Panel Decision for dispute CAC-ADREU-004274

Case number	CAC-ADREU-004274
Time of filing	2007-02-16 11:53:59
Domain names	salomon-sports.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	SALOMON S.A.

Respondent

Organization / Name	Fienna.com, Domain Handler

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

None

FACTUAL BACKGROUND

The Complainant is a well-known French company; it is active since years in the sport sector (outdoor sports: products and events). The Complainant underlines the facts that (1) it is the owner of several Trademark (including SALOMON-SPORTS which is exactly the domain name at stake), (2) its company name is close to the domain name at stake and (3) it is the holder of several domain names identical to the domain name at stake (except the TLDs).

The Respondent is a UK company. The Respondent registered the Domain Name at stake on April 4th, 2006 (i.e. the first day of the Land Rush period).

The Complainant requests the transfer of the Domain Name from the Respondent to its benefit.

The Respondent did not answer to the complaint.

A. COMPLAINANT

The Complainant contends that the domain name at stake is identical or confusingly similar on several rights owned by him, and that said rights are recognized or established by national and/or Community law, including the followings:

- French Trademark “SALOMON-SPORTS” applied for on October 17th, 2005 with the Institut National de la Propriété Industrielle and published on March 24th, 2006 (evidence is attached to the complaint).

- Complainant’s trade and commercial name “SALOMON” (evidence is attached to the complaint).

The Complainant insists on the fact that a web search made via Google® shows that it is well-known in its business while the respondent is absent in this field (evidence is attached to the complaint).

Consequently, the Complainant affirms that the Respondent knew or should have known that the terms “salomon” and “salomon-sports” were owned, used and protected at the benefit of someone else (i.e. the Complainant). The Complainant also stress the risk that internet users may wrongly think that the Respondent’s is linked in some way with the Complainant’s company, products and services.

The Complainant contends that both “absence of interest” and “bad faith” criteria are satisfied, and request the remedies provided for by

article 21 of EC Regulations n°874/2004, notably because:

- Firstly, as already said, the Respondent couldn't ignore that the terms "salomon" and "salomon-sports" were already owned, used and protected at the benefit of the Complainant.

- Secondly, the Respondent is using the domain name in bad faith because no active website is associated with the domain name (absence of a bona fide provision of service). The Complainant sees this as a demonstration that the principal aim of the Respondent was to prevent the Complainant from registering the domain name and/or to grab easy traffic from the domain name.

- Eventually, the Complainant underlines at least three previous decisions issued by other Panels of the Arbitration Center in which the Respondent has been already sanctioned three times.

On the basis of these legal grounds, the Complainant requests the transfer of the domain name.

B. RESPONDENT

Respondent did not respond.

DISCUSSION AND FINDINGS

When the Czech Arbitration Court (CAC) receives a complaint, it follows a strict procedure including the notification of the complaint to the Respondent.

Said notification notably states that:

"Default. If your Response is not sent in the period of time above or if it will not comply with all administrative requirements mentioned in the ADR Rules and/or ADR Supplemental Rules even after granting additional time period to remedy the noncompliance under Paragraph B3 (d) of the ADR Rules, you will be considered in default. We will still appoint an ADR Panel to review the facts of the dispute and to decide the case. The Panel will not be required to consider a Response filed late or not administratively compliant, but will have the discretion to decide whether to do so and may draw such inferences from your default as it considers appropriate, as provided for by ADR Rules, Paragraph B10. There is a possibility to challenge the Notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules."

The Respondent also received a "non-standard communication" from the CAC to inform it of the deadline to submit its response.

When a Respondent doesn't answer within the delay, it also receives a "notification of Respondent's default" informing it of the consequences of said default. This notification notably stipulates that:

(begin of quote)

1. We shall go forward and appoint an ADR Panel based on the number of panelists designated by the Complainant. As the Complainant has designated a single-member Panel, we shall appoint the panelist from our published list. / As the Complainant has designated three-member Panel, we shall appoint a Panelist from the list of Candidates provided by Complainant and 2 Panelists from our published list. In case we are unable within five (5) calendar days to secure the appointment of a Panelist from the list of Candidates, we shall appoint a Panelist from our published list of Panelists.

2. The ADR Panel and the Complainant will be informed of your default. The ADR Panel will decide in its sole discretion whether or not to consider your defective Response (if submitted) in deciding the case.

3. Notwithstanding your default, we shall continue to send you all case-related communications to your contact details and using the methods you have specified in your Response (if submitted later), or as we consider appropriate in our discretion (if not submitted).

4. You have a right under Paragraph B3 (g) of the ADR Rules to challenge this Notification in a written submission to the Czech Arbitration Court filed within 5 days from receiving this notification. The Czech Arbitration Court shall acknowledge receiving your challenge and shall forward it to the Panel within 3 days from its receipt. In submitting your potential challenge, you must use Form "Challenge of Notification of Respondent Default" available on the Online Arbitration Platform of the Czech Arbitration Court.

(end of quote)

The right of Complainant of the domain name seems to be unquestionable, and the domain name is identical.

As far as the bad faith and the right/legitimate interest are concerned, it must be stressed that in most cases, it is impossible for a Complainant to demonstrate with an absolute certainty the absence of right and legitimate interest and/or the bad faith of a Respondent.

This is why the Panels usually require the Complainant to make a reasonable demonstration rather than to bring absolute evidence. This demonstration lays on the various facts and legal elements of each case.

The response is then the occasion for the Respondent to challenge and contradict the reasonable demonstration of the Complainant and to draw the Panel's attention on other facts and legal elements to support its view.

In this case, the least that can be said is that the complaint is quite persuasive.

It underlines facts and legal elements that are indeed good signs that the domain name "has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith" (art. 21 of EC regulation 874/2004). (see hare above "Parties' contentions" for factual and legal details).

The respondent had a chance to reply; it chose not to.

This case is also remarkable because there is no active website under the domain name at stake. The absence of a bona fide provision of service has always been considered as a strong sign of a possible cyber squatting. This was one more reason for the Respondent to answer to the complaint and to explain its project (if any).

Based on the sole complaint, this Panel is convinced that the domain name "has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith" (art. 21 of EC regulation 874/2004).

DECISION

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

the domain name SALOMON-SPORTS be transferred to the Complainant

PANELISTS

Name	**Thibault Verbiest**

DATE OF PANEL DECISION 2007-05-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

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The complaint is quite persuasive and the Respondent didn't respond.

Based on the sole complaint, this Panel is convinced that the domain name "has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith" (art. 21 of EC regulation 874/2004).