Panel Decision for dispute CAC-ADREU-004371

Case number	**CAC-ADREU-004371**
Time of filing	**2007-03-20 11:58:44**
Domain names	**simtek.eu**

Case administrator

Name	**Tomáš Paulík**

Complainant

Organization / Name	**SIMTEK Präzisionswerkzeuge GmbH, SIMTEK Präzisionswerkzeuge GmbH**

Respondent

Organization / Name	**Lexicon Media, Ltd., Lexicon Media, 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 other legal proceedings which are pending or decided and which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant Simtek Praezisionswerkzeuge Gmbh is a German limited partnership claiming to be a registered owner of the German and EU Trademark „SIMTEK“.

On April 7, 2006, i.e. after the Sunrise Period lapsed, the Respondent – Lexicon Media Ltd., an English limited liability company, registered a domain name „simtek.eu“ and, therefore, the Complainant filed a Complaint against the Respondent requesting that the above mentioned domain name is transferred from the Respondent to the Claimant.

A. COMPLAINANT

The Complainant states that the Respondent is not a holder of a trademark „SIMTEK“, it does not use the same expression in its business name and, since the registration, it has not operated a web presence under the domain name. Further, the Complainant argues that the Respondent was created to hijack .eu domain names and that the Respondent offers the respective domain name via domain marketplace „afternic.com“.

The Complainant referred to Article 22/1 of the Regulation (EC) No. 874/2004 (the „Regulation“), under which alternative dispute resolution may be sought by anybody, if registration of a domain name is speculative within the meaning of Article 21 of the Regulation. For a registration to be speculative and/or abusive within the meaning of Article 21 of the Regulation, it is required that

- the domain name is identical or confusingly similar to another name is respect of which rights are recognized or established by national and/or Community Law

- and the domain name has been registered by a domain holder who either cannot assert any rights or legitimate interest in the domain name

- or registers or uses the domain name in bad faith

The Complainant then claimed that the respective domain name is identical with its registered trademark and that the Respondent has used neither the respective domain name, nor any name corresponding to this domain name in connection with the selling of goods or services, nor provably made any preparation to that effect, and that the domain holder is neither an undertaking, an organization or a natural person that is generally known under the domain name. Finally, the Complainant argues that the Respondent registered the

respective domain name in bad faith as demonstrated by the public offer to sell it at domain marketplace afternic.com.

From all the above mentioned reasons, the Complainant requested that the respective domain name must be transferred to the Complainant.

B. RESPONDENT

Despite reminders, the Respondent did not file its reply to the Complaint.

DISCUSSION AND FINDINGS

In disputes on transferring a domain name from a person who registered an .eu domain name, a Complainant must establish facts under Article 21/1 of the Regulation:

"1. A registered domain name shall be subject to revocation, using an approximate extra-judicial or judicial procedure, where the name is identical or confusingly similar to a name in respect of which a rights is recognized or established by national and/or Community law, such at the rights mentioned on 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."

It is apparent from the above mentioned provision, that in order to succeed with the complaint, a Complainant must firstly prove its right or interest in the name and identity or similarity of the domain name to such name and then, at least one of the two following elements:

(a) registration of the domain name without right or legitimate interest; and/or

(b) registration or use of the domain name in bad faith.

RIGHT TO OR INTEREST IN THE NAME AND ITS IDENTITY OR SIMILARITY WITH THE DOMAIN NAME

The Complainant enclosed to the complaint two internet excerpts to prove its ownership to the trademark "SIMTEK":

(i) German Trademark and Patent Registry on the word trademark "SIMTEK" No. 39873616.2 registered in 1999; and

(ii) Community Trademark Registry on the word trademark "SIMTEK" No. 001204643 registered in 2001.

Both excerpts further prove that the business name of the Complainant contains expression "SIMTEK".

Both documents are in German, which is not language of the present proceeding, however, due to its language skills, the Panel accepted those documents without requiring the Complainant to submit their translation into English being the language of this ADR proceeding under Section A (c) of the ADR Rules.

From the filed documents, it is apparent that the disputed domain name is identical with the name which is registered in the trademark registries. For this purpose, expression "(dot)eu" must be ignored when comparing and contrasting a trademark and a domain name (see e.g. ADR Nos. 387 – GNC or 596 – RESTAURANTS).

The Complainant therefore fulfilled both requirements under Article 21/1 of the Regulation as well as under Section B11 (d)(1)(i) of the ADR Rules.

DOMAIN NAME REGISTRATION WITHOUT RIGHTS OR LEGITIMATE INTERESTS

The Complainant had not provided any evidence that the Respondent has registered the domain name without rights or legitimate interest in the name, but argued in this respect that the Respondent:

- has not used the respective domain name nor any name corresponding to it

- has not used any name corresponding to respective domain name in connection with the selling of goods or services and has not

provably made any preparation to that effect

- is neither an undertaking, an organization or a natural person that is generally known under the respective domain name

- does not operate a web presence under the respective domain name.

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

The Panel concludes that the disputed domain name does not correspond to any web presence which would indicate that the Respondent has any kind of trademark or business name rights in the name "SIMTEK" or which would contain any reference to a commercial use of the same name. Thus, the Panel therefore considers that there is no element in the present case which could be interpreted as justifying a conclusion that the Respondent has any rights to or legitimate interests in the respective domain name.

DOMAIN NAME REGISTRATION IN BAD FAITH

The above finding that the Respondent does not have rights to or legitimate interests in the respective domain name satisfies the requirements of Article 21/1 of the Regulation and Section B11(d)(1) of the ADR Rules. Therefore, the Panel does not need to deal with the issue of the domain name registration in bad faith.

DECISION

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

PANELISTS

Name	Thomas Johann Hoeren

DATE OF PANEL DECISION 2007-06-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a complaint claiming its rights to the domain name "simtek.eu" registered by the Respondent based on its ownership rights to the trademark "SIMTEK" registered in a German and EU trademark registry. The Complainant argued that under Article 21/1 of the Regulation (EC) 874/2000, the Respondent does not have rights to or legitimate interests in the disputed domain name and that the registered domain name is used in bad faith.

The Respondent did not file its reply to the complaint.

From the filed documents, the Panel concluded that it is apparent that the disputed domain name is identical with the name which is registered in the trademark registries and therefore the Complainant proved its right to the name "SIMTEK" which is identical with the disputed domain name.

Further, the Panel concluded that the Respondent also appears not to have rights to or legitimate interests in the disputed domain name.

Based of the aforesaid, the Complainant satisfied the requirements of Article 21/1 of the Regulation and Section B11(d)(1) of the ADR Rules and the Panel did not need to deal with the issue of the domain name registration in bad faith and ordered the transfer of the domain name "simtek.eu" to the Complainant.