# Panel Decision for dispute CAC-ADREU-004410

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| Case number | CAC-ADREU-004410 |
| Time of filing | 2007-04-03 16:00:05 |
| Domain names | 4711.eu |

## Case administrator

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| Name | Tereza Bartošková |

## Complainant

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| Organization / Name | Mäurer + Wirtz GmbH & Co. KG, Roland Breuer |

## Respondent

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| Organization / Name | Fienna.com, Domain Handler, Fienna.com |

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 legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is the owner of more than 1.000 trademarks containing name “4711” including several German and European trademarks registered in 1895, 1915, 1925 and 1998 for inter alia perfumeries and cosmetics. The Complainant is seeking transfer of the domain name “4711.eu” registered by the Respondent to the Complainant.

A. COMPLAINANT

1. The Complainant, a company duly incorporated and registered with the commercial register Aachen, Germany, is the owner of rights under Article 10 (1) EC regulation 874/2004, as the Complainant is the owner of numerous German, international and Community Trademarks with respect to the name “4711”, amongst others, particularly the trademarks “4711”: DE 206680 (applied for in 1915, registered in 1915), DE 5261 (applied for in 1894, registered in 1895), DE 339885 (applied for in 1924, registered in 1925), and CTM 603217 (applied for 20 August, 1997, registered 14 December, 1998). “4711” is used for perfumeries, soaps and further cosmetics, however, particularly for the world famous Eau de Cologne produced in the city of Cologne. Name “4711” became a registered trademark in 1875 and is one of the most famous trademarks in Germany, Europe and world wide. In the “Outfit 5” market survey of the important magazine “Spiegel” of 2002 it is stated that “4711” has a brand awareness (women) of 85%. On the market of perfumes, 4711 ranged 22 in November 2004 acc. to a market research study by the company iri with a market share of 1,9%.

2. The Respondent registered the domain name “4711.eu” on 7 April, 2006, using the trademark of the Complainant. The registrant defined itself as “Domain Handler, fienna.com”. “Händler” in German means dealer. The domain name registered for the Respondent is identical or at least confusingly similar to the Complainants trademark rights. With respect to the CTM word mark “4711” identity is given. With respect to the German trademarks which are not merely word marks but word/image marks, it can be assessed that the word element “4711” is the most distinctive part of the trademark and that the image elements around the word “4711” are of only descriptive or at least not dominant character and can, therefore, be neglected. This is most obvious with respect to the German trademark 206680, which consists of the element 4711 solely without any graphic additions. Thus, the .eu domain name “4711.eu” is also confusingly similar to the German trademarks of the Complainant.

3. The Respondent has no rights or legitimate interest in the name. He is not using the domain name in connection with the offering of goods and services nor has he made demonstrable preparation to do so according to Article 21 (2) (a) EC regulation 874/2004.

Under the domain name there is only a “place holder” with no real content with respect to any offering of goods and services. In the opinion of the Complainant this is just a “fake”-website to awake the impression of a regular business website. At the top of the website

it just says “Welcome to 4711.eu”. There is no imprint nor any indication of the business performed under the website or with respect to the Respondent. If there was real business to be performed under the website, potential customers would not be able to address the Respondent nor order or buy any goods and services from him. The mere content of the website simply consists of displaying search results for diverse terms such as “ASDF” (the first 4 letters in the middle row of a typewriter or computer keyboard), which are in no way related to any potential business of the Respondent. Further, the Respondent is known under the ADR proceedings, especially ADR 2235 “PALMERSCOCOABUTTER” and 1328 “TSE-SYSTEMS”. In these proceedings it appeared that the Respondent has also registered domain names without any legitimate interests or rights and has been requested to transfer the domain names to the Complainants according to the Panels’ decisions. Although in those proceedings the respondent's name was not exactly the same ("Fienna Limited, Fienna Limited bruceg", "Fienna, Ltd."), it is absolutely clear that the registrant is identical in all cases, as "Ltd." is the abbreviation for "Limited", as "bruceg@fienna.com" is also the contact email in this case, and as "fienna.com" appears to be the domain of the Respondent. Further, the respondents' addresses are identical in all cases.

The Respondent is not commonly known by the domain name nor has the Complainant found any indications of a connection between the Respondent and the domain name “4711” (Article 21 (2) (b) EC regulation 874/2004), nor does he make any legitimate and non-commercial or fair use of the domain name according to Article 21 (2) (c) EC regulation 874/2004.

4. Furthermore the Respondent registered and uses the domain name in bad faith according to Article 21 (1) (b), (3) (a), (b), (d), (e) EC regulation 874/2004.

a. “4711” is a famous trademark, which is very attractive for domain grabbers, as much traffic on the internet will be directed to the domain “4711.eu” by search engines etc. It can be seen from the other proceedings mentioned (“TSE-SYSTEMS”, “PALMERSCOCOABUTTER”) that the Respondent obviously registers domain names, which he has no rights or legitimate interests in. A further circumstance indicating, that he mainly does this for the purpose of selling, renting or otherwise transferring the domains to the holders is that the registrants name the Respondent used is “Domain Handler”, showing everybody, that the domain registered hereunder can be purchased from him.

b. Consequently, by registering the domain name, the Respondent prevents the real owner of “4711” the right to reflect this name in a corresponding domain name. This has been demonstrated by the facts that the Respondent has already been forced to transfer two other domain names, belonging to other owners of the respective rights and that in these cases the respondent did not even file a response to the Complaints. The Complainant needs the domain name to demonstrate its presence on the European markets.

c. Further the Respondent uses the domain name intentionally to attract internet users for commercial gain. The Respondent uses “sponsored listings” on the respective website. For these listings he receives remuneration from the companies mentioned under the “sponsored listings”.

d. Further, the domain name is a name for a product and no demonstrable link exists between the domain name holder and the domain name registered.

Therefore it has been proven that the Respondent acted in bad faith by registering and using the domain name.

5. The Complainant is eligible to register .eu domain names under Article 4 (2) EC Regulation 733/2002, as Complainant is a company incorporated in Germany, having its registered office and principal place of business in Stolberg/Aachen, Germany.

Accordingly the Complainant requires the panel to transfer the domain name “4711.eu” to the Complainant.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

According to Article 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.

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

The Complainant submitted several excerpts from the trademarks register to prove the existence of the registered trademarks containing the name “4711”. The word element “4711” is the most distinctive part of the combined (word/image) German trademarks (No. 206680, 5261, 339885). Besides that, the Community trademark CTM 603217 is a word trademark with the only word “4711”. It may be stated that “4711” is a dominant element of all these trademarks.

Without a doubt, the Complainant has proven the existence of its rights to the name “4711” as recognized by national law of a Member State (German trademarks No. 206680, 5261, 339885) and Community law (CTM 603217) consisting of a dominant element “4711.”

The Panel therefore came to the conclusion that the domain name 4711.eu is identical with the prevailing element of the trademarks of the Complainant. Therefore, the Panel concludes that the condition set forth under Article B11(d)(1)(i) of the ADR Rules has been fulfilled. This conclusion could not be affected by the existence of the suffix “.eu” as a part of the 4711.eu domain name, as this suffix is not relevant for the consideration of the identity and the similarity of the domain name as stated in ADR 596 (RESTAURANTS), ADR 475 (HELSINKI) and ADR 387 (GNC) decisions.

II. Condition according to Article B11(d)(1)(ii) of the ADR Rules

The Complainant contends that the Respondent has no rights or legitimate interest in the domain name.

The Panel is of the opinion that it is very difficult for the Complainant to prove the non-existence of rights or legitimate interest of the Respondent. It is predominantly upon the Respondent to demonstrate the existence of his rights or legitimate interest in the domain name, but the Respondent has not responded to the Complaint at all. Therefore, the Panel had to review the existence of the Respondent’s right or legitimate interest on the basis of Complainant’s arguments and evidence only.

The legitimate interest is defined in more detail in Article 21(2) of the Commission Regulation (EC) 874/2004 (and similarly in Article B11(e) of the ADR Rules) which contains a demonstrative enumeration of the circumstances which may prove the rights or legitimate interest.

The Complainant proved that the Respondent used the domain name as the address of the website which contained the links to the search results. The website doesn’t contain any contact information of the Respondent (or any other party) and there is no information about products or services offered by the Respondent. The Panel agrees with the conclusion of the Complainant that such a website is a “fake” website used only to demonstrate the real use of the domain name. The Panel concludes that it has not been demonstrated that the Respondent has really used the domain name prior to the notice of an ADR procedure in connection with the real offer of goods or services. Furthermore, it has not been demonstrated that the Respondent has made demonstrable preparation to do so (Article B11(e)(1) of the ADR Rules).

It has not been proved that the Respondent has been commonly known by the domain name (Article B11(e)(2) of the ADR Rules).

It has not been proved that the Respondent was making a legitimate and non-commercial or fair use of the domain name without intent to mislead consumers or harm the reputation of a name on which a right is recognized or established (Article B11(e)(3) of the ADR Rules).

Any circumstance demonstrating the existence of right or legitimate interest of the Respondent has been proved. Therefore, the Panel concludes, that the domain name 4711.eu has been registered by the Respondent without rights or legitimate interest in the name.

III. Condition according to Article B11(d)(1)(iii) of the ADR Rules

The Complainant contends that the Respondent registered and uses the domain name in bad faith. The bad faith is defined in more detail in Article 21(3) of the Commission Regulation (EC) 874/2004 (and similarly in Article B11(f) of the ADR Rules) which contains a demonstrative enumeration of the circumstances which may prove the registration or use of a domain name in bad faith.

The bad faith of the Respondent follows from the

(a) insertion “Domain Handler” used by the Respondent in its name when registering the domain name “4711.eu”; this insertion indicates that the domain name could be sold by its owner, the “domain handler” (domain dealer) and the domain name has been therefore registered primarily for the purpose of selling - Article 21(3)(a) of the Commission Regulation (EC) 874/2004;

(b) high degree knowledge of the name “4711” as being a name of the perfumes and cosmetics, and from the fact that the Respondent registered several other domain names which he had no rights or legitimate interests in – see ADR 01328 (TSE-SYSTEMS), ADR 02235 (PALMERSCOCOABUTTER) and ADR 04274 (SALOMON-SPORTS) – the Panel is of the opinion that the domain name “4711.eu” has been registered in order to prevent the Complainant from reflecting this name in the corresponding domain name. Furthermore, the pattern of such conduct of the Respondent is demonstrated by the above mentioned ADR decisions. Therefore, the condition set up in Article 21(3)(b)(i) of the Commission Regulation (EC) 874/2004 is met;

(c) fact that the website accessible via domain name 4711.eu is used primarily for searching and returns replies with the links to the searched terms and these links are sponsored (see text “Sponsored listings …” in the screenshots provided by the Complainant – without a doubt these sponsored listings bring a commercial profit to the Respondent). The domain name 4711.eu is therefore used to attract Internet users, for commercial gain, to the Respondent’s website creating a likelihood of confusion with a name “4711” - Article 21(3)(d) of the Commission Regulation (EC) 874/2004.

Therefore, the Panel concludes, that the domain name 4711.eu has been registered by the Respondent in bad faith.

The Complainant has satisfied the requirements of the Article 21(1) of Commission Regulation (EC) 874/2004 and Article B11(d)(1) of the ADR Rules. Therefore, the Panel finds the Complaint as justified. The Complainant is a company based and registered in the Germany and satisfies the criteria set out in the Article 4(2)(b)(i) of the Commission Regulation (EC) 733/2002, and so, it is entitled to receive the transfer of the domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name 4711 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 Article B12(a) of the ADR Rules) .

## PANELISTS

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| Name | **Petr Hostas** |

DATE OF PANEL DECISION 2007-06-27

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the owner of combined (word/image) German trademarks (No. 206680, 5261, 339885) with the dominant word element “4711” and Community word trademark CTM 603217 with the only word “4711”. The domain name “4711.eu” registered by the Respondent is therefore identical with the prevailing element of the trademarks of the Complainant.

The Respondent has not responded to the Complaint and has not provided the Panel with any evidence demonstrating the existence of Respondent’s rights or legitimate interest in the name “4711.eu.” Besides that, from the evidence provided by the Complainant, any circumstance demonstrating the existence of right or legitimate interest of the Respondent has been proved. Therefore, the Panel concluded, that the domain name 4711.eu was registered by the Respondent without rights or legitimate interest in the name.

The domain name “4711.eu” was registered by the Respondent in bad faith as the respondent used an insertion “Domain Handler” (i.e. Domain Dealer in English) in its name when registering the domain name and this insertion could indicate that the Respondent is ready to sell its domain names including “4711.eu.” Furthermore, the Panel is of the opinion that the domain name “4711.eu” has been registered in order to prevent the Complainant from reflecting this name in the corresponding domain name as the name “4711” is known as a name of the perfumes and cosmetics and the Respondent registered several other domain names which he had no rights or

legitimate interests in – see ADR 01328 (TSE-SYSTEMS), ADR 02235 (PALMERSCOCOABUTTER) and ADR 04274 (SALOMON-SPORTS). Finally, the domain name 4711.eu is used to attract Internet users, for commercial gain, to the Respondent's website creating a likelihood of confusion with a name "4711," as the website accessible via domain name 4711.eu is used primarily for web searching and returns replies with the links to the searched terms and these links are sponsored (text "Sponsored listings …") – without a doubt these sponsored listings bring a commercial profit to the Respondent.

For these reasons, registration without rights or legitimate interest and registration in bad faith, the Panel decided to transfer the domain name "4711.eu" to the Complainant.