Panel Decision for dispute CAC-ADREU-004645

Case number	**CAC-ADREU-004645**
Time of filing	**2007-08-06 12:57:02**
Domain names	**airfranceonline.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Société Air France, Jean-Marc BARDY**

Respondent

Organization / Name	**ibiz hosting, Tamer Nurgel**

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

None

FACTUAL BACKGROUND

On 24 April 2006, the domain name "airfranceonline.eu" (the "Domain Name") was registered by a Mr Tamer Nurgel, apparently on behalf of an organization called "Ibiz Hosting" (the "Respondent").

On 6 August 2007, the French company "Société Air France" (the "Complainant") filed a Complaint before the ADR Centre for .eu attached to the Arbitration Court attached to the Economic Chamber of the Czech Republic and Agricultural Chamber of the Czech Republic (the "ADR Centre"), requesting that the Domain Name were transferred to them.

On 9 August 2007, EURid provided the registration information requested by the ADR Centre, and confirmed that the Domain Name would remain blocked during the pending ADR Proceedings.

The ADR Centre issued a notice of commencement of proceedings on 10 August 2007.

The Respondent was notified of the Complaint and was given a term for submitting a Response until 21 September 2007.

However, the Respondent failed to submit a Response and was declared in Default by the ADR Centre's notification of 24 September 2007.

A. COMPLAINANT

The Complaint requests a decision issued by the Panellist, that the Domain Name is transferred to the Complainant.

To this purpose, the Complainant primarily alleges that it is one of the world's major airline companies, holder of a number of trademarks and domain names including various nominative "AIR FRANCE" trademarks and that Mr Tamer Nurgel, apparently located in the Netherlands, does not have and in fact, cannot have, any good purpose or legitimate interest on the Domain Name.

The Complainant first states that the Domain Name is identical or confusingly similar to the name or names in respect of which a right or rights are recognized or established by national and/or community law. The Complainant states that it holds rights in the form of, among others, French and Community trademarks, on the name "AIR FRANCE"; and that this trademark is, in addition, well and widely known through the world and easily recognizable as such.

The Complainant goes on to state that the Domain Name is confusingly similar to the trademark "AIR FRANCE", on the basis of three arguments: (i) that the trademark is entirely reproduced in the Domain Name; (ii) that the absence of spaces has to be ignored; and (iii) that the suffix "ONLINE" is commonly used on the Internet in the field of tourism and does not eliminate the risk of confusion.

The Complainant also states that the Domain Name has been registered by the Respondent without rights or legitimate interests in respect of the Domain Name. The Complainant claims that Mr Tamer Nurgel should be considered as having no rights or legitimate interests in respect of the Domain Name, as he is in no way legitimately connected to the Complainant's business.

The Complainant finally states that the Domain Name was registered and is being used in bad faith. Registration in bad faith is affirmed on the basis that due to the notoriety of the Complainant's trademarks, it is difficult to imagine a registration in good faith made by a third party such as the Respondent. Use in bad faith is affirmed on the basis that the Domain Name is currently used to divert Internet users to a parking website including hyperlinks in the field of tourism and travel. This use of the Domain Name could be misleading for consumers and users and result in unfair competition.

B. RESPONDENT

The Respondent failed to file its Response to the Complaint.

DISCUSSION AND FINDINGS

As a preliminary issue, it must be mentioned that the Complaint constantly refer to Mr Tamer Nurgel as the Respondent, while the Respondent is, in fact, the entity Ibiz Hosting, which appears as the Registrant of the Domain Name in the information provided by EURid. Mr Tamer Nurgel is the representative of the Respondent. However, all the statements made by the Claimant in respect of Mr Tamer Nurgel may be understood as made in respect of Ibiz Hosting, as there are no reasons not to do so. In fact, all of the statements of the Complainant in respect of Mr Tamer Nurgel properly fit with Ibiz Hosting's position, and this modification does not alter the request of the Complaint.

Article 21(1) of the Commission Regulation (EC) No 874/2004 of 28 April 2004 (the "Regulation") provides that:

"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".

Therefore, what has to be applied to decide whether the Domain Name must be revoked or not is a test made of three steps, with the particularity that the use of the word "or" at the end of provision (a) renders the two last steps alternative. For a name to be revoked, it is sufficient that only steps one and two or one and three are met.

1. The first part of the test consists in verifying whether the Domain Name is identical or confusingly similar to a name in respect of which the Complainant has national and/or Community law rights.

In the current case, it has been showed by the Complainant that it has legitimate national (French) and Community law rights on the name "AIR FRANCE" in the form of various nominative trademarks exactly matching these words.

The Domain Name and the name "AIR FRANCE" are not identical. Two differences exist between them:

(a) The two words forming the name appear with a space between them, while in the Domain Name such a space does not exist. However, this difference is not sufficient to dispel the risk of confusion: domain names do not accept spaces in their format, and Internet users are used to see spaces in names or trademarks indistinctly disappear or be replaced by a hyphen. As a consequence, this difference becomes irrelevant.
(b) The word "ONLINE" appear in the Domain Name added to "AIR FRANCE". The word "ONLINE" constitutes one of the most generic terms used to refer to information society services and, in particular, to services rendered through the Internet. A wild search of the word "ONLINE" in the browser Google, returns a number of approximately 3,060,000,000 hits. The version "ON-LINE" (with a hyphen) returns a result of 4,210,000,000 web pages. Finally, the version "ON LINE" (with a space and between inverted commas) produces a result of approximately 616,000,000 hits. As a consequence, the word or string of characters "ONLINE" cannot be considered as distinctive or

capable of dispelling a risk of confusion. In fact, the registration by a third party of a famous trademark followed by such generic words associated with the Internet as "ONLINE", normally obeys to a strategy of trying to obtain a domain name that, while non-distinctive in practice from the domain name consisting only in the name of the trademark, inadvertently may have not been registered by the rightful holder of the trademark, with the only purpose of making a bad faith use of it.

Therefore, it must be concluded that the Domain Name is confusingly similar to trademarks which constitute rights in the meaning of Article 21(1) and 10(1) of the Regulation, and whose holder is the Complainant.

2. The second part of the test is to verify whether the Respondent has any rights legitimate interest in the name.

Article 21(2) of the Regulation provides for a list of situations that may demonstrate the existence of a legitimate interest:

"(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".

In the current case, the Respondent has not provided any evidence that his connection with the Domain Name is any of the ones listed. In fact, the Respondent has failed to provide any response to the Complaint. This, by itself, does not necessarily imply acceptance of all the statements of the counterparty, in accordance with Article 22(10) of the Regulation. However, in this specific step of the test, where it is clearly easier for the Respondent to prove the existence of a legitimate interest than for the Complainant to prove the non-existence, the default by the Respondent must be given an additional weight.

As a consequence, and absent any evident interest of the Respondent in the Domain Name in the forms provided for in Article 21(2) of the Regulation, the default of the Respondent must be understood as an acceptance of the Complainant's reasonable statement of lack of rights or legitimate interests by the Respondent.

3. The third part of the test is to verify whether the domain name was registered in bad faith or is used in bad faith.

The registration of a domain name identical or confusingly similar to a famous trademark by a person with no verifiable right or legitimate interest in the name constitutes a strong presumption that the domain name was registered in bad faith. In the present case, it is difficult to imagine reasons for the Respondent to register the Domain Name, besides disrupting the Complainant's business, obtaining an illegitimate commercial gain by misleadingly attracting consumers to the website operating under the Domain Name or reselling the Domain Name to the Complainant for an amount in excess of out-of-pocket costs.

This presumption, put in connection with the Respondent's default, leads to conclude that the Domain Name was registered in bad faith.

Related to the above, it may also be concluded that the Domain Name is being used in bad faith. The use of a domain name to divert Internet users to a parking webpage containing hyperlinks, some of which direct to websites announcing services competing to the Complainant's, can only be qualified as bad faith use.

All the three parts of the test are positive. As a consequence, the Domain Name must be revoked, in accordance to Article 21(1) of the Regulation.

In addition, the Complainant has requested not only revocation, but that the Domain Name be transferred to them. In accordance with Article 22(11), the Complainant meets the eligibility requirements of Article 4(2)(b) of Regulation (EC) No 733/2002. As a consequence, the Domain Name must 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 AIRFRANCEONLINE be transferred to the Complainant.

PANELISTS

Name	Alejandro López Ortiz

DATE OF PANEL DECISION 2007-11-12

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, the French airline "Société Air France" filed a Complaint requesting the Domain Name "airfranceonline.eu", registered by the Respondent, an entity with no apparent connection with the name and which failed to submit their Response to the Complaint, to be transferred to them.

The Panel decided to accept the Complaint and order the Domain Name to be transferred to the Complainant.

The Panel decided that the Domain Name was confusingly similar to the different nominative "AIR FRANCE" national and Community law trademarks of which the Complainant is a rightful holder, since the absence of a space in the Domain Name between the words forming the trademark and the addition of the word "ONLINE" to the Domain Name were not sufficient to dispel the risk of confusion between the Domain Name and the trademark.

The Panel decided that the Respondent lacked any right or legitimate interest in the name, on the basis that in cases where the Complainant stated the absence of such right or legitimate interest and where no right or legitimate interest was evident, the Respondent's failure to submit a Response should be given special weight in determining that such rights or interest did not exist.

The Panel finally decided that the Respondent had registered and was using the name in bad faith, on the basis that the registration of a domain name identical or confusingly similar to a famous trademark by a party with no verifiable right or legitimate interest in the name constitutes a strong presumption that the domain name was registered in bad faith.