Panel Decision for dispute CAC-ADREU-004069

Case number	**CAC-ADREU-004069**
Time of filing	**2006-12-29 11:30:44**
Domain names	**eurokera.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**EUROKERA**

Respondent

Organization / Name	**Aphrodites Ventures Ltd, Aphrodites Ventures 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

FACTUAL BACKGROUND

The Complainant is a French company registered at the French Business and Trade Registry. It is also the owner of several trademark registrations.

The Complainant has been aware of the registration of domain name eurokera.eu by the Respondent (registration obtained on 7 April 2006 at 11:15).

The parent company of the Complainant sent a warning letter beginning of October 2006 to the Respondent informing it of its subsidiary's trademark rights and requesting the transfer of the litigious domain name to the benefit of the Complainant. The receipt of the registered letter has been acknowledged. It must be specified that an attempt to send the letter also via fax has been unsuccessful.

The Respondent did not answer to the complaint.

A. COMPLAINANT

The Complainant contends that it has valid rights on the domain name.

- First valid right invoked is the Trade name and Commercial name. The Complainant is indeed registered before the French Business and Trade Registry under n° 351 430 806 since 7 August 1989 (see Appendix B).

The Complainant requests the protection of Article 8 of the Paris Convention for the Protection of Industrial Property which stipulates that "A trade name shall be protected in all the countries of the Union without the obligation of filing or registration, whether or not it forms part of a trademark".

- Second valid right invoked is Complainant's trademarks. The Complainant is indeed the owner of several trade mark registration in particular throughout the European Union, including notably:

(i) French Registration n° 1 603 320 EUROKERA renewed on 27 June 2000 and dating back to 19 July 1990;
(ii) International registration n° 631 261 EUROKERA, based on the above cited French registration, dating back to 8 February 1995 claiming amongst other countries a protection in Germany, Austria, Benelux, Bulgaria, Spain, Hungary, Italy, Poland, Republic Czech, Romania, Slovenia and Slovakia;

(iii) French Registration n° 1 603 321 EUROKERA (+logo) renewed on 27 June 2000 and dating back to 19 July 1990;
(iv) International registration n° 635 066 EUROKERA (+logo), based on the above cited French registration, dating back to 9 February 1995 claiming amongst other countries a protection in Germany, Austria, Benelux, Bulgaria, Spain, Hungary, Italy, Poland, Republic Czech, Romania, Slovenia and Slovakia;
(v) UK Registration n° 2008574 EUROKERA renewed on 24 January 2005 and dating back to 24 January 1995;
(vi) Swedish registration n° 311 371 EUROKERA renewed on 27 March 2006 dating back to 23 January 1995;
(vii) Irish registration n° 166140 EUROKERA duly renewed on 3rd January 2002 and dating back to 30 January 1995;
(viii) Greek registration n° 122 744 EUROKERA renewed on 30 January 2005 dating back to 30 January 1995;
(ix) Finnish registration n° 141715 EUROKERA renewed in 2005 and dating back to 1st February 1995;
(x) Danish registration n° VR 01.450 1995 EUROKERA renewed in 2005 and dating back to 28 November 1990.

The Complainant contends that the domain name registered by the Respondent is identical to the term “EUROKERA”.

Furthermore, Complainant contends that a web search made via Google® on the Respondent’s name revealed solely six results: “four speaking about the not so squeaky clean attitude of the Respondent and two giving information of the incorporation of the Respondent in the UK. Concerning this last point, it could easily be deduced from the date of incorporation i.e. 21 March 2006 […], that this date is very convenient for the Respondent when the land rush period was due to start on 7 April 2006”.

The Complainant also stresses that there is no reference made to any website for the Company of the Respondent, and that the domain aphroditeventures.com, used seemingly at least for email address, is not active at all.

In Complainant’s mind, the fact that the Respondent did not reply to the Complainant letter is another evidence of the Respondent bad faith and absence of right or legitimate interest.

Eventually, the Complainant underlines that any search on the web on the Complainant’s name would reveal thousands of links, most of them if not all being either a link to the Complainant’s websites or references to the Complainant’s activity or company, in such a way the respondent can hardly say that it was unaware of Complainant’s existence ad activity when it registered the domain name.

B. RESPONDENT

Respondent did not respond.

DISCUSSION AND FINDINGS

When the Czech Arbitration Court (CAC) receives a complaint, it follows a strict procedure including the notification of the complaint to the Respondent.

Said notification notably states that:

“Default. If your Response is not sent in the period of time above or if it will not comply with all administrative requirements mentioned in the ADR Rules and/or ADR Supplemental Rules even after granting additional time period to remedy the noncompliance under Paragraph B3 (d) of the ADR Rules, you will be considered in default. We will still appoint an ADR Panel to review the facts of the dispute and to decide the case. The Panel will not be required to consider a Response filed late or not administratively compliant, but will have the discretion to decide whether to do so and may draw such inferences from your default as it considers appropriate, as provided for by ADR Rules, Paragraph B10. There is a possibility to challenge the Notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules.”

The Respondent also received a “non-standard communication” from the CAC to inform it of the deadline to submit its response.

When a Respondent doesn’t answer within the delay, it also receives a “notification of Respondent’s default” informing it of the consequences of said default. This notification notably stipulates that:

(begin of quote)

1. We shall go forward and appoint an ADR Panel based on the number of panelists designated by the Complainant. As the Complainant has designated a single-member Panel, we shall appoint the panelist from our published list. / As the Complainant has designated three-member Panel, we shall appoint a Panelist from the list of Candidates provided by Complainant and 2 Panelists from our published list. In case we are unable within five (5) calendar days to secure the appointment of a Panelist from the list of Candidates, we shall appoint

a Panelist from our published list of Panelists.

2. The ADR Panel and the Complainant will be informed of your default. The ADR Panel will decide in its sole discretion whether or not to consider your defective Response (if submitted) in deciding the case.

3. Notwithstanding your default, we shall continue to send you all case-related communications to your contact details and using the methods you have specified in your Response (if submitted later), or as we consider appropriate in our discretion (if not submitted).

4. You have a right under Paragraph B3 (g) of the ADR Rules to challenge this Notification in a written submission to the Czech Arbitration Court filed within 5 days from receiving this notification. The Czech Arbitration Court shall acknowledge receiving your challenge and shall forward it to the Panel within 3 days from its receipt. In submitting your potential challenge, you must use Form "Challenge of Notification of Respondent Default" available on the Online Arbitration Platform of the Czech Arbitration Court.

(end of quote)

The right of Complainant of the domain name seems to be unquestionable, and the domain name is identical.

As far as the bad faith and the right/legitimate interest are concerned, it must be stressed that in most cases, it is impossible for a Complainant to demonstrate with an absolute certainty the absence of right and legitimate interest and/or the bad faith of a Respondent.

This is why the Panels usually require the Complainant to make a reasonable demonstration rather than to bring absolute evidence. This demonstration lays on the various facts and legal elements of each case.

The response is then the occasion for the Respondent to challenge and contradict the reasonable demonstration of the Complainant and to draw the Panel's attention on other facts and legal elements to support its view.

In this case, the least that can be said is that the complaint is quite persuasive.

It underlines facts and legal elements that are indeed good signs that the domain name "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" (art. 21 of EC regulation 874/2004). (see hare above "Parties' contentions" for factual and legal details).

The respondent had a chance to reply; it chose not to.

Based on the sole complaint, this Panel is convinced that the domain name "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" (art. 21 of EC regulation 874/2004).

DECISION

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

the domain name EUROKERA be transferred to the Complainant

PANELISTS

Name	**Thibault Verbiest**

DATE OF PANEL DECISION 2007-03-26

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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The respondent had a chance to reply; it chose not to (default).

Based on the sole complaint, this Panel is convinced that the domain name "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" (art. 21 of EC regulation 874/2004).