Panel Decision for dispute CAC-ADREU-004008

Case number	**CAC-ADREU-004008**
Time of filing	**2006-12-21 09:42:01**
Domain names	**sirena.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Sirena A/S**

Respondent

Organization / Name	**World Online Endeavours, Ltd., World Online Endeavours, Ltd.**

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 that the Panel is aware of.

FACTUAL BACKGROUND

The domain name "sirena.eu", which is the subject of this ADR proceeding, was filed with the Registry (EURid) on 7 April 2006 by the Respondent.

The Complainant, Sirena A/S, contacted the Respondent in order to get the domain name transferred to the Complainant.

The Parties had an e-mail correspondence about this issue but did not come to a conclusion on either transferring or not transferring the domain name.

The Complainant therefore filed a complaint against the Respondent claiming the domain name to be transferred to the Complainant as the Respondent - according to the Complainant - had no rights or legitimate interests in the domain name and that the registration was made in bad faith and in such conflicts with Article 21(1) of (EC) No 874/2004.

Under this ADR proceeding the Respondent has offered the domain name in dispute to the Complainant for the price of EUR 30. The Complainant has accepted such offer but the Parties have made different offers in respect on how and which order such transfer should follow.

To the knowledge of this Panel the Parties have not come to a conclusion on this issue and no proof has been submitted to the Panel showing that a transfer has been accepted and initiated to the extend possible.

A. COMPLAINANT

The domain name: “sirena.eu”, which is the subject of this Complaint, was filed with the Registry (EURid) on 7 April 2006. According to the application data, the domain name is registered by World Online Endeavours, Ltd. having address in Sweden.

The Complainant is the holder of the name Sirena A/S, which is registered as a company name in the Danish Agency of Commerce and Companies and protected under Danish company law and marketing law. Furthermore, the Compliant has registered this name as a trademark in Denmark and elsewhere. Based on its rights in the name and trademark the Complainant contacted the Respondent by letter on 27 June 2006 asking for a transfer of the domain name “sirena.eu” to the Complainant. On 28 June 2006 the Respondent replied with asking for documentation of the Complainants Rights. Even though, the Complainant has sent the requested documentation several times no substantial reply has been received from the Respondent.

The Complainant seeks a transfer of the domain name “sirena.eu”, on the grounds that the registration is speculative and abusive, and thus conflicts with Article 21(1) of (EC) No 874/2004.

Article 21(1) of (EC) No 874/2004 states that 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 recognized 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.

The Respondent’s domain name “sirena.eu” is quasi-identical and confusingly similar to the Complainant’s established name and registered trademark – Sirena. Thus the Complainant is the holder of Prior Rights according to Article 10(1), which are in full force and effect under Danish law, including the Danish Trademarks Act Section 4 and Danish company law.

The Complainant submits that the Respondent has not shown any rights or legitimate interest in the disputed domain name. The Complainant submits that the Respondent has apparently not used the domain name or a name corresponding to the domain name in connection with the offering of goods and services or has made demonstrable preparation to do so, cf. Article 21(2)(a) of (EC) No 874/2004. Furthermore, the Complainant submits that the Respondent has not been commonly known by the domain name or is making fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which the Complaint is recognized, cf. Article 21(2)(b) and (c) of (EC) No 874/2004.

The Complainant finally submits that the Respondent has registered the disputed domain name in bad faith. Since the Respondent apparently not has taken the domain name into use, and does not hold any Prior Rights to the domain name, indicates that the disputed domain name was registered in order to prevent the holder of such names in respect of which a right is recognized from reflecting this name in corresponding domain names, cf. Article 21(3)(b)(i) of (EC) No 874/2004.

Based on above, the Complaint respectfully requests that the domain name “sirena.eu”, which is the subject of this complaint, be transferred/attributed to the Complainant, cf. ADR Rules § B11(b) and (d), as the Complainant satisfies all registration criteria set out in the European Union Regulations.

Having noted the reply from the Respondent, the Complainant maintains its view on the legal position in all respects.

However, for practical and commercial reasons only the Complainant would be prepared to accept a transfer of the domain name against payment of 30 EUR.

Provided that the Respondent arranges for an immediate transfer of all rights in and to the domain name to the Complainant, the amount of 30 EUR will be transferred through the Complainant's representative upon receipt of documentation that such transfer has been completed.

B. RESPONDENT

The complainant has contacted the respondent for the first time on the 27 June 2006 claiming to have prior rights to the domain name sirena.eu. The respondent immediately responded on the 28 June 2006 requesting evidence of TM rights which would give a prior right to the domain name. On the 14th of July the respondent received another email by the complainant stating that she has not received an answer to her email from 27 June 2006. On the 19th of July the respondant sent another email requesting evidence of TM rights and received an automated response that the complainant is out of the office and would not return until 7 August 2006. On the 7th of August the complainant received an email containing an attachment which the respondant claimed contained evidence of a TM. This attachment could not be opened. In addition, the complainant made a reference to an email sent on 29 July 2006 that contained the same documents, but the respondant never received such an email. Following this there were several email exchanges which lead to no further action and the complainant filed the ADR.

The undersigned has mentioned the above to emphasize that there seemed to be have been several technical issues that prevented both parties from coming to an understanding before a complaint was filed.

The respondent now offers to the complainant the transfer the domain name for the usual registration fee of 30 Eur if the complainant drops the ADR procedure. If the complainant agrees the respondent will send a signed transfer agreement and after receipt of the payment and the return of the agreement will accept a transfer request without due delay.

DISCUSSION AND FINDINGS

According to Article 21(1) of (EC) 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 recognised or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it has been registered by its holder without rights or legitimate interest in the name or has been registered or is being used in bad faith.

As the case has been presented before the Panel the Respondent in respect of Article 21(1) of (EC) No 874/2004 has demonstrated no rights or legitimate interests in the domain name and/nor has the Respondent proved that the domain name has been registered or is being used in good faith.

On the contrary the Panel interprets the Respondent's response and doings as such as the Respondent has had no rights or at least no legitimate interests in the name.

The domain name sirena.eu has been registered by the Respondent without rights or legitimate interests in the name since neither a right nor a legitimate interest in accordance with Article 21(2) of(EC) No 874/2004 was demonstrated by the Respondent or is otherwise apparent to the Panel.

The Complainant however has demonstrated such necessary rights to the name "sirena" as needed in respect of Article 21(1) cf. Article 10(1) of (EC) No 874/2004.

The Complainant satisfies the eligibility criteria set out in Article 4(2)(b) of (EC) No 733/2002.

DECISION

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

the domain name SIRENA be transferred to the Complainant

PANELISTS

Name	**Mikkel Gudsøe**

DATE OF PANEL DECISION 2007-03-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant argued that the Respondent had violated Article 21 of (EC) No 874/2004 when registering the domain name "sirena.eu".

The Complainant demonstrated sufficient rights to the trademark and company name "sirena".

The Respondent demonstrated no rights or legitimate interests in the name "sirena".

The Respondent offered under the ADR proceeding in its response to sell the domain name to the Complainant for the price of EUR 30.

The Panel decided that the domain name should be transferred to the Complainant.