Panel Decision for dispute CAC-ADREU-004664

Case number	CAC-ADREU-004664
Time of filing	2007-09-11 11:00:59
Domain names	fobazo.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	Fobazo.com A/S

Respondent

Organization / Name	Dieter Brinkmann

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 not aware of any other legal procedings relating to the disputed domain name.

FACTUAL BACKGROUND

The Complainant, Fobazo.com ApS, has filed a complaint against the holder of the disputed domain name Dieter Brinkmann. (hereinafter the Respondent). The Complaint was submitted to the Czech Arbitration Court on 4 September, 2007, and amended 20 September same year.

The formal date of the Commencement of the ADR-proceeding is September 24, 2007.

The Respondent applied for registration of the domain name FOBAZO.EU on the 11 May 2006. The Respondent has not submitted its Response to the Complaint within the deadline of 30 working days from notification of the commencement of the ADR-proceeding, but has submitted a nonstandard communication after this date.

A. COMPLAINANT

Complainant states to be the owner of the Danish trademark "Fobazo.com".

Respondent has registered the domain name FOBAZO.EU without having rights or legitimate interests in the name and the domain name was registered and is being used in bad faith.

Thus, the domain name should be transferred to the Complainant.

B. RESPONDENT

Respondent does not make any specific contentions nor disputes the Complainants infromation about the factual circumstances but includes a certificate of incorporation of FOBAZO Inc., dated November 23, 2007, and refers to WIPO Administrative Panel Decision - Case No. D2007-1277 - concerning the domain name FOBAZO.NET.

DISCUSSION AND FINDINGS

According to the provisions in Article 21(1) of the Regulation a domain name shall be subject to revocation when it 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.”

Initially, the Panel must examine whether the Complainant holds rights to the name “FOBAZO”. The Complainant bases its right in this respect on the use of the trademark - i.e. a so-called “common law“ trademark (a trademark-by-use), which is protected according to Danish law. In this respect, the Complainant has substantiated that the trademark - and name of it's soccer portal - "FOBAZO.COM", the use of which portal and domain name was initiated in April 2006, was revealed on a press conference on 10 May 2006. Further Complainant has produced a number of Internet newsservice articles dated 10 and 11 May 2006 in which the Complainants business and the name "FOBAZO" is mentioned. These articles are in various languages and accessible worldwide. From more of these articles it transpires that the Complainant has made an agreement with a famous soccer player for the purpose of its business.

Given these factual circumstances - which are not countered by the Respondent - this Panel finds that the Complainant has established a trademark right in the name "FOBAZO.COM" on 10 May 2006 in accordance with Danish law. In the decision submitted by the Respondent - WIPO Administrative Panel Decision - Case No. D2007-1277 - concerning the domain name FOBAZO.NET involving the Complainant - the panelist did find that such a right was established, however, as it transpires from the reasoning, the panelists finding is inter alia based on the fact that the Complainant in that case only produced one (Danish language) newspaper article as evidence.

A “common law” trademark is recognised as a right under Article 10(1) of the Regulation. Therefore, the Panel finds that the Complainant has established sufficient evidence of a prior right under Article 10(1) of the Regulation. This right extends to the contested domain name, which is not identical but confusingly similar to the Complainants common law trademark.

According to the Complainant the Respondent has no rights or legitimate interest in the domain name, cf. Article 21(1)(a) of the Regulation, since the Respondent has not used the name in connection with the offering of goods and services nor has made demonstrable preparations to do so. Furthermore, the Respondent is not commonly known by the name or is making fair use of it. The Respondent has not made any comments to this in its nonstandard communication (response) nor provided any information that could support that the Respondent has any legitimate interests or rights in the domain name, cf. e.g. Article 21(1)(a) of the Regulation, as was done by the respondent in the above WIPO-decision.

The Panel therefore finds that the Complainant has demonstrated prima facie that the Respondent has registered the domain name without rights or legitimate interests in the name. The Panel refers to the reasoning in case no. 03942 (COPENHAGENZOO.EU).

The Complainant has further argued that the Respondent has registered the domain name in bad faith, cf. Article 21(1)(b) of the Regulation, however, the Complainant has not sufficiantly substantiated that the behaviour or intent required for invoking this provision have been present on part of 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 FOBAZO be transferred to the Complainant

PANELISTS

Name	Kim G. Hansen

DATE OF PANEL DECISION 2008-01-08

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant, FOBAZO.COM A/S, requested that the domain name FOBAZO.EU was transferred to the Complainant on the grounds that the Complainant had a prior right (trademark) pursuant to Article 10(1) of the Regulation and that the Respondent had no rights or legitimate interest in the domain name and had acted in bad faith, cf. Article 21(1) of EC Regulation 874/2004.

The Panel found that the Complainant had demonstrated a prior right (trademark) pursuant to Article 10(1) of the Regulation.

The Respondent had not disputed the factual information that the Complainant had provided in the Complaint.

The Panel found that the Complainant had demonstrated prima facie that the Respondent had registered the domain name without rights or legitimate interests in the name.

Therefore, the Panel ordered that the domain name FOBAZO.EU was transferred to the Complainant.