Panel Decision for dispute CAC-ADREU-004139

Case number	**CAC-ADREU-004139**
Time of filing	**2007-02-14 12:44:34**
Domain names	**sazka.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**SAZKA, a.s., JUDr. Aleš Hušák**

Respondent

Organization / Name	**Andreas Polanka**

FACTUAL BACKGROUND

The original registrant of the domain name in question, a natural person named Bohumil Straka, registered the domain name Sazka.eu on 22 August 2006. The domain name was then transferred on 31 October 2006 to the Respondent.
The Complainant submitted his Complaint by e-mail on 12 February 2007 and in hardcopy on 16 February 2007. The formal date of the commencement of the ADR Proceeding was 16 February 2007-02-16; and, the Respondent submitted his Response on 2007-04-03.
The Complainant contends that “Sazka” is his corporate name and that it is the owner of the Community Trade Mark and Czech national trademarks consisting of word SAZKA. The Complainant further contends that the original registrant and the Respondent registered the domain name sazka.eu without rights or legitimate interests and in bad faith, and it requests the domain name to be transferred to it, the Complainant.
The Respondent rejects all the Complainant’s allegations and suggests that the Complaint should be denied.

A. COMPLAINANT

The Complainant contends as follows:
The domain name “Sazka.eu” registered in the name of the Respondent is identical with the corporate name of the Complainant, SAZKA a.s.
The Complainant is the owner of Community Trade Marks No. 20043131, 2043156, 4100723, 2188928, 21688896, 2167989 and 4100731, and each are formed by the designation “SAZKA” or consisting of this designation.
The Complainant is the owner of national trademarks No. 165945, 199256, 235278, 240147, 245433, 245439 and 245439, which are formed by the designation “SAZKA” or consisting of this designation.
SAZKA trademarks have been used by the Complainant for more than fifty years.
The Complainant is the largest lottery company in the Czech Republic, started its activity as early as 1956, and has more than 7,000 sales outlets with the logo SAZKA. Furthermore, a sporting arena bears the name SAZKA ARÉNA, which is known for where many important events take place.
Since 1973, “sazka” trademarks have appeared on TV in connection with drawing the lottery, the name “sazka” appears in other media, on its webpage, etc. Therefore, the trade name and trademark enjoy a general, good reputation, and in consequence the Complainant refers to the Czech Trade Mark Act, the Paris Convention, as well as TRIPS.

According to the Complainant, the Respondent is not related to the Complainant, or its services, and has registered this domain name without any rights or legitimate interest.
Registering such a domain name constitutes a trademark infringement under Regulation (EC) No. 40/94 and Czech Trade Mark Act, as well as an infringement of the rights of a company name under the Czech Commercial Code No. 513/1991 Coll. (The Complainant refers in detail to the relevant provisions of the legal regulations.)
The Respondent became the owner of a domain name as a result of a transfer from the original owner, Mr. Bohumil Straka (a natural person), who received a warning letter from the Complainant, advising him of his unlawful procedure, prior the transfer.
The Complainant claims that Mr. Bohumil Straka and the Respondent did not act in good faith in the transfer, as the purpose of the transfer was to evade Czech jurisdiction in regard to the commencement of criminal prosecution.
The domain name was registered for the purpose of selling, renting or otherwise transferring it to Complainant.
The Complainant further affirms that it meets the criteria for the domain name registration according to Art. 4 (2) b of Regulation EC No. 733/2002 and requests the domain name to be transferred to it, the Complainant.

B. RESPONDENT

The Respondent contends as follows:
The Complainant applied for the domain name SAZKA.eu on 8/12 2005, but its application was not validated as no prior right was proven. The Complainant abandoned its second application as it did not provide any Documentary Evidence supporting its rights. Thus, the Complainant confirmed a lack of its prior rights.
The Respondent suggests that the Acts of the Czech Republic mentioned by the Complainant and provided only in Czech be disregarded (as well as all the appendices which are not translated into English), because English is the language of the ADR proceeding. The Respondent does not recognize any connection to the previous holder before the trade of the domain name and cannot be responsible for the action of the previous domain holder.
The domain name was traded before any criminal proceedings against original owner had been initiated. The Respondent is of the opinion that the criminal proceedings have been started in order to threaten the original owner of the domain name.
The Respondent contends that the domain name is not confusingly similar to the trademarks to which the Complainant claims its rights, because the Complainant registered only figurative trade marks with additional symbols or word trademarks with additional symbols. The Respondent contends that he has a legitimate interest in the generic domain name “sazka”, meaning “bet” in the Czech language.
The Respondent contends that he has the intention of using the domain name for a legitimate and non-commercial use and for a future private project, without any primary purpose of selling, renting or otherwise transferring it to third persons or to prevent others from registering and using this domain name. His bad faith cannot be demonstrated. The Respondent is not a competitor of the Complainant.
The Complainant has not demonstrated its existence since 1956, as no evidence has been submitted to prove it is the legal successor to the original Sazka, for which trademark No. 156968 has already lapsed.
The Respondent even takes issue with the ability to register the designation “sazka” as a trademark, since it is a generic designation. The same argument is applied to the trade name. The Respondent supports its allegations of the generic character of “sazka” through evidence it submitted.
The Respondent suggests that the domain name should not be transferred to the Complainant and that the Complaint should be denied.

DISCUSSION AND FINDINGS

I. Procedural questions
The Respondent has objected to the fact that a prevailing part of Appendices have not been translated into English—the language of this ADR Proceeding, a step required by Art. A3(C) of ADR Rules. In accordance with Art. A3 (d), the Panel ordered the Complainant to translate the Appendices which are deemed as relevant.
The Respondent was given appropriate time for a response. The Complainant submitted a translation of the Appendices on 26 April 2007. The Complainant expressed the view that the Panel may consider other Appendices due to their nature and purpose, regardless of the language used.
The Respondent has not answered the additional filing of the Complainant, though he has been provided with such a possibility.

II. Material questions
According to Art. B11 (a) of ADR Rules, the Panel shall issue a decision granting remedies requested under the Procedural Rules in the event that the Complainant proves
(i) The domain name in question is identical or confusingly similar to a name in respect of which a right of the Complainant is recognized or established by the national law of a Member state and/or Community law and; either
(ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or
(iii) the domain name has been registered or is being used in bad faith.
1. Condition according to Art. B 11 (d) (1)(i).
The Complainant submitted an extract from the Commercial Register proving that the Complainant has been registered under the company name SAZKA a.s. (a.s. being designation of a type of a company) since 15.2.1993.
The Complainant further contends that it has been active on the Czechoslovak (and Czech) market since 1956. The Panel agrees with the allegation of the Respondent that this statement was not proven (as the remark at the bottom of companies register extract that Complainant enters into rights and responsibilities of SAZKA business, registered in the Commercial Register does not show the date of the existence of the SAZKA business.
All the submitted trademarks (in spite of the fact that some of them have special characters or letters) contain the mark "SAZKA." In fact, the existing trademark No. 235278 is practically identical (expect for the designation a.s.). In addition, it may be stated that "SAZKA" is a dominant element of all these trademarks.
Without a doubt, the Complainant has proven the existence of its rights to the name "SAZKA" as recognized by national law of a Member State, as the name "SAZKA" is company name and the Complainant has registered many Community Trade Marks and national trademarks consisting of a dominant element "SAZKA."
The Panel considers the position of the Respondent that this designation should not have been registered under trademark rules as completely irrelevant because the question of whether or not it can be registered as a trademark is settled by the powers given to national trademark offices of Member States and OHIM.
The Panel therefore came to the conclusion that the domain name SAZKA.eu is identical with the company name and forms a dominant and prevailing element of the trademarks of the Complainant. Therefore, the condition set forth under Art. B 11(d)(1)(i) has been met; and the Panel concludes that this condition has been fulfilled.

2. Condition according to Art. B(11) d (1)(ii).
The Complainant contends that the Respondent is not related to the Complainant, or its services, and has registered this domain name without any rights or legitimate interest.
The Respondent contends that he has a legitimate interest in the generic domain name "sazka", meaning "bet" in Czech, and he intends to use the domain name for a legitimate and non-commercial use in his own private project.
The legitimate interest is defined in more detail in Art. 21/2 of Regulation (EC) No. 874/2004 which contains a demonstrative enumeration of the circumstances which may prove the rights or legitimate interest of one to a domain name.
The Panel is the opinion that it is predominantly upon the Respondent to demonstrate the existence of his rights or legitimate interest in the domain name, as for the Complainant to prove the non-existence of such rights to be a very difficult matter.
In fact, compliance with this condition must be examined primarily in regard to the original holder of the domain name. The original holder of the domain name was a Czech natural person, one not been related to the Complainant, and he never used this domain name nor did he demonstrate any intention to use it legitimately for non-commercial purposes. Instead, he transferred this domain name to the Respondent soon after its registration. It was not proven either that he would be known or active under this name or that he would have any rights or legitimate rights to this domain name. As well, even the Respondent (who claims to have such an intention) has not proven this. The Respondent became the owner of the disputed domain name almost 4 months prior to initiation of the ADR Proceeding. He is not related to the Complainant and has only declared an intention of using the domain name in his Response. A mere declaration of the will to do so is not sufficient for considering it as clear preparation for use.
It was not proven that either the original holder of the domain name or the Respondent would be generally known under the domain name SAZKA.eu (B 11 (e) (2) of ADR Rules).
Absence of use by the original owner and the Respondent for almost 6 months is considered by the Panel as an absence of legitimate interest in the domain name (as referred to in decisions ADR 387 (GNC) ADR 1043 (PIXY FOTO) and ADR 3652 (IVAX).

3. Condition According to Art B 11 (d)(1)(iii)
The Complainant contends that the original holder of the domain name and the Respondent did not act in good faith. The Respondent denies bad faith by stating that he had no knowledge of SAZKA and that he is not responsible for the actions of the original domain name holder.
Bad faith is defined in more detail in Art. B 11 (f) of the ADR Rules which contain a demonstrative enumeration of the circumstances which may prove the registration or use of a domain name in bad faith.
First of all, the Panel is of the view that bad faith must be examined at the point of registration. Any subsequent transfer(s) cannot remedy bad faith: it existed with respect to the original holder of a domain name.
In this particular case, the Complainant has demonstrated that the name “sazka” is known to a high degree as being a lottery company with extensive business activity in the Czech Republic. The Panel agrees that the documents the Complainant submitted proving this point (in addition to translated certificates of trademarks) were understandable. So, the original holder of the domain name being a Czech natural person in all likelihood knew and fully comprehended this connection at the he registered for the domain name, i.e., he knew of the existence of the Complainant and its products and services under name “sazka.” The Panel does not share the view that SAZKA is merely a generic name in Czech but considers it in its relation and function to consumers in the EU. As well, the word “sazka” is not even so generic a name even in Czech (since “sazka” is not the same as sázka, the generic word with its diacritic mark); and, in any event, a possible generic alternative to this word probably is not contemplated by consumers in other countries when viewing the word “sazka.”
The Complainant addressed the original holder of the domain name in a letter dated 19.9.2007. The original holder did not react. Thereafter, the Complainant initiated criminal proceedings (on 30.10.2006), and subsequently, the original holder transferred the disputed domain name to the Respondent (on 31.10.2006). The Panel is of the view that such behavior, i.e., absence of any reaction to a warning letter under the circumstances described above and the ensuing transfer of a disputed domain name to a third person clearly demonstrated the existence of bad faith, as defined under Section B 11 (f) of ADR Rules. The Panel finds in this behavior the circumstance of a bad faith (Panel refers even to decisions ADR No. 01196, 04154, etc.).

Conclusion:
The Complainant has satisfied the requirements of Art. 21.1. of Commission Regulation (EC) No. 874/2004 and Paragraph B 11(d) (1) of the ADR Rules. Therefore, the Panel finds the Complaint as justified.
The Company is a company based and registered in the Czech Republic and satisfies the criteria set out in Art. 4.2.(b) of Regulation (EC) No. 733/2002, and so, it is entitled to receive the transfer of the domain name.

DECISION

For all the foregoing reasons, in accordance with paragraphs B 12 (b) and (c) of the ADR Rules, the Panel orders the domain name sazka.eu be transferred to the Complainant.

PANELISTS

Name	**Otakar Svorcik**

DATE OF PANEL DECISION 2007-05-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant submitted a Complaint against the Respondent holding the domain name SAZKA.eu.
The Complainant claimed to be owner of a corporate name sazka.a.s. and of several Community Trade Marks and national trademarks for “SAZKA.”
Furthermore, it claimed that the Respondent had no rights or legitimate interest in the domain name and petitioned to receive its transfer.
The Respondent contested all the allegations of the Complainant.
The Panel concluded that the domain name was identical to the company name and confusingly similar to the trademarks of the Complainant, as it forms a dominant part of the trademarks mentioned – meeting the conditions under §11 (d)1(i).

The Panel came to the conclusion that neither the Respondent nor the original holder of the domain name has shown any rights or legitimate interest in the disputed domain name. And, it was necessary to examine such interests primarily with the original owner. Neither the original owner nor the Respondent has used the domain name prior to the commencement of this ADR Preceding, and no true and verifiable preparation to use the domain name was proven. The original owner and Respondent are not related to the Complainant. Due to a lack of use of the domain name in almost 6 months, the Respondent does not have any right or legitimate interest in the domain name.
As to bad faith, the Panel is the opinion that its existence must be examined and determined with respect to the original holder of the disputed domain name. The Complainant has proven a high degree of awareness in the public (and among consumers) for its clear connection to the name “sazka.” Under the given circumstances, the absence of a reaction to a warning letter and the subsequent transfer of a disputed domain name to a third party proved the existence of the original holder’s bad faith.