Panel Decision for dispute CAC-ADREU-004336

Case number	**CAC-ADREU-004336**
Time of filing	**2007-04-25 10:12:14**
Domain names	**nimm2-lachgummi.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**August Storck KG, Dr. Wolf-Christian Dickertmann**

Respondent

Organization / Name	**World Online Endeavours, Ltd., World Online Endeavours, 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

None that the Panel is aware of.

FACTUAL BACKGROUND

1. The Complainant is a company with headquarters in Germany, involved for severla decades in the production and distribution of well known sweets and candies as "Merci", " Toffifee" and "nimm2".

2. The Complainant is the owner of a family of trademarks for the production and distribution of the sweets and candies, among which it registered the following:
a) trademark "nimm 2" registered at the German Patent and Trademark Office (DPMA) under the number 39645049.0, at the Austrian Patent Office under the number 68837, at the Office for Harmonization in the European Market under the number 003858362, and at WIPO (with protection inter alia for Austria) under the number 291 537,
b) the trademark “Lachgummi” registered at the German Patent and Trademark Office (DPMA) under the number 934 431, at WIPO (with protection inter alia for Austria) under the number 641 701 and
c) the trademark "nimm 2 Lachgummi", registered at the German Patent and Trademark Office (DPMA) under the number 39547582.

3. The Respondent is World Online Endeavours Ltd, an organisation with address in Sweden and UK.

4. On 7 April 2006, the first day of the Land Rush period, the Respondent applied for registration of the disputed domain name NIMM2-LACHGUMMI, which registration was subsequently blocked by EURid.

7 On 24 April 2007, the Complainant issued the Complaint in the present ADR proceedings. Having been notified of the Complaint, the Respondent did not submit a response to the Complaint within the required time period.
The Czech Arbitration Court reminded the Respondent by a Nonstandard Communication dated 29
june 2007 that the time by which a Response must be submitted would expire on 11
July 2007. On 12 July 2007, the Czech Arbitration Court issued a Notification of Respondent’s Default.

.

A. COMPLAINANT

8. The Complainnat asserts that:
a) The domain name in dispute "nimm2-lachgummi.eu" is identical with the Complainant's trademark "nimm2 lachgummi" and

furthermore partly identical and confusingly similar to the trademarks “nimm2” and “Lachgummi”, all of which are protected under German, Austrian and EU law for the Complainant. There is no connection between the Complainant and the Respondent as to the use of the disputed domain name, even though the Complainant uses the domain name "nimm2-lachgummi.de", "nimm2.de", and "nimm2.eu" extensively for its company presentation.
b) The disputed domain name has been registered by the Respondent and had been used in bad faith as the Respondent had in the past been engaged in a pattern of bad faith conduct and the domain name was intentionally used to attract internet users for commercial gain to the Respondent's website according to ADR-rules B 11 (d) (1) (iii), (f) (2) (i) and (4). The Respondent is known as a cybersquatter.
c) The Respondent does not posses legitimate interests to the name "nimm2-lachgummi" as the Respondent has not been commonly known by the domain name.

9. The Complainant has a right to claim the transfer of the said domain name. The Complainant satisfies the general eligibility criteria for registration set out in para. 4 (2) (d) of Regulation (EC) no. 733/2002. The Complainant is a corporation (Kommanditgesellschaft) registered with the company name August Storck KG in Berlin, Germany, registered at Local Court Amtsgericht Charlottenburg (Berlin) under the no. HRA 22321.

B. RESPONDENT

10. The Respondent has not provided a Response to the Complaint.

DISCUSSION AND FINDINGS

11. According to Paragraph B11(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves in ADR proceeding where the Respondent is the holder of the domain name 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 national 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.
article 21(1) of the Commission Regulation (EC) 874/2004 of 28 April 2004 contains similar provision.
In arriving to the findings in this case, the Panel has reviewed and considered the Complainant’s submissions and annexed documents in detail and has, based on article B7(a) of the ADR rules, further taken note of the decisions in ADR cases 04037 and 04008.

I. Condition according to Paragraph B11(d)(1)(i) of the ADR Rules

The disputed domain name consists entirely of the Complainant's trademark "nimm2 lachgummi" and furthermore integrate partly the trademarks “nimm2” and “Lachgummi”. All these trademarks are protected under national German, Austrian and EU law for the Complainant. The Panel, accordingly finds that the disputed domain name is "identical and confusingly similar” to names in respect of which a right of the Complainant is recognised within the meaning of Paragraph B.11(d)(1) of the ADR Rules.

II. Condition according to Paragraph B11(d)(1)(iii) of the ADR Rules

Bad faith is defined in more detail in Paragraph B11(f) of the ADR Rules which contains a an enumeration of the circumstances which may prove the registration or use of a domain name in bad faith. The Panel finds in this case applicable at least the circumstance provided at Paragraph B 11(f)(2)(i) of the ADR Rules, as the Respondent has engaged in a pattern of conduct where it has registered domain names in order to prevent the holder of such name in respect of which a right is recognized and established by national and/or Community law, from reflecting this name in a corresponding domain name. In this sense, the Panel considered the following facts:
- the fact that the Respondent applied for registration of the disputed domain name "nimm2-lachgummi.eu" on 7 April 2006, the first day of the Land Rush period and
- the fact that it was already involved as a Respondent in two other ADR cases 04037 and 04008, in which the designated Panels ruled against it among others for a conduct identical to the one in this case.

12.Further, no evidence has been provided or submitted by the Respondent to challenge the claims made by the Complainant and/or that the Respondent’s registration of domain names was for a reason to prevent the domain names being used by holders of rights recognised by National or Community Law.

13.In light of these findings, the Panel does not need to consider whether the Respondent has rights or legitimate interests in the

disputed domain name as the conditions set in Paragraphs B11(d)(1)(i) and (iii) are satisfied.

14 Since the Complainant has is a German registered company and based in the Germany, the Complainant also satisfies the general eligibility criteria set out in article 4.2(b) of Regulation (EC) No 733/2002 and referred to in article 22.11 of the Commission Regulation (EC) 874/2004. The Complainant is therefore entitled to the transfer of the disputed domain name 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 NIMM2-LACHGUMMI be transferred to the Complainant.

This decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless the Respondent initiates court proceedings in a Mutual Jurisdiction (see Paragraph B12(a) of the ADR Rules.

PANELISTS

Name	**Beatrice Onica Jarka**

DATE OF PANEL DECISION 2007-08-11

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought an action against the Respondent for abusive registration of the domain name “nimm2-lachgummi.eu”.

The Panel held that the name was identical and confusingly similiar to the Complainant’s right in names registered under national and Community law.

The Panel found that the domain name in dispute had been registered in bad faith because the Respondent had engaged in a pattern of conduct involving the registration of a number of domain names which had been found by a previous Panel to be registered in order to prevent legitimate rights holders from registering corresponding domain names.

The Panel therefore ordered that the disputed domain name be transferred to the Complainant.