Panel Decision for dispute CAC-ADREU-004477

Case number	CAC-ADREU-004477
Time of filing	2008-03-18 13:34:56
Domain names	walther-praezision.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Carl Kurt Walther GmbH & Co. KG

Respondent

Organization / Name	Mandarin & Pacific Services Limited, Gerald Mwanyika

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 which relate to the disputed domain name.

FACTUAL BACKGROUND

Acc. to a letter of the owner of the German figurative trademarks “walther-praezision” (DE 305 03 690)and “walther-praezision Schnellkupplungssysteme” (DE 305 03 691) the Complainant is licensee of the above trademarks and owner of the German word trademark “Walther” (DE 713 811/07).

The domain name “WALTHER-PRAEZISION.eu” has been registered with the Respondent on 7 June, 2006.

On 18 March, 2008 the Czech Arbitration Court (CAC) received Complainant’s Complaint.

The Complainant requests the Panel to decide:

Transfer of the domain name WALTHER-PRAEZISION.eu to the Complainant.

Respondent did not file a response to the Complaint.

A. COMPLAINANT

The Complainant originated from a Company that Mr. Carl Kurt Walther founded in 1931 and had been registered as an individually-owned firm with the commercial register of Wuppertal District Court in 1931 under commercial register number HRA 8569.

The Company was restructured into the existing legal form of a limited partnership in 1976 and has been registered since.

The Complainant has operated under the designation "Walther-Präzision Schnellkupplungssysteme” since 1951.

The Complainant owns the German trademark "Walther", register number 713811, since 1956, registered on 22.06.1956, entered in the trademarks register on 12.05.1958.

This trademark is protected e.g. for the following goods

"compressed air fittings i.e. hose clips, compressed air couplings and machine valves".

An affiliate of the Complainant, the Company Walther & Walther GmbH & Co. KG, Haan, owns the German trademark registrations number 30503690

"Walther Präzision",

and 30503691

"Walther Präzision Schnellkupplungssysteme",

By virtue of the Licence Agreement of 19 July 2005, the Complainant has an exclusive right of use to the above-mentioned trademarks, cf.

The Complainant's affiliate, Walther & Walther GmbH & CO. KG, is furthermore e.g. owner of the following domain names:

- walther-praezision.com

- walther-praezision.de

- walther-praezision.info

- walther-praezision.net

- walther-präzision.de

- walther-präzision.com

The Complainant had applied for registration of the name "walther-praezision" during the Sunrise period, however, did not succeed.

The domain name "walther-praezision" was registered for the Respondent on 7 June 2006.

The domain name

"walther-praezision"

registered for the Respondent is likely to be confused with the German trademark "Walther" 713 811 registered for the Complainant and the German trademarks 30503690 "Walther-Präzision" and 30503691 "Walther Präzision Schnellkupplungssysteme" of Walther & Walther GmbH & CO. KG.

As already stated above, the Complainant has an exclusive licence for these trademarks.

The part "Walther" of the domain name registered for the Respondent corresponds on the one hand to trademark 713811, protected for the Complainant, and on the other hand to trademarks 30503690 and 30503691 as far as the parts "Walther" and "Präzision" are concerned, where it is irrelevant that the word "Präzision" is spelt differently in the Respondent's domain, the German umlaut "ä" being written as "ae".

Considering the spelling of umlauts - in this case "ä" resp. "ae" - it is clear in different languages that these are analogous.

The Respondent has no rights whatsoever to or legitimate interests in the domain name "walther-praezision" registered on its behalf.

It was not possible to establish whether the Respondent itself pursues any business activities.

According to the Respondent's Company details the Respondent was founded on 10.04.2004. The following reference is given under "Branch Details":

"There are no branches associated with this Company."

Furthermore, there are obvious preconditions to assume that the Respondent acted in bad faith when registering the domain name "walther-praezision.eu".

Investigations conducted in this respect in August 2006 led to the conclusion that the domain name was offered for sale by the provider through whom registration was made on behalf of the Respondent, the Company SicherRegister, 2002 156th Ave NE, 98007 Bellevue WA USA.

The domain name must therefore be assigned to the Complainant.

The Complainant is located in Germany, and is therefore eligible to register .eu domain names, pursuant to Article 4.2 (b) (iii) EC Regulation No. 733/2002.

B. RESPONDENT

The Respondent has not filed a response.

DISCUSSION AND FINDINGS

A claim for the transfer of the domain name to Complainant can only be granted in case the requirements of Article 21.1 of the EC Regulation No. 874/2004 (Speculative and abusive registrations) are complied with and Complainant is eligible to register .eu domain names acc. to Article 4.2 b) of the EC Regulation No. 733/2002 (see also Paragraph B.11(b) ADR Rules).

I.

As Respondent has not disputed the facts provided by Complainant with the Complaint, the Panel regards the facts provided by Complainant as given acc. to Paragraph B 10 ADR Rules (see also ADR 2810 “RATIOPARTS”, 3976 “ABAT”, 4108 “YOUNGLIFE”).

II.
1.

Complainant has proved by a letter of the licensor that it is the licensee of the owner of the trade mark “WALTHER-PRAEZISION”. In this letter it is stated that the Complainant has entered into a license agreement with the licensor on 19 July, 2005. Therefore, and in the absence of any contradiction by the Respondent, the Complainant is eligible to enforce a trademark right acc. to Article 10.1 of the EC Regulation No. 874/2004.

2.

The domain name “WALTHER-PRAEZISION.eu” is confusingly similar to the Complainant’s trade mark “WALTHER-PRÄZISION”.

a) The suffix “.eu” is to be disregarded in this respect (see also ADR 475 “HELSINKI”; 387 “GNC”; 596, “RESTAURANT”, 3976 “ABAT” 4108 “YOUNGLIFE”).

b) The figurative elements of the German trademark “WALTHER-PRAEZISION” merely consist of two chops of the German Patent and Trademark Office “Deutsches Patent- und Markenamt 29”, located to the left and right of the dominant words “walther praezision” in bold letters. However, in an excerpt from the original database “dpinfo” of the German Patent and Trademark Office, the chops do not appear at all. However, even if these chops were part of the trademark, they would not hinder the impression that the trademark is confusingly similar to the disputed domain name, as the public would regard the chops as (descriptive) confirmation of the registration of the trademark such as a “TM” sign attached to a trademark.

c) Further, the use of the German umlaut “ä” in the trademark instead of “ae” in the domain name is irrelevant, as it does not influence the overall impression that the terms “walther präzision” and “walther-praezision” are confusingly similar. Neither does the hyphen in the

domain name.

3.

Complainant has argued that Respondent has no rights or legitimate interests in the domain name “WALTHER-PRAEZISION.eu”. The burden of proof is on Complainant’s side (see also ADR 1304 “KEMET”). However, Complainant has presented its results of investigation with respect to the negative fact of the missing rights and legitimate interests of Respondent in the domain name “WALTHER-PRAEZISION.eu”. The Complainant stated that no business activities of the Respondent could be figured and its company details read “There are no branches associated with this Company”.

Acc. to Paragraph B 10 ADR Rules and in view of the missing response of Respondent the Panel accepts this presentation as given and bases its decision on this presentation.

III.

Therefore, the Panel did not have to decide, whether the Respondent registered and/or used the domain name “WALTHER-PRAEZISION” in bad faith.

IV.

As Complainant is a registered German company, acc. to Article 4.2 (b) (i) EC Regulation No. 733/2002, Complainant is entitled to request the transfer of the domain name “WALTHER-PRAEZISION.eu”.

DECISION

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

the domain name WALTHER-PRAEZISION be transferred to the Complainant.

PANELISTS

Name	**Dirk Stolz**

DATE OF PANEL DECISION 2008-07-07

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant is the licensee of the owner of the German figurative trademark “walther praezision”. The domain name “WALTHER-PRAEZISION.eu” has been registered with the Respondent on 7 June, 2006.

The Complainant asserts rights acc. to Article 21.1, and 2 of the EC Regulation No. 874/2004 due to a lack of right or legitimate interest of Respondent in the domain name. He further claims that Respondent registered the domain name and/or used it in bad faith.

Respondent did not file a response.

As Complainant’s assertions have not been disputed by Respondent, such assertions have been adopted by the Panel and build the basis of the Panel’s decision.

As the Complainant has proven that it is, as licensee of the trademark owner, the owner of a right acc. to Articles 21.1 in connection with 10.1 EC-Regulation 874/2004, and, further, that Respondent has no rights or legitimate interests in the domain name, and as further Complainant is eligible to register domain names acc. to Article 4.2 (b) EC Regulation 733/2002, the Panel decided to accept the Complaint. Accordingly, the Panel decided to let the domain name “WALTHER-PRAEZISION” be transferred to the Complainant.