Panel Decision for dispute CAC-ADREU-004319

Case number	CAC-ADREU-004319
Time of filing	2007-03-06 12:08:16
Domain names	airfranceairlines.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Société Air France, Jean-Marc BARDY

Respondent

Organization / Name	Magdalena Blaszak, Magdalena Blaszak

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

1. AIR FRANCE (hereinafter the "Complainant") is one of the world's major airline companies.

2. The Complainant operates an international web portal (<airfrance.com>) and also registered several ccTLD as well as the <airfranceairline.com> and <air-france-airline.com> domain names which point to the said web portal since their registration.

3. On April 12, 2006, the <airfranceairlines.eu> domain name was registered by MAGDALENA BLASZAK (hereinafter the "Respondent"), apprently located in Poland.

4. The Complainant tried to settle the matter amicably, but the Respondent was ready to proceed with the transfer of ownership of the said domain name only if the Complainant agreed to pay 1.700 euros.

5. Considering the registration of the <airfranceairlines.eu> domain name was "obvious cybersquatting", the Complainant refused to pay the amount of 1.700 euros and requested the transfer of the said domain by filing to the Court a complaint against the Respondent.

6. The Panel was duly appointed on May 16, 2007.

A. COMPLAINANT

The Complainant contends as follow:

7. The Complainant is:
(i) the holder of the trade name "AIR FRANCE" since 1933;
(ii) the owner of numerous trademarks, notably in France and in Poland, consisting or including the wording "AIR FRANCE";

8. On the grounds of some UDRP cases, the Complainant also considers that "AIR FRANCE" is a famous trademark, in the sense of Article 6 of the Paris Union Convention.

9. First, the Complainant claims that the domain name <airfranceairlines.eu> is confusingly similar to its trademark "AIR FRANCE" because :

(i) the trademark "AIR FRANCE" is entirely reproduced in the disputed domain name (no matter there is no space between the two words);
(ii) the combination of the trademark "AIR FRANCE" with the suffix "AIRLINES", which describes the main part of the Complainant's activity does not eliminate the risk of confusion with the Complainant's famous trademark and, in fact, suggests that the disputed domain name refers to the French Airline company;
(iii) the mere addition of a descriptive term to an otherwise distinctive or well-known trademark does not serve to distinguish the domain name from the said trademark.

10. Secondly, the Complainant considers that the domain name <airfranceairlines.eu> has been registered by the Respondent without rights or legitimate interests because:
(i) the Respondent is not related in any way to the Complainant's business;
(ii) the Respondent is not currently and has never been known under the wording AIR FRANCE nor under the combination of this trademark with the suffix "AIRLINES";
(iii) no licence or authorization has been granted to the Respondent to make any use, nor apply for registration of the disputed domain name by the Complainant.

11. Finally, the Complainant claims that the domain name <airfranceairlines.eu> has been registered or is used in bad faith because:
(i) it is difficult to imagine that the Respondent could have ignored the well-known trademark "AIR FRANCE" at the time she applied for the registration of the disputed domain name;
(ii) the fact that the disputed domain name combines the Complainant's famous trademark with the suffix "AIRLINES" ascertains the Respondent bad faith registration;
(iii) the Respondent's passive holding of the disputed domain name constitutes bad faith use.

12. As a consequence, the Complainant requests that the disputed domain name be transferred to him.

B. RESPONDENT

The Respondent contends as follow:

13. The Respondent declares that she is still willing to transfer the disputed domain name "for an amount of out-of pocket costs".

14. The Respondent considers that the domain name has been registered after Phased Registration Period according to the "first come, first served" principle.

15. The Respondent stresses that it is "not true that domain have been used in bad faith, especially because the domain name has not been used yet. It is not activated. So it didn't violate any third party rights, applicable laws or regulations". Moreover, according to the Respondent, regarding ADR Rules B.1, "for the avoidance of doubt, until the domain name in respect of which the Complaint is initiated has been registered and activated, a party can initiate an ADR Proceeding only against the Registry. In the disputed case the domain name has not been activated yet so a complaint may be filed only against the Registry".

DISCUSSION AND FINDINGS

16. In consideration of the Factual Background, the Parties' Contentions stated above and its own web searches, the Panel comes to the following conclusions:

Article 21 of the Regulation (EC) No. 874/2004 of 28 April 2004 (hereafter “the Regulation”) states that "a registered domain name shall be subject to revocation [...] where the 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(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".

17. The rights mentioned in Article 10 (1) of the Regulation shall be understood to include national and community trademarks and, as far as they are protected under national law in the Member-State where they are held: trade names, business identifiers or company names.

18. As a consequence, this Panel is of the view that:

(i) The documentary evidence provided by the Complainant shows this latter owns a French trademark "AIR FRANCE" which is, from the opinion of the Panelist, a famous trademark, in the sense of Article 6 of the Paris Union Convention.

(ii) The domain name <airfranceairlines> is confusingly similar to the trademark of the Respondent:
- as the trademark "AIR FRANCE" is entirely reproduced in the disputed domain name and as the absence of space between the two words has to be ignored in assessing the question of confusing similarity (see Case n° 3125, BASLER-HAARKOSMETIK, BASLERHAARKOSMETIK) and
- as the combination of the trademark "AIR FRANCE" with the suffix "AIRLINES" suggests that the disputed domain name refers to the famous French Airline company.

19. The remaining issue is then to decide wether the domain name <airfranceairlines> has been registered by the Respondent without rights or legitimate interest or wether it has been registered or used in bad faith by the Respondent.

20. Considering the fact that the Respondent is not currently and has never been known under the wording AIR FRANCE nor under the combination of this trademark with the suffix "AIRLINES", and that no licence or authorization has been granted to the Respondent to make any use, nor apply for registration of the disputed domain name by the Complainant, it is this Panel's opinion that the Respondent acted without legitimate interests.

21. Moreoever, Article 21(3) of the Regulation states that bad faith may be demonstrated, where "circumstances indicate 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 recognised or established by national and/or Community law".

22. Considering Article 21(3) of the Regulation and the fact that the Respondent offered the disputed domain name for sale whereas the Respondent made passive holding of the disputed domain name, it is this Panel's opinion that the Respondent acted in bad faith.

23. The last argument of the Respondent regarding ADR Rules B.1 (which states: "for the avoidance of doubt, until the domain name in respect of which the Complaint is initiated has been registered and activated, a party can initiate an ADR Proceeding only against the Registry"), can not be invoked in the present case because the disputed domain name has been registered, as the Eurid's Whois database proves it.

24. As the Complainant, a French registered company, satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) n° 733/2002, the disputed domain name is transferred to the Complainant.

DECISION

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

PANELISTS

Name	Frédéric Sardain

DATE OF PANEL DECISION 2007-06-14

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

On April 12, 2006, the <airfranceairlines.eu> domain name was registered by the Respondent.

The documentary evidence provided by the Complainant shows this latter owns a French trademark "AIR FRANCE" which is a famous trademark, in the sense of Article 6 of the Paris Union Convention.

The domain name <airfranceairlines> is confusingly similar to the trademark of the Respondent:
(i) as the trademark "AIR FRANCE" is entirely reproduced in the disputed domain name and as the absence of space between the two words has to be ignored in assessing the question of confusing similarity and
(ii) as the combination of the trademark "AIR FRANCE" with the suffix "AIRLINES" suggests that the disputed domain name refers to the famous French Airline company.

Considering the fact that the Respondent has never been known under the wording AIR FRANCE nor under the combination of this trademark with the suffix "AIRLINES", and that no licence or authorization has been granted to the Respondent to make any use, nor apply for registration of the disputed domain name by the Complainant, it is this Panel's opinion that the Respondent acted without legitimate interests.

Considering Article 21(3) of the Regulation and the fact that the Respondent offered the disputed domain name for sale whereas the Respondent's made passive holding of the disputed domain name, it is this Panel's opinion that the Respondent acted in bad faith.

The domain name is transferred.