Panel Decision for dispute CAC-ADREU-004447

Case number	**CAC-ADREU-004447**
Time of filing	**2007-05-03 11:09:00**
Domain names	**epicurious.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**CondeNet.UK Limited, Mrs Pamela Raynor**

Respondent

Organization / Name	**Cure Limited, Kurt Janusch**

INSERT INFORMATION ABOUT OTHER LEGAL PROCEEDINGS THE PANEL IS AWARE OF WHICH ARE PENDING OR DECIDED AND WHICH RELATE TO THE DISPUTED DOMAIN NAME

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed doamin name.

FACTUAL BACKGROUND

1.The Complainant is an English company, CondeNet.uk Limited and the Respondent is Cure Limited.

2.The Respondent registered the Disputed Domain Name, “epicurious.eu” on 7 April 2006 during the “land rush period”.

3.On 29 November 2006, the Complainant’s representative sent a letter to the Respondent at the address listed on the Whois database. The letter was returned to the Complainant in the post marked “NOT KNOWN”.

4.On 26 April 2007, the Complainant submitted the Complaint together with the Annexes. On 4 May 2007, EURid confirmed that the Respondent was the current registrant of the Disputed Domain Name.

5.On 10 May 2007 these proceedings formally commenced.

6.The Respondent failed to submit a response.

7.On 4 July 2007 the Panel was appointed.

A. COMPLAINANT

8.The Complainant contends that it is the licensee of the registered European Community trade mark No. 1480524, “Epicurious” under a trade mark licence dated 20 April 2007 but with an effective date of 20 January 2001 (The Trade Mark Licence). The Trade Mark Licence provides at Clause 6 that “the Licensee [the Complainant] shall be entitled to bring all and any proceedings against the unauthorised use of the trade mark EPICURIOUS and unauthorised use and/or registration of the domain name epicurious.eu in the name of Kurt Janusch and/or Cure Limited including the right to bring proceedings under the Alternative Dispute Resolution policy offered by EURid facilitated by the Czech Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic”.

9.The Complainant has also submitted a Whois report at Annex COND4 that shows that the Registrant of epicurious.com is Condenet Inc. of Four Times Square, New York, New York 10036, United States. It also submits at Annex COND4 extracts from the website www.epicurious.com showing trading activity under the domain name epicurious.com.

10.The Complainant contends that the Respondent has no Right or Legitimate Interest in the Disputed Domain Name in particular:-
(a)the Respondent has no registered trade mark right in Epicurious;
(b)the Disputed Domain Name resolves to a web page which has no connection to food;
(c)the Respondent's name "Cure Limited" is fictitious because the UK Companies Register shows that there is no company called Cure Limited incorporated in the UK; and
(d)a letter sent by the Complainant's representatives on 29 November 2006 to the Respondent at the address listed on the Whois details was returned to the Complainant marked "NOT KNOWN".

11.The Complainant contends that the Disputed Domain Name has been registered in bad faith. The Complainant contends that:-

(a)the contact name at the Respondent, Mr Janusch was the subject of Case 02219 Altova Ges.m.b.H v ALTRA-NS.LTD where it was found that Mr Janusch had registered 3,000 .eu domain names and offered all for sale;

(b)A company, "Lexicon Media Ltd" resident at the same address as the Respondent has registered tonyblair.eu without any apparent legitimate reason;

(c)the Respondent is therefore engaged in a pattern of registering domain names in order to prevent the holders of names in respect of which a right is recognised or established by national and/or Community law, from reflecting the name in a corresponding domain name; and

(d)potential visitors looking for a European website corresponding to www.epicurious.com will automatically type epicurious.eu. They will then be diverted to the Respondent's website and confused into believing that there is a connection between the Respondent and the Complainant.

B. RESPONDENT

12. The Respondent did not submit a response.

DISCUSSION AND FINDINGS

1.Under Regulation 874/2004, Article 22(1)(a), an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21.

2.Article 21 of Regulation 874/2004 states that 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 and where it has been registered by its holder without rights or legitimate interest in the name; or has been registered or has been used in bad faith.

3.The Complainant has submitted an extract from the European Community Trade Mark Registry database which shows that "Epicurious" is registered as a trade mark database and is a right which is recognised or established by National and/or Community Law. Therefore, the Complainant has established that the Disputed Domain Name is identical or confusingly similar to a name which is recognised or established by National and/or Community Law.

4.The Respondent has not submitted a Response and therefore the Panel is not aware that the Respondent has any registered rights or any other rights in the name Epicurious. The Panel has considered the website epicurious.eu and in particular notes that the website consists of a list of links to third party websites. On this basis the Panel finds that the Respondent has no legitimate interest in the Disputed Domain Name.

5.Since the Panel has held that the Respondent has no right or legitimate interest in the Disputed Domain Name there is no need to make a finding as to bad faith for the purposes of Article 21(1). However, since the issue has been raised the Panel will deal with this issue.

6.Article 21(3) defines what is meant by bad faith. In particular, bad faith may be demonstrated where:-

(a)the domain name was registered or acquired primarily for the purpose of selling, renting or otherwise transferring the domain name in respect of which a right is recognised;

(b)the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised by

National or Community Law from reflecting this name in a corresponding domain name provided that a pattern of such conduct by the Registrant can be demonstrated;

(c)the domain name was registered primarily for the purpose of disrupting the professional activities of a competitor;

(d)the domain name was intentionally used to attract internet users for commercial gain.

7.The Complainant has submitted a copy of a previous Panel Decision (Case 02219) that purports to demonstrate that the individual contact name at the Respondent (Kurt Janusch) has been responsible for registering a large number of .eu domain names (approximately 3,000). A large number of these domain names can be found on epicurious.eu, for example chanel5parfum.eu, cartierparfum.eu, givenchyparfum.eu and armaniparfum.eu. All these domain names resolve to the same website. The notice at the foot of the website states “Copyright 2006 Standard Parking”. There is no obvious connection with the Disputed Domain Name and a genuine offer of goods and services.

8.The Panel has considered this evidence and concludes that the Complainant has demonstrated that the Respondent has engaged in a pattern of conduct where it has registered a large number of domain names without any apparent intention to trade under such names.

9.Further, no evidence has been provided or submitted by the Respondent to challenge the claims made by the Complainant and/or that the Respondent’s registration of a large number of domain names was for a reason other than the sale of the domain names to third parties or to prevent the domain names being used by holders of rights recognised by National or Community Law.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name EPICURIOUS be transferred to the Complainant

PANELISTS

Name	**Simon Bennett**

DATE OF PANEL DECISION 2007-07-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought an action against the Respondent for a speculative and abusive registration of the Domain Name “epicurious.eu”.

The Panel held that the name was identical to the Complainant’s right derived under a licence of a trade mark registration for “Epicurious”.

The Panel held that the Respondent had no rights or legitimate interest in the name. The Panel made this finding based upon the absence of any trading activity by the Respondent or any intended trading activity.

The Panel also found that the Disputed Domain Name had been registered in bad faith because the Respondent had engaged in a pattern of conduct involving the registration of a large number of domain names which had been found by a previous Panel to be registered in order to prevent legitimate rights holders from registering corresponding domain names.

The Panel therefore ordered that the Disputed Domain Name be transferred to the Complainant.