# Panel Decision for dispute CAC-ADREU-004661

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| Case number | CAC-ADREU-004661 |
| Time of filing | 2007-08-27 11:43:06 |
| Domain names | bayergarden.eu |

## Case administrator

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| Name | Josef Herian |

## Complainant

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| Organization / Name | Bayer AG, Kristina Kersten |

## Respondent

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| 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 is aware of the fact that Eurid has either started legal proceedings against the Respondent, or is considering to do so. The dispute between Eurid and the Respondent concerns the validity of all domain name applications of Respondent with Eurid, and therefore also the domain name in dispute. The Panel is not aware of any decision in such proceedings.

FACTUAL BACKGROUND

Complainant is a company active in the fields of health care, nutrition and high-tech materials. It has its principal seat of business in Germany. Respondent is a natural person. Respondent applied for the domain name in dispute on June 7 2006. The domain name is currently linked to a website with merely the adres of the Company Only One Ltd in Hong Kong and a message that the domain name has been taken. In August 2007 it linked to a website where domain name brokerage services were offered.

A. COMPLAINANT

Complainant contents that it is the owner of German and International trademark registrations for the trademark BAYER and of German trademark registrations for the trademark BAYER GARTEN. It is using the name ‘Bayergarden’ for a series of products in some markets and uses some CcTLD domain names containing the name ‘Bayergarden’. It has applied for the .eu domain name bayergarden.eu in the sunrise period but the application expired.
Complainant contents that the domain name bayergarden.eu is confusingly similar to its registered trademarks BAYER and BAYER GARTEN and its unregistered brand ‘Bayer Garden’.
Complainant states that Respondent has no legitimate interest in the disputed domain name, as it is used to forward visitors to the website of sedo.co.uk, a domain broker. Respondent has not used the domain name in any other way or in connection with the offering of goods under the corresponding name, is not making preparations to do so, does not have an own right in the domain name and does not make any legitimate non commercial or fair use of the domain name.
According to Complainant Respondent must have known of the expiration of its Sunrise application as it applied for the domain name on the date the domain name was released for public registration.
According to Complainant Respondent is known for applying for domain names containing trademarks of other companies. Respondent was involved in 15 Eurid ADR proceedings. In all of these cases the domain names were transferred.
Complainant concludes that the disputed domain name should be transferred to Complainant on the basis of article 21 (1) of Regulation 874/2004 and article 11 of the ADR Rules.

B. RESPONDENT

Respondent did not file a Response to the Complaint.

DISCUSSION AND FINDINGS

As the Panel is aware of the fact that there are legal proceedings (going to be) initiated by Eurid against Respondent concerning the domain name in dispute, amongst many other domain names, the Panel will first assess the implications thereof for this ADR proceeding. On the basis of article A.4.c and 5 of the ADR Rules the Panel will have to terminate the ADR only if a final decision is given by a court in a dispute that is the subject of the Complaint. In this case the Panel is not aware of a final decision and it is unclear what the exact dispute between Eurid and Respondent is. Complainant is not a party in that court case so the case concerns a different dispute. For all of these circumstances the Panel sees no reason for termination of this ADR proceeding.
The Complaint was notified to Respondent on August 30, 2007. Respondent did not file a Response within 30 working days after the notification date, nor did he file a non-standard communication afterwards. Therefore the Panel may proceed to a decision on the Complaint and the facts stated therein, and may consider this failure as grounds to accept the claims of Complainant (article 10 (a) of the ADR Rules).
Complainant based its claim on article 21(1) of Regulation 874/2004 (hereafter: the Regulation). The Panel will therefore assess whether the requirements of this article are fulfilled.
Does Complainant have a right recognized or established by national or Community law? Complainant has provided evidence of trademark registrations in (i.a.) Germany for the trademarks BAYER and BAYER GARTEN. These trademarks were registered before Respondent filed its application for the disputed domain name and were still registered in August 2007. These registered trademarks are rights recognized or established under national law in the sense of article 10 of the Regulation. This does not account for the name 'Bayer Garden' that Complainant calls a 'family brand'. Complainant has not made clear which kind of recognized or established right it claims for this 'family brand' so the Panel does not recognize a right for the name 'Bayer Garden'.
The next question is, whether the domain name bayergarden.eu is identical or confusingly similar to either the trademark BAYER or the trademark BAYER GARTEN. The top level domain <eu> should be left out of the comparison, as this part is technically required. The Panel is of the opinion that the disputed domain name is confusingly similar with the trademark BAYER GARTEN. The words are almost identical with only one different letter. In addition, the second part of the disputed domain name: 'garden' is the English translation of the German word 'garten', so that the meaning of both words is also identical.
Therefore the Panel comes to the question whether either of the requirements described in article 21.1 under (a) or (b) are fulfilled. Respondent has not filed a response defending and explaining its rights or legitimate interests in the disputed name. The Panel has checked what use is currently made of the domain name. The domain name currently leads to a system message stating that the domain name has been taken. The message also contains the address of a company in Hong Kong, Only One Ltd. This message and the earlier page of sedo.co.uk do not give any indication of a right of Respondent or a legitimate interest. There is no indication that Respondent has used the domain name in connection with the offering of goods or services or has made demonstrable preparations to do so. There is no indication that Respondent is commonly known by the domain name or is making legitimate non-commercial or fair use of the domain name. Therefore the Panel comes to the decision that the requirements of article 21.1(a) of the Regulation are met.
In addition, the requirements of article 21.1 (b) are also met. Complainant has supplied sufficient evidence of circumstances showing that Respondent has registered the domain name in order to prevent Complainant to reflect a name for which it has a prior right in a corresponding domain name. It is clear from the facts of the earlier ADR cases against Respondent that Respondent has applied for at least 20 registrations in bad faith and/or without rights or legitimate interest. The fact that Respondent clearly shows a pattern of such conduct and was implicitly offering the domain name for sale on the site of domain name broker Sedo are relevant circumstances for this conclusion. Also the fact that this rather long domain name is not part of the common language in English or German is relevant for this conclusion: for this reason the Panel considers it highly unlikely that the similarity between the domain name in dispute and the brand of Complainant is a coincidence.
Given all these considerations the Panel finds that the domain name in dispute should be revoked on the basis of article 21 and 22.11 of the Regulation. The Panel will therefore decide whether Complainant is eligible for transfer of the disputed domain name. As Complainant has its formal seat of business in the Community, it satisfies the eligibility criteria of article 4.2(b) of Regulation 733/2002. Therefore the domain name can be transferred to 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 BAYERGARDEN be transferred to the Complainant.

## PANELISTS

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| Name | **Freyke Bus** |

DATE OF PANEL DECISION 2007-11-15

## Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant is the German company Bayer, owner of the registered trademarks BAYER and BAYER GARTEN. The Complaint stated that

the domain name bayergarden.eu was registered without right and legitimate interest and in bad faith. The domain name was used to link visitors to a site of a domain broker. Respondent did not file a response. The Panel decided that the domain name Bayer Garden was confusingly similar to the trademark BAYER GARTEN. It also decided that there was no evidence of any right or legitimate interest of Respondent, in the light of the use of the domain name and the lack of response by Respondent. In addition, the domain name was registered in bad faith. For this last finding it was relevant that Respondent has been involved in over 20 ADR proceedings. In 20 of these the domain name was revoked. It was also relevant that the word ‘bayer garden’ are not common language in English and German, which made it highly unlikely that the choice of this domain name was a coincidence. The domainname was transferred to Complainant.