Panel Decision for dispute CAC-ADREU-004218

Case number	CAC-ADREU-004218
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Domain names	olympiakos.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E. (FOOTBALL TEAM), OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E. OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E., LEGAL ENTITY

Respondent

Organization / Name	SYNERGIS Maciej Przywara, Maciej Przywara

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 unaware of any other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant in this ADR Proceeding is Olympiakos Syndesmos Filathlon Piraeus P.A.E. is a legal entity, registered in Greece. The Complainant is a football team, which is widely recognized in Europe.
The Respondent is SYNERGIS Maciej Przywara, Maciej Przywara, with address in Swietokrzyska 10B, Bochnia, Poland.

The disputed domain name (olympiakos.eu) was registered by the Respondent on August 1st, 2006.

The Complaint was filed on 22 February 2007. The Czech Arbitration Court acknowledged receipt of the Complaint and issued a Request for EURid Verification for that disputed domain name on the same date. On 28 February 2007, EURid replied in a Non-standard communication confirming that the disputed domain name olympiakos.eu was registered with the Registrar - eu-hekate.at web invest gmbh & co KEG, that the current Registrant of the domain name was the Respondent, that the domain name would remain locked during the pending ADR Proceeding and that the specific language of the registration agreement as used by the Registrant for the disputed domain name was English. It also provided the full details from the WHOIS database for the registrant and its technical contacts.

On 01 March 2007 the Czech Arbitration Court provided a Non-standard communication to the Complainant regarding the absence of hard copies of the Complaint. On 07 March 2007 the Complainant filed the hardcopies. The formal date of the commencement of the ADR Proceeding was therefore 08 March 2007. On 02 May 2007 a Non-standard communication was sent to the Respondent reminding that the term for submitting the Response was to expire on 10 May 2007. The Respondent opposed the calculation of the deadline for submission of a Response. On 09 May 2007 the Case Administrator confirmed that the deadline was 10 May 2007. With a Non-standard communication from 10 May 2007 the Respondent presented arguments for improper calculation of the deadline and requested its extension. On 11 May 2007 the deadline was prolonged until 17 May 2007. A Response to the Complaint was received within the extended deadline.

Following an invitation to serve on the Panel in this dispute, the Panel accepted the mandate and submitted the Declaration of Impartiality and Independence in due time. The Czech Arbitration Court duly notified the parties of the identity of the Panel appointed on 02 June 2007, in accordance with paragraph B4(e) of the .eu Alternative Dispute Resolution Rules ('ADR Rules') and the date by which a decision on the matter was due, which was specified as 17 June 2007, further corrected on 28 June 2007.

In the absence of a challenge to the Panel's appointment by either Party according to Paragraph B5(c) of the ADR Rules, the Czech

Arbitration Court transmitted the case file to the Panel on 05 June 2007.

A. COMPLAINANT

The Complainant explains that it owns the following Greek registered trade marks:

1. "OLYMPIAKOS S.F.P. P.A.E." – reg.N 120366, written with Greek characters, protected until 17.09.2013;
2. "OLYMPIAKOS P.A.E." – reg.N 120367, written with Greek characters, protected until 17.09.2013;
3. "OLYMPIAKOS PIRAEUS" - reg. N 120368, written with Latin characters, protected until 17.09.2013;
4. "OLYMPIAKOS PIRAEUS F.C." - reg. N 120369, written with Latin characters, protected until 17.09.2013;
5. "OLYMPIAKOS PIRAEUS" - reg.N 154445, written with Greek characters, protected until 15.12.2010;
6. "OLYMPIAKOS" - reg.N 154448, written with Greek characters, protected until 15.12.2010;
7. "OLYMPIAKOS" - reg.N 163618, written with Greek characters, protected until 16.07.2012;
8. "OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E." – reg. N 166560, written with Greek characters, protected until 18.02.2013;
9. "OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E." – reg. N 166561, written with Greek characters, protected until 18.02.2013.

In addition, the Complainant is owner of a Community trademark – reg. N 003168325 - "OLYMPIACOS SYNDESMOS FILATHLON PIRAEUS P.A.E.- OLYMPIACOS FOOTBALL CLUB", which is protected until 2013.

According to the Complainant, which is a football team from Greece with the name "OLYMPIAKOS" and the same distinguishing title since 1979, the team is very well-known and famous throughout Europe.

The Complainant considers that the registration of the disputed domain name is detrimental to its rights in that:

- the Respondent has no right or legitimate interest in the domain name;
- the Respondent uses the domain name in bad faith as 1) the Complainant is a football team of Greece with the name "OLYMPIAKOS" and uses the same distinguishing title since 1925. It is acting as union until 1979, whereupon a new law for football teams in Greece was activated, and as result it became Societe Anonyme Company with the same name and distinguishing title. Thus during its presentation it became very well known and famous throughout Europe as it participated in European and International Football festivals as the Champions League; 2) a way to attract Internet users on its web page and to prohibit the football team from its presentation in Europe.

The Complainant asks for transfer of the domain name to himself.

B. RESPONDENT

The Respondent considers that the Complainant has modified the transcription of its name which is normally used as „OlympiaCos syndesmos filathtlon piraeus p.a.e." to „OlympiaKos syndesmos filathtlon piraeus p.a.e.". He supports his statement with the fact that the official internet web page used by the club "ΟΛΥΜΠΙΑΚΟΣ ΣΥΝΔΕΣΜΟΣ ΦΙΛΑΘΛΩΝ ΠΕΙΡΑΙΩΣ Π.Α.Ε. (ΠΟΔΟΣΦΑΙΡΙΚΗ ΑΝΩΝΥΜΗ ΕΤΑΙΡΙΑ) uses the name with official English translation „olympiaCos syndesmos filathtlon piraeus p.a.e.".

The Respondent outlines that the trade mark is protected in an invariable form only and contrary to Complainant's suggestions the translations of Greek signs with English letters do not present trade mark and the translation is not a "trade mark".

In the next place, the Respondent points out that a single word from trade mark does not represent use of a trade mark, while the Complainant owns trade marks consisted of several words.

Finally, the Respondent mentions that the purpose for the registration of the disputed domain name was non-commercial. The aim of the registration of the disputed domain was the website to provide search of people, who want to offer help for others in order to achieve noble purposes.
The website would have been designated to children and disabled people and would have concerned different matters of their lives, particularly education, ecology, safe usage of Internet by children, free access to knowledge, but also promotion of health, sports and the Olympic idea.

According to the Respondent the website under the challenged domain would have been completed in 2 years term from the date of registration.

No proposals for sale or renting of the domain name have been addressed to the Complainant. Neither the domain name was used to attract Internet users, for commercial gain, to the Respondent's website or other on-line location.

Taking all this into consideration, the Respondent considers that the domain has been registered for a legitimate, non-commercial and fair use. No intention for misleading consumers or harm of the reputation of the Complainant was present.

Taking all this into consideration, the Respondent pleads that the Complainant's demand should be rejected.

DISCUSSION AND FINDINGS

This Complaint is brought under the auspices of Regulation 874 and the ADR Rules. Article 22(1)(a) of Regulation 874 allows any party to initiate an ADR procedure where the registration is speculative or abusive within the meaning of Article 21.

Article 21(1) states that a registered domain name may be subject to revocation where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1), and where it:
(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.

Article 21(2) provides examples whereby the Respondent's legitimate interest may be demonstrated (echoed in Paragraph B11(e) of the ADR Rules), while Article 21(3) provides examples whereby bad faith may be demonstrated (similarly echoed in Paragraph B11(f) of the ADR Rules).

Article 10(1) states that:
"[…]

"'Prior rights' shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works."

Article 22(11) states that in the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. Furthermore, the domain name is to be transferred to the complainant if the complainant applies for it and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

Paragraph B11(d)(1) of the ADR Rules provides as follows:
"The Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves (1) in ADR Proceedings where the Respondent is the holder of a .eu domain name registration in respect of which the Complaint was initiated that
(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."

1. Identity or confusing similarity

It is clear from the applicable provisions that the burden of proving that a .eu domain name registration is speculative or abusive lies with the Complainant. Accordingly, the first question for the Panel is whether the Complainant has proved that the disputed domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law.

The Complainant claims that it is owner of several registered Greek national trademarks, containing the word “olimpiakos” in Greek letters, as well as of one Community trademark, where the word is written as “olympiacos”. Moreover, the name of the Complainant also includes the name “olympiaKos” and it is the well-know Greek football team, participant in a number of European and International Championships. The Respondent opposes that the transliteration which is used by the Complainant is “olimpiaCos” and it has been modified to “olimpiaKos” for the purposes of the present proceeding.
For the purposes of comparison the top level domain ".eu" must be eliminated as wholly generic, leaving a comparison of "olymiacos " and "olimpiakos". It is well-established that the extension of a domain name “.eu” does not affect the domain name for the purpose of

determining whether it is identical or confusingly similar pursuant to Article 21 (1) of Regulation 874 (case No. 00283- lastminute.eu, case No. 04015 - tirfor.eu and secalt.eu, case No. 04318 - e-airfrance.eu).

First of all, the letter “k” included in the disputed word ΟΛΥΜΠΙΑΚΟΣ should be analyzed. According to Encyclopedia Britanica the Greek letter “K” (kappa) has dual transliteration – “c” in proper nouns and “K” in all other words (http://www.britannica.com/ebc/art-61395?articleTypeId=1). Taking into consideration the fact that the word in dispute is not a proper noun (ΟΛΥΜΠΙΑΚΟΣ means OLIMPIC (http://www.kypros.org/cgi-bin/lexicon)), the conclusion could be drawn that the right transliteration of the word ΟΛΥΜΠΙΑΚΟΣ would be OLYMPIAKOS. However, even if the Latin transliteration was “olympiaCos” the difference in one letter does not allow eluding the risk of collision between the two names. In spite of these linguistic rules, it is commonly admitted that the fact that distinctive element of a word for which a right is recognized under national and/or Community law is identical or similar to the registered domain name is sufficient to conclude that there is similarity between the two words. Therefore, adding descriptive elements to a registered trademark to prevent the domain name to be confusingly similar is worthless (case No. 2429 - ericpol.eu).

In this respect and in accordance with ECJ case law that ruled that the similarity has to be determined looking at the dominant elements of the sign, the Panel considers that the letter “C/K” can not be regarded as enough descriptive and even if word ΟΛΥΜΠΙΑΚΟΣ could be transliterated as “olympiacos” and “olympiakos”, if they are not identical, they are confusingly similar. It considers that the disputed domain name may well cause further association with the Complainant’s name or trademarks because the both words have visual, phonetic and semantic similarity. The disputed domain name is thus, in the Panel's view, confusingly similar to the name in which the Complainant holds registered rights and in this respect the first requirement of Article 21 (1) of Regulation 874 is satisfied.

2. Respondent’s Rights or Legitimate Interest in the disputed domain name

The Panel then turns to the question of whether the disputed domain name has been registered by the Respondent without rights or legitimate interest in the name.

Article 21(2) of Regulation 874 and paragraph B11(e) of the ADR Rules provide non-exhaustive examples of how a Respondent might demonstrate a legitimate interest. These may be summarised as where (a) prior to notice of the dispute the Respondent has used (or made demonstrable preparations to use) the domain name in connection with the offering of goods and services; (b) the Respondent has been commonly known by the domain name; or (c) the Respondent is making a legitimate, non-commercial or fair use of the domain name without the intention to mislead consumers or to harm the reputation of a name in which there are rights under national or Community law.

There is no evidence on the record which indicates that Respondent might be able to satisfy any of these tests. Even though the Respondent filed a Response to the Complaint, it has failed to rebut that demonstration, raising none of the issues referred to in paragraph B11(e) of the Rules, and putting forward no other reasons substantial enough to convince the Panel of its rights or legitimate interest in the disputed domain name. Moreover, obviously the Respondent is very well informed on the trade marks owned by the Complainant, the domains registered by it, as well as on the content of its website. The Respondent did not provide any evidence to fulfil the requirement under Article 21(2) (a) of Regulation 874 because neither the website olympiakos.eu was ever used, nor the name olympiakos was used for the charity purposes as described in the response. No connection between the disputed domain name and the Respondent were found. The stated non-commercial use was not supported by any evidence. In this respect although the Complainant's submissions on this point are extremely limited, it is clear from its submissions as a whole that it is asserting that the Respondent will try to attract Internet visitor on the basis of the popularity of the name of the Complainant.

Thus the Panel cannot conceive of any potential explanation that might confer a right or legitimate interest upon the Respondent in the disputed domain names, whether in terms of the non-exhaustive examples in Article 21(2) of Regulation 874 and paragraph B11(e) of the ADR Rules or otherwise. The Respondent could not have been unaware of the fame of the football team both offline and on the Internet (case No. 04316 – prada.eu). Consequently, the Panel finds that the Respondent registered the disputed domain name olympiakos.eu without rights or legitimate interest.

3. Registered or used in bad faith

For the sake of completeness, the Panel will also deal with the issue of bad faith. This is expressed in Article 21(1)(b) of Regulation 874 and paragraph B11(d)(iii) as a further alternative to a lack of rights or legitimate interest which may be proved by the Complainant. In this case the Panel has found that the Respondent has no rights or legitimate interest in the disputed domain name under paragraph B11(d)(1)(ii), thus satisfying the conditions to issue a decision granting the remedy requested. However the Panel will go on to consider the

question of registration or use of the disputed domain name in bad faith for the sake of completeness. Article 21(3)(a) to (e) and the corresponding paragraph B11(f)(1) to (5) provide non-exhaustive examples which may be evidence of bad faith registration or use.

In view of the notoriety of the Complainant's trademarks and name as a football team, the Panel agrees that it is inconceivable that the Respondent was unaware of them at the time of registration of the disputed domain name and could not have chosen them accidentally. In addition, the disputed domain name has never been in use. The Panel finds this fact sufficient to declare that the domain name was used to attract Internet users by creating a likelihood of confusion (by misleading consumers about the origin of the services offered through the website) with an identical brand name of the Complainant, which might attract sponsors. The Panel is therefore of the opinion that, in these particular circumstances, and given the distinctiveness of the Complainant's trademarks and name, there could be no conceivable good faith registration or use of the disputed domain name by the Respondent. Accordingly, the Panel finds that this circumstance is highly indicative of a use of the disputed domain name in bad faith.

In view of the above and taking into consideration that the Complainant is a company incorporated under Greek law and having its place of business within the European Community, the Panel considers that the requirements for the requested transfer of the domain name to the Complainant are satisfied.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name OLYMPIAKOS be transferred to the Complainant.

PANELISTS

Name	George Dimitrov

DATE OF PANEL DECISION 2007-06-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the recognized Olympiakos Syndesmos Filathlon Piraeus P.A.E. with the duly registered distinctive name and trade marks. It seeks the transfer of the domain name www.olympiakos.eu registered by the Respondent to itself. The Respondent filed its observations in response to the Complaint claiming that it was entitled at the time of registration, namely the 1st of April 2006, to register the disputed domain name. The Respondent also claimed that it intended using the disputed domain name for charity purposes.

The Panel found that the disputed domain name was identical or confusingly similar to the Complainant's registered trademarks and famous name. The Panel found that the Complainant has the right and legitimate interest over the disputed domain name and that the Respondent does not fulfil the conditions set out by Article 21.1(a) of Regulation 874 due to the fact that, inter alia, there was no relation between the Respondent and the disputed domain name www.olympiakos.eu that was registered by him and he had not made use of the said domain name. The Panel also found that the Respondent has registered the disputed domain name in bad faith.

The domain name must be transferred to the Complainant.