02.

Pursuant to ADR Rules B7(d) and A3(c), the Panel declares admissible the Respondent's Response included above under "Respondent's contentions". However, due to the lack of translation of the Decision of the Swiss Court, the Panel declares inadmissible the annex to the Response i.e. the Decision of the Swiss Court of 29 December 2006.

B) On the substance

According to article 22(11) of Regulation 874/2004, the Panel must determine whether the registration of the disputed domain name is speculative or abusive as defined in article 21 of that Regulation.

A registration of a domain name is speculative or abusive if the domain name "is identical or confusingly similar to a name in respect of which a right is recognised or established by national or Community law" and where it (a) has been registered by its holder without rights or legitimate interest; or (b) has been registered or is being used in bad faith.

In the view of the Panel, if the .eu suffix is discounted, the disputed domain name is identical to the Complainant's "ATLASPROFILAX" International Registration, which is valid in several EU countries. Accordingly, the Panel finds that the first requirement of the definition of speculative or abusive registration is satisfied.

Regarding the question of whether the Respondent has a legitimate interest in the domain name, Article 21(2) of Regulation 874/2004 states that “a legitimate interest may be demonstrated where, prior to any notice of an … ADR procedure, (a) the holder of a domain name has used the domain name … in connection with the offering of goods or services or has made demonstrable preparations to do so; (b) [it] has been commonly known by the domain name …; (c) [it] is making a legitimate and non-commercial or fair use of the domain name….”. These circumstances are not exhaustive.

The Complainant has established prima facie that the Respondent does not meet any of the above requirements. Furthermore, in its Response, the Respondent states that it has no trademark rights in "ATLASPROFILAX" and that the successful registration of the domain name provides enough entitlement to the domain name. For obvious reasons, this latter argument has to be rejected, particularly in light of the fact that the Respondent did not even have to prove any right when filing the application for the domain name. Accepting the opposite would render trademark owners without any defense against cybersquatting.

Also, the fact that the Respondent completed the course and at some point belonged to the Atlasprofilax association (which appears not to be the case anymore) does not give him any legitimate interest to the domain name, especially taking into account the enrollment contract that he had to sign acknowledging the Complainant's intellectual property.

It appears that the only reason for the Respondent to register the domain name was in reaction to the registration by an official of the Complainant of the domain name <atlantotec.de>. Whether this registration by the Complainant is questionable is not relevant to the present proceedings and it certainly cannot constitute a legitimate reason for the Respondent to register the domain name <atlasprofilax.eu>.

The Panel finds that the Respondent has no right or legitimate interest in the disputed domain name. Accordingly, the Panel finds that the second requirement of the definition of speculative or abusive registration is also satisfied.

Since the Respondent has no right or legitimate interest in the disputed domain name, it is therefore unnecessary to consider whether the domain name was registered or is being used in bad faith. However, it appears to the Panel on the evidence that the domain name was registered and, at some point, it was being used in bad faith. This strong indication is supported by the existence of the circumstances set out in Regulation 874/2004 article 21(3)(c), since the Respondent seems to be engaged in activities similar to that of the Complainant, and 21(3)(d), since, as admitted by the Respondent, the domain name was pointing at its website www.atlantotec.com.

In addition, the Respondent's failure to abide by the provisions of the training contract signed with the Complainant, and particularly the failure to respect the Complainant's intellectual property, constitutes further evidence of bad faith registration of the domain name.

C) Remedy requested

Pursuant to Paragraph B.11(b) 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.”

Paragraph 4(2)(b) of Regulation (EC) No 733/2002 setting out the general eligibility criteria requires a .eu domain name registrant to meet 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.

In its Complaint the Complainant seeks the transfer of the domain name to itself. However, the Complainant, based in Sierre (Switzerland), does not meet the above criteria and, therefore, this Panel cannot comply with the Complainant's request.

Article 22(11) of Regulation 874/2004 provides that the domain name shall be transferred to the complainant if the complainant applies and satisfies the general eligibility requirements. There is no provision for transferring the domain name to another legal entity, even if there were one, which is not clear from the evidence submitted by the Complainant (ADR.eu cases Nos. 1580 AUNTMINNIE, 3239 EUROSUISSE, 3465 ROTARY, 3924 XANGO). The domain name must therefore be revoked.

DECISION

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

the domain name ATLASPROFILAX be revoked

PANELISTS

Name	**José Checa**

DATE OF PANEL DECISION 2007-05-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

ATLASPROFILAX is a natural technique developed by the Complainant, who owns registered trademark rights to the name. The technique is taught through a course. In order to enroll in the course, the student must sign a contract acknowledging the intellectual property disclosed in the course, including the name ATLASPROFILAX (Article III).

The Respondent enrolled in the course and seems to be running a business by the name of ATLANTOTEC, which appears to be for similar activities.

The Panel partially admitted the Response, even if the CAC found it to be deficient. However, the Panel declared inadmissible the evidence annexed to the Response, since it was submitted in a language other than the language of the proceedings.

The Panel finds that the domain name is identical to the Complainant's mark and that Respondent has no rights or legitimate interest to the domain name. Furthermore, the domain name has been registered in bad faith.