Panel Decision for dispute CAC-ADREU-004090

Case number	**CAC-ADREU-004090**
Time of filing	**2006-12-28 11:43:10**
Domain names	**bookings.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**Bookings Europe B.V.**

Respondent

Organization / Name	**Stichting Miloma, .**

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 legal proceeding connected to the disputed domain name BOOKINGS.EU. No such information was obtained from the parties and the Panel is not entitled to make any own investigations.

FACTUAL BACKGROUND

The Complainant is Bookings Europe BV, established in Amsterdam, The Netherlands. The Complainant seeks transfer of the domain name BOOKINGS.EU in accordance with article 22(11) of Regulation EC 874/2004. The domain name BOOKINGS.EU is currently owned by Respondent, Stichting Miloma, established in Amstelveen, The Netherlands.

Complaint has been filed within the set time frame and is therefore admissible. Response has been filed too late. It is up to the Panel in its sole discretion whether or not to consider the defective Response.

Both parties have submitted a reaction on the argumentation of the other side by filing a Nonstandard Communication.

A. COMPLAINANT

(i) General reasoning

In the opinion of the Complainant, the domain name BOOKINGS.EU in the name of Stichting Miloma is a speculative and abusive registration within the provisions of Regulation (EC) 874/2004, as set out in Article 21.

Under Article 21 (1a) domain name shall be subject to revocation whether that name is identical or confusingly similar to a name in which the Complainant has relevant rights and if the domain has either (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.

Complainant contends that Stichting Miloma is under common control with RoosIT which applied for the domain during the sunrise period. In particular Marc Oomens (secretary/Treasures of Stichting Miloma) and Marc Roos (sole shareholder and administrator/managing director of 100% owner of RoosIT) are both officers of another company (Stichting Piramesse) with the same registered address and telephone number as Stichting Miloma. Furthermore, Marc Oomens has been using RoosIt telephone/fax/email details for at least four unsuccessful sunrise ADR complaints concerning other domain names connected with RoosIT. RoosIT is the registrant of the domain used for the Respondent's e-mail address in the Domain whois. RoosIt is now shown as the registrar of the domain.

Complainant requests the Panel to take the same approach of examining the case as done in case 2035 WAREMA in which the Panel

states:

“Furthermore, the Panel holds that although the burden of proof lies with the Complainant, the existence of a right or legitimate interest is difficult to prove since the relevant facts lie mostly in the sphere of the holder. Hence, the Panel holds that it is sufficient that the Complainant contends that the obvious facts do not demonstrate a right or legitimate interest of the Respondent in the Domain Name. The onus then shifts to the Respondent to produce factual evidence for a right or legitimate interest.”

As to Article 21(2a) of Regulation (EC) 874/2004 Complainant contends that there is no evidence that the holder of the domain name has used the domain in connection with any offering of goods and services. Nor is there any evidence or indication of any demonstrable preparations to use the domain in connection with any offering of goods and services. Also the Respondent itself has no website under miloma.nl. The website is “under construction”.

As to Article 21(2b) of Regulation (EC) 874/2004 Complainant contends that there is no evidence that the holder of the domain has been commonly known by that name. Indeed it is clear that it is not known by that name because Respondent is under common control with RoosIT which applied for the domain name and that RoosIT had at least four unsuccessful sunrise ADR complaints.

Complainants further argues that as with the UDRP, the controllers of the applicant for the domain should not be permitted to evade the .eu rules and regulations by use of different entities. Otherwise the provisions concerning speculative and abusive registrations would be rendered completely meaningless. Accordingly, no distinction should be drawn between the Respondent, RoosIT and any of the other related entities.

As to Article 21(2c) of Regulation (EC) 874/2004, Complainant contends that there is no evidence of any use of the domain, let alone any legitimate and non-commercial or fair use.

In addition, the Complainant contends that the circumstances surrounding the application for the domain indicate that the Respondent lacks rights or legitimate interests and/or that the domain has been registered or used in bad faith.

Complainant supports this by describing the history around .eu domain name application of RoosIT, the first registrant of BOOKINGS.EU.

Complainant states that the application for the domain name BOOKINGS.EU by RoosIT was based on a Maltese registered trade mark for B&O&O&K&I&N&G&S. The registration was in respect of “internet website such as providing telecommunication connections to a computer network and providing user access to a computer network”. The trade mark includes the following condition: Registration gives rights to the exclusive use of the word “bookings”, only when this is used with the symbols “&”, as shown on the mark. Complainant contends that it is inconceivable that there was any bona fide intention to use this trademark as it is meaningless other than an artificial device to obtain the corresponding .eu domain name without ampersands i.e. “bookings”.

RoosIT registered many expedited Benelux trademarks with ampersands during the Sunrise period and applied for the corresponding .eu domainnames. These marks were all registered for ropes, strings and related goods in classes 22 and 23. Also a list of trade names with ampersands have been registered and used for domain name applications. A list is included in the Complaint.

Complainant filed a Nonstandard Communication as a reaction on the Response informing that in ADR case 02955 F1, in which RoosIT was Respondent, it was ruled that Respondent had no rights or legitimate interest in the domain F1. Furthermore the Panel held that the Respondent had registered the domain name F1 in bad faith. The registration was part of a pattern of conduct in registering trade names with addition of ampersands. The Panel concluded that, in the absence of any explanation from the Respondent, it was highly unlikely that the Respondent intended to use these trademarks for anything other than sunrise applications for .eu domain names without the ampersands.

Significantly, The Panel noted the following:

“This finding is supported by the fact that the Respondent has not provided a Response but only purported transfer from Respondent to Stichting Roos Beheer, a company which appears to be related and whose signatory appears to be the same Mark Roos as signed the transfer on behalf of Respondent. This appears to be simply an attempt to avoid these proceedings and, in the circumstances, constituted further evidence of bad faith.”

Furthermore, Complainant states that in this case the Respondent repeatedly asserts that the Respondent is a separate legal entity to RoosIT/Marc Roos with limited liability but does not deny the Complainant’s assertion concerning common control, let alone give any explanation for this use of different entities. The Complainant suggests that this is further evidence of lack of rights and legitimate

interests and also bad faith.

(ii) Prior rights

The Complainant owns four trademark registrations for BOOKINGS, namely a Benelux word mark registration no. 762054 BOOKINGS, CTM word mark registration no. 3413846 BOOKINGS as well as a word/device mark BOOKINGS in the Benelux and the European Union (CTM) under the nos. 762051 and 3413952.

B. RESPONDENT

(i) General reasoning

Complaint should be denied because domain name BOOKINGS is a generic word and has not been offered to Complainant for sale. Therefore the Respondent is not in bad faith.

Respondent contends that there are many -similar to BOOKINGS- trademark registrations in the Benelux. Moreover, that it was impossible to acquire a trademark registration for BOOKINGS as the Benelux Trademark Office considered it as generic. Furthermore, Respondent shows that Dutch court has ruled that “generic” trademark applications do not hold and give any rights concerning domain name registrations. Respondent illustrates this by attaching two court decisions in which the court has decided to deny the transfer of the domain name. In one case Roos Automatisering BV and Roos IT Holding BV are the defenders of the domain name zorgmakelaar.nl. In the other the Roos Automatisering BV is defending the domain name garnier.nl.

Respondent further contends that it is irrelevant that the domain name is not in use because it has only just been acquired (namely on 28 September 2006). Respondent is developing services, which are going to be published under this domain. Respondent has acquired multiple domains to fit their target audience.

Respondent contends that it is irrelevant to ascertain whether there is a connection between Respondent and Roos IT BV. Respondent may not be held liable for actions of other firms or companies.

Finally, Respondent questions whether Complainant has a right to the domain name BOOKINGS.EU. This is illustrated by the fact that Complainant is using the name booking.com on the website under bookings.nl. Moreover, Complainant does not possess the domain name bookings.com.

In a Nonstandard Communication Respondent utters discontent with the proceedings. Respondent states that she does not agree with the fact that the proceedings are in English instead of Dutch. Moreover Respondent holds the ADR court liable for all, past and future costs and damages. Any domain that will be taken from Respondent will be challenged in Dutch or Belgium court. In advance Respondent concludes that the Panel will not do a good job.

(ii) Claim of the Respondent

The Respondent demands the Complaint be rejected.

DISCUSSION AND FINDINGS

(i) Late submissions of the Parties

Respondent filed his Response after the expiry of the deadline set by the Case Administrator. Under the ADR.eu rules it is up to the Panel to decide whether such Response filed in default will be considered by the Panel in decision making or not.

The Panel sees it as appropriate to include the argumentation of the Respondent into its decision. The ADR process should be conducted in a quick manner and no serious procedural or material reasons not to consider late submissions of the Respondent were found by the Panel in this concrete case. As the Panel accepted late submissions of the Respondent the Panel decided to accept also respective procedural Response of the Complainant; other procedure could lead to unjust treatment of the Parties and thus to unfair trial.

(ii) Language issue

The language of the proceedings is English. Through a Nonstandard Communication the Respondent requests to answer to the Complaint in Dutch. The Czech Arbitration Court consequently answers by a Nonstandard Communication that the language of the ADR

Proceeding is English. Therefore the Respondent should answer in English.

The Panel refers to article A3(a) of the ADR Rules. The language of the ADR Proceeding shall be the language of the Registration Agreement for the disputed domain name.

The language for the domain name BOOKINGS.EU as stated in the whois database and which is chosen by the first registrant is English. Therefore the language of the ADR Proceedings is English.

(iii) Legal assessment of the case

Complainant seeks transfer of the domain name BOOKINGS.EU because Complainant has relevant rights and the domain has either (a) 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 according to Article 21 (1) of Regulation EC 874/2004.

Complainant has proven to have relevant rights in BOOKINGS by showing certificates of registration of the word as a Benelux trademark and a Community Trademark.

Respondent has no trademark or any other rights in BOOKINGS.

Complainant sufficiently showed that there were no indications of an interest in the domain name BOOKINGS.EU: a contrario to Article 21 (2a) of Regulation EC 874/2004, Respondent did not use the domain nor made any demonstrable preparations to use the domain name in connection with any offering of goods and services. Although Respondent claimed that there was a lack of time to set up a website because the domain name was recently acquired, this defense is not considered sufficient as Respondent did not show any preparations thereof either.

Furthermore, a contrario to Article 21 (2b) of Regulation EC 874/2004, Respondent has not been commonly known by the domain name. Respondent is not known at all. Respondent did not deny this allegation and therefore it is accepted by the Panel.

Moreover, Respondent does not even have a website under her own name “miloma”. The webpage www.miloma.nl says the website is “under construction”. As the list of examples of Article 21 (2) is non-exhaustive the Panel accepts this also as an indication that the domain name BOOKINGS.EU is not registered with a legitimate interest.

Respondent’s argument being that BOOKINGS is a generic term and therefore cannot constitute any trademark rights fails. Complainant did prove that she is the holder of a right that is recognized and/or acknowledged under national and Community law by showing certificates of registration in the word BOOKINGS. Whether or not a Benelux Trademark Office would examine a trademark application for the word BOOKINGS differently today meaning that a trade mark application might be refused from registration is not part of the assessment of the Panel. The Panel decides whether a trademark right recognized in the European Union is evidenced without placing itself on the chair of the examination division of the Trademark Office.

Article 21 (1a) of Regulation EC 874/2004 requires that the domain name has been registered by its holder without rights or legitimate interest in the name. Respondent is not the primary registrant of the domain name but has acquired the domain name by assignment to her. The Panel interprets Article 21 (1a) Regulation EC 874/2004 as also being meant with respect to assignees since they register a domain name too, though on second instance.

Consequently, the Panel concludes that the Respondent has met the requirement of Article 21 (1a) of Regulation EC 874/2004 because Respondent has neither a right nor a legitimate interest in the domain name. The domain name should therefore be revoked.

Since Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation No 733/2002 the domain name BOOKINGS.EU will be transferred to Complainant as requested.

Since the Complaint can be accepted on Article 21 (1a) of Regulation EC 874/2004 there is no obligation to consider the issue of bad faith.

(iv) Final remark

In a Nonstandard Communication Respondent utters that she disagrees with ADR proceedings. The Panel however would like to stress that Respondent has committed himself to ADR proceedings by registration of the domain name. As article 22 (2) of the of Regulation

EC 874/2004 states: “participation in the ADR Procedure shall be compulsory for the holder of a domain name and the Registry”.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel accepts the Complaint and since Complainant satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation No 733/2002 the domain name BOOKINGS.EU will be transferred to Complainant.

PANELISTS

Name	Marieke Westgeest

DATE OF PANEL DECISION 2007-04-19

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant seeks transfer of the domain name BOOKINGS.EU because Complainant has relevant rights and the domain has either (a) 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 according to Article 21 (1) of Regulation EC 874/2004.

Complainant has proven to have relevant rights in BOOKINGS by showing certificates of registration of the word as a Benelux trademark and a Community Trademark.

Respondent has no trademark or any other rights in BOOKINGS.

Complainant sufficiently showed that there were no indications of an interest in the domain name BOOKINGS.EU: a contrario to Article 21 (2a) of Regulation EC 874/2004, Respondent did not use the domain nor made any demonstrable preparations to use the domain name in connection with any offering of goods and services. Although Respondent claimed that there was a lack of time to set up a website because the domain name was recently acquired, this defense is not considered sufficient as Respondent did not show any preparations thereof either.

Furthermore, a contrario to Article 21 (2b) of Regulation EC 874/2004, Respondent has not been commonly known by the domain name. Respondent is not known at all. Respondent did not deny this allegation and therefore it is accepted by the Panel.

Moreover, Respondent does not even have a website under her own name “miloma”. The webpage www.miloma.nl says the website is “under construction”. As the list of examples of Article 21 (2) is non-exhaustive the Panel accepts this also as an indication that the domain name BOOKINGS.EU is not registered with a legitimate interest.

Respondent’s argument being that BOOKINGS is a generic term and therefore cannot constitute any trademark rights fails. Complainant did prove that she is the holder of a right that is recognized and/or acknowledged under national and Community law by showing certificates of registration in the word BOOKINGS. Whether or not a Benelux Trademark Office would examine a trademark application for the word BOOKINGS differently today meaning that a trade mark application might be refused from registration is not part of the assessment of the Panel. The Panel decides whether a trademark right recognized in the European Union is evidenced without placing itself on the chair of the examination division of the Trademark Office.

Article 21 (1a) of Regulation EC 874/2004 requires that the domain name has been registered by its holder without rights or legitimate interest in the name. Respondent is not the primary registrant of the domain name but has acquired the domain name by assignment to her. The Panel interprets Article 21 (1a) Regulation EC 874/2004 as also being meant with respect to assignees since they register a domain name too, though on second instance.

Consequently, the Panel concludes that the Respondent has met the requirement of Article 21 (1a) of Regulation EC 874/2004 concerning speculative ad abusive registrations because Respondent has neither a right nor a legitimate interest in the domain name.

The Panel accepts the Complaint and orders the domain name to be transferred to Complainant since she satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation No 733/2002.