Panel Decision for dispute CAC-ADREU-004040

Case number	**CAC-ADREU-004040**
Time of filing	**2007-01-03 15:30:50**
Domain names	**winamp.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**AOL UK, Mr Nity Raj**

Respondent

Organization / Name	**Paul Achille**

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 Panel is not aware of any other pending legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Respondent, Paul Achille, was registered with the disputed domain name WINAMP.eu (the “Domain Name”) on 7 April 2006.

The Complainant is AOL (UK) Limited a UK registered company.

AOL LLC, Dullas, Virginia, USA own several registered trade marks for the WINAMP mark including:

(i) German Trademark (Reg. No 30261678.0) registered on 20 March 2003
(ii) US Trademark (Reg. No 2,557,585) registered 9 April 2002
(iii) US Trademark (Reg. No 2,809,981) registered 3 February 2004
(iv) US Trademark (Reg. No 2,734,590) registered 8 July 2003

The WINAMP mark is used in connection with the provision of multimedia services. The WINAMP mark is also used in domain names which resolve to websites promoting WINAMP products.

A. COMPLAINANT

The Complainant contends that:

1. The Complainant, AOL (UK) Limited, is part of the America Online group of companies, including AOL LLC (together “AOL”).

2. The Complainant’s affiliated entity AOL LLC, owns the WINAMP name including the German trade mark registration and several trade mark registrations worldwide.

3. The WINAMP product and mark have been widely publicised by AOL throughout the world and the use of the WINAMP mark in connection with the provision of online services denotes to members of the public that the business, goods and/or services of those of AOL, or businesses connected or in some way associated with AOL.

4. AOL owns substantial valuable reputation and goodwill in the WINAMP name in relation to a variety of goods and services.

5. AOL uses the WINAMP mark in connection with its domain names for the WINAMP website including: www.WINAMP.com;

www.WINAMP.org; www.allWINAMPskins.com and www.WINAMP.net.

6. The WINAMP mark has been used continuously and extensively for many years and AOL has invested substantial sums in developing and marketing WINAMP worldwide.

7. The disputed Domain Name is identical to the WINAMP mark used by AOL.

8. The Respondent has no right or legitimate interest in the Domain Name and is not licensed or authorised to use a domain name that is identical to the WINAMP mark.

9. The Respondent has not used the Domain Name or a name incorporating the Domain Name in connection with the offering of goods or services and has not made any legitimate non-commercial use of the Domain Name.

10. The Respondent has registered the Domain Name in bad faith. The Domain Name was registered or acquired primarily for the purpose of either selling, renting or otherwise transferring the Domain Name to AOL for a profit or for the purpose of intentionally attracting internet users to a website owned or operated by the Respondent.

11. At the time of registration, the Respondent will have been aware of the reputation and widespread recognition of the WINAMP mark worldwide.

12. The Respondent has sought to charge considerable fees for the assignment of the Domain Name.

13. Any use of the Domain Name by the Respondent would infringe the Complainant's registered trade mark rights.

The Complainant requests the transfer of the Domain Name to the Complainant.

B. RESPONDENT

The Respondent has not filed a Response to the Complaint

DISCUSSION AND FINDINGS

Article 22 of Commission Regulation (EC) No 874/2004 ("the Regulation") provides that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21.

In accordance with Article 21 of the Regulation, a registered domain name shall be subject to revocation where the 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, and where:

(a) it has been registered by its holder without rights or legitimate interests in the name; or

(b) it has been registered or is being used in bad faith.

Once the Complaint has established that the Domain Name is identical or confusingly similar to a name in respect of which a right is recognised or established by national law of a member state and/or community law, it has only to prove one of the elements set out in Article 21(1)(a) or (b), namely, that it is registered without rights or legitimate interests in the name or has been registered or used in bad faith.

The Complainant alleges that the Respondent has no right or legitimate interest in the Domain Name and that the Respondent registered the Domain Name in bad faith. The factors to be considered in determining if there is a legitimate interest are set out in Article 21(2) of the Regulations. A legitimate interest may be demonstrated where:

(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation 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, without intent to mislead consumers or harm the reputation of a name in which a right is recognised or established by national and/or community law.

Article 22(5) provides that complaints and responses must be made in accordance with that Regulation and the ADR provider's published supplementary procedures. The Respondent has not filed a response and there is no evidence before the Panel of any legitimate interest of the Respondent in the Domain Name. According to Article 22(10) of the Regulation, failure of any of the parties involved in an ADR proceeding to respond within the given deadlines may be considered as grounds for accepting the claims of the other party.

Further, Rule 10(a) of the ADR Rules states that in the event of a default, the Panel shall proceed to a decision and may consider the failure to comply as grounds to accept the claims of the other party. Rule 10(b) of the ADR Rules further states unless otherwise provided, the Panel shall draw such inferences from a default as it considers appropriate. Rule 11(a) of the ADR Rules provides that a Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the ADR Rules, the Supplemental ADR Rules and Regulations 733/2002 and 874/2004. ;

In the absence of a Response or any evidence showing a legitimate interest or fair use of the Domain Name by the Respondent, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name.

Having determined that the Respondent has no rights or legitimate interest in the Domain Name it is not necessary to determine whether it has been registered in bad faith as alleged by the Complainant. However, for completeness it is proposed to address this issue.

In accordance with Article 21(3) bad faith may be demonstrated in a number of ways including where the Domain Name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law.

The email date 16 August 2006 from the Managing Director of Goalover Limited, to the legal representatives of AOL refers to the Respondent and states:

"He has agreed to return the domain to the respective trade mark holders in exchange for the refund of his costs on these matters"

These costs were put at 700 Euros. There appears no legitimate reason why the Respondent has registered the Domain Name which, excluding the .eu suffix, is identical to the registered trade mark WINAMP. The Respondent has elected not to file a response to the Complainant's assertion that a simple .eu registration costs 15 Euros. In the absence of any answer by the Respondent to the Complainant's allegation of bad faith, I find that the on the evidence before me that the Domain Name was registered primarily for the purpose of selling or otherwise transferring the domain name to the holder of a name in respect of which a right is recognised or established by national and/or Community law as set out in Article 21(3)(a) of the Regulation.

There remains one final point to be discussed. Unlike the Sunrise Rules where an applicant for a domain name had to show that it was the holder of prior rights in the name in question, there is no similar obligation set out in the Regulation or the .eu ADR rules that requires that a Complainant itself must hold the rights in the name in question. Under Article 22 of the Regulation an ADR procedure may be initiated "by any party" where the registration is speculative or abusive within the meaning of Article 21. It is sufficient that such rights are recognised or established by national and/or Community if the other elements required by law Article 21 are present; subject to the safeguard in that Article 21(4) that paragraphs,1, 2, and 3 of Article 21 should not be invoked to obstruct claims under national law.

The owner of the relevant rights in the WINAMP name is AOL,LLP, a US based corporation which owns the German trade mark for name WINAMP. The Complainant states that it is an affiliate of AOL,LLC and is part of the AOL group. In support its submission the Complainant refers to Annex G attached to the Complainant which is a printout of Hoover's Online "Family Tree –AOL,LLC". This lists numerous AOL and Time Warner Inc companies but not the Complainant, AOL UK Limited. The exact relationship between the companies listed in Annex G is not clear, nor does Annex G evidence that the Complainant is part of the AOL group of companies or an affiliate of the rights holder AOL, LLP. The only UK company listed in Annex G bearing the AOL name is AOL Services (UK) Limited. There is no evidence that the Complainant in this case, AOL (UK) Limited is an affiliate of AOL.LLC or the owner of any rights in the WINAMP name.

The Panel has found that disputed Domain Name (excluding the .eu suffix) is identical to the AOL LLC owned registered German trade mark WINAMP which is a right recognised by national and/or Community law and that the Respondent has no right or legitimate interest in the Domain Name and (although it is not necessary to do so) has also found that the domain name is registered in bad faith.

For the reasons set out, the Panel finds that the complaint relating to speculative and abusive registrations set out in Article 21 is justified. The Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002 and accordingly

the Panel directs that the Domain Name should be transferred 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 WINAMP be transferred to the Complainant.

PANELISTS

Name	**Veronica Marion Bailey**

DATE OF PANEL DECISION 2007-04-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is AOL (UK) Limited, a UK registered company. AOL LLC, Dullas, Virginia, USA own several registered trade marks for the WINAMP including a registered German trade mark for WINAMP.

The Domain Name excluding the .eu suffix is identical to the name in respect of which a right is recognised by national law. In the absence of a Response or any evidence showing a legitimate interest or fair use of the Domain Name by the Respondent, the Panel finds that the Respondent has no rights or legitimate interests in respect of the Domain Name and that the Domain name is speculative or abusive.

The Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) 733/2002 and accordingly the Panel directs that the Domain Name should be transferred to the Complainant.