Panel Decision for dispute CAC-ADREU-003976

Case number	**CAC-ADREU-003976**
Time of filing	**2006-12-07 13:53:26**
Domain names	**abat.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**ABAT AG**

Respondent

Organization / Name	**Georg Gottfried**

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

Complainant is the owner of a German trademark “Abat” (No. 300 87 312), which is registered for classes 9, 35, 41, and 42.

The domain name “ABAT.eu” has been registered with the Respondent on 22 August, 2006. Respondent only uses a domain parking system under the domain name, operated by Sedo GmbH, Germany. On the site there is an information, including a link, that the domain name can be bought.

Per email, the Complainant expressed its interest towards the Respondent to purchase the domain name ABAT.eu. The Respondent offered to sell it for € 10.000.

On 7 December, 2006 the Czech Arbitration Court (CAC) received Complainant’s Complaint.

On 29 December, 2006, the Respondent offered to sell the domain name to Complainant for € 500.

The Complainant requests the Panel to decide:

Transfer of the domain name ABAT.eu to the Complainant.

Respondent did not file a response to the Complaint.

A. COMPLAINANT

The Complainant asserts rights acc. to Article 21.1, and 2 of the EC Regulation No. 874/2004.

Complainant contends own trademark rights acc. to Article 21.1 of the EC Regulation No. 874/2004 based on its German trade mark rights.

1. Identity or confusing similarity acc. to Article 21.1 of the EC Regulation No. 874/2004

The domain name “ABAT.eu” is almost identical to the trade mark “ABAT”, which is protected under German law for the Complainant. The top level domain “.eu” is a technically essential element of the domain name and can be disregarded in this respect.

2. Registration without rights or legitimate interests, Article 21.1a), 2 of the EC Regulation No. 874/2004.

The domain name “ABAT” has been registered by the Respondent without rights or legitimate interests in respect of the domain name. There is no indication whatsoever which could prove Respondent’s legitimate interests to the domain name. He seems to have no trade mark, neither does he use the name as company name. Nor is he commonly known under the name. Further, he does not make a legitimate and non commercial use or fair use of the domain name. He only uses a domain parking system operated by Sedo GmbH, Germany.

3. Registration or use in bad faith, Article 21.b), 3 of the EC Regulation No. 874/2004.

Obviously the Respondent registered the domain name “ABAT” primarily for the purpose of selling, renting or otherwise transferring it to a holder of rights in the name. He offered it not only to the Complainant but – via the Sedo site – to anyone.

B. RESPONDENT

The Respondent has not filed a response.

DISCUSSION AND FINDINGS

I. Although not mandatory, the Panel considered all documents provided disregarding the fact that not all of them were presented in the language of the proceeding (English), as they were presented in German, the Panelist’s native language. The Panel is of the opinion that the more complete the basis of facts is, the better is the chance to find the right decision. However, the Panel wishes to make clear that its decision is restricted to this case, and the decision in other cases may be different, as may be the decisions of other panels. Therefore it is strongly recommended to provide all documents of a proceeding in the language of the proceeding.

II. A claim for the transfer of the domain name to Complainant can only be granted in case the requirements of Article 21.1 of the EC Regulation No. 874/2004 (Speculative and abusive registrations) are complied with and Complainant is eligible to register .eu domain names acc. to Article 4.2 b) of the EC Regulation No. 733/2002 (see also Paragraph B.11(b) ADR Rules).

1. The Complainant has proved that it is the owner of a trade mark right “Abat” in Germany. Such a trade mark is a right acc. to Article 10.1 of the EC Regulation No. 874/2004.

2. The domain name “ABAT.eu” is identical or at least confusingly similar to the Complainant’s trade mark “Abat”, as the suffix “.eu” is to be disregarded in this respect (see also ADR 475 “HELSINKI”; 387 “GNC”; 596, “RESTAURANT”).

3. Complainant has argued that Respondent has no rights or legitimate interests in the domain name “ABAT.eu”. The burden of proof is on Complainant’s side (see also ADR 1304 “KEMET”, 2929 “SOFTAGE” with further citations). However, Complainant has presented its results of investigation with respect to the negative fact of the missing rights and legitimate interests of Respondent in the domain name “ABAT.eu”. Acc. to Paragraph B 10 ADR Rules and in view of the missing response of Respondent the Panel accepts this presentation as given and bases its decision on it (see also ADR 2810 “RATIOPARTS”). Further, the panel itself has not found any additional proof regarding any rights or legitimate interests of the Respondent with respect to the domain name “ABAT.eu”.

However, one could argue that the use of the domain parking system could be regarded legitimate, non commercial and fair use under Article 21.1 (a), 2 (c) EC Regulation No. 874/2004. But, however, this use can not establish a legitimate interest acc. to Article 21. 2 (c) EC Regulation No. 874/2004, as it is commonly known that this parking systems are offered by the domain name providers solely as alternative to the “site under construction” design. Moreover, this parking system intensifies the proof that the Respondent intends to sell the domain name rather than using it for own (legitimate) purposes. Thus, the Panel is of the opinion that the Respondent has no rights or legitimate interests in the domain name “ABAT”.

4. Therefore, the Panel did not have to decide, whether the Respondent registered and/or used the domain name “ABAT” in bad faith.

5. Finally, the Panel verified that the Complainant, being a German corporation, also satisfied the criteria for eligibility for a .eu domain name as set out in Article 4 (2) (b) of Regulation (EC) No. 733/2002 (same opinion ADR 3885 “WORLDSBK”. The Panel understands B 11(b) ADR Rules in a way that the Panel is not obliged but, however neither prohibited to carry out own investigations with respect to the eligibility of the Complainant under Article 4 (2) (b) of Regulation (EC) No. 733/2002. The Panel wishes to emphasize that other Panels may be of a different opinion and may request explicit proof in this respect. So may the Panel itsself in other cases with different situations.

Other than in ADR 1674 “EBAGS” there is no hint that the Complainant is not eligible to register a .eu domain name. Further, the Panel's opinion does not contradict the opinion expressed in “ADR 3499 BRITISH SWIMMING”, as in that case there were 2 Complainants, 1 of which did not prove its eligibility and the panel was not able to verify, if this person is eligible to apply for a .eu domain name under Article 4 (2) (b) of Regulation (EC) No. 733/2002.

Accordingly, the Panel ordered the transfer of the Domain Name “ABAT.eu” to the Complainant.

DECISION

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

the domain name ABAT be transferred to the Complainant.

PANELISTS

Name	**Dominik Eickemeier**

DATE OF PANEL DECISION 2007-03-06

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the owner of a German trademark “Abat” (No. 300 87 312), which is registered for classes 9, 35, 41, and 42. The domain name “ABAT.eu” has been registered with the Respondent on 22 August, 2006.

The Complainant asserts rights acc. to Article 21.1, and 2 of the EC Regulation No. 874/2004 due to a lack of right or legitimate interest of Respondent in the domain name. The Complainant further claims that the Respondent registered the domain name and/or used it in bad faith.

Respondent did not file a response.

As Complainant’s assertions have not been disputed by Respondent, such assertions have been adopted by the Panel and build the basis of the Panel’s decision.

As the Complainant has proven that it is the owner of a right acc. to Articles 21.1 in connection with 10.1 EC-Regulation 874/2004, and, further, that Respondent has no rights or legitimate interests in the domain name, and as further Complainant is eligible to register domain names acc. to Article 4.2 (b) EC-Regulation 733/2002, the Panel decided to accept the Complaint. Accordingly, the Panel decided to let the domain name “ABAT” be transferred to the Complainant.