Panel Decision for dispute CAC-ADREU-004375

Case number	CAC-ADREU-004375
Time of filing	2007-03-19 11:21:06
Domain names	redstore.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E. (FOOTBALL TEAM), OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E. OLYMPIAKOS SYNDESMOS FILATHLON PIRAEUS P.A.E., LEGAL ENTITY

Respondent

Organization / Name	BIURO POMOCY ADWOKACKIEJ I PAT, STANISLAW HERMAN

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 of which the Panel is aware

FACTUAL BACKGROUND

1. The Complainant is a legal entity which appears to be established under the laws of Greece. It is the operator of the well-known Olympiakos football team. The Respondent appears to be a Polish professional firm. The domain name in dispute, redstore.eu, was registered by the Respondent on 1st August 2006.
2. The Complainant has registered a trade mark REDSTORE as a Greek national trade mark, number 176933. It appears to have been registered with effect from 21st December 2004. The copy provided with the Complaint (which is accompanied by a partial translation into English) is in black and white. As registered, the wording is spelt as redSTORE, and the initial "r" is superimposed against a largely circular dark background. The mark also includes a circular device, apparently bearing the name of the football team in Greek in white lettering against a dark background of a circular outer edge to a white circle, which contains a portrayal of what appears to be the head of an athlete, with a laurel wreath. In its Complaint, the Complainant suggests that the mark is registered under the distinctive colours of red and white, which are also the official colours of the Olympiakos football team.
3. These proceedings began with a request by the Complainant to change the language of the ADR proceeding from Polish to English, on 16th March 2007, adopting the procedures set out in paragraph A.3(b) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules"). That request, which was not opposed by the Respondent, was decided in favour of the Complainant, by an Interim Decision of a panelist, dated 22nd May 2007.
4. The Complainant then filed its Complaint on 12th June 2007. The formal date of the commencement of the ADR proceeding was fixed by the Czech Arbitration Court as 22nd June 2007, and the Complaint notified to the Respondent. Despite subsequent reminders from the Czech Arbitration Court, no Response was received from the Respondent.
5. On 29th August 2007 Robert Elliott was appointed panellist in this matter ("the Panel"), having filed the necessary Statement of Acceptance and Declaration of Impartiality and Independence.

A. COMPLAINANT

6. The Complainant says that it is a Greek football team that is "very well known and famous throughout Europe", due to its participation in European competitions such as the Champions League. It was founded in 1925. As indicated above, it has registered REDSTORE as a Greek national trade mark.
7. When the Complainant wanted to register the domain name redstore.eu, it realised that it was already registered by the Respondent. That existing registration is said to have damaged the Complainant's interests, as the trade mark REDSTORE relates to the Complainant's store Karaiskakis, which appears to be situated at the Olympiakos stadium in Athens. The Complainant says that it has plans to open other REDSTOREs in other places.

8. The Complainant has provided two photographs of its store. The name of the store contains the same circular device with the athlete's head which forms part of its registered trade mark, but with the wording spelt as REDstore (the former part in red, the latter part in white).
9. The Complainant says that the Respondent wanted to take advantage of the name of its store, as it is visited by "thousands of football fans", and the Complainant asserts (although without providing supporting evidence) that "our fame has spread throughout Europe and other countries and the registrant does know that we have prior rights in the disputed domain name, therefore the registrant acted in bad faith".
10. The Complainant also alleges that the registrant's holding and use of its domain name is against Greek national law, and in bad faith in order to attract internet users to the registrant's web page. "For that reason it prohibits our football team from its presentation in EU.Level Domain Name even though we have the only legitimate rights and interests in respect of the disputed domain name".

B. RESPONDENT

11. The Respondent has not replied.

DISCUSSION AND FINDINGS

12. The first matter which the Complainant is required to establish under paragraph B.11(d)(1) of the ADR Rules is that the domain name in question is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law.
13. The evidence provided by the Complainant in this respect is not ideal. As mentioned above, the translation of the Greek trade mark into English does not appear to be complete (there is no translation of the part of the trade mark which sets out the respective classes for which the mark has been registered). Also, as previously noted, it would appear that the mark may have been registered in colour, and no colour copy has been provided. Nevertheless, it does appear to the Panel from such evidence as has been provided that it is the word REDSTORE which is the predominant element of the mark, notwithstanding other stylised and additional elements of the mark, and notwithstanding that the registration may be in colour. The other elements of the registered mark appear to the Panel to be very much subsidiary to that predominant feature. Given that the domain name is identical to that predominant feature, it appears to the Panel that the Complainant has established that the domain name is confusingly similar to a name in respect of which a right is protected under Greek law.
14. The Panel also notes in this respect that there is no response from the Respondent, and that in accordance with paragraph B.10(a) of the ADR Rules, in the event that a party does not comply with any of the time periods established by the ADR Rules, the Panel shall proceed to a decision on the Complaint, and may consider this failure to comply as grounds to accept the claims of the other party.
15. Having established that the domain name is confusingly similar to a name which is protected under Greek national law, the Complainant then needs to show under paragraph B.11(d)(1) of the ADR Rules either that the domain name has been registered by the Respondent without rights or legitimate interest in the name, or that the domain name has been registered or is being used in bad faith.
16. As regards the former of these requirements (lack of legitimate interest), a number of circumstances are set out in paragraph B.11(e) of the ADR Rules which may demonstrate the Respondent's rights or legitimate interests to the domain name. These include the Respondent having used the domain name or a name corresponding to the domain name in connection with the offering of goods or services, or making demonstrable preparation to do so, before being notified of the dispute; the Respondent having been commonly known by the domain name; or the Respondent making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of its name. In this case, the Respondent has made no effort to put forward evidence. The Complainant asserts that it has the only legitimate rights and interest in respect of the disputed domain name. There is no obvious explanation as to why the Respondent has acquired the domain name.
17. The Panel does not, however, accept the Complainant's assertion that the Respondent must have known of the Complainant's trade mark. Olympiakos is itself undoubtedly a well-known football club in Europe, but the repute of one store in Greece which appears to be devoted solely to selling products in support of Olympiakos is unlikely to have spread to any significant extent outside Greece. The Panel notes that the Complainant links the "fame" of the store to it having been visited by "thousands of football fans", but there is no evidence of its goodwill extending beyond the club's own fans who buy goods at the Karaiskakis store.
18. Nevertheless, it seems to the Panel that, for the Complainant to succeed on this ground, it is not necessary under the ADR Rules for it to establish that the Respondent must have known of the existence of its rights, when acquiring the domain name. All that the Complainant needs to show is that the domain name has been registered by the Respondent without rights or legitimate interests in the name. If the Respondent does not reply, and there is no other obvious reason why it should have such rights or legitimate interests, then it appears to the Panel that it is entitled to conclude that the Respondent has no such rights or legitimate interests, and the Complainant therefore succeeds in its complaint.
19. In the circumstances, as the requirement to show that the domain name has been registered or is being used in bad faith is only an alternative to that of absence of rights or legitimate interests, it is not strictly necessary for the Panel to decide whether the domain name has been so registered or used. The Panel would note, however, that the Complainant has provided no evidence of the method of use of the domain name by the Respondent, and in the absence of any such evidence, a finding of bad faith would have been unlikely.

20. The Complaint therefore succeeds. The Complainant is a legal entity established under the laws of Greece, and therefore satisfies the general eligibility criteria for registration set out in paragraph 4(2)(b) of Regulation (EC) No 733/2002. The Panel therefore orders that the domain name be 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 REDSTORE be transferred to the Complainant

PANELISTS

Name	**Robert Elliott**

DATE OF PANEL DECISION 2007-09-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant alleged that the Respondent's registration of the disputed domain name redstore.eu is identical or confusingly similar to its Greek registered trade mark REDSTORE, and that it was either registered by the Respondent without rights or legitimate interests in the name, or has been registered or is being used in bad faith.

The Respondent did not reply to the Complaint. In the circumstances, the Panel accepted that that domain name was confusingly similar to the Complainant's Greek trade mark (although elements of that trade mark were stylised). Further, in the absence of any response from the Respondent, or other obvious reason as to why it might have rights or legitimate interests in that name, the Complainant established that the Respondent had no such rights or legitimate interests, and the Complaint therefore succeeded. It was not therefore necessary for the Panel to decide whether the domain name has been registered or is being used in bad faith, although the lack of evidence offered by the Complainant in that respect would have made such a finding unlikely.