Panel Decision for dispute CAC-ADREU-004038

Case number	CAC-ADREU-004038
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Domain names	heraeus.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Heraeus Holding GmbH, Bodo Stahn

Respondent

Organization / Name	Bogdan Surdu

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

1. The Complainant is Heraeus Holding GmbH, a company registered and based in the Federal Republic of Germany. Complainant's group of companies basically unites six companies:

W. C. Heraeus: precious metals
Heraeus Kulzer: dental health
Heraeus Electro-Nite: sensors
Heraeus Quarzglas: quartz glass
Heraeus Tenevo: synthetic quartz glass
Heraeus Noblelight: specialty lighting sources

2. The Complainant is, and has been for several years, the proprietor of numerous trademark registrations in the sign „Heraeus", which is protected in Germany and other member states of the European Union. Furthermore, the Complainant is propriertor of numerous domain names containing the term "Heraeus", like inter alia heraeus.com, heraeus.de.

3. The Respondent, a private person, helds that he registered the domain name not in bad faith but as a avatar in a multiplayer online game.

A. COMPLAINANT

Complainants Contentions read as follows:

This Complaint is hereby submitted for a decision in an ADR Proceeding in accordance with the Procedural Rules (ADR Rules, Supplemental ADR Rules and European Union Regulations) under Art. 22(1)(a) and (b) of Commission Regulation (EC) No. 874/2004 of April 28, 2004 laying down public policy rules concerning the implementation and functions of the .eu Top-Level-Domain and principles governing their registration (ADR Rules, Paragraph B 1 (b)(1)).

This Complaint is filed against the registration of the domain name heraeus.eu (Disputed Domain Name) for Respondent on August 29, 2006, 11.01 am.

The language of this ADR Proceeding within the meaning of ADR Rules Paragraph 3 (a) is English, since this is the language of the registration agreement provided for in the WHOIS database of the registry EURid (Registry) regarding the Disputed Domain Name. An excerpt from the Registry's WHOIS-database for the Disputed Domain Name dated October 4, 2006 is attached hereto as ANNEX C1.

This Complaint concerns a classic case of cyber-squatting. Complainant is a world-wide recognized company in the business segments of precious metals, dental health etc. known as "Heraeus". The term "Heraeus" is protected world-wide by numerous trademark registrations in favor of Complainant. There is no need for Respondent to using the term "Heraeus". This is neither a descriptive nor a common term. Respondent obviously has no legitimate interest in the Disputed Domain Name which obviously was registered or is made use of by Respondent in bad faith. The Panel should not countenance such an abuse of the domain name system and should order the domain name to be transferred from Respondent to Complainant.

This Complaint is based on the following factual and legal grounds:

(A) The Disputed Domain Name is identical and/or confusingly similar to a name in which Complainant has rights (ADR Rules, Paragraph B 1 (b) (10) (i) A.)

(1) Complainant is a global, private company in the business segments of precious metals, dental health, sensors, quartz glass and specialty lighting sources. With revenues of more than
EUR 9 billion and more than 10,600 employees in over 100 companies, Complainant has stood out for more than 150 years as one of the world's leading companies involved in precious metals and materials technology.

The name "Heraeus" derives from the company's founder Wilhelm Carl Heraeus, a pharmacist and chemist who in 1851 took over his father's pharmacy "Einhorn-Apotheke" located in Hanau/Germany (where Complainant is still domiciled).

In these days, the City of Hanau also was the home of the German goldsmith's guild. Platinum was used in jewelry production as early as the late 18th century, but especially in the arts of the sophisticated 19th century, the precious metal was in high demand because of its refined appearance. But platinum posed a tremendous challenge for goldsmiths. It was hard to process because of its toughness and its high melting point of 1,769 degrees Celsius. Until a melting process was developed, platinum was forged in a white-hot state – an art that in the mid-19th century was only understood in London and Paris. Thanks to a technological breakthrough, Wilhelm Carl Heraeus changed this situation from the ground up in 1856. After extensive attempts, he had succeeded in melting two kilograms of platinum in an oxy-hydrogen gas flame. The "First German Platinum Melting House" W. C. Heraeus was born. And success was not too far off. The young entrepreneur's customers soon included goldsmith shops and jewelry factories around the world, as well as dental factories, chemical laboratories, and companies in numerous other industrial sectors.

Nowadays, Complainant's group of companies basically unites six companies:

W. C. Heraeus: precious metals
Heraeus Kulzer: dental health
Heraeus Electro-Nite: sensors
Heraeus Quarzglas: quartz glass
Heraeus Tenevo: synthetic quartz glass
Heraeus Noblelight: specialty lighting sources

All of these companies are linked by their comprehensive know-how in the processing of precious materials and in their high-tech applications. From the automotive industry to semiconductors, electronics and steel, and to chemistry and medicine, many industries rely on state-of-the-art technology from Complainant.

In evidence of the above facts, an Affidavit of Complainant's Head of IP Department Hans-Christian Kühn dated December 11, 2006 is provided as ANNEX C2. More detailed information on Complainant's profile and history, company structure and key figures taken from Complainant's website at www.heraeus.com is further provided as ANNEX C3.

(2) Complainant's rights in the name "HERAEUS"

(a) Complainant is the owner of numerous registered trademarks many of which contain the name "Heraeus", in particular:

International Registration

Registration No.: WIPO No. 167352
Registration Date: February 23, 1953,
Word-Mark,
including:
- Austria (AT)
- Benelux (BX)
- Switzerland (CH)
- Czech Republik (CZ)
- Algeria (DZ)
- Egypt (EG)
- France (FR)
- Croatia (HR)
- Italy (IT)
- Liechtenstein (LI)
- Morocco (MA)
- Monaco (MC)
- Portugal (PT)
- Slovenia (SI)
- Slovak Republic (SK)
- San Marino (SM)

International Registration
Registration No.: WIPO No. 641357
Registration Date: December 10, 1994
Word-Mark,
including:
- Austria (AT)
- Bosnia & Herzegovina (BA)
- Bulgaria (BG)
- Benelux (BX)
- Belarus (BY)
- Switzerland (CH)
- China (CN)
- Cuba (CU)
- Czech Republic (CZ)
- Spain (ES)
- France (FR)
- Croatia (HR)
- Hungary (HU)
- Italy (IT)
- Kyrgyzistan (KG)
- Korea (KP)
- Kazakhstan (KZ)
- Liechtenstein (LI)
- Moldova (MD)
- Macedonia (MK)
- Mongolia (MN)
- Poland (PL)
- Romania (RO)
- Russian Federation (RU)
- Sudan (SD)
- Slovenia (SI)
- Slovak Republic (SK)
- Tajikistan (TJ)
- Ukraine (UA)
- Uzbekistan (UZ)
- Vietnam (VN)

International Registration
Registration No.: WIPO No. 708686
Registration Date: August 8, 1998
Word-Mark,
including:
- Albania (AL)
- Kenya (KE)
- Latvia (LV)
- Denmark (DK)
- Finland (FI)
- Iceland (IS)
- Lithuania (LT)
- Norway (NO)
- Sweden (SE)

Germany
Registration No.: German Patent and Trademark Office No. 501201
Registration Date: April 1, 1938
Word-Picture-Mark

Germany
Registration No.: German Patent and Trademark Office No. 1005836
Registration Date: July 31, 1980
Word-Mark

Germany
Registration No.: German Patent and Trademark Office No. 1006406
Registration Date: September 30, 1980
Word-Mark

Germany
Registration No.: German Patent and Trademark Office No. 2088194
Registration Date: December 23, 1994
Word-Mark

Documentary evidence of Complainant's registered trademarks in form of printouts from the official Online-Registers at WIPO as well as the national German Patent and Trademark Office dated October 10, 2006 is attached hereto as ANNEX C4.

(b) Complainant's 100% subsidiary Heraeus Infosystems GmbH (legally domiciled at the principal place of business of Complainant) further owns numerous domain names, all of which contain the name "Heraeus", in particular:

Domain Name: heraeus.com
Registration Date: January 18, 2004
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus.com

Domain Name: heraeus.de
Registration Date: March 13, 1997
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-cc.com/ceramiccolours

Domain Name: heraeus-cc.com
Registration Date: January 11, 2006
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-cc.com/ceramiccolours

Domain Name: heraeus-cc.de
Registration Date: January 13, 2006
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-cc.de/ceramiccolours

Domain Name: heraeus-med.com
Registration Date: January 18, 2004
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-med.com

Domain Name: heraeus-med.de
Registration Date: October 4, 2000
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-med.de

Domain Name: heraeus-quarzglas.com
Registration Date: November 22, 2003
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-quarzglas.com

Domain Name: heraeus-quarzglas.de
Registration Date: August 12, 2001
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-quarzglas.de

Domain Name: heraeus-quarzglas.net
Registration Date: January 18, 2004
Registrant: Heraeus Infosystems GmbH
Redirects to: www.behnisch.heraeus-kulzer.com

Domain Name: heraeus-quarzglas.org
Registration Date: August 14, 2001
Registrant: Heraeus Infosystems GmbH
Redirects to: www.heraeus-quarzglas.org

Printouts from the WHOIS Registers of the respective National Network Information Centers (NICs) and various Internet Service Providers researched at www.dnsstuff.com/tools/whois are provided as ANNEX C5.

(c) Most of the aforementioned domain names redirect to Complainant's main websites at www.heraeus.com and/or www.heraeus.de, where Complainant maintains an active presence on the Internet in order to promote its goods, to provide information about Complainant's company profile and history, and to give a detailed overview on the major fields of Complainant's business activities, its brands and products (see e.g. ANNEX C3).

(d) From the very beginning of its commercial activities, Complainant eventually used and promoted its "Heraeus" trademarks world-wide in connection with its business and products. As a result of Complainant's investment of its efforts, money, skills and other resources, Complainant's trademark "Heraeus" is widely recognized as indicating a product emanating from Complainant. In 2005 alone, Complainant sold more than EUR 9 billion with Heraeus products (see ANNEXES C2 and C3).

(e) Furthermore, Complainant is using the name "Heraeus" as a company name and is registered since February 19, 1986 as "Heraeus Holding Gesellschaft mit beschränkter Haftung" with the Commercial Register of the Municipal Court of Hanau/Germany under No. HRB 3364.
An excerpt from the Commercial Register of the Municipal Court of Hanau/Germany dated September 13, 2006 together with a partial translation of the relevant wording into the English language is provided as ANNEX C6.

It, therefore, must be noted that Complainant has comprehensive rights in the name "Heraeus".

(3) Identity and/or confusing similarity of Domain Name in Dispute to Complainant's rights

(a) It is obvious that the Disputed Domain Name is identical to Complainant's trademarks "Heraeus".

As a principle of International Domain Name Law, it can be held that the addition of a generic Top-level-domain suffix is irrelevant in an examination of identity between a domain name and a trademark. Accordingly, the Top-level domain ".eu" is not capable of diminishing the identity (or confusing similarity) of the second level domain "Heraeus" with Complainant's trademarks "Heraeus" and shall have no legal significance and be neglected for this comparison (see e.g. LTUR Tourismus AG v. Rücker, Decision dated June 8, 2006 rendered by the Czech Arbitration Court Case No. 00283 – lastminute.eu; PepsiCo, Inc. v. PEPSI, SRL (a/k/a P.E.P.S.I. and EMS Computer Industry (a/k/a EMS), Decision dated October 28, 2003 rendered by WIPO Arbitration and Mediation Center under the Uniform Domain Dispute Resolution Policy Case No. D2003-0696, provided as ANNEX C7).

Taking the above into account, it goes without saying that the Disputed Domain Name, namely "heraeus.eu", is identical to Complainant's trademarks "Heraeus".

(b) As far as Complainant's company name "Heraeus Holding Gesellschaft mit beschränkter Haftung" is concerned (see ANNEX C6), it can be held that there is at least confusing similarity to the Disputed Domain Name. As already described above, the name "Heraeus" derives from the company's founder Wilhelm Carl Heraeus, who took over his father's pharmacy already in 1851. To the best of Complainant's knowledge, the name "Heraeus" has no concrete meaning but being a family name (see ANNEX C2). It is, furthermore, obvious that "Heraeus" is the distinctive term in Complainant's company name, since the components "Holding" and "Gesellschaft mit beschränkter Haftung" (limited liability partnership) only refer to Complainant's company form. Thus, Complainant's company name must be held being at least confusingly similar to the Disputed Domain Name.

Therefore, it can be noted that there is identity and/or confusing similarity of the Disputed Domain Name to Complainant's numerous rights in the name "Heraeus".

(B) Respondent has no rights or legitimate interests in respect of the Disputed Domain Name (ADR Rules, Paragraph B 1 (b) (19) (i) B.)

It goes without saying that Complainant has neither granted Respondent any license nor has Complainant otherwise permitted Respondent to use the trademark "Heraeus" or any other of Complainant's rights in that name or even to apply for any domain name(s) incorporating the said trademark (see ANNEX C2).

Furthermore, for the following reasons, it is prima facie obvious that Respondent has no rights or legitimate interests in respect of the Disputed Domain Name:

(1) No Prior Use (Art. 21 para. 2 (a) of Regulation (EC) No. 874/2004)

To the best of Complainant's knowledge and information, Respondent is not now making and has not in the past made use of, or demonstrable preparations to making use of the Disputed Domain Name or a name corresponding to the Disputed Domain Name in connection with the offering of goods and services. Not only there is no need for Respondent to making use of the term "Heraeus" as it is neither descriptive nor it is a common term. Moreover, there is no indication whatsoever that Respondent is doing or intends to do any business in connection with the term "Heraeus". The Disputed Domain Name is currently connected to a website at http://www.awebhosting.com/ (see ANNEX C8). This website offers typical internet services such as web-hosting and domain names which have no connection whatsoever to Complainant and/or its business. The website does not contain any term "Heraeus" or any other term relating thereto. Not even the website's source code (see ANNEX C9, printout taken on October 10, 2006 by Complainant's Authorized Representative) refers in any respect to the term "Heraeus".

Furthermore, as can be gathered from the Registry's WHOIS-database relating to the Disputed Domain Name (see ANNEX C1), Respondent apparently is a private person (otherwise the WHOIS-database should contain all of Respondents personal data, see Section 2.4. of Registry's .eu Domain Name WHOIS Policy). Complainant, therefore, in order to file this Complaint, first needed to file a Request for Personal Data Disclosure with the Registry which was granted by Registry's e-mail notification dated September 15, 2006 (see ANNEX C10). This also indicates that Respondent - at least in relation to the Disputed Domain Name - obviously is not engaged in any business at all relating to the term "Heraeus".

(2) Not commonly known by the domain name (Art. 21 para. 2 (b) of Regulation (EC) No. 847/2004)

Moreover, to the best of Complainant's knowledge and information, there is no evidence given that Respondent is commonly known by the Disputed Domain Name, even in the absence of a right recognized or established by National and/or Community Law.

Respondent obviously neither owns trademark rights nor any other rights in the name "Heraeus".

Complainant's group of companies obviously was the only applicant for the registration of the Disputed Domain Name during the Sunrise-Period reserved for owners of prior rights of various kinds in the name "Heraeus" (see ANNEX C11). The application dated February 7, 2006 was finally rejected by Registry due to a formal mistake in the application process since it was filed in the name of Complainant's 100% subsidiary Heraeus Infosystems GmbH without providing for the necessary license agreements between Complainant as the owner of the prior rights and the applicant Heraeus Infosystems GmbH. The absence of any application filed by Respondent during the Sunrise-Period indicates, however, that Respondent itself obviously does not own any rights in the name "Heraeus" that would have entitled Respondent to a Sunrise application for the Disputed Domain Name. This fact, in turn, must be treated as an indication for the fact that Respondent is not commonly known under the name "Heraeus".

Furthermore, Complainant has installed an internal system of Trademark Watching in order to ensure on an ongoing basis that potential conflicts with the trademark "Heraeus" are immediately noticed and, if necessary, pursued. In intervals of approx. 6 months, members of the Complainant's IP Department research all Trademark Registers of e.g. the German Patent and Trademark Office, the US Patent and Trademark Office as well as WIPO and OHIM for conflicting applications and registrations which allows Complainant to react in due course and to provide for the necessary legal steps in order to protect its trademark rights. Complainant, therefore, is well aware of any trademark registrations that are identical with or similar (not only confusingly similar!) to Complainant's trademark "Heraeus". Complainant, however, has no information on any trademark rights of Respondent in the name "Heraeus" (see ANNEX C2). Complainant, therefore, asserts that Respondent is not commonly known under the Disputed Domain Name, but is rather acting as a typical "cyber-squatter" who is not at all aiming to becoming known under a certain domain name, but instead is exploiting other parties such as Complainant who has in fact achieved a respective standard and is commonly known under its trademarks and subsequently under the corresponding domain names, in particular "Heraeus".

The latter may be demonstrated in a particularly impressive manner by entering the name "Heraeus" into a Google search engine at http://www.google.com/search where at least the first 50 out of 1,260,000 results exclusively point to Complainant and its group of companies; on the very contrary, there is no entry whatsoever relating to Respondent (see the respective printouts from a Google search conducted on December 13, 2006, provided as ANNEX C12).

Moreover, it should be noted that in this particular case Respondent obviously is a private person under the name of Bogdan Surdu (see ANNEX C10). There is no relation whatsoever apparent between this name and the name "Heraeus" (e.g. the name "Heraeus" can neither be understood as an abbreviation of the name "Bogdan Surdu" nor as a nick-name etc.).

It must, therefore, be held that prima facie Respondent is not commonly known under the name "Heraeus".

(3) No non-commercial or fair use of Disputed Domain Name (Art. 21 para. 2 (c) of Regulation (EC) No. 874/2004)

Finally, to the best of Complainant's knowledge and information, Respondent is not making a legitimate non-commercial or fair use of the Disputed Domain Name, without intent to mislead consumers or harm the reputation of a name on which a right is recognized or established by National and/or Community Law.

As already described above, the Disputed Domain Name is connected to an active commercial website (see ANNEX C8). Therefore, it is prima facie obvious that Respondent is making - if at all - a commercial use of the Disputed Domain Name. Moreover, it can be held that – taking into account the identity and/or confusing similarity of the Disputed Domain Name to Complainant's trademarks and company name rights – Respondent is obviously trying to attract internet users who were seeking to reach Complainant's website but ended up with Respondent's internet presence, which contains information that are not specifically tied to Complainant. It goes without saying that such misleading (commercial) use of the Disputed Domain Name may not be considered as "fair".

Respondent, therefore, prima facie has no rights or legitimate interests whatsoever in respect of the Disputed Domain Name. According to the concrete wording of Art. 21 para. 1 (a) of Regulation (EC) No. 874/2004 ("or") this alone entitles Complainant to request the transfer the Disputed Domain Name from Respondent.

(C) The Disputed Domain Name was registered or is being used in bad faith (ADR Rules, Paragraph B 1 (b)(10)(i) C.)

Nevertheless, there can also be no doubt that the Disputed Domain Name was registered and/or is being used in bad faith. In particular,

the Disputed Domain Name (1) was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring it (Art. 21 para. 3 (a) of Regulation (EC) No. 874/2004) and (2) is a personal name for which no demonstrable link exists between Respondent and the Disputed Domain Name (Art. 21 para. 3 (e) of Regulation (EC) No. 874/2004).

(1) Purpose of selling, renting, or otherwise transferring the Disputed Domain Name (Art. 21 para. 3 (a) of Regulation (EC) No. 874/2004)

As described in detail above, there is no indication whatsoever that Respondent has any rights in or other connection to the name “Heraeus”. On the very contrary, Complainant is very well-known under the name “Heraeus” in which Complainant has comprehensive rights all over the world, even in Latvia, the country where Respondent is domiciled (see in particular International Trademark Registration No. 708686, ANNEX C4). Moreover, Complainant has shown concrete interest in the Disputed Domain Name during the Sunrise Period, where Complainant’s 100% subsidiary Heraeus infosystems GmbH was the very only applicant for the Disputed Domain Name. From the timing of the registration of the Disputed Domain Name for Respondent, it must be drawn the conclusion that Respondent was well aware of the exact date of release of the Disputed Domain Name for the so-called Landrush-Registration, namely on August 29, 2006, since this date was made public only in the Registry’s WHOIS database right above the listing of Heraeus infosystems GmbH as the only applicant (see ANNEX C11). Taking further into account (1) that the current use of the Disputed Domain Name by Respondent does not show any connection whatsoever to the name “Heraeus” and (2) that there are no demonstrable links whatsoever between Respondent and the Disputed Domain Name (see also Section (2) below), it becomes more than obvious that the registration of the Disputed Domain Name was effected for no other purpose than eventually selling, renting or otherwise transferring it to Complainant for the benefit of Respondent, thus in bad faith.

(2) No demonstrable link between Respondent and the Disputed Domain Name (Art. 21 para. 3 (e) of Regulation (EC) No. 874/2004)

As also already described above, the term “Heraeus” derives from Complainant’s founder Wilhelm Carl Heraeus. To the best of Complainants knowledge, the name “Heraeus” has no other meaning than being a family name (see ANNEX C2).

With regard to this family name, there is no demonstrable link whatsoever between Respondent and the Disputed Domain Name. Apart from the fact, that the name “Heraeus” is neither a common nor a descriptive term, first of all it is important to note that Respondent’s family name is obviously “Surdu”, a name that has no link whatsoever with the term “Heraeus” (neither as an abbreviation nor under any other aspect). Moreover, there is no relation whatsoever between Respondent and the Disputed Domain Name apparent from the way in which the Disputed Domain Name is used. As demonstrated above, the Disputed Domain Name is connected to a commercial website that does not even mention the name “Heraeus”, neither in the website’s text nor in the website’s source code (see ANNEXES C8 and C9).

On the contrary, it must again be noted that Complainant’s 100% subsidiary was the only applicant for the Disputed Domain Name during the Sunrise-Period (see ANNEX C11). Therefore, as already mentioned above, it can be drawn the conclusion that Respondent does not own any trademark rights or other prior rights recognized under the Sunrise-Rules for the registration of a .eu-domain-name that would have entitled Respondent to an application for the Disputed Domain Name during this Sunrise-Period. Certainly, Respondent was not obliged to file such an application. However, in the absence of any other link between Respondent and the Disputed Domain Name, it is permissible to argue that Respondent became aware of the Disputed Domain Name only due to the fact that Complainant had applied for the Disputed Domain Name in the Sunrise-Period, but due to a formal mistake in the application procedure unfortunately was not granted the Disputed Domain Name immediately. According to the Registry’s policy, the release date for the Disputed Domain Name was subsequently published in the Registry’s WHOIS-database (namely August 29, 2006, see ANNEX C11) which allowed Respondent to apply for the Disputed Domain Name at the very same day that the Disputed Domain Name was released for public registration. Again, there can be not doubt that the registration of a .eu-domain-name in the Landrush-Period is not fraudulent per se. However, against the background of the very specific circumstances in this case (namely that there is no indication whatsoever given that Respondent has a relation to the name “Heraeus” other than having registered the Disputed Domain Name in which Complainant had demonstrated concrete interest during the Sunrise-Period), it is Complainant’s view to find that such registration is deemed to have taken place in bad faith.

As a conclusion, Complainant has demonstrated that even both criteria of speculative and abusive registration within the meaning of Art. 21 of Regulation (EC) No. 874/2004 have been fulfilled, thus a decision by the Panel is to be rendered in the interest of Complainant in order to transfer the Disputed Domain Name from Respondent to Complainant.

B. RESPONDENT

Respondent contents:

As a private person I play World of Warcraft, a popular MMORPG (Massime Multiplayer Online Role Playing Game) since Nov 2004 when

the game was launched on US market.

In Feb 2005 the game was launched on European market and I decided to play here. I selected the server named 'Zenedar' (out of 300 servers) for my online adventures. I registered 'zenedar.eu' domain name where I intend to create a community site for players on this server. See Exhibit A for the whois output of zenedar.eu domain, registered by me (screenshot is taken from www.whois.eu website).

On Zenedar I have several 'characters' (avatars) and one of them is called Heraeus. See Exhibit B for the history of this character on Zenedar server. The character was registered in early May 2006 and I play this character from time to time.
Character history is taken from a public website that keeps track of characters used in World of Warcraft. The history for Heraeus on EU-Zenedar history is available at the following URL: http://www.warcraftrealms.com/charsheet/33353098 and the screen output is attached as Exhibit B.

When I created the character name, I had no idea what Heraeus means, the name was composed from the Greek Goddess named 'Hera' and a combination of letters that sounded good and were valid and available for register as character name.

When I registered the domain name, I've seen that an application was made for this domain name under EU Sunrise rules, but the application was rejected and no ADR was initiated by the applicant (this means they forfeited their rights over the domain name based on trademark and business name).

I was never contacted by the complainant to discuss and solve this possible trademark infrigement, I never used the domain name to damage their business (no proofs that I did were included in the complain) and I don't intend to. As you can see, right now the domain is parked with a hosting company until I find some time to finish the project I have in mind.

DISCUSSION AND FINDINGS

1. To succeed in its Complaint, the Complainant must show that the requirements of Article 21(1) of the Regulation have been complied with. That paragraph reads as follows:

" A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, 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:

(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."

2. Paragraph B.10(a) of the ADR rules provides that:

In the event that a Party does not comply with any of the time periods established by these ADR Rules or the Panel, the Panel shall proceed to a decision on the Complaint and may consider this failure to comply as grounds to accept the claims of the other Party.

3. However, this does not mean that the Complainant is entitled to a default judgment in a case, such as this, where no Response is filed. As paragraph B.11(d) of the ADR Rules makes clear, it is for the Complainant to prove that the requirements of Article 21(1) of the Regulation are satisfied.

4. The panel therefore deals with each of the three constituent parts of Article 21(1) of the Regulation in turn:

IDENTICAL OR CONFUSINGLY SIMILAR DOMAIN NAME

5. The Complainant has asserted that it is the proprietor of (and has provided details of) numerous registered trademarks in the mark HERAEUS.

These assertions are not contradicted by the Respondents Contentions.

The Complainant has, therefore, satisfied the requirements of the first paragraph of Article 21(1).

NO RIGHTS OR LEGITIMATE INTERESTS

6. The Complainant has provided a description of the use of the relevant name and the domain name by the respondent; and expressly asserted that in the circumstances described the respondent has no legitimate interest in the name. Respondents Contentions, that he registered the domain name as an avatar in online games are unsuitable to raise a claim for the domain name in issue because the need for a naming of an avatar does entitle the Respondent to register the .eu- domain of the name. Therefore, the Complainat has proven that the Respondent has no rights or legitimate interests in the domain name in issue.

Because Complainant needs to show either

- a lack of rights or legitimate interest on the part of the Respondent
OR
- bad faith registration or use and given the finding on rights and legitimate interests set out above it is not necessary in this case to go on to consider the Complainant's assertions in relation to bad faith registration or use.

Legally independent of these findings is the question, wether the Respondent has intentionally registered the domain name. The Panel does not see the necessary evidence for a intentional malfeasance, but, as stated above, there is no need to evaluate this issue in depth.

DECISION

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

the domain name HERAEUS be transferred to the Complainant

PANELISTS

Name	**Friedrich Kurz**

DATE OF PANEL DECISION 2007-02-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought proceedings against the Respondent under Article 22(1)(a) of Commission Regulation (EC) No.874/2004 alleging that the Respondent's registration of the Domain Name (i.e. <heraeus.eu>) was speculative or abusive, Art. 21(1) a) and b) of Commission Regulation (EC) No. 874/2004..

The Complainant maintained that it was the proprietor of, inter alia, various European trade mark rights incorporating or comprising the word HERAEUS.

The Panel held:

(1) The Complainant had managed to prove to the Panel that the requirements of Article 21 of the Regulation were satisfied in this case.

(2) That the Complainant has managed to make out that the Respondent had no legitimate rights or interests in the Domain Name.

(3) Given the Panel's finding on the question of rights and legitimate interests, it was not necessary to address the Complainant's allegation of bad faith registration. The Complainant had satisfied the requirements of Article 21 of the Regulation.

(5) The Complainant, being a German registered company, also satisfied the criteria for eligibility for a .eu TLD set out in Article 4(2)(b) of regulation (EC) No. 733/2002.

Accordingly, the Panel ordered the transfer of the Domain Name to the Complainant.