Panel Decision for dispute CAC-ADREU-004568

Case number	CAC-ADREU-004568
Time of filing	2007-06-20 15:23:23
Domain names	nutrition-et-sante.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	SAS, NUTRITION ET SANTE SAS

Respondent

Organization / Name	ARGO, Claude ELISSALDE

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

As far as the Panel is aware of, there are no other legal proceedings that have been initiated or terminated in connection with or relating to the domain names <NUTRITION-ET-SANTE.EU>, subject of the Complaint.

FACTUAL BACKGROUND

The present case arises further to a complaint filed by the French Company, Nutrition et Santé, having in particular an activity in the field of selling all kind of diet food and presents itself as the “leader on the European diet food market”.

The Respondent, French company Argo, registered the domain name “nutrition-et-sante” on 14 June 2006 in the so called "landrush period". EURid activated and registered the domain name for the Respondent according to its rules.

The Complainant being aware of these registrations filed a complaint on 18 June 2007, complaint which date of filing has been established on 20 June 2007 by The Czech Arbitration Court (“CAC”).

According to paragraph A 2 (k) of the ADR rules, Eurid transmitted the relevant information on the registrant of the contested domain name.

On 28 June 2007, The “CAC” sent to the Complainant a non-standard communication requesting to amend the incorrect “mutual jurisdiction”. This modification has been made on 29 June 2007, within the time limit set, by electing the Respondent’s address.

On 2nd July 2007, the “CAC” informed the Respondent of the Complaint both by email and registered letter.

On 2nd July 2007, the “CAC” received a response but informed the respondent of a “notification of deficiencies”. The Respondent did not reply to this notification within the timeframe. Hence, the “CAC”, having not received such amended document from the Respondent, issued a “Notification of Respondent’s Default”, which was not challenged.

The Panel was therefore appointed, and has duly filed the “statement of acceptance and declaration of impartiality and independency".

A. COMPLAINANT

The complainant barely exposed that it has been registered at the French trade Register since April 20, 1972 under the commercial name "NUTRITION ET SANTE".

The Complaint mentioned that NUTRITION ET SANTE is a subsidiary of Swiss company SANUTRI AG which is also established in

Belgium, Italy and Spain.

Then the Complainant specified that SANUTRI AG is titular of several domain names: <nutrition-et-sante.fr>, <nutrition-et-sante.be>, <nutrition-et-sante.it>, <nutrition-et-sante.lu>, <nutrition-et-sante.net>, <nutrition-et-sante.nl>and <nutrition-et-sante.es>.

The Complainant indicated also that SANUTRI AG is owner of the international mark "NUTRITION ET SANTE" n° 599850 since March 18, 1993.

The Complain explained that it is “within the framework of its commercial development, NUTRITION ET SANTE wanted to hold the domain name "nutrition-et-sante.eu", when they noticed that “this domain name was taken by Claude ELISSALDE of company ARGO since June 14, 2006. They mentioned as further argument that “this domain name is not used and Claude ELISSALDE does not have any bond with the words "NUTRITION ET SANTE".

The Complainant concluded that they and SANUTRI AG have former rights.

B. RESPONDENT

The Respondent submitted a Response where he/she simply mentioned that “Since June 21st the disputed domain name doesn't belong to me. I didn't renew my subscription”.

DISCUSSION AND FINDINGS

Before deciding on the merits of the Complaint, the Panel would like to remind that Paragraph B. 3 (f) of the ADR Rules states that “if a Respondent does not submit a Response or submits solely an administratively deficient Response, the Provider shall notify the Parties of Respondent’s default. The Provider shall send to the Panel for its information and to the Complainant the administratively deficient Response submitted by the Respondent”. Moreover, Paragraph 10 (a) of the ADR Rules states that “in case of default of one of the Parties, the Panel may consider this failure to comply as grounds to accept the claims of the other Party”.

Considering the exceptional situation where the domain name has not been renewed at the time of the filing of the Complaint, the Panel will take into account the response inasmuch it only mentions this situation, which was confirmed by Eurid.

Article 2 of the Commission Regulation EC n° 874/2004 of 28 April 2004 states in paragraph 3 that “once a domain name is registered it shall become unavailable for further registration until the registration expires without renewal, or until the domain name is revoked”.

Additionally, the ADR rules stipulates, in its article A 1, that “Domain Name Holder means a legal or natural person who holds an activated registration of a “.eu” domain”.

The principle set in these regulations is that a Complainant may dispute a registered domain name.

Eurid indicated while communicating information concerning the data of the domain that (“non standard communication” form Eurid” of 21 June 2007) “the [contested] domain name was deleted on 15 June 2007”. The fact that the domain is in quarantine after it expires is a simple technical matter with no legal effect.

From this the Panel finds that the Complaint does not meet the very first condition i.e. being filed against a registered domain name.

The Panel can only conclude to the rejection of the Complaint.

Yet, for the sake of completeness and in the event the Complaint would have been admissible per se, the Panel is ready to examine the case obiter dicta. The Panel would like to stress the fact that the filing of a complaint requires in particular that:

- according to A 3(c) ADR rules and B1d of the Supplemental ADR rules, all documents must be in the language of the proceedings or translated into that language;

- according to B 1(a) Supplemental rules, the Complaint must include all elements listed in paragraph B 1(b) of ADR rules i.e. describe “why the domain name is identical or confusingly similar” to the prior rights; and either why the domain name has been registered by its holder without rights or legitimate interests; or why the domain name should be considered as having been registered or being used in bad faith;

- according to B 11, the Complainant should specify the remedies sought. If a transfer is requested, then the Complainant has to provide evidence that it satisfies the general eligibility criteria for registration of a ".eu" domain.

The Panel in examining the Complaint as filed and the evidence provided with shall make the following comments:

The Panel has no other choice than conclude to the Complainant's failure to comply with the core of the conditions set by the various rules and regulations organising the Alternative Dispute Resolution process.

Indeed, and in particular, the Complainant indicated that it is a French registered company since 1972 under the trade name NUTRITION ET SANTE. Yet, there is no further evidence that the trade name is or has been used or that the Company is known under this name.

The Panel noticed moreover that the domain names <nutrition-et-sante> mentioned by the Complainant as prior rights present a simple "under construction" page which cannot, in the opinion of the Panel, be considered as a convincing use of said trade name.

Additionally, the Complainant mentions several domain names <nutrition-et-sante> registered under the CCTLD (Country Code top Level Domain) of European countries. However, a brief check of the status of these domains shows that they all were registered after the filing of the contested domain name and therefore could be considered as prior rights. Furthermore, they are not owned by the Complainant.

With the same reasoning, the trademark right referred to by the Complainant is owned by the parent company. One cannot invoke the right of a third party for its own benefit. This right should also be disregarded.

Even if the Panel reaches the conclusion, despite what has been mentioned above, that the Complainant may rely on the trade name, the Complainant does not demonstrate to what extent the domain name is identical or confusingly similar and either the holder does not have any legitimate interest or has registered or used the contested domain in bad faith. At most the Complainant provided the Panel with a copy of a "under construction" webpage appearing while visiting the contested domain name and similar to that of the Complainant uses for its other above mentioned domains.

Finally, the Panel would not have been in a position of deciding on what remedy is being sought, as non were requested by the Complainant –at best the transfer of the domain as a remedy may have been inferred-.

If the Panel was convinced by the Complainant's arguments, The Panel would have been confronted to situation where to make a decision of transferring or revoking the contested domain name without any authority. Thus, the Panel would have thus to decide ultra-petita, which would be contrary to the essence and the spirit of the ADR rules.

In the view of all the foregoing, the Panel decides that the Complaint shall be denied.

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	**David-Irving Tayer**

DATE OF PANEL DECISION 2007-09-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The present case arises further to a complaint filed by the French Company, Nutrition et Santé presenting itself as the "leader on the European diet food market" and wishing - supposedly (as not requested)- to obtain the transfer of the domain name <NUTRITION-ET-SANTE.EU>.

The Panel, upon reviewing the documents of the case and in particular the "non standard communication" transmitted by Eurid where it is mentioned that the domain name had expired at the time of the filing of the Complaint, concluded to the rejection of the Complaint. Indeed, the registration of the domain name is the prima facie condition for the Complaint to be valid; otherwise it would be without subject matter.

The Panel, nevertheless, reviewed the other conditions to be fulfilled for the filing of a Complaint. The Panel concluded that the Complainant did not demonstrate any of the main conditions set by the ADR rules and supplemental rules for a Complaint to be successfully acceded to. In particular, why the domain name is identical or confusingly similar to the prior rights, the registration or use in bad faith or the absence of legitimate interest of the domain name holder. Moreover, the Complainant did not bring sufficient evidence of the existence of prior rights owned by them –and not the parent company or any other affiliated ones-.