Panel Decision for dispute CAC-ADREU-004616

Case number	**CAC-ADREU-004616**
Time of filing	**2007-11-02 11:11:41**
Domain names	**microapp.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Micro Application, SAS**

Respondent

Organization / Name	**Aphrodite Ventures, Ltd.**

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 Panelist is aware.

FACTUAL BACKGROUND

This Complaint has been filed by the French incorporated company Micro Application SAS (hereinafter the “Complainant”) against the British company Aphrodite Ventures, Ltd (hereinafter the “Respondent”), to obtain the transfer of the domain name “MICROAPP.EU”. Micro Application SAS is a company active in the field of software (and, in particular, “leisure software”) production and commercialization. Micro Application SAS distributes its products, in particular, in France, Benelux, Switzerland and other countries of the French-speaking zone and, in general, worldwide.

On 26.10.2007, the Complainant filed a complaint against the Respondent indicating English as the language of the ADR proceedings.

Afterwards, the Complainant provided the payment of the relevant fees. The complaint Time of Filing was 02.11.2007 at 11:11:41. Also, on the same date, the Case Administrator acknowledged the receipt of the complaint and filed the “Request for EURid Verification”.

On 09.11.2007, EURid filed a “Nonstandard Communication” answering to the “Request for EURid Verification”.

On 09.11.2007, the Case Administrator filed the “Complaint Check”, admitting the Complainant to proceed further in the ADR proceedings and forwarded the complaint to the Respondent, together with the communication of “Commencement of the ADR Proceeding”. In this communication, the Case Administrator indicated, inter alia, the deadline for the filing of a Response, which is within 30 working days from the delivery of such notification, and therefore within the date of 11.01.2008, with the express indication that any Response not filed within the mentioned terms would be considered in default.

On 19.12.2007, the Case Administrator filed a “Nonstandard Communication” informing the Respondent that the term for submitting the Response was going to expire on 11.01.2008.

On 14.01.2008, since no Response was filed by the Respondent, the Case Administrator filed a “Notification of Respondent Default” serving the Respondent with all the appropriate information related to its default.

On 24.01.2008, the “Panelist Selection” was issued and this Panelist filed the “Statement of Acceptance and Declaration of Impartiality and Independence”. Therefore, the Case Administrator served the parties with the “Notification of Appointment of the ADR Panel and Projected Decision Date”.

On 29.01.2008, the “Case File” was transmitted to the Panelist.

A. COMPLAINANT

The Complainant filed a complaint indicating in detail the factual and legal grounds to obtain the sought remedy of the transfer of the domain name “MICROAPP.EU” to it.

In particular, the Complainant claimed to be a well-established French limited company, created in 1981 and registered at the French Trade Register of Paris under n° 321 525 032 with the company name of “Micro Application”, and owner of several trademark registrations, including above all:

(a) the trademark “MA MICRO APPLICATION”, an International registration n° 517 899, registered on September 22, 1987 and renewed in 2007, classes 9, 16, 35, 39, 41, 42, for the following countries: Liechtenstein, Italy, Algeria, Germany, Austria and France;

(b) the trademark “Micro Application”, an International registration n° 680 925, registered on November 1st, 1997 and renewed in 2007, classes 9, 16, 38, 41, 42, for the following countries: Benelux, Switzerland and France;

(c) the trademark “microapp.com”, a French Registration n° 00 / 3069983, registered on November 30, 2000, classes 9, 16, 35, 38, 41, 42.

Moreover, the Complainant affirmed to be the holder of about one hundred fifty (150) domain names, forty (40) of them containing “microapp” or the like, including above all: “microap.eu”, “microapp.com”, “microapp.fr”, “microapp.biz”, “microapp.info”, “microapp.net”, “microapp.org”, “microapp.mobi”, “microapp-mobile.eu”, “microapplication.com” and “microapplication.fr”.

The Complainant also claimed that “Micro Application” is the corporate name of the company, but the short name “microapp” is the official name for its main website, “microapp” being used currently as a brand name for Micro Application. According to the Complainant, due to the extensive use of the short name “microapp” in connection with Micro Application business (including, but not limited to, software packages, books, printing papers, on-line services), “microapp” has become well known and famous throughout the mass market public, and customers and end users associate the short name “microapp” with Micro Application products and services.

Finally, the Complainant affirmed that, since June 30th, 2005, it has shown its intent to reserve the domain name “MICROAPP.EU”. However, the Respondent – Aphrodite Ventures, Ltd. – outran the Complainant for a few seconds. On April 18th, 2006, the Complainant contacted the Respondent asking if they intended to use the domain name “MICROAPP.EU” and if not, if they could resell it to Micro Application. However, according to the Complainant, the Respondent never replied.

Therefore, the Complainant concluded affirming that:

- the disputed domain name “MICROAPP.EU” is identical or confusingly similar to the microapp.com trademark and domain name and to several property rights of Micro Application;

- according to the research performed by the Complainant, the Respondent has never registered any trademark (local, European or International) in connection with “microapp” or “MICROAPP.EU” names and has never developed and/or published any website for the domain name “MICROAPP.EU”;

- the Respondent is not using the domain name with the offering of goods and services and has not made any intent or demonstration to do so. There is no mention on the Aphrodite Ventures website (“aphroditeventures.com”) which could indicate that they have planned to use the domain name “MICROAPP.EU”, no public communication, press release or the like. The “MICROAPP.EU” website is totally inactive and does not refer to the main website of Aphrodite Ventures;

- the Respondent registered the contested domain name in bad faith, since it was aware of the fame and audience that the domain name “MICROAPP.EU” could generate and this domain name has intentionally been registered to attract Internet users for commercial gain by creating a likelihood of confusion on a name on which Complainant’s rights are well established and to take advantage of Micro Application reputation;

- the Respondent is already known by the Czech Arbitration Court, since it has been the subject matter of ADR case number 04069. In that case, Aphrodite Ventures had registered the domain name “eurokera.eu” and the Panel ordered its transfer to the Complainant, the French Company Eurokera, acknowledging that Aphrodite Ventures had no legitimate interest and had registered this name in bad faith;

- Aphrodite Ventures is also known as a front company. Many clues on Internet websites indicate that this company has only been

created to be able to register European domain names. Another source maintains that this company is owned by the accredited registrar "name-services.com" which is used to register large numbers of domains for its own use rather than as the result of an order from a customer, activity which is specifically forbidden by Article 4 (last bullet point) of the EURid registrar agreement (the so-called "warehousing");

- therefore: the domain name "MICROAPP.EU" is confusingly similar with the rights owned by Micro Application; Aphrodite Ventures has used neither the respective domain name, nor any name corresponding to this domain name in connection with the selling of goods or services, and has never made any intent to do so effect; Aphrodite Ventures has registered the "MICROAPP.EU" domain name in bad faith as previously demonstrated.

B. RESPONDENT

On 09.11.2007, the Case Administrator duly served the communication of "Commencement of ADR Proceeding". In this communication, the Case Administrator expressly informed the Respondent of its duty to submit a Response within the term of thirty (30) working days from the communication, according to Section B3 of the "ADR Rules".

Moreover, on 19.12.2007, the Case Administrator filed a "Nonstandard Communication" informing the Respondent that the term for submitting the Response was going to expire on 11.01.2008.

However, the Respondent did not submit its Response. Therefore, the Respondent is in default in this ADR procedure.

DISCUSSION AND FINDINGS

(A) The applicable regulations

Article 21 of the EC Regulation No. 874/2004, as implemented by Paragraph B) 11 of ".eu Alternative Dispute Resolution Rules" (hereinafter "ADR Rules"), defines as "speculative and abusive registrations" all the cases in which the Complainant proves the following circumstances:

"(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."

Moreover, the regulation specifies that any of the following circumstances, if found by the Panel to be proved, based on its evaluation of all evidence presented, shall demonstrate the Respondent's rights or legitimate interests to the domain name:

"(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."

Finally, the regulation at issue lists some circumstances (in particular but not limited to) which, if found by the Panel to be present, may be evidence of the registration or use of a domain name in bad faith:

"(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."

(B) The case at issue.

a) The default of the Respondent

First of all, it is important to note that, notwithstanding the Case Administrator duly served the Respondent with the necessary communication (on 09.11.2007, the "Commencement of ADR Proceeding"; on 19.12.2007, the "Nonstandard Communication"), the Respondent did not file any Response and, therefore, did not challenge in any way the arguments affirmed by the Complainant and did not try to demonstrate its eventual rights in the domain name "MICROAPP.EU".

b) Identity or confusing similarity of the domain name "MICROAPP.EU"

The Complainant affirmed to be the owner of several trademarks, service marks and domain names and attached adequate documentation to show its rights in such distinctive signs. Therefore, this Panelist assumes that the Complainant is the owner, in particular, of the following trademark:

- "microapp.com", a French Registration n° 00/3069983, registered on November 30, 2000, classes 9, 16, 35, 38, 41, 42;

and the holder of the following domain names:

- "microap.eu";
- "microapp.com";
- "microapp.fr";
- "microapp.biz";
- "microapp.info";
- "microapp.net";
- "microapp.org";
- "microapp.mobi";
- "microapp-mobile.eu".

According to the above, it is clear that – as prescribed by Article 21 of the EC Regulation No. 874/2004, as implemented by Paragraph B) 11 of the "ADR Rules" – the domain name at issue ("MICROAPP.EU") is identical or confusingly similar to a name in respect of which a right of the Complainant is recognized or established by the national law of a Member State and/or Community law.

c) Respondent's rights or legitimate interests in the domain name registration

The Respondent, in default, did not provide this Panelist with any evidence, demonstration or affirmation of its right/interest in the registration of the domain name "MICROAPP.EU". The Response is the occasion for the Respondent to challenge and contradict the Complainant's assertions and to lead the Panelist's attention to other facts and circumstances to support its own view. In this case, Aphrodite Ventures had a chance to reply; however, it decided not to do so.

Therefore, this Panelist will take into consideration only the circumstances proved by the Complainant and the independent researches conducted by the Panelist itself.

First of all, according to the research performed by the Panelist on the principal on-line trademark data bases, it does not show any registration for the trademark "MICROAPP" in the name of the Respondent. Moreover, no circumstance has been found to demonstrate that the Respondent has any right in company names, service marks, trademarks, domain names or other distinctive signs related to "MICROAPP".

The Respondent is not using the domain name to offer goods or services and it has not shown any intention to do so. As affirmed by the Complainant, there is no mention whatsoever on the Respondent's website ("aphroditeventures.com") which could indicate that it has planned to use the domain name "MICROAPP.EU", no public communication, press release or the like. The "MICROAPP.EU" website is totally inactive and does not refer to the main website of Aphrodite Ventures.

Therefore, there are no proves (and not even simple indicia) of an actual right or legitimate interest in the registration of the domain name "MICROAPP.EU" by the Respondent.

Finally, this Panelist is aware of several decisions of this Court, for similar conducts, involving Aphrodite Ventures, Ltd (the Respondent). In particular, the Panelist recalls the decision No. 00616 ("ferner.eu"), the decision No. 04069 ("eurokera.eu"), the decision No. 04440 ("skinstore.eu"), the decision No. 04723 ("videx.eu").

In all the mentioned cases (with the only exception of the case No. 00616, focused on procedural aspects), the Court found Aphrodite Ventures having registered (different) domain names without any right or legitimate interest. This Panelist certainly knows that this circumstance can not be used to hold/sustain the decision of the case at issue, which is based on completely different facts. However, the mentioned decisions can offer a view of the landscape in which Aphrodite Ventures operates.

In light of all the foregoing reasons, this Panelist deems that the domain name "MICROAPP.EU" has been registered by the Respondent without rights or legitimate interests.

d) Respondent's bad faith in the domain name registration or use

The subsistence, in the case at issue, of the requisites provided by points i) e ii) of Paragraph B) 11 of the "ADR Rules" (as well as Art. 21, number 1), letter a), of the EC Regulation 874/2004), is enough to define the registration of "MICROAPP.EU" by the Respondent as a "speculative and abusive registration".

Therefore, it is not necessary to further discuss in detail the Respondent's bad faith claimed by the Complainant.

(C) Conclusion

According to the above, the complaint should be accepted and the domain name "MICROAPP.EU" should be transferred to the Complainant.

DECISION

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

PANELISTS

Name	Francesco Paolino

DATE OF PANEL DECISION 2008-02-13

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant filed a complaint indicating the factual and legal grounds to obtain the sought remedy of "domain transferral" and affirming that the domain name is identical or confusingly similar to the Complainant's name, trademarks and domain names, it has been registered by the Respondent without any rights or legitimate interest in the name, and it has been registered/used in bad faith.

The Respondent did not file any Response and, therefore, it is in default.

The Panelist held that the domain name "MICROAPP.EU" is identical or confusingly similar with the trademarks and the domain names of the Complainant (in particular, with the trademark "microapp.com", a French Registration n° 00/3069983, registered on November 30, 2000, classes 9, 16, 35, 38, 41, 42, and with the domain names "microap.eu", "microapp.com", "microapp.fr", "microapp.biz", "microapp.info", "microapp.net", "microapp.org", "microapp.mobi", "microapp-mobile.eu").

The Complainant established a “prima facie” case that the Respondent did not have rights or legitimate interests in the domain name “MICROAPP.EU” and the Respondent failed to rebut this allegation. The Panelist, therefore, concluded that the domain name was registered without rights or legitimate interests. Accordingly, there was no need to consider the issue of bad faith.

For these reasons, the Panelist ordered the domain name to be transferred to the Complainant.