Panel Decision for dispute CAC-ADREU-004725

Case number	CAC-ADREU-004725
Time of filing	2007-10-24 10:09:54
Domain names	thesting.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Mills Brothers B.V.

Respondent

Organization / Name	OEEO Networks Limited, Michael Kopinski

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

There are no other legal proceedings of which the Panel is aware that are pending or decided and that relate to the disputed domain name.

FACTUAL BACKGROUND

1. The Complainant is Mills Brothers B.V., a legal entity set up under the Dutch law, owner of the Community Trademark n° 000410399, “The Sting”, registered on 08.11.96 and renewed on 03.12.06 until 08.11.16.
2. The Respondent has not responded to the Complaint.

A. COMPLAINANT

The Complainant contends as follows:

1. Complainant is specialised in the designing, producing and selling of clothing, distinguished by the word sign “The Sting”.
2. Complainant is owner of numerous trademark registrations for classes n. 25, 18 and 3 of Nice Classification.
3. The disputed domain name is registered on 7 June 2006 by Respondent.
4. Respondent runs a website, via the domain name oeeonetworks.com, in which it shows links to different websites.
5. Complainant has executed various trademark researches for owner and no trademark registrations are found in the name of Respondent.
6. In 2006 Respondent has already been involved in an ADR proceeding (Case “Ethercat.eu" n. 03565).
7. Complainant has requested, by e-mail, Respondent to transfer the disputed domain name to Complainant. Respondent is remained in silent.

B. RESPONDENT

The Respondent has not responded to the Complaint.

DISCUSSION AND FINDINGS

1. The Respondent has not responded to the Complaint. Article 22.10 of Commission Regulation (EC) No 874/2004 and Paragraph B10(a) of the ADR Rules are clear that, in a situation where the Respondent does not respond to the Complaint, this may (and not must) be considered by the Panel as grounds to accept the claims of the Complainant.
2. This does not mean a Complaint should be upheld whenever a Respondent fails to respond. In order to succeed on its Complaint, the Complainant is still required to demonstrate that the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules are satisfied.

3. The Complainant must, in accordance with Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules, demonstrate that the THESTING domain name is identical or confusingly similar to a name in respect of which a right (of the Complainant) is recognised or established by national and/or Community law and either: (A) the Respondent has registered the domain name without rights or legitimate interests in the name; or (B) the domain name has been registered or is being used in bad faith.
4. The Complainant has provided evidence that its company is the registered proprietor of trade marks which are constituted by the name “The Sting”.
5. The Complainant has not provided any evidence that “the Respondent has registered the domain name without rights or legitimate interests in the name”. However, the Complainant has provided evidence that it wrote to the Respondent and claims not to have received a response to that letter. It also asserts that the Respondent does not have any rights or legitimate interests in the name. In the absence of a response from the Respondent, either to the Complainant’s earlier e-mail or the Complaint, the Panel finds that the Respondent accepts the Complainant’s assertion that it does not have rights or legitimate interests in the name “The Sting”.
6. The above finding that the Respondent does not have rights or legitimate interests in the domain name is enough to satisfy the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules. However, for completeness, it is necessary to consider whether the domain name was registered or is being used in bad faith.
7. The Complainant has also not provided any evidence that “the domain name has been registered or is being used in bad faith”. However, the domain name is not in use and the Respondent has not responded to the letter written by the Complainant. It would therefore have been impossible (or at least exceedingly difficult) for the Complainant to obtain any evidence that the Respondent registered or intends to use the domain name in bad faith. The Complainant has asserted that the Respondent registered the domain name in bad faith and, in the absence of a response from the Respondent, the Panel again finds that the Respondent has accepted the Complainant’s assertion.
8. Given the Complainant’s rights to the use of the name “The Sting” in the European Union, there is only a limited number of ways in which the Respondent could use the domain name that would not be in bad faith. In this respect, Article 21.3(d) of Commission Regulation (EC) No 874/2004 and Paragraph B11(f)(4) of the ADR Rules are relevant, which include, as an example of bad faith, the use of a domain name to attract Internet users for commercial gain by creating a likelihood of confusion with a name on which a right is established. If the domain name was used for any commercial purpose (including the offering of the domain name for sale, or for sponsored links or affiliate sales) this would therefore be evidence of bad faith. Like in the present case, that unanimous doctrine and jurisprudence on the ADR domain names known as “Passing Off”. Using trademarks or URL as a search engine adword (that usually set out separately under a heading such as "sponsored links") is a variation on the theme of so called “Passing Off”.
9. The Complainant has satisfied the requirements of Article 21.1 of Commission Regulation (EC) No 874/2004 and Paragraph B11(d)(1) of the ADR Rules. It is therefore entitled to obtain the domain name.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that the domain name THESTING be transferred to the Complainant.

PANELISTS

Name	**Avvocato Pierfrancesco Carmine Fasano**

DATE OF PANEL DECISION 2008-03-03

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant brought ADR Proceeding against the Respondent on 24 March 2007, claiming that the domain name THESTING.eu should be transferred. The Complaint asserts that the Respondent does not have any rights or legitimate interests in the name. The Complaint also asserts that the Respondent registered the domain name in bad faith. No evidence was provided by the Complainant to support either assertion. The Respondent failed to file a Response. As a result, and in accordance with Article 22.10 of Commission Regulation (EC) No 874/2004 and Paragraph B10(a) of the ADR Rules, the Panel was entitled to consider this grounds to accept the claims of the complainant. However, the Panel still required the Complainant to demonstrate that the requirements of Commission Regulation (EC) No 874/2004 and the ADR Rules were satisfied. The Panel held: (1) The Complainant is the owner of the Community registered trade mark THE STING. The domain name is identical to the Complainant’s registered right. (2) The Respondent appears not to have rights or legitimate interests in the name THE STING. The Complainant asserted this in its Complaint, which was provided as evidence by the Complainant. The Respondent has not responded to the Complaint nor to the e-mail sent by the Complainant. (3) The Respondent also appears to have registered the domain name in bad faith. Again, this was asserted by the Complainant in the Complaint. (4) Using trademarks or URL or domain names as a search engine adword (that is usually set out separately under a heading such as "sponsored links") is an evidence and example of use of the domain name in bad faith: a variation of so called “Passing Off”. Accordingly, the Panel ordered the transfer of the domain name to the Complainant.