Panel Decision for dispute CAC-ADREU-004082

Case number	CAC-ADREU-004082
Time of filing	2007-01-05 11:27:47
Domain names	festivaldecannes.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	ASSOCIATION FRANCAISE DU FESTIVAL INTERNATIONAL DU FILM, ASSOCIATION FRANCAISE DU FESTIVAL INTERNATIONAL DU FILM

Respondent

Organization / Name	EUTeam Ltd, Michael Bahlitzanakis

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 ASSOCIATION FRANCAISE DU FESTIVAL INTERNATIONAL DU FILM (the Complainant) is a French public utility association financed by the French Ministry of Culture and the Foreign Office.

For sixty years, the Complainant has successfully organized the worldwide famous FESTIVAL INTERNATIONAL DU FILM, also known as FESTIVAL DE CANNES, taking place in Cannes (France) every year in May.

The complainant is the owner of several French and European Community Trademark (see here after for details).

The Complainant is also the owner of the several domain names, including:

- festival-cannes.fr
- festival-cannes.net
- festival-cannes.com
- festival-cannes.org
- festival-cannes.eu

The Respondent is EUTeam Limited, a company registered in the United Kingdom.

The Respondent registered “festivaldecannes.eu” on April 7th, 2006 at 16.03.

The Complainant requests the transfer of the domain name “festivaldecannes.eu” or at least, the revocation of this domain name.

A. COMPLAINANT

The Complainant first claims to be the owner of the intensively used trademark “FESTIVAL DE CANNES” duly registered as follows:

- The European Community Trademark “FESTIVAL DE CANNES”, registered with the Office For the Harmonization of the Inner Market on March, 6th, 2002 under the 002607299, for products and services of the Classes 3, 9, 14, 16, 18, 25, 33, 38, 39, 41 (Nice International classification);

- The French Trademark “FESTIVAL DE CANNES”, registered with the Institut National de la Propriété Industrielle, on June 6th, 2004, under the number 043295726, products and services of the classes 3, 9, 12, 14, 16, 18, 21, 22, 25, 28, 33, 34, 35, 38, 39, 41, 42, 43, 44, 45 (Nice International classification).

The Complainant provides the certificates of registration of the two trademarks in order to prove its ownership.

As a result, the Complainant invokes the protection of the French and European Community intellectual property rules of law i.e. the French Code de la Propriété Intellectuelle and the Council Regulation (EC) N° 40/94 of December 20th, 1993 on Community Trademark

The Complainant contends that the “festivaldecannes.eu” domain name used by the Respondent is strictly identical to the French and Community “FESTIVAL DE CANNES” Trademarks

The Complainant also contends that the Respondent has no legitimate interest in the domain name, for various reasons:

- The Company EUTeam did not register, either with the UK patent Office or with the OAMI, any trademark including the words “festival” or “Cannes”.

- The Respondent’s business name (EUTeam Ltd) does not imply any connection with the name “festival de Cannes” and it demonstrates that the public doesn’t know this company under the name “festival de Cannes”.

- The “festivaldecannes” domain name is not used by the Respondent.

The Complainant considers that the Respondent intends to use the litigious domain name to attract Internet users towards its web site, by creating a likelihood of confusion with the famous “FESTIVAL DE CANNES” Trademark in order to take advantage of the prestige of the Cannes Film Festival.

The Complainant pretends that this likelihood of confusion is increased by the fact that the ASSOCIATION FRANCAISE DU FESTIVAL INTERNATIONAL DU FILM is the owner of several domain names (all of them being intensively used since long), including:

- festival-cannes.fr
- festival-cannes.net
- festival-cannes.com
- festival-cannes.org
- festival-cannes.eu

The Complainant stresses that the domain name registered by the Respondent is very similar to all its domain names because they all include the terms “festival” and “Cannes.

B. RESPONDENT

After the normal delay to file a response, the Respondent eventually sent a non-standard communication in which it doesn’t address the ground of the complaint (is it a speculative and abusive registration under article 21 of EC Regulation 874/2004?), and solely confirms that it has no objection to the transfer of the domain name to the Complainant.

DISCUSSION AND FINDINGS

1.

The Panel is of the opinion that the mere fact that the Respondent doesn’t object to the transfer of the domain name doesn’t mean that the parties have entered into an agreement. An agreement needs the consent of both parties. In a situation where the Complainant hasn’t confirmed its consent, such consent may not be inferred by the sole fact that the Respondent doesn’t object to the transfer.

This point is important because the Complainant could, as an example, be tied by an agreement when it comes to a claim for damages in a judicial proceeding. The Panel must therefore be careful not to exceed its power by indirectly limiting the freedom of both parties.

As consequence, this ADR proceeding will not be understood to be concluded according to Section 4 (a) of the ADR Rules and a decision shall be issued.

2.

The right of the Complainant on several trademarks 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 here above "Parties' contentions" for factual and legal details).

The respondent had a chance to reply; it chose not to (the non-standard communication filed after the normal delay for Response doesn't address the ground of the complaint).

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 FESTIVALDECANNES be transferred to the Complainant

PANELISTS

Name	**Etienne Wery**

DATE OF PANEL DECISION 2007-05-01

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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