Panel Decision for dispute CAC-ADREU-004478

Case number	CAC-ADREU-004478
Time of filing	2007-06-13 10:44:45
Domain names	picmg.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	PICMG Europe, Eelco van der Wal

Respondent

Organization / Name	Barbara Baldwin

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

So far as the Panel is aware, there are no other legal proceedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, a non-profit organization, is the European branch of PICMG, the PCI Industrial Computer Manufacturers Group, Inc. of the USA. PICMG is a registered trademark owned by the USA company. On 4 April 2006, Forum Foundation, an association management company acting on behalf of the Complainant, requested the registration of the domain name picmg.eu . Due to a mistake by the Registrar in The Netherlands, the domain name picmg.eu was not registered in the name of Forum Foundation. On 9 April 2006 the Respondent registered the domain name picmg.eu for personal use. Currently the Complainant uses the domain name picmgeu.org.

A. COMPLAINANT

The Complainant contacted the Respondent by email explaining the situation and asking her to cooperate in transferring the domain name picmg.eu to the Complainant. Initially the Respondent asked the Complainant to make a suggestion. The Complainant offered to pay for the Respondent's registration costs plus a small fee for inconvenience. The Respondent then refused to transfer the domain name, saying she registered it for her personal use and did not intend to sell. The Respondent has no commercial or other interest in the Complainant's organization and therefore no link to the trademark PICMG, whereas the Complainant intended to use the domain name professionally and is seeking to protect the PICMG trademark. Further, the existence of two very similar domain names (picmg.eu and picmgeu.org), referring in the name to an official trademark and a professional organization, is confusing for the business in which the Complainant operates.

B. RESPONDENT

The Respondent, a U.K. resident, says she purchased the domain name on 9th April 2006, during the landrush phase and with the intention of using it in good faith for her own personal use. Her initial response to the Complainant was not for the Complainant to make a suggestion but that the domain name was currently in use. When the Complainant suggested that she transfer the domain to it, she responded that the name was bought for her own use and that she did not intend to sell it. She agrees that she has no commercial interest in the Complainant's industry or trademark and says her application for the use of the domain name would not infringe such trademark but would be used for a photography site. The Respondent says her enquiries made since the Complaint was brought indicate that the Complainant is not the holder of the UK/Dutch trademark.

DISCUSSION AND FINDINGS

Under Article 22 of Commission Regulation (EC) No 874/2004 (“the Regulation”), an ADR procedure may be initiated “by any party” where the registration is speculative or abusive within the meaning of Article 21. Accordingly, it is not necessary for the Complainant to

establish that it is the registered proprietor or licensee of the trademark PICMG nor that it has common law rights in that mark: see Case No. 4040. However, under Article 21, the Complainant must prove that the challenged domain 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 that either

(a) the domain name has been registered by its holder without rights or legitimate interests in the name; or

(b) the domain name has been registered or is being used in bad faith.

So far as this Panel is aware, there are no .eu cases which have held that a U.S. federally registered trademark is a name in respect of which a right is recognised or established by national and/or Community law, within the meaning of Article 21 of the Regulation. This Panel finds that the U.S. registered trademark PICMG is not such a name.

Although the Complainant does not rely on its own name, PICMG Europe, as constituting such a name, that issue must be addressed. The Complainant claims to be the European branch of PICMG, the PCI Industrial Computer Manufacturers Group, Inc. of the USA. It provides no evidence of this nor any proof of the nature of its legal personality, if any, such as corporation, partnership or joint venture. Nor does it provide any evidence showing that the names PICMG or PICMG Europe are registered in any part of the European Community, either as a company name or as a business name. Under these circumstances this Panelist declines to find that either PICMG or PICMG Europe are names in respect of which a right is recognised or established by national and/or Community law.

It follows that the Complaint must fail. It is unnecessary to consider confusing similarity, legitimacy or bad faith.

DECISION

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

PANELISTS

Name	Alan Lawrence Limbury

DATE OF PANEL DECISION 2007-08-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Under Article 22 of Commission Regulation (EC) No 874/2004, an ADR procedure may be initiated "by any party" where the registration is speculative or abusive within the meaning of Article 21. However, the Complainant must prove that the domain 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."

So far as this Panelist is aware, there are no .eu cases which have held that a U.S. federally registered trademark is a name in respect of which a right is recognised or established by national and/or Community law, within the meaning of Article 21. This Panel finds that the U.S. registered trademark PICMG is not such a name.

The Complainant provides no evidence that the names PICMG or PICMG Europe are registered in any part of the European Community, either as a company name or business name. Under these circumstances this Panelist declines to find that either PICMG or PICMG Europe are names in respect of which a right is recognised or established by national and/or Community law.

The Complaint is denied.