Panel Decision for dispute CAC-ADREU-004387

Case number	CAC-ADREU-004387
Time of filing	2007-04-10 13:22:34
Domain names	maerskoil.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Mærsk Olie og Gas AS, Majbritt Perotti

Respondent

Organization / Name	Stephen Smith

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 unaware of any other legal proceedings, pending or decided, which relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is a member of the AP Moller-Maersk group of companies, which employs over 110,000 people in over 125 countries. The oil and gas activities of the group were established in Denmark in 1962. Oil and gas activities are ongoing in, among other places, the North Sea, from bases in Denmark and the U.K. under the MAERSK trademark.

2. A related company in the AP Moller-Maersk group owns, in addition to many others, Danish trademark registration VR 1956 00383, the word MAERSK registered for, inter alia, all goods in Class 4 (which includes "oil"). In addition to this registered trademark right, the Complainant has Danish and U.K. company names comprising "Maersk Oil".

A. COMPLAINANT

3. Complainant asserts that domain name is clearly identical to the Maersk Oil name used by the Complainants' numerous registered companies in Denmark, the UK and in other parts of the world; alternatively it is confusingly similar to it. It is also confusingly similar to the Maersk name as an internationally recognized trading name and business identifier and as registered as a trade mark.

4. The Respondent has no right or legitimate interest in the name pursuant to Article 21(2) of the Regulation. In particular: (i) prior to notice of the ADR procedure, the Respondent has not used the domain name or a name corresponding to the domain name in connection with any offering of goods or services, (ii) the Respondent has not been commonly known by the domain name, (iii) the Respondent is not making legitimate and non-commercial or fair use of the domain name

5. Complainant contends that the use and registration of the domain name has been in bad faith in accordance with Article 21(3) of the Regulation in that:- (i) The domain name was intentionally used to attract internet users, for commercial gain to an online location, by creating a likelihood of confusion with a name recognised and established by national and/or community law, such likelihood arising when users of the domain name are diverted automatically to the online location of the Respondent (Article 21(3)(d)). (ii) The domain name presently diverts automatically to a site entitled www.godaddy.com which is a revenue generating web hosting service with sponsored links to oil and gas related services and which professes in its literature to provide a service by which the domain name holder earns revenue on each occasion that a user clicks on advertising appearing on a page posted by the service. This is referred to on the website as "Cashparking" (iii) Furthermore the domain name is personal to the Maersk Group of Companies and there is no demonstrable link between the Respondent and the registered domain name (Article 21(3)(e)).

B. RESPONDENT

6. The Respondent has failed to file any Response, despite timely reminders and an official notification of default, which also set out the Respondent's rights of challenge.

DISCUSSION AND FINDINGS

7. In the absence of a Response, the Panel has looked very carefully at the evidence submitted by the Complainant concerning the website operated by the Respondent under the disputed domain. The Panel can confirm that the domain name is "parked" at GoDaddy.com with a website comprised of links to what appears to be the competitors of the Complainant. By directing traffic in this way, the Respondent and/or GoDaddy were in a position to profit from their activities.

8. Article 21(1) of Regulation 874/2004 states: "A registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, 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(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."

Identity or confusing similarity
9. Complainant has submitted evidence which demonstrates that the domain is similar to a name in respect of which rights are recognised by applicable law. The Complainant owns trademark rights in MAERSK covering "oil". The Panel finds that the domain name MAERSKOIL.EU is confusingly similar to the Complainant's trademark rights. This finding is consistent with prior case law whereby trademark rights in a part of a domain name are infringed where the remainder of the domain name is descriptive, see CAC Case No. 4337, where ENTERPRISECARRENTAL.EU was considered confusingly similar to ENTERPRISE (registered for a car rental service), CAC Case No. 4345, where MERCKGROUPE.EU was considered confusingly similar to MERCK, and CAC Case No. 4319, where AIRFRANCEAIRLINES.EU was considered confusingly similar to AIR FRANCE (registered for airline services). Further, Complainant has company name rights in "Maersk Oil".

Right or legitimate interest
10. The Panel can see nothing which indicates that the Respondent has any right or legitimate interest in the domain. The Respondent has had an opportunity to demonstrate any such rights but has failed to do so. The Panel is therefore satisfied that the Article 21(1)(a) grounds are made out.

Bad faith
11. The Respondent uses the domain intentionally to attract Internet users for commercial gain. The activities carried on by the Respondent seem to be the very embodiment of bad faith and represent exactly the type of activity which the Council Regulations, in both their spirit and letter, seek to prevent.

12. For these reasons, the Panel has decided that the Respondent's ownership of the domain should be revoked and the domain name should 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 MAERSKOIL be transferred to the Complainant

PANELISTS

Name	Matthew Harris

DATE OF PANEL DECISION 2007-09-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Compliant owns trademark rights in the word MAERSK, registered for "oil", as well as company names comprising "Maersk Oil". Respondent uses the domain name MAERSKOIL.EU on a "parking site" which lists apparent competitors of the Complainant.

Having held firstly that the domain name was confusingly similar to the Complainant's trademark rights, the Panel found that Respondent had no right or legitimate interest in the domain name, and was using it in bad faith by parking it, for commercial gain, at a website listing the apparent competitors of the Complainant. Accordingly, the Panel ordered the transfer of the domain name to the Complainant.