Panel Decision for dispute CAC-ADREU-004318

Case number	CAC-ADREU-004318
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Domain names	e-airfrance.eu

Case administrator

Name	Tomáš Paulík

Complainant

Organization / Name	Société Air France, Jean-Marc BARDY

Respondent

Organization / Name	Lehigh Basin, Ltd., Lehigh Basin, Ltd.

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 pending or decided legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The present complaint was filed on March 2, 2007 by the French company AIR FRANCE and is directed against a UK company by the name of LEHIGH BASIN LTD which registered the domain name “e-airfrance.eu” on April 7, 2006. AIR FRANCE relies upon its earlier trademarks and domain names, as well as the worldwide notoriousness of the name AIR FRANCE to sustain that the Respondent cannot have any legitimate interest in the disputed domain name and necessarily acts in bad faith.

The postal address and e-mail addresses of the Respondent as declared in the application to register the disputed domain name appear to be erroneous; all communications forwarded to the Respondent, including the Complainant’s cease-and-desist letter as well as the Complaint per se have not reached the Respondent, which did not file any response to the Complaint and was thus found in default on May 3, 2007.

The Panel was appointed on May 15, 2007.

A. COMPLAINANT

The Complainant seeks the transfer of the disputed domain name.

The Complainant contends that it owns a web portal www.airfrance.com and that it had registered several domain names consisting in the name “airfrance” joined to country top level domain names. He also registered four “e-airfrance” domain names which point at its main web portal www.airfrance.com.

1 – The Complainant considers that the disputed domain name is confusingly similar to its trademarks, since the “E-”, which commonly stands for “electronic” is not a distinctive element and may refer to AIR FRANCE electronic and/or online services.

The Complainant cites earlier WIPO and UDRP cases, which ruled in this direction.

2 - The Complainant claims that the disputed domain name was registered without legitimate interest in that :

- the Respondent has no link of any kind with Air France
- the Respondent has never been known under the name AirFrance or E-Airfrance before the registration
- the Respondent has not demonstrated any activity under the name “e-airfrance”

3 - The Complainant claims that the disputed domain name was registered and is used in bad faith for the Respondent could not ignore AIR FRANCE's activity and reputation.

Furthermore, the Complainant notices the passive holding of the disputed domain name which, according to previous ADR cases, is constitutive of bad faith use, emphasizes that the Respondent deliberately declared fake postal and e-mail addresses in his domain name application and that the Respondent has in the past already been involved in similar "cybersquatting" cases.

B. RESPONDENT

The Respondent did not file any response to the Complaint and was found in default on May 3, 2007.

DISCUSSION AND FINDINGS

The Panel is to decide, in view of the facts and arguments of the parties, whether the conditions of article 21 of Reg. No. 874/2004 are satisfied to decide whether the disputed domain name should be transferred to the Complainant or not.

1) ON THE PRIOR RIGHTS

Pursuant to Article 21. Reg. No. 874/2004, "A registered domain name shall be subject to revocation […] where that name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, such as the rights mentioned in Article 10."

The Panel finds that the trademark rights vested in the name AIR FRANCE claimed by the Complainant are clearly substantiated.

The Complainant justifies that it owns French, British and Community trademark registrations for the name "AIR FRANCE" as well as a series of domain names formed with AIRFRANCE and E-AIRFRANCE, including under the country-top-level domain ".co.uk" (Great Britain is the declared country of origin of the Respondent).

Besides, AIR FRANCE is the Complainant's corporate name and tradename, under which it has been running its business for many years.

2) ON THE IDENTITY OR CONFUSINGLY SIMILARITY OF THE DOMAIN NAME

The disputed "e-AirFrance.eu" domain name is not identical to the Complainant's registered trademark.

However, the disputed domain name "e-airfrance.eu" wholly incorporates the word element of Complainant's trademark "AirFrance". 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 the Regulation (EC) No. 874/2004 (cf case No. 00283, lastminute.eu).

In the same way, the sole presence of the prefix "E-" does not allow to elude the risk of collision between the two names. Indeed, it is commonly admitted that the fact that the distinctive element of a sign for which a right is recognised 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 signs. Therefore, adding descriptive elements to a registered trademark to prevent the domain name to be confusingly similar is worthless (cf case No. 2429, Ericpol.eu).

In this respect, and in accordance with ECJ case law, that ruled that similarity has to be determined looking at the dominant elements of the sign, the Panel considers that the prefix "E-"is descriptive in reference to electronic services, the concept of which is that the consumer can buy products or services online, and that the only dominant and distinctive element in the expression "e-airfrance" is "AirFrance".

The Panel thus finds that the first requirement of Article 21 (1) of the Regulation (EC) No. 874/2004 is satisfied.

3) ON THE LEGITIMATE INTEREST IN THE NAME

"A registered domain name shall be subject to revocation […] where it

(a) has been registered by its holder without rights or legitimate interest in the name;

Pursuant to Article 10 of the Regulation (EC) No. 874/2004, the legitimate interest condition is considered as fulfilled when:
a) prior to any notice of an alternative dispute resolution procedure, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so
b) the Respondent has been commonly known by the domain name
c) the Respondent is making a legitimate and non commercial or fair use of the domain name, without intend to mislead consumers or harm the reputation of the name on which a right is recognized.

It is the Panel's view that the overall burden of proof under the above provision rests with the Complainant, which is required to establish that the Respondent prima facie lacks any rights to, or legitimate interests in, the disputed domain name, and that if the respondent fails to answer such case, the complainant is deemed to have satisfied its burden of proof.

The Complainant states that the Respondent has no rights to or legitimate interests in the contested domain name because:

- it is not related in any manner to AIR FRANCE ;
- it has not been authorized by the Complainant to register or use the disputed domain name;
- it does not trade nor is known in the course of trade under the name "AIR FRANCE or E-AIRFRANCE" and does not make any legitimate non commercial use thereof;
- it could not ignore the rights vested in the notorious trademark AIR FRANCE;

The Respondent, being in default, has not presented any justification for holding the disputed domain name.

The Panel observes that the disputed domain name does not resolve to any website which would indicate that the Respondent has any kind of trademark or trade name rights in the name "e-airfrance" or which would contain any reference to a commercial use of the name "e-airfrance" in the course of trade or would indicate that Respondent has been commonly known by the disputed domain name.

The Panel therefore considers that there is no element in the present case which may be interpreted as justifying a finding that Respondent has any rights or legitimate interests in the disputed domain name.

4) ON THE RESPONDENT'S BAD FAITH

"A registered domain name shall be subject to revocation where it
(b) has been registered or is being used in bad faith."

The Complainant is the major French airline company and it asserts that it has been using its corporate name, trade name and trade mark AIR FRANCE for many years all throughout the world.

The Panel agrees that the notoriousness of the name AIR FRANCE is indisputable.

Earlier UDRP decisions have confirmed the outstanding notoriousness of the trade mark AIR FRANCE [Wipo Case D2005-0168 "airfrancesucks.com" ; Wipo Case D2005-1337 "airfranceflights.com"].

It is the Panel's opinion that the Respondent necessarily had the Complainant's trademark in mind when it registered the disputed domaine name for it could not ignore that there is only one AIR FRANCE company in the world and that the name AIR FRANCE is not free to use.

It is very unlikely that the Respondent registered the disputed domain with a view to setting up a new airline company operating in or from France …

The Respondent's behaviour does not appear to have been dictated by a bona fide intent to use the disputed domain name, in the Panel's view.

Of true relevance is also the fact that the Respondent cannot be reached.

The postal and e-mail addresses it declared in its domain name application appear to be fake: all communications directed to those addresses were returned to senders.

It is the Panel's opinion that a person acting in good faith has no reason to disguise its contact details.

The Respondent has registered as a domain name a trademark which it necessarily knew was not available and besides organized its invisibility with an intent to evade its responsabilities.

Such a behaviour clearly reveals that the Respondent acted in bad faith when it sought to register the disputed domain name.

This impression is reinforced by the fact that the Respondent has already been involved in abusive domain registration cases, in particular ADR Case No. 2791 ("messe-stuttgart.eu").

The Respondent could not ignore therefore that the registration as a domain name of a third party's trademark is reprehensible and one may infer from the Registrant's pattern of conduct that the disputed domain name was registered in order to prevent the Complainant from reflecting its name in the corresponding domain name, in the meaning of Article 21.3 b) (i) of Reg. No.874/2004.

For all above reasons, the Panel finds that the Respondent has no right or legitimate intrest in the disputed domain name and is further convinced that the Respondent registered the disputed domain name in bad faith.

It does not appear necessary therefore to examine whether the Respondent uses the domain name in bad faith.

5) TRANSFER OF THE DOMAIN NAME

The Complainant is a company incorporated under French law and having its place of business within the European Community. Therefore, the requirements for the requested transfer of the domain name to the Complainant are satisfied (Section B No. 1 (b) (12) of the ADR Rules).

The Panel finds that the Complainant satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002.

DECISION

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

the domain name E-AIRFRANCE be transferred to the Complainant.

PANELISTS

Name	William Lobelson

DATE OF PANEL DECISION 2007-05-29

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, AIR FRANCE, seeks the transfer of the domain name "E-AIR FRANCE.EU" registered by the Respondent. The domain name does not resolve to any web site. The Respondent did not file any observation in response to the Complaint and was found in default.

In view of the inherent notoriousness of the trademark AIR FRANCE, the Panel finds that the Respondent was necessarily aware of the Complainant's rights in this name when it registered the disputed domain name "E-AIRFRANCE.EU". It is further noted that the Respondent supplied false information about its postal and e-mail addresses in its domain name application and that it has already been involved in earlier similar ADR procedures.

The Panel is therefore of the opinion that the Respondent has no right or legitimate in the disputed domain name and registered the same in bad faith.

The domain name is transferred to the Complainant.