Panel Decision for dispute CAC-ADREU-004562

Case number	**CAC-ADREU-004562**
Time of filing	**2007-06-28 10:09:28**
Domain names	**adina.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Adina Europe Limited, andrew hunter**

Respondent

Organization / Name	**Fienna.com, Bruce G**

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

N/A

FACTUAL BACKGROUND

The Complainant offers luxury hotel and serviced apartment services and has done so under the mark ADINA in the UK and Europe since 1 April 2005. The Respondent registered the Domain Name adina.eu ("the Domain Name") on April 7, 2006. The Respondent does not contest the Complaint.

A. COMPLAINANT

The Complainant's submissions can be summarised as follows;

The Complainant offers luxury hotel and serviced apartment services and has done so under the mark ADINA in the UK and Europe since 1 April 2005. The Complainant parent company filed a Community Trade Mark Application for ADINA on 21 May 2004. They have also registered the following domain names www.adina.eu.com; www.adina.hu; www.adina.dk and www.adina.de.com.

The Domain Name is confusingly similar to the Complainant's trade mark and company name.

The Complainant mainly conducts its business online and a customer typing in the Domain Name would expect to be taken to the Complainant's web site.

In correspondence with the Complainant the Respondent agreed to transfer the Domain Name to the Complainant for 30 Euros but despite requests did not provide relevant documents.

The Respondent has no legitimate rights or interest in the Domain Name.

The Respondent registered the name in bad faith to sell the name.

The Domain Name in the hands of the Respondent must amount to a misrepresentation that it is associated with the Complainant and this is likely to cause damage to the Complainant.

B. RESPONDENT

The Respondent did not contest the Complaint and indicated it was willing to transfer the Domain Name to the Complainant.

DISCUSSION AND FINDINGS

Article 21 (1) of Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration ("the Regulation") provides:

"Article 21

Speculative and Abusive Registrations

1. 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, such as the rights mentioned in Article 10 (1) and where it:

(a) 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."

2. A legitimate interest within the meaning of point (a) of paragraph 1 may be demonstrated where:

(a) prior to any notice of an alternative dispute resolution (ADR) procedure the holder of a domain name 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;

(b) the holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;

(c) the holder of a domain name 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 on which a right is recognised or established by national and/or Community law.

3. Bad faith, within the meaning of point (b) of para 1 may be demonstrated where:

a) circumstances indicate 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 recognised or established by national and/or Community law or to a public body;

REST INTENTIONALLY OMITTED"

Article 21 (1) refers to the rights listed in Article 10 (1) as being rights recognised or established by national and/or Community law. The rights listed in Article 10 (1) include unregistered trade marks.

The Complainant has demonstrated that it has unregistered trade mark rights in the United Kingdom since it is using the name ADINA in the United Kingdom for its services and has provided documentary evidence of the same.

The Domain Name consist of a sign identical to the Complainant's unregistered trade mark ADINA and the generic domain name suffix .eu. As such the name is identical or confusingly similar to a name in respect of which a right belonging to the Complainant is recognised or established by national and/or Community law.

The Respondent does not contest the Complaint and there is no evidence that the Respondent has used the name to offer goods and/or services, is commonly known by the name or is making legitimate non commercial or fair use of the name. As such the Respondent does not appear to have any right or legitimate interest in the name.

The Respondent does not dispute that it agreed to sell the name to the Complainant for 30 Euros, but failed to provide the relevant documents for this. Nor does the Respondent deny that it registered the domain name in bad faith for sale to the Complainant. Accordingly it appears that the Domain Name has been registered in bad faith in accordance with Article 21 (3) (a) of the Regulation.

DECISION

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

the Domain Name ADINA be transferred to the Complainant

PANELISTS

Name	**Dawn Osborne**

DATE OF PANEL DECISION 2007-08-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Domain Name consists of a sign identical to the Complainant's unregistered trade mark ADINA and the generic domain name suffix .eu. As such the name is identical or confusingly similar to a name in respect of which a right belonging to the Complainant is recognised or established by national and/or Community law.

The Respondent does not contest the Complaint and there is no evidence that the Respondent has used the name to offer goods and/or services, is commonly known by the name or is making legitimate non commercial or fair use of the name. As such the Respondent does not appear to have any right or legitimate interest in the name.

The Respondent does not dispute that it agreed to sell the name to the Complainant for 30 Euros, but failed to provide the relevant documents for this. Nor does the Respondent deny that it registered the domain name in bad faith for sale to the Complainant. Accordingly it appears that the Domain Name has been registered in bad faith in accordance with Article 21 (3) (a) of the Regulation.

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

the Domain Name ADINA be transferred to the Complainant