Panel Decision for dispute CAC-ADREU-004440

Case number	CAC-ADREU-004440
Time of filing	2007-07-09 14:16:04
Domain names	skinstore.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Salu Inc, Salu Inc

Respondent

Organization / Name	Aphrodite Ventures Limited, Aphrodite Ventures Limited

FACTUAL BACKGROUND

The Complainant is SALU Inc., a company registered under the laws of California, United States. The Complainant is the owner of Community Trade Mark registration “SKINSTORE” n°E4695177 filed on 1st November 2005 in classes 16 and 35.

The Respondent is Aphrodite Ventures Limited, a company registered under the laws of Great-Britain. The Respondent has registered the domain name “skinstore.eu” on 7 April 2006.

On 29 June 2007, the Complainant has submitted a complaint to the Czech Arbitration Court, claiming a breach of Article 21(1)(a) and (b) of the Public Policy Rules (EC reg. 874/2004).

On 25 September 2006, the Czech Arbitration Court has notified the Respondent that it has failed to submit a response within the time frame.

On the same day, but after the Notification of Respondent’s Default by the Czech Arbitration Court, the Respondent has submitted a Challenge of Notification of Respondent’s Default.

On 1st October 2007, the Czech Arbitration Court has appointed Mrs Isabelle LEROUX as sole Panelist in this matter. The Panel finds that it was properly constituted. The Panel has submitted the Statement of Acceptance and Declaration of Impartiality and Independence in compliance with Paragraph B5 of the ADR Rules and Paragraph B5 of the Supplemental ADR Rules.

A. COMPLAINANT

In support of its complaint, the Complainant contends as follows:

The registration of the domain name is in breach of Article 21(1)(a) and (b) of the Public Policy Rules (EC reg. 874/2004), as:

- The domain name registered by the Respondent is identical to the mark "SKINSTORE".

The Complainant has been trading under the name SKINSTORE extensively internationally and in the UK. In the year 2005 - 2006 the company's UK turnover alone was approximately £300,000, with sales throughout the EU increasing.

- The Respondent has made no use of this domain name since registration on 7 April 2006.

- The Respondent appears to be engaged in systematic bad faith domain name registrations and has already been found by the Czech Arbitration Court to have been engaged in the registration of another .eu domain in bad faith (www.eurokera.eu, case number 04069).

The Complainant contacted the Respondent in writing in March 2007 to request transfer of the domain name, but received no response.

B. RESPONDENT

The Respondent failed to file a response before the time limit set by the Czech Arbitration Court.

On 25 September 2007, the Respondent filed a Challenge of Notification of Respondent's Default whereby its representative explained that he had just been instructed to represent the Respondent and that the Respondent had problems to recover its emails.

DISCUSSION AND FINDINGS

On 23 July 2007, the Czech Arbitration Court notified the complaint to the Respondent. Said notification notably stated that:

"Default. If your Response is not sent in the period of time above [30 working days from the delivery of this notification] or if it will not comply with all administrative requirements mentioned in the ADR Rules and/or ADR Supplemental Rules even after granting additional time period to remedy the non compliance under Paragraph B3 (d) of the ADR Rules, you will be considered in default. We will still appoint an ADR Panel to review the facts of the dispute and to decide the case. The Panel will not be required to consider a Response filed late or not administratively compliant, but will have the discretion to decide whether to do so and may draw such inferences from your default as it considers appropriate, as provided for by ADR Rules, Paragraph B10. There is a possibility to challenge the Notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules."

As the Respondent failed to comply with the deadline, the Czech Arbitration Court sent to the Respondent on 25 September 2007 a "Notification of Respondent's Default" informing it of the consequences of said default, namely:

"1. We shall go forward and appoint an ADR Panel based on the number of panelists designated by the Complainant. As the Complainant has designated a single-member Panel, we shall appoint the panelist from our published list. / As the Complainant has designated three-member Panel, we shall appoint a Panelist from the list of Candidates provided by Complainant and 2 Panelists from our published list. In case we are unable within five (5) calendar days to secure the appointment of a Panelist from the list of Candidates, we shall appoint a Panelist from our published list of Panelists.

2. The ADR Panel and the Complainant will be informed of your default. The ADR Panel will decide in its sole discretion whether or not to consider your defective Response (if submitted) in deciding the case.

3. Notwithstanding your default, we shall continue to send you all case-related communications to your contact details and using the methods you have specified in your Response (if submitted later), or as we consider appropriate in our discretion (if not submitted).

4. You have a right under Paragraph B3 (g) of the ADR Rules to challenge this Notification in a written submission to the Czech Arbitration Court filed within 5 days from receiving this notification. The Czech Arbitration Court shall acknowledge receiving your challenge and shall forward it to the Panel within 3 days from its receipt. In submitting your potential

challenge, you must use Form "Challenge of Notification of Respondent Default" available on the Online Arbitration Platform of the Czech Arbitration Court."

The Respondent challenged the "Notification of Respondent's Default" and asked for cancellation of said notification.

Pursuant to article B3(g),"the Respondent's challenge shall be considered by the Panel in its sole discretion as part of its decision making. If the Panel confirms that the Response is administratively deficient, the Panel may decide the dispute based upon the Complaint only".

The Panel considers that the reasons given by the Respondent for challenging the notification are inadequate. Therefore, the Panel considers that the Response is administratively deficient.

The Complainant's application is made pursuant to article 21(1)(a) and (b) of EC Regulation N°874/2004, which provides that a registered domain name shall be subject to revocation where that name is identical to a name in respect of which a right is recognised or established by national and/or Community law and where it 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.

Said article 21(1)(a) and (b) makes specific reference to article 10(1) which gives a list of those rights that are recognised or established by national and/or Community law, i.e. "Prior rights" and namely community trademarks.

The domain name "skinstore.eu" is strictly identical to the prior community trademark "SKINSTORE" n°E4695177 owned by the Complainant.

As far as the rights or legitimate interest are concerned, the Complainant mentioned that "the Respondent does not appear to have any legitimate rights to use the name SKINSTORE". The Respondent did not challenge too this assertion.

Moreover, the good faith of the Respondent in the registration is highly questionable namely because of its similar behaviour in another dispute submitted to the Czech Arbitration Court in connexion with the domain name "eurokera.eu".

Therefore, this Panel is convinced that the domain name "skinstore.eu" has been registered without rights or legitimate interest in the name and, or has been registered in bad faith.

DECISION

For these reasons given above, and in accordance with Article 21(1)(a) and (b) of EC Regulation N°874/2004, the Panel orders that

the domain name SKINSTORE be revoked.

PANELISTS

Name	**Isabelle Leroux**

DATE OF PANEL DECISION 2007-10-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

As far as the rights or legitimate interest are concerned, the Respondent did not challenge the assertion from the Complainant mentioning that "the Respondent does not appear to have any legitimate rights to use the name".

Moreover, the good faith of a Respondent in the registration can be questioned because of its similar behaviour in another dispute submitted to the Czech Arbitration Court in connexion with another domain name.

Therefore, this Panel is convinced that the domain name “has been registered without rights or legitimate interest in the name and, or has been registered in bad faith” (article 21(1)(a) and (b) of EC Regulation N°874/2004).