Panel Decision for dispute CAC-ADREU-004187

Case number	CAC-ADREU-004187
Time of filing	2007-02-19 13:24:26
Domain names	deginvest.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH, Guido Reckmann

Respondent

Organization / Name	Zheng Qingying

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 proceedings which are pending or have been decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant challenges the registration of the domain name “DEGINVEST” by the Respondent.

It results from the undisputed submissions brought forward and evidenced by the Complainant that he is one of the largest European development finance institutions for long-term project and company financing based in Cologne/Germany. For more than 40 years, the Complainant has been financing and structuring the investments of private companies in developing and transition countries.

The Complainant is well known under the name “DEG Deutsche Investitions- und Entwicklungsgesellschaft” and its abbreviation “DEG” and “DEGINVEST”. Since several years the complainant presents himself and his business in the internet using the domain name “DEGINVEST.DE”. Furthermore, the Complainant is owner of the domains “DEGINVEST” under the top level domains “.net”, “.com” and “.org”.

The aforementioned “.com” and “.org” domains have been subject of domain name dispute resolution procedures under UDRP. In these administrative proceedings the Panel found that the Complainant has recognised rights in the name “DEGINVEST” (cf. WIPO-Cases D2005-1280 and D2005-1222).

The Complainant owns two coloured German trademarks (device) “DEG - Wir unternehmen Entwicklung” (DE-39961097.9 registered for services in class 36 on November 18, 1999) and „DEG – DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH – DEG - German Investment and Development Company“ (DE-39822523.0 registered for services in class 36 on July 24, 1998).

The disputed domain name “DEGINVEST” is currently not in use.

A. COMPLAINANT

The Complainant substantially claims that registration of the disputed domain name “DEGINVEST” is speculative and abusive pursuant to Art. 22 (1) (a) of the Regulation (EC) No. 874/2004.

Pursuant to the Complainant, the disputed domain name is confusingly similar to the above mentioned trademarks and his company symbols “DEG” and “DEGINVEST”. Furthermore, he claims that the Respondent has no rights or legitimate interest in the disputed domain name and that the domain name has been registered in bad faith.

To support this argumentation the Complainant brings forward that the Respondent is neither commonly known under the name “DEGINVEST” nor does he have any other rights with respect to the domain name. Furthermore, the Complainant refers to ADR.eu decisions No. 03588 – XIRONA, No. 03444 – OCUNET and No. 02325 – GLENDIMPLEX rendered against the Respondent. In these cases the Respondent had registered domain names which are similar to existing trademarks or existing domain names under a different top level domain.

Accordingly, the Complainant requests the transfer of the domain name from the Respondent to the Complainant.

B. RESPONDENT

The Respondent failed to comply with the deadline indicated in the Notification of Commencement of ADR Proceeding for the submission of his response and with the further deadline indicated in the Notification of Respondent's default.

Therefore, he has not produced any arguments or provided any evidence of any actual or contemplated right, legitimate interest or good faith use.

DISCUSSION AND FINDINGS

1. According to Article 22 (11) of the Regulation (EC) No 874/2004 an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21 of the aforementioned or the decision taken by the Registry conflicts with this Regulation or with Regulation (EC) No. 733/2002.

In the present case, the Complaint has been brought against the Registrant, not the Registry. Therefore, the only question is whether the registration is speculative or abusive within the meaning of Article 21 the Regulation (EC) No 874/2004. According to this disposition and Paragraph B 11 (d) (1) of the ADR.eu Alternative Dispute Resolution Rules (the “ADR Rules”) the Complainant bears the burden of proving the following:

(i) The domain name is identical or confusingly similar to a name in respect of which a right 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.

2. The Respondent did not file any Response to the Complaint. This entitles the Panel to proceed to a decision on the Complaint and to consider this failure to comply as grounds to accept the claims of the Complainant, paragraph B. 10 (a) of the “.eu” Alternative Dispute Resolution Rules (ADR Rules). Consequently, the Panel accepts the claims of the Complainant, provided however, that these claims are coherent and that the Complainant fulfils the eligibility criteria for who can register a “.eu”-domain name as established by Article 4 (2) (b) of the Regulation (EC) No. 733/2002:

3. The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State and/or Community law

The Complainant has evidenced being the owner of two registered German trademarks including the word “DEG”, namely the device marks “DEG – Wir unternehmen Entwicklung” (DE-39961097.9, registered for services in class 36 on November 18, 1999) and „DEG – DEG - Deutsch Investitions- und Entwicklungsgesellschaft mbH – DEG - German Investment and Development Company“ (DE-39822523.0, registered for services in class 36 on July 24, 1998). Due to the specific design and dimensions in comparison to the other components, both device marks are visually dominated by the element “DEG”. It further results from the undisputed documentation provided by the Complainant that he runs his business under the company symbol “DEG” and the domain “DEGINVEST.DE”.

The domain name is not identical but confusingly similar with the element “DEG” dominating the above mentioned German marks and the company symbols the Complainant uses in the course of trade: The Complainant correctly points out that the domain name is combining the term “DEG” with the term “INVEST”, describing his business and services (class 36). Therefore, this purely descriptive term is not capable to exclude confusing similarity between the domain name and the name “DEG” in respect of which the Complainant owns rights (cf. ADR.eu Cases No. 02832 – SABANCIHOLDING; No. 03650 – “QUELLE-KATALOG”).

4. The domain name has been was registered by the Respondent without rights or legitimate interest in the name

The Panel considers that the Respondent has registered the disputed domain name without rights or legitimate interest, Article 21 (1) (a) Regulation (EC) No. 874/2004. The Respondent did not present any evidence to prove that he offered goods or services in connection with the domain name or prepares to do so, that he has been commonly known by the domain name or that he is making any legitimate and non-commercial fair use of the domain.

5. The domain name has been registered or is being used in bad faith

The Panel further considers that the Respondent has registered the disputed domain name in bad faith, Article 21 (1) (b) Regulation (EC) No. 874/2004. The registration of several domain names that are similar to existing trademarks without using these domains is sufficient to establish a pattern of conduct according to Article 21 (3) (b) (i) of the Regulation (EC) No. 874/2004 (cf. ADR.eu No. 03588 – XIRONA). This behaviour has not been disputed by the Respondent.

6. Finally, the Complainant is entitled to have the disputed domain name transferred to.

The Complainant has demonstrated fulfilling the eligibility criteria for who can register a .eu domain name as established by Article 4 (2) (b) of Regulation (EC) 733/2002 as DEG – Deutsche Investitions- und Entwicklungsgesellschaft mbH is established in Germany.

DECISION

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

the domain name DEGINVEST be transferred to the Complainant

This decision shall be implemented by the Registry within thirty (30) days after notification of this decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction, Articles B12 (d) and (a) of the ADR Rules.

PANELISTS

Name	**Dr. Tobias Malte Müller, Mag. iur.**

DATE OF PANEL DECISION 2007-06-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

1. The Respondent did not file any Response to the Complaint. Therefore, the Panel accepts the claims of the Complainant, provided however, that these claims are coherent and that the Complainant fulfils the eligibility criteria for who can register a .eu domain name as established by Article 4 (2) (b) of Regulation (EC) 733/2002.

2. The domain name “DEGINVEST” is confusingly similar with the German device marks “DEG – Wir unternehmen Entwicklung” (DE-39961097.9) and „DEG – DEG - Deutsch Investitions- und Entwicklungsgesellschaft mbH – DEG - German Investment and Development Company“ (DE-39822523.0). Due to the specific design and dimensions in comparison to the other components, both device marks are visually dominated by the element “DEG”. It further results from the undisputed documentation provided by the Complainant that he runs his business under the company symbols “DEG”.

The domain name is combining the term “DEG” with the term “INVEST”, describing the Complainant’s business and services (class 36). Therefore, this purely descriptive term is not capable to exclude confusing similarity between the domain name and the name “DEG” in respect of which the Complainant owns rights (see ADR.eu Cases No. 02832 – SABANCIHOLDING; No. 03650 – “QUELLE-KATALOG”).

3. The registration of several domain names that are similar to existing trademarks without using these domains is sufficient to establish a pattern of conduct according to Article 21 (3) (b) (i) of the Regulation (EC) No. 874/2004 (cf. ADR.eu No. 03588 – XIRONA).