Panel Decision for dispute CAC-ADREU-004474

Case number	CAC-ADREU-004474
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Domain names	lanko.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	PAREXGROUP

Respondent

Organization / Name	Ralf KOEPCKE

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

None.

FACTUAL BACKGROUND

The Complainant, Parexgroup, is an international manufacturer of premixed mortars for the construction industry, specialising in products for façade decoration and protection, ceramic tile installation, and concrete repair and maintenance. It operates 32 industrial sites and sells in thirty countries, with leading positions in France, Spain, the USA, Argentina, Brazil, Australia and Asia. It has an annual turnover of 430 million Euros.

The Complainant owns various trade marks in the term LANKO, together with the domain names <lanko.com>, <lanko.fr> and <lanko.co.uk>.

The Respondent, Ralf Koepcke, registered <lanko.eu> (“the Disputed Domain Name”) on 10 April 2006, three days after the .EU top-level domain (“tld”) became open for general registration.

On 18 September 2006, the Complainant sent an email to the Respondent asking the Respondent to transfer the Disputed Domain Name and specifying that the Complainant would pay the costs involved in such transfer.

The Complainant did not receive any reply and so sent reminders by email on 12 October 2006 and then on 24 November 2006.

On 4 January 2007, the Complainant sent a warning letter to the Respondent by email informing the Respondent of its trade mark rights and requesting the immediate transfer of the Disputed Domain Name.

The Respondent did not reply to nor comply with the Complainant's request and so the Complainant decided to file a Complaint under the .EU Alternative Dispute Resolution (“ADR”) procedure with the Czech Arbitration Court.

A. COMPLAINANT

The Complainant details its rights in the term LANKO, which is identical to the Disputed Domain Name.

First, the Complainant points out that it owns the domain names <lanko.com>, <lanko.fr> and <lanko.co.uk>, all of which are currently pointing to active web pages. According to the Complainant, it is well established under French and European case law that a domain name may be considered as a prior right.

Secondly, the Complainant states that it is the owner of several trade mark registrations, in particular throughout the European Union, and notably:

(i) French Registration n° 1 481 375 LANKO renewed on 25 June 1998 and dating back to at least 8 December 1986;

(ii) International registration n° 510 865 LANKO, of 4 May 1987, based on French Registration n° 1 383 535, dating back to 8 December 1986 claiming amongst other countries protection in Germany, Benelux, Spain, Greece, Poland, Portugal, Ireland and Italy;

(iii) International registration n° 635 466 LANKO of 2 May 1995, based on French registration n° 1 481 375, claiming protection in Morocco;

(iv) German national trade mark n° 39 551 105.4 registered on 12 December 2005; and

(v) Norwegian national trade mark n° 150 806 registered on 4 June 2002.

The Complainant also makes reference to its portfolio of trade mark rights registered throughout the world, all of which are in force.

According to the Complainant, the Respondent is required to submit to a mandatory administrative proceeding in accordance with ADR Rules ("the Rules"), Paragraph B1(b)(10), because:

1. The domain name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or Community law; and either

2. The domain name has been registered by their holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint; or

3. The domain name should be considered as having been registered or being used in bad faith.

The Complainant examines each of the above conditions in turn and underlines the following:

1. The domain name registered by the Respondent is identical to the term LANKO, which is protected by rights recognised by national and Community laws.

2. The Respondent did not reply to the Complainant's letter. According to the Complainant, this leads to the conclusion that the Respondent does not have any rights or legitimate interests in the term LANKO. If the Respondent had been the owner of rights or legitimate interests in the Disputed Domain Name, he or she had the possibility to inform the Complainant further to the Complainant's attempt to find an amicable settlement. The Complainant also asserts that the absence of use for over a year shows beyond doubt that the Respondent had no specific interest in the domain name apart from disrupting the Complainant's business and online presence under the .EU tld.

3. The Complainant supplies the results of an internet search made using Google® on the term LANKO, which produced 480 000 hits. Most hits are either a link to the Complainant's websites or references to the Complainant's activity or company. The Complainant asserts that it can therefore be construed beyond doubt that the Respondent could not have ignored the rights owned by the Complainant. The registration of the Disputed Domain Name was therefore made in bad faith.

In addition, the Complainant asserts that the absence of use of the Disputed Domain Name and the absence of a reply to the Complainant's letter cannot be considered as diminishing the Respondent's bad faith, but on the contrary strengthens this idea.

The Complainant points out that the passive holding of the Disputed Domain Name does not appear to constitute any use as such. For over a year, the Disputed Domain Name has been pointing to a static web page mentioning the name of the Registrar or the Company offering registration services. According to the Complainant, this can by no means be considered as a proper use. The Complainant therefore contends that the Respondent's passive holding of the Disputed Domain Name constitutes bad faith use.

According to the Complainant, the Respondent is obviously not making any legitimate or fair use of the Disputed Domain Name and only registered it to disrupt the Complainant's business and presence on the internet. The Complainant points out that, in such circumstances, ADR Panelists have previously decided in earlier cases that respondents have used the domain name(s) at stake in bad faith. In support of this argument, the Complainant cites the following cases:

- ADR .eu Case n°02325 <GLENDIMPLEX.EU>: Passive holding of the Disputed Domain Name would infer registration or use in bad faith;

- ADR .eu Case n° 04141 <AIRFRANCESUCKS.EU>: Passive holding may according to the facts be considered as a use in bad faith.

For all these reasons, the Complainant asserts that the Respondent has engaged in bad faith registration and use of the Disputed Domain Name.

According to the Complainant, the grounds set out in the Rules in article B1(b)(10) are clearly demonstrated. Thus, in accordance with Paragraph B11 of the Rules, and for the reasons described above, the Complainant requests the transfer of the Disputed Domain Name.

Finally, the Complainant also points out that it satisfies the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002: The Complainant is a French "société par actions simplifiée à associé unique" registered under the laws of France n° 434 272 316 and having its headquarters located at 19 Place de la Résistance, Issy Les Moulineaux, France.

B. RESPONDENT

The Respondent did not reply to the Complainant's contentions.

DISCUSSION AND FINDINGS

Paragraph B11(d)(1) of the Rules provides that the Panel shall issue a decision granting the remedy requested in the event that the Complainant proves the following:

"(i) The domain name is identical or confusingly similar to a name in respect of which a right is recognized or established by the national law of a Member State 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."

Taking each of these issues in turn, the Panel decides as follows:

A. Identical or Confusingly Similar

Based on the evidence put forward by the Complainant (in particular the certificates of trade mark registration and the documents attesting the transfer of ownership or change of name to the Complainant), the Panel finds that the Complainant has rights recognized by the national law of a European Member State in the trade mark LANKO.

The Panel considers that, as previously held in numerous other Panel decisions, the generic top level domain suffix .EU is without legal significance and has no effect on the issue of similarity.

On the basis of these considerations, the Panel finds that the Disputed Domain Name is identical to trade marks in which the Complainant has rights recognized by the national law of a European Member State. Paragraph B11(d)(1)(i) of the Rules is therefore met.

B. Rights or Legitimate Interests

The second element to consider under Paragraph B11(d)(1)(ii) of the Rules is whether the Respondent has registered the Disputed Domain Name without rights or legitimate interests in it. Paragraph B11(e) of the Rules sets out various ways in which a Respondent may demonstrate rights or legitimate interests in a domain name, without limitation, as follows:

"(1) prior to any notice of the dispute, the Respondent has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;

(2) the Respondent, being an undertaking, organization or natural person, has been commonly known by the domain name, even in the absence of a right recognized or established by national and/or Community law;

(3) the Respondent is 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 in which a right is recognized or established by national law and/or Community law."

The Panel has considered the evidence put forward by the Complainant and considers that the Complainant has presented a clear demonstration of the Respondent's lack of rights or legitimate interests in the Disputed Domain Name. The Respondent did not file a Response to the Complaint and has thus failed to rebut that demonstration. It should be noted that a respondent's simple failure to file a response is not a definitive indication of a lack of rights or legitimate interests, and the Panel only finds as such in light of the facts of this particular case.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the Disputed Domain Name. Paragraph B11(d)(1)(ii) of the Rules is therefore met.

C. Registered or Used in Bad Faith

The third element to consider under Paragraph B11(d)(1)(iii) of the Rules is whether the Disputed Domain Name has been registered or is being used in bad faith. However it should be noted that consideration of this element is not strictly required in this particular instance as it is only necessary for a Complainant to prove either the second element under Paragraph B11(d)(1)(ii) or the third element under Paragraph B11(d)(1)(iii). In this case the Panel has found that the Respondent has no rights or legitimate interests in the Disputed Domain Name under Paragraph B11(d)(1)(ii), thus satisfying the conditions to issue a decision granting the remedy requested. However the Panel will go on to consider the question of registration or use of the Disputed Domain Name in bad faith for the sake of completeness. Paragraph B11(f) of the Rules sets out various circumstances which may be treated by the Panel as evidence of the registration or use of a domain name in bad faith, without limitation, as follows:

"(1) circumstances indicating that the domain name was registered or acquired primarily for the purpose of selling, renting, or otherwise transferring the domain name to the holder of a name, in respect of which a right is recognized or established by national and/or Community law, or to a public body; or

(2) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognized or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that:

(i) the Respondent has engaged in a pattern of such conduct; or

(ii) the domain name has not been used in a relevant way for at least two years from the date of registration; or

(iii) there are circumstances where, at the time the ADR Proceeding was initiated, the
Respondent has declared its intention to use the domain name, in respect of which a right is recognized or established by national and/or Community law or which corresponds to the name of a public body, in a relevant way but failed to do so within six months of the day on which the ADR Proceeding was initiated;

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

(4) the domain name was intentionally used to attract Internet users, for commercial gain to the Respondent's website or other on-line location, by creating a likelihood of confusion with a name on which a right is recognized or established, by national and/or Community law, or it is a name of a public body, such likelihood arising as to the source, sponsorship, affiliation or endorsement of the website or location or of a product or service on the website or location of the Respondent; or

(5) the domain name is a personal name for which no demonstrable link exists between the Respondent and the domain name registered."

The Panel has carefully reviewed the evidence put forward by the Complainant and concludes that none of the circumstances in Paragraph B11(f) of the Rules have been satisfied. However, it should be noted that such circumstances are without limitation, and other factors noted by the Panel may lead to a finding of registration or use of the Disputed Domain Name in bad faith.

In view of the notoriety of the Complainant's trade marks, the Panel is of the view that it is inconceivable that the Respondent was unaware of them at the time of registration of the Disputed Domain Name and could thus not have chosen it accidentally. The Panel is therefore of the opinion that, in these particular circumstances, and given the distinctiveness of the term LANKO, there could be no

conceivable good faith registration or use of the Disputed Domain Name by the Respondent.

The Panel therefore concludes that the Complainant has succeeded in proving that the Disputed Domain Name was registered or is being used in bad faith. Paragraph B11(d)(1)(iii) of the Rules is therefore met.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12(b) and (c) of the Rules, the Panel orders that the Disputed Domain Name be transferred to the Complainant.

PANELISTS

Name	Jane Seager

DATE OF PANEL DECISION 2007-09-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Panel found that the Complainant had rights recognized by the national law of a European Member State in various trade marks in the term LANKO. Furthermore, the Panel found that the Disputed Domain Name was identical to such trade marks. Paragraph B11(d)(1)(i) of the Rules was therefore met.

The Panel considered on the evidence put forward by the Complainant that the Complainant had presented a clear demonstration of the Respondent's lack of rights or legitimate interests in the Disputed Domain Name. The Respondent did not reply to the Complaint. The Panel therefore found, on the facts of the particular case, that the Respondent had no rights or legitimate interests in the Disputed Domain Name. Paragraph B11(d)(1)(ii) of the Rules was therefore met.

Finally, the Panel was of the opinion that, in the particular circumstances, and given the distinctiveness of the term LANKO, there could be no conceivable good faith registration or use of the Disputed Domain name by the Respondent. The Panel therefore concluded that the Complainant had succeeded in proving that the Disputed Domain Name had been registered or was being used in bad faith. Paragraph B11(d)(1)(iii) of the Rules was therefore met.

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