Panel Decision for dispute CAC-ADREU-004656

Case number	CAC-ADREU-004656
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Domain names	gls-bank.eu, gls-gemeinschaftsbank.eu, glstreuhand.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	GLS Gemeinschaftsbank eG, Uwe Nehrkorn

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 Panel has is not aware of other legal proceedings which are pending or decided and which relate to the disputed domain name. However, the Complainant has indicated that it seems probable that the contested domain names are subject of a court proceeding against the Respondent initiated by EURid. Even if this is correct this does not prevent Complainant from initiating this ADR procedure, since Complainant is not a party to the other procedure, and will not necessarily benefit from the outcome of it.

FACTUAL BACKGROUND

The Complainant is a registered co-operative society incorporated under German law, having its principal place of business in Bochum, Germany. The Complainant, the first ethical and ecological bank in Germany, has been doing business under its company name “GLS Gemeinschaftsbank e.G.” since as early as 1974

Through use of the company name “GLS Gemeinschaftsbank e.G.” and its shortened version Complainant has acquired company name rights in the designations “GLS Gemeinschaftsbank” and “GLS Bank”.

Besides the afore-mentioned company name rights Complainant is the proprietor of German trademark 305 27 689 “GLS” and registered for numerous services of international class 36, of international registration 903 816 “GLS” based on the afore-said German trademark, among others covering the EC as well as of Community trademark 2 886 455 “GLS Gemeinschaftsbank eG”.

Moreover, Complainant is the owner of numerous domain names incorporating the designation “GLS” including the domain name “gls.de”, the domain name “www.gls-bank.de”, the domain name “glsbank.de”, the domain name “gls.eu” and the domain name “glsgemeinschaftsbank.eu”

One of Complainant’s co-operation partners, working closely together with Complainant and complementing its range of services, GLS Treuhand e.V. was incorporated as a registered association under German law under the name “Gemeinnützige Treuhandstelle e.V.” in 1961

By contract dated September 23, 2005 Complainant permitted Gemeinnützige Treuhandstelle e.V. to change its name to “GLS Treuhand e.V.” for as long as the close co-operation would last.The said contract also stipulates that GLS Treuhand e.V. does not have the right to register the designation “GLS” as a trademark nor to acquire any other sort of exclusive rights. Moreover, the Complainant is obliged to defend the designation “GLS” against infringement by third parties.
Complainant is also the owner of the domain names “glstreuhand.de” and “gls-treuhand.de”.

For reasons of procedural economy and in accordance with the GLS Treuhand e.V. has permitted Complainant to enforce the rights in its

name “GLS Treuhand e.V.” on its behalf and to request transfer of the contested domain name “glstreuhand.eu” to Complainant.

Since Respondent is in default the Panel has not been provided with specific information on Respondent and Respondents activities, apart from those information put forward by the Complainant as stated below.

The disputed domain name gls-bank.eu was registered on 12 july 2006, gls-gemeinshaftsbank was registered on 18 July 2006 and the domain name glstreuhand.eu was registered on 22 August 2006 and the complaint was filed on 19 September 2007. After having approved the Complaint the ADR Center initiated the ADR proceedings on 5 October 2007. On 21 November 2007 a notification of Respondent Default was issued. After having received his declaration of independence and impartiality the ADR Center appointed Knud Wallberg to serve as Panelist on 7 December 2007.

The contested domain names gls-bank.eu and glstreuhand.eu are both used for a standard web-page stating "this domain is for sale" while the domain name gls-gmeinshaftsbank.eu is currently inactive.

A. COMPLAINANT

The Complainant contends that

a) the domain names at issue are identical or confusingly similar to the names in respect of which rights are recognized or established by national and/or Community law.
b) the domain names have been registered by the Respondent without rights or legitimate interest in the names, and that
c) the domain names have been registered in bad faith

a)
In support of its contentions the Complainant claims that each of the domain names incorporates the Complainant´s registered trademark “GLS” as the most prominent and as the only non-descriptive element. The designation “GLS” dominates the overall impressions of the contested domain names due to its position at the beginning of each domain name and the further elements’ descriptive nature. The word element “Gemeinschaftsbank” in the contested domain name “gls-gemeinschaftsbank.eu” is the German word for “community bank”, thus describing the field of business in which the Complainant is active and the exact nature of Complainant’s business. The same applies for the word element “Bank” in the contested domain name “gls-bank.eu”. Finally, the word element “Treuhand” in the contested domain name “glstreuhand.eu” is the German equivalent to “trust” and describes the bearer’s subject of business in the fields of financial consultancy as a charitable trust as well as Complainant’s services in the field of trusteeship.

In addition the contested domain names are identical with the company name rights of the Complainant. Complainant is referred to as “GLS Gemeinschaftsbank” or “GLS Bank”. The last element of its company name “e.G.” merely represents an indication of the Complainant’s legal form as a registered co-operative (eingetragene Genossenschaft). The same applies to GLS Treuhand e.V. which is commonly referred to as “GLS Treuhand”, the final element of its name “e.V.” merely constituting an indication as to the legal form of a registered association (eingetragener Verein).

b)
Respondent does not have any rights or legitimate interest in the contested domain names. To the contrary, the circumstances of the case as well as the information on Respondent and his apparent “business model” which Complainant gained through searches on the Internet unmask Respondent as a cybersquatter routinely registering third parties’ company names or trademarks as domain names under the .eu-system.

Respondent is commonly known under her personal name “Zheng Qingying”. There is no indication whatsoever that Respondent owns trademark rights in any of the names for which national and Community rights are recognized and established for the Complainant nor that she is commonly known under any of the names at issue. To the contrary, judging from the previous fifteen (15) ADR proceedings in which Respondent was the respondent and which Complainant was able to find, Respondent has engaged in a pattern of registering third parties’ trademarks or names as .eu domain names without being the proprietor of any demonstrable rights or legitimate interest in the respective names.

Furthermore, Respondent has not, prior to any notice of the possibility of ADR proceedings being filed against the domain names at issue or prior to such filings, used the domain names in connection with a bona fide offering of goods or services. Nor have there been demonstrable preparations for such use. To the contrary, each of the contested domain names have been parked at the domain broker “sedo” and offered for sale at prices ranging from 350,00 GBP to 380,00 GBP.

c)
In view of the nature of the contested domain names it is most unlikely that the Respondent chose the domain names coincidentally out of whole cloth without reference to the prior rights.

Moreover, according to the non-exhaustive list contained in Article 21 Section 3 of the Regulation (EC) No. 874/2004 bad faith may be demonstrated where circumstanced indicate that the domain name was registered 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 where 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 from reflecting this name in a corresponding domain name, provided that a pattern of such conduct by the Registrant can be demonstrated.

In that relation the Complainant contends that Respondent is engaged in a pattern of conduct by registering domain names corresponding with trademarks of third parties, thereby preventing the holders of such trademarks from reflecting the same in a corresponding domain name. Complainant refers to several administrative proceedings in which Respondent also was the respondent and in which transfer of the respective domain names was ordered.

B. RESPONDENT

Respondent did not file a response in the matter

DISCUSSION AND FINDINGS

According to article 21,1 of the Public Policy Rules (Commisssion Regulation (EC) No 874/2004 and paragraph B 11 (d) of the ADR Rules a registered domain name shall be subject to revocation provided that each of the three following elements are satisfied:

(A) The domain name is identical or confusingly similar to a trademark or service
mark in which the Complainant has rights that are recognised or established by national a
and/or Community law; and
(B) Respondent has no rights or legitimate interests in respect of the domain name; and
(C) The domain name has been registered or is being used in bad faith.

The Respondent is in default and paragraph B 10 (a) of the ADR Rules states that the Panel may consider the failure to comply with the time limits for filing a Response as grounds to accept the claims of the Complainant. Paragraph B 10 (b) of the ADR Rules further states that if a party does not comply with any provision of, or requirement under, the Rules or the Supplemental Rules or any request from the Panel, the Panel shall draw such inferences there from as it considers appropriate.

A. Identical or Confusingly Similar

The contested domain names all contains Complainant’s distinctive and protected trademark GLS in full. Neither the addition of the descriptive terms "bank", "gemeinshaftsbank" or "treuhand" as suffix nor the inclusion of the gTLD denomination “.eu” alters the fact that the domain names are confusingly similar to the Complainant’s trademark. The Panel also notes that the contested domain names are all confusingly similar to Complainants company name rights or company name rights that Complainant is entitled to invoke under these proceedings.

Consequently, the Panel finds that the disputed domain names are confusingly similar to names in which the Complainant has rights.

B. Rights or Legitimate Interests

Complainant alleges that Respondent has no rights or legitimate interests in the domain names. The Respondent has not rebutted this allegation, nor is there material before the Panel demonstrating that such rights or interests may exist.

The Panel therefore finds that the Respondent has no rights or legitimate interests in the disputed domain name.

C. Registered or Used in Bad Faith

The burden of proof that all the requirements of Article 21, 1 of the PPR are fulfilled lies with the Complainant.

Complainant’s trademarks are registered in the European Union and thus also in the home country of the Respondent, the United

Kingdom.

The Respondent has not rebutted the substantiated allegations put forward by the Complainant. The Panel finds that it is unlikely that the contested domain names have been registered without prior knowledge of Complainant and Complainants rights and further finds that the registration of the domain names are obviously made with the purpose of selling them to Complainant or to others. Further, the registration and current use of the domain names are likely to disrupt or otherwise harm the business interests of the Complainant.

It is further evident that the Respondent is engaged in a pattern of such conduct i.e. of registering domain names that contain trade marks or other business identifiers belonging to others that are recognised by national or Community law.

The Panel is therefore satisfied that the domain name has been registered in bad faith.

In conclusion, considering all the facts and evidence, the Panel finds that all the requirements of paragraph 21, 1 of the PPR and of paragraph B 11(d) of the ADR Rules are met.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 of the Rules, the Panel orders that the domain names GLS-BANK.EU, GLS-GEMEINSCHAFTSBANK.EU and GLSTREUHAND.EU be transferred to the Complainant.

PANELISTS

Name	**Knud Wallberg**

DATE OF PANEL DECISION 2008-01-04

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The contested domain names all contain the trademark GLS in which the Complainant holds rights and they are also identical or at least similar to company names in which the Complainant holds rights or has been granted authority to enforce under these proceeding. Complainant filed a complaint alleging that the domain names were confusingly to a trademark or service mark in which the Complainant has rights and identical or similar to Complainant´s company name rights, that Respondent has no rights or legitimate interests in respect of the domain name; and that the domain name has been registered or is being used in bad faith. The Respondent was in default and did thus not rebut the allegations put forward by the Complainant. Since the allegations were substantiated in the Complaint the Panel found that all the requirements of Paragraph 21, 1 of the Public Policy Rules and Paragraph B 11 (b) and (d) of the ADR Rules were met and thus decided that the contested domain names should be transferred to the Complainant.