Panel Decision for dispute CAC-ADREU-004253

Case number	CAC-ADREU-004253
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Domain names	europart.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	EUROPART Holding GmbH, Mark Siebert

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 has not been made aware of other legal proceedings pending or decided in respect of the domain name presently disputed.

FACTUAL BACKGROUND

The Complainant is EUROPART Holding GmbH, a limited company under German law. The company supplies vehicle parts and workshop requisites. It has 75 EUROPART outlets in 18 European countries and owns the domain names <europart.de> and <europart.net>.

The Complainant owns trademarks for EUROPART and EURO PART including the German trade mark No. 300 37 023 EURO PART in classes 1 to 12, 14, 16 to 22, 25, 27, 35, 37 and 41 (registered 21 February 2002, priority date 16 May 2000).

The Complainant filed for the domain name <europart.eu> unsuccessfully during the sunrise period. The Respondent obtained the domain name immediately upon its general release (7 November 2006).

The Respondent has not filed any response to the Complaint.

A. COMPLAINANT

The Complainant contends that:

a) It has rights in the European trademarks Europart and Euro Part;

b) The disputed domain name is confusingly similar to the Complainant’s trademarks;

c) The Respondent appears to have no rights in the trademarks EUROPART or EURO PART in the United Kingdom, Germany, the European Community or internationally as far as has been searched. Specifically in terms of paragraph B11(e) of the ADR Rules, the Respondent has not used or made demonstrable preparations to use the domain name in connection with the offering of goods or services; or been known by the domain name; or made any legitimate or fair use of the domain name.

d) The Respondent registered the disputed domain name in bad faith and as part of a pattern of registering established trademarked names in which the Respondent cannot reasonably have any legitimate interest, in order to block the trademark owner from doing so. The Respondent has been the subject of several adverse decisions in a similar context in the present forum, in respect of domain names registered as soon as possible after expiration of the sunrise period, citations of which cases were submitted.

The Complainant seeks the transfer of the disputed domain name to the Complainant.

B. RESPONDENT

The Respondent has not made any reply or filed any formal Response to the Complaint.

DISCUSSION AND FINDINGS

This proceeding is undefended by the Respondent and the Panel shall therefore proceed on the basis of ADR Rules, B10. Nevertheless in accordance with ADR Rules B11(d)(1), it remains for the Complainant to prove on the balance of probabilities 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.

WHETHER THE DOMAIN NAME IS CONFUSINGLY SIMILAR TO A TRADEMARK IN WHICH THE COMPLAINANT HAS RIGHTS

The Complainant has produced evidence of its extensive rights in the trademarks EUROPART and EURO PART. In the disputed domain name <europart.eu>, the TLD identifier .eu, being inevitable, is of no consequence for the determination of confusing similarity. What remains of the domain name is “europart”. The Panel finds the disputed domain name to be confusingly similar to the Complainant’s trademarks in the terms of paragraph B11(d)(1)(i) of the ADR Rules.

WHETHER THE RESPONDENT HAS RIGHTS IN THE DOMAIN NAME

The Complainant says in evidence that it has conducted extensive searches and has failed to find any trademark or other association of the words EUROPART or EURO PART with the Respondent. As the registered owner of the trademarks, the Complainant states that it has not granted the Respondent any right to use them. Thus the Complainant has made out a prima facie case to the effect that the Respondent has no rights in the name. The Respondent has offered no rebuttal. The Panel finds for the Complainant in the terms of paragraph B11(d)(1)(ii) of the ADR Rules.

WHETHER THE DOMAIN NAME HAS BEEN REGISTERED OR USED IN BAD FAITH

In the alternative, paragraph B11(f) of the ADR Rules sets out circumstances indicative of bad faith registration or use of a domain name by a Respondent, however it is to be noted that these circumstances are without limitation.

Paragraph B11(f) of the ADR Rules states that the following may be evidence of bad faith:

(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or

(2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; [or...]

On the evidence, the Respondent knowingly registered the domain name comprising the Complainant’s registered trademark immediately upon expiry of the sunrise period without any legitimate interest in the name. The ADR Policy empowers the Panel to take into account that the Respondent may have engaged in a pattern of such conduct. The Complainant cites six cases in which the same Respondent has registered well-known trademarks, including that of <ericpol.eu>, Ericpol Telecom sp. z o.o., Monika Wydrych v Zheng Qingying, ADR .EU Case No. 02429, in which the same Respondent asked the respective Complainant for €30,000 for transfer of a domain name incorporating that Complainant’s trademark.

In the present case and in the absence of any explanation from the Respondent it is not possible to conceive of a legitimate use of the disputed domain name in the Respondent’s hands. The Panel finds bad faith proven on the grounds that, on the balance of probabilities,

in the terms of paragraph B11(f)(1) of the ADR Rules, the circumstances indicate that the domain name was registered primarily for the purpose of transferring it profitably to the trademark owner. The Panel finds bad faith further proven on the grounds that on the balance of probabilities, in the terms of paragraph B11(f)(2) of the ADR Rules, the Respondent has intended to prevent the trademark owner from reflecting its name in the domain name and has engaged in a pattern of such conduct.

The Complainant has provided evidence in support of a contention that the Respondent, having given a contact address in Europe, on the balance of probabilities is resident in China, in contravention of locational prerequisites for the registration of a .eu domain name (Article 4(2)(b) of Regulation (EC) Number 733/2002). The Panel finds additional bad faith on this ground.

DECISION

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

PANELISTS

Name	**Dr. Clive Trotman**

DATE OF PANEL DECISION 2007-08-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the German company EUROPART Holding GmbH, which is the owner of trademark registrations for EUROPART and EURO PART including German trade mark No. 300 37 023.

The Respondent has registered the domain name <europart.com>. The Respondent did not respond to the Complaint.

The Panel found that:

The disputed domain name is 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

The Complainant has established prima facie, and the Respondent has not contested, that the Respondent has no rights or legitimate interests in the domain name; and

The Respondent has acted in bad faith since it may reasonably be concluded on the evidence that he registered the domain name with the intention of transferring it profitably (paragraph B11(f)(1) of the ADR Rules), and that he intended to block the Complainant from registering its trademark as a domain name and has engaged in a pattern of such conduct (paragraph B11(f)(2) of the ADR Rules). Furthermore the Respondent appears not to qualify for the legitimate registration of the domain name in accordance with Article 4(2)(b) of Regulation (EC) Number 733/2002.

The Panel ordered the transfer of the domain name <europart.eu> to the Complainant.