Panel Decision for dispute CAC-ADREU-004620

Case number	**CAC-ADREU-004620**
Time of filing	**2007-07-09 00:00:00**
Domain names	**eltropuls.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**ELTRO Gesellschaft für Elektrotechnik mbH, ELTRO**

Respondent

Organization / Name	**Zheng Qingying**

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

The Respondent has been an involved party (as Respondent) to the ADR Cases under the nos. 04309, 04229, 02651, 03641, 03499, 03773, 03885, 03368, 02929, 03589, 02986, 03510, 03588, 03444, 02606, 02325, 02429

In all of the aforementioned cases with the exception of cases nos. 02929, 03589 and 02626 the registration of several domain names by the Respondent has been revoked pursuant to the provisions of art.21 of the Regulation and on the legal basis of abusive and speculative registrations sustained upon the lack of legitimate interest.

FACTUAL BACKGROUND

On July 18, 2007, the Company under the name “ELTRO Gesellschaft fur Elektrotechnik mbH” (hereinafter called “The Complainant”) filed a Complaint against the registration of the domain name ‘eltropuls” which had been made on July 4, 2006, in the name of Mrs. Zheng Qimgying as Registrant (hereinafter called “The Respondent”), according to the formal requirements of the ADR Rules and the ADR Supplements Rules. The Complainant requests the Panel to transfer the domain name “eltropuls” to the Complainant.

The Respondent did not filed any response

On September 11, 2007, the Czech Arbitration Court appointed the undersigned herewith as a Panelist in response to the above action.

A. COMPLAINANT

1. The Complainant is the owner of the German trademark no. DE 2002512 “ELTROPULS” which has a continuous and unchallenged priority as of January 19, 1991.
2. The Complainant applied for registration of “eltropuls” as a Community trademark on March 16, 2007.
3. The Complainant is the holder of the .de top level domain name “eltropuls”.
4. The Complainant and its subsidiaries have been making use of “eltropuls” as company symbol and for a long time.
5. The Respondent proceeded with the registration of the domain name “eltropuls” only minutes after the Complainant had failed with his application in the sunrise period for the simple reason that the name of the Complainant did not match with the Domain name.
6. The Respondent has no rights or legitimate interests as it results through a relevant inquiry on the Internet.
7. The Respondent registered and since then has been holding the domain name in bad faith since it appears that he has offered said domain name for sale at a price of 559.00 Euro on the webside sedo.co.uk.
8. The Respondent turned down a transfer of the Domain Name to the Complainant.
9. The Respondent is an involved part to the ADR Cases nos. 04309, 04229, 02651, 03641, 03499, 03773, 03885, 03368, 02929, 03589, 02986, 03510, 03588, 03444, 02606, 02325, 02429. In almost all said cases, the Respondent is involved on the grounds of speculative and abusive registration within the meaning of Article 21 of the Commission Regulation no. 874/2004.

10. The Complainant is eligible for registration of .eu-TLD names.

B. RESPONDENT

The Respondent did not filed any Response and has opted to remain silent.

DISCUSSION AND FINDINGS

1. According to art.22 par.11 of the Regulation and art.11 par.(b) of the ADR Rules "…In the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked, if it finds that the registration is speculative or abusive as defined in Article 21. The domain name shall be transferred to the complainant if the complainant applies for this domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002……".

2. According to art.21 par.1 of Regulation 874/2004 (hereinafter called "The Regulation") and art.11 par.(d) of the ADR Rules, 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.

3. According to art.21 par.2 of the Regulation 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.

4. According to art.21 par.3 of the Regulation and art.11 par.(f) of the ADR Rules "Bad faith, within the meaning of point (b) of paragraph 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; or (b) the domain name has been registered in order to prevent the holder of such a name in respect of which a right is recognised or established by national and/or Community law, or a public body, from reflecting this name in a corresponding domain name, provided that (i) a pattern of such conduct by the registrant can be demonstrated; 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) in circumstances where, at the time the ADR procedure was initiated, the holder of a domain name in respect of which a right is recognised or established by national and/or Community law or the holder of a domain name of a public body has declared his/its intention to use the domain name in a relevant way but fails to do so within six months of the day on which the ADR procedure was initiated".

5. According to art.10 of the Regulation "1. Holders of prior rights recognised or established by national and/or Community law and public bodies shall be eligible to apply to register domain names during a period of phased registration before general registration of. eu domain starts. "Prior rights" shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held: unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works. "Public bodies" shall include: institutions and bodies of the Community, national and local governments, governmental bodies, authorities, organisations and bodies governed by public law, and international and intergovernmental organizations. 2. The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists."

6. According to art.4 par.2(b) of the Regulation 733/2002 "the Registry shall register domain names in the .eu TLD through any accredited .eu Registrar requested by any (i) undertaking having its registered office, central administration or principal place of business within the Community, or (ii) organization established within the Community without prejudice to the application of national law, or (iii) natural person resident within the Community;

7. According to art.3 par.(c.) of the ADR Rules "all documents including communications made as part of the ADR Proceeding shall be made in the language of the ADR Proceeding. The Panel may disregard docunents submitted in other language than the language of the ADR Proceeding without requesting their translation".

8. Acording to art.4 par.(c) of the ADR Rules "the Panel if it becomes aware that the dispute that is the subject of the Complaint has been

finally decided by a court of competent jurisdiction or an alternative disoute resolution body, shall terminate the ADR Proceeding".

9. According to art.11 par.(a) of the ADR Rules "a Panel shall decide a Complaint on the basis of the statements and documents submitted and in accordance with the Procedural Rules."

10. The Panel clarifies herewith that i. the burden of proof is on the Complainant's side (see ADR 1304 KEMET", 3510 "BIGDUTCHMAN", 1250 "VOCA") and ii. the Complainant has—at least—to present a prima facie evidence to shift the burden of proof to the Respondent (ADR 2888 "GERMANWINGS").

11. According to art.22 par.10 of the Regulation and art.B10 of the ADR Rules "Failure of any of the Parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty".

12. In thorough consideration of all the above claims the Panel herewith decides the following:

a. The Panel is not adequately and factually informed upon the issue that the dispute on the domain name eltropuls.eu which is the subject of this Complaint has been finally reached a verdict by a court of competent jurisdiction or an alternative dispute resolution body according to art.4 par.(c) of the ADR Rules which instruct that "the Panel if it becomes aware that the dispute that is the subject of the Complaint has been finally decided by a court of competent jurisdiction or an alternative disoute resolution body, [then the Panel] shall terminate the ADR Proceeding".

b. The Panel herewith clarifies that it considers the documentary evidence filed by the Complainant in the Dutch language despite the fact that i) according to art.3(c) of the ADR Rules "The Panel may disregard documents submitted in other language than the language of the ADR Proceeding without requesting their translation" and ii) the language of the ADR Proceeding is English.

c. Prior rights of the Complainant: The Panel considers that i) the Complainant has a contituous and unchallenged priority on the German trademark "ELTROPULS" and as of January 1991, which is identical with the domain name which is the subject of this decision, ii) the Complainant is the owner of the community trademark "ELTROPULS" as of March 16, 2007, iii) The Complainant is the owner of the domain name "eltropuls.de" despite the fact that it is not clarified the issue of the time since when the Complainant has been the owner of the domain name "eltropuls.de", iv) the domain name "eltropuls" is registered by the Complainant on July 4, 2006, v) according to art.21 par.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), vi) according to art.10(1),"Prior rights" shall be understood to include, inter alia, registered national and community trademarks, geographical indications or designations of origin, and, in as far as they are protected under national law in the Member-State where they are held unregistered trademarks, trade names, business identifiers, company names, family names, and distinctive titles of protected literary and artistic works. The registration on the basis of a prior right shall consist of the registration of the complete name for which the prior right exists, as written in the documentation which proves that such a right exists, vii) according to art.11 par.(d) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that the Complainant proves that "(i) the domain name is identical or confusingly similar to a name in respect of which a right is recognised or established by the national law of a Member State and/or Community law and either….",

In consideration of all the above facts, the Panel decides that the Complainant has prior rights on the word "ELTROPULS" regarding the registration of the domain name eltropuls.eu and as of July 4, 2006, based solely upon the registration of the German Trademark "ELTROPULS" in effect as of January 1991.

d. Rights or legitimate interest in the name "ELTROPULS" of the Respondent: Regarding the contentions of the Complainant that the Respondent has no rights or legitimate interests as it appears by the relevant inquiry online and in consideration of the following facts, i.e. that i) the Respondent did not file any response and did not present any legitimate interest in the name "ELTROPULS', pursuant to the provisions of art.21 par.2 of the Regulation, ii) the Respondent has been an involved party (as Respondent) to the ADR Cases under the nos. 04309, 04229, 02651, 03641, 03499, 03773, 03885, 03368, 02929, 03589, 02986, 03510, 03588, 03444, 02606, 02325, 02429 and in particular because of the fact that in all of the aforementioned cases with the exception of cases nos. 02929, 03589 and 02626 the registration of several domain names by the Respondent has been revoked pursuant to the provisions of art.21 of the Regulation and on the legal basis of abusive and speculative registrations sustained upon the lack of legitimate interest, iii) "Failure of any of the Parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of the counterparty", according to art.22 par.10 of the Regulation and art.B10 of the ADR Rules

the Panel decides that the Complainant has—prima facie—proven that the Respondent has no rights or legitimate interest in the domain

name “eltropuls.eu” and therefore meets the requirements of Article 21(1)a on the grounds of which the domain name eltropuls.eu shall be revoked.

e. In thorough consideration of the findings on the rights and legitimate interests explicitly set out above hereto the Panel decides that in the case at hand it is not necessary to proceed with any consideration upon the Complainant’s claims in relation to bad faith in registration and/or use of the critical domain name.

f. In thorough consideration of the fact that the Complainant is a company duly incorporated and operating under the German Limited liability Company Law the Panel decides that the Complainant satisfies the generability criteria as they are set by art.4 par.2(b) of the Regulation 733/2002“, and further it orders herewith the transfer of the domain name eltropuls.eu 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 ELTROPULS be transferred to the Complainant

PANELISTS

Name	**Alexandra Kaponi**

DATE OF PANEL DECISION 2007-10-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The company titled “ELTRO Gesellschaft fur Elektrotechnik mbH” (hereinafter called “The Complainant”) filed a Complaint against the registration of the domain name ‘eltropuls” which had been made on July 4, 2006, in the name of Mrs. Zheng Qimgying as Registrant (hereinafter called “The Respondent”). The Complainant filed a request to the Panel in order to transfer the domain name “eltropuls” to the Complainant. The Respondent failed to file any response upon this issue.

In thorough consideration of the Complainant’s contentions as well as of the relevant documents submitted to it the Panel herewith decides the following:

1. The Complainant proved that a) it has a prior right on the name “eltropuls” because of the German trademark “ELTROPULS” for which the Complainant has been the right-holder as of January 1991, and which is identical with the domain name eltropuls.eu in consideration of the provisions of art.21 par.1 of Regulation 874/2004 (hereinafter called “The Regulation”) providing among others that a registered domain name shall be subject to revocation, 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); among the rights mentioned in Article 10(1) the registered national trademarks are considered by law as prior right, and b) the Complainant has prima facie proven that the Respondent does not have a legitimate interest in the name “eltropuls.eu” in consideration of the provisions of art.21 par.1 of the Regulation providing among other that a registered domain name shall be subject to revocation, if it has been registered by its holder without rights or legitimate interest in the name.

2. In thorough consideration of the findings on the rights and legitimate interests explicitly set out above hereto the Panel decides that a) it is not necessary in this case to proceed with considering the Complainant’s claims in relation to bad faith registration and/or use of the critical domain name, and b) the Complainant meets the requirements of art.21(1)a, therefore the domain name eltropuls.eu must be revoked.

3. In thorough consideration of the fact that the Complainant is a company duly incorporated and operating under the German Limited liability Company Law the Panel decides that the Complainant meets all the criteria according to art.4 par.2(b) of the Regulation 733/2002 and orders herewith the transfer of the domain name eltropuls.eu to the Complainant.