Panel Decision for dispute CAC-ADREU-004419

Case number	**CAC-ADREU-004419**
Time of filing	**2008-06-05 13:28:06**
Domain names	**zivania.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**WINE PRODUCTS COUNCIL, Mr Stavros Ioannides**

Respondent

Organization / Name	**Theodoros Onisiforou**

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 pending or decided legal proceedings related to the disputed domain name

FACTUAL BACKGROUND

The Complainant is a semi-governmental body with legal personality which can initiate and defend actions.
The Complainant's responsibilities, powers and general operation is governed by Law No 61(I) / 2004 Cyprus in respect of the WINE PRODUCTS COUNCIL.
Zivania is a spirit drink and the name can only be used for the spirit 'grape marc' produced in Cyprus in accordance with COUNCIL REGULATION (EEC) No 1576/89 of 29th May 1989 article 1.4.f.3.
The Complainant is the trade mark owner of the name 'zivania' and it's among its responsibilities to safeguard the fair and legal use of the name 'zivania'.
The Respondent has registered the domain name zivania.eu without the consent of the Complainant who is the registered trade mark owner and in violation of COUNCIL REGULATION (EEC) No 1576/89 and Law No 61(I)/2004 of Cyprus which designate the Complainant as the authorised body for administering the use of the word/name 'zivania'.
The Complainant is entitled to registration in its name of the domain name 'zivania.eu' as the registered trade mark owner of 'zivania'.

A. COMPLAINANT

1. The Complainant is a semi-governmental body with legal personality which can initiate and defend actions. The Complainant's responsibilities, powers and general operation is governed by Law No 61(I) / 2004 Cyprus in respect of the WINE PRODUCTS COUNCIL. The Complainant submits the respective law of Cyprus, which is the constitutional Law of the said Body (the Complainant) and the Council Regulation laying down general rules on the definition, description and presentation of the spirit drinks to prove such pleadings.

2. Zivania is a spirit drink and the name can only be used for the spirit 'grape marc' produced in Cyprus in accordance with COUNCIL REGULATION (EEC) No 1576/89 of 29th May 1989 article 1.4.f.3.
The Complainant is the trade mark owner of the name 'zivania' and it's among its responsibilities to safeguard the fair and legal use of the name 'zivania'. The Complainant submits a copy of the Trade Mark registration issued by the Department of Registrar of Companies and Official Receiver/Intellectual and Industrial Property Section /Trade Marks on 12th May 2008.
3. The Respondent has registered the domain name zivania.eu without the consent of the Complainant who is the registered trade mark owner and in violation of COUNCIL REGULATION (EEC) No 1576/89 and Law No 61(I)/2004 of Cyprus which designate the Complainant as the authorised body for administering the use of the word/name 'zivania'.
4. The Complainant is entitled to registration in its name of the domain name 'zivania.eu' as the registerd trade mark owner of 'zivania'.

B. RESPONDENT

The Respondent has failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding and has been informed for such Default on 11th August 2008.

DISCUSSION AND FINDINGS

According to the article 21 of the Commission Regulation (EC) No 874/2004, "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.

AS CONCERNS THE PRIOR RECOGNISED RIGHT OR THE LEGITIMATE INTEREST:

The Panel decides that the Complainant has prior rights on the name 'ZIVANIA' as it is the owner of the No 45092 Trade Mark [ZIVANIA] of the Department of Registrar of Companies and Official Receiver/Intellectual and Industrial Property Section /Trade Marks. The said right of the Complainant is recognised by the national Law of Cyprus (TRADE MARKS LAW CAP. 268), but also derives from the provisions of Law No 61(I) / 2004 Cyprus in respect of the WINE PRODUCTS COUNCIL, as it is the competent body of the respective Member State (Cyprus) to seek acknowledgment of the rights in its name for the said wine marc. Furthermore, the COUNCIL REGULATION (EEC) No. 1576/89 and in particular in the Articles 1.4.f.3 AND 5 establishes exclusive rights on the referred therein spirits only for the respective Member States producing such spirits as ZIVANIA is for Cyprus.

AS CONCERNS THE BAD FAITH OF THE RESPONDENT:

The Respondent is a Cypriot citizen, declaring residence in Limassol, Cyprus and therefore it is likely to have knowledge of the wine marc 'ZIVANIA' and that the said name is protected by Law. This protection of the name should have been already and for many years advertised by the Cypriot State and/or its Agents, Public Bodies, Authorized Distributors and therefore the Panel decides that the Respondent has been acting in bad faith and in knowledge of the prior rights of the Complainant the time he asked for the domain name registration. The Panel also decides that the Respondent has no rights or legitimate interest on the disputed domain name.

The Panel has decided that there is no need to examine further the fact that the Respondent has proceeded to use of the domain name in bad faith.

TRANSFER OF THE DOMAIN NAME:

The Complainant is a Body established according to the Laws of Cyprus and having its registered office and seat in the territory of the European Union. Therefore the Complainant satisfies the general conditions and criteria for transfer of the domain name 'ZIVANIA' to the Complainant, of section B, No. 1 (b) 12 of the eu. Alternative Dispute Resolution Rules.
The Panel decides the Complainant satisfies the general eligibility criteria for the registration of the domain name 'ZIVANIA' set out in Paragraph 4(2) (b) of Regulation (EC) No. 733/2002.

DECISION

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

the domain name ZIVANIA be transferred to the Complainant

PANELISTS

Name	**Charikleia Mamali**

DATE OF PANEL DECISION 2008-09-05

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant "WINE PRODUCTS COUNCIL" of Cyprus seeks the transfer of the domain name [ZIVANIA] registered by the Respondent. The Respondent did not file any observation in response to the Complaint and was found in default.
The Panel finds that the Complainant has all rights and legitimate interests on the disputed domain name and the Respondent was necessarily aware of the Complainant's rights in the disputed name when he registered the disputed domain name [ZIVANIA.EU].
The Panel is therefore of the opinion that the Respondent has no right or legitimate interest in the disputed domain name and he had

registered same in bad faith.
The domain name is transferred to the Complainant.