Panel Decision for dispute CAC-ADREU-004757

Case number	CAC-ADREU-004757
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Domain names	rotary.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Rotary International, -

Respondent

Organization / Name	Straka Bohumil

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 other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

The Complainant is one of the local branches, seated in Cobenhagen, Denmark, of Rotary international.

The Complainant`s international non-profit organisation, Rotary International, has several trade mark registrations on the trade mark Rotary throughout Europe dating back to 1951.

The domain name rotary.eu was registered in the name of the Respondent.

A. COMPLAINANT

The Complainant argues that has several trade mark registrations on the trade mark Rotary throughout Europe. As evidence, he attached written evidence showing registrations dating back to 1951.

Consequently, there is without any doubt identity between the Complainant's international organisations prior trade mark rights and the registered domain name.

Furthermore, the trade mark Rotary owned by the Complainant's international organisation is a without a doubt a renowned and well-known trade mark which is associated with a non-profit organisation not only in Europe but throughout the world.

The Complainant refers to www.rotary.org or www.rotary.dk for more information.

The registrant does not appear to have any connection whatsoever with the name Rotary.

Moreover, the Complainant's international organisation was successful in stopping a previous registrant, Eric Auer, from registering the same domain name, but unsuccessful in pursuing the Arbitration Court to accept a transferral to one of the local branches such as for example the Complainant.

Further, the Complainant was not successful in registering the domain name on behalf of its international organisation as it became available. It was registered by the person behind the address ib0@centrum.cz. The Registrar is in Austria.

Consequently, the Complainant's has filed this complaint with the Arbitration Court requesting the transferral of the domain name

rotary.eu.

The homepage www.centrum.cz appears to be a marketing place for different companies and apparently allows third persons to register their own domain names anonymous such as the address of the Registrant ib0@centrum.cz.

In accordance with Article 16 in the Commissions Regulations No 874/2004 the WHOIS database shall contain information about the holder of a domain name that is relevant and not excessive in relation to the purpose of the database. Further, the information that is to be made available to the public shall be subject to the unambiguous consent of the domain name holder and deliberate submission of inaccurate information shall constitute grounds for considering the domain name registration to have been in breach of the terms of registration. The only available information about the holder of the domain name rotary.eu is the e-mail address ib0@centrumcz. Consequently, it is not possibly to find out more about the holder, including the motives behind registering a previously disputed domain name. At the same time it is not possibly to ascertain whether the holder has previous experience with registering other company's trademarks as domain names. For the transparency of the system and in order not to be able to conceal ones intentions and identity, it must be in conflict with the rules in Article 16 in the Commissions Regulations No 874/2004 only to allow the publication of an e-mail address as the sole information on a holder of a previously disputed domain name.

The Complainant has tried to contact the holder several times through the e-mail address in order to settle this matter amicable, but have so far received no response.

As proof that the Complainant is part of Rotary International and have legitimate interest in the domain name rotary.eu, the Complainant refers to his international organisations homepage at http://www.rotary.org/en/AboutUs/SiteTools/ClubLocator/Pages/clublocatoradvanced.aspx?k=ClubDistrict%3A1470&txtKeywords=1470&start1=31 where the Complainant is listed as number nine.

In Complainant`s opinion it is clear that the domain name rotary.eu will be associated with the business conducted by the Complainant's international organisation and its other local branches and as the Arbitration Court recently also decided in favour of the Complainant's international organisation in a similar case, case No 03465, it should have been clear to the Registrant the he - or she - has no rights or legitimate interest in the domain name Rotary.eu.

The contested domain name is currently not being used. However, a message appears on the address www.rotary.eu informing that the homepage is under development.

Consequently, the registration of the domain name rotary.eu by a third party with no obviously natural relations to the name or natural explanation, is clearly preventing the Complainant through its international organisation from using the domain in Europe and therefore the domain name must have been registered in bad faith.

The Complainant therefore requests that the ADR transfer the right to the domain name rotary.eu to the Complainant on behalf of its international organisation.

B. RESPONDENT

The Respondent did not submit any response within the given deadline.

DISCUSSION AND FINDINGS

According to art. 22 (10) of the Commission Regulation (EC) No 874/2004 of 28 April 2004 laying down public policy rules concerning the implementation and functions of the .eu Top Level Domain and the principles governing registration "Failure of any of the parties involved in an ADR procedure to respond within the given deadlines or appear to a panel hearing may be considered as grounds to accept the claims of counterparty".

In this case the respondent did not submit any response within the given deadline.

First, the Panel dealt with the question arising from the default of the Respondent to reply and concluded that this default can be taken into consideration in assessing case.

The complainant has prima facie reasonable demonstrated his claims without any doubt. The disputed domain name is identical to the name “ROTARY” in which the Complainant has established relevant registered trade mark rights. See f.i. the Community Trade Marks "ROTARY" (No. 003201456, No. 000897843 or 001973049).

The Complainant has made out a prima facie case to the effect that the Respondent lacks rights or legitimate interests in the disputed domain name. There is no indication that the Respondent registered the domain name for a genuine purpose based on its generic meaning. See f.i. the previous "ROTARY" case no 03465.

The Respondent has failed to demonstrate any right or legitimate interest in the disputed domain name in accordance with Article 21(1)a of the Commission Regulation (EC) No 874/2004.

Consequently the Panel has taken into consideration the respondent`s failure to respond within the given deadline as grounds to accept claims of the Complainant.

The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and moreover has been registered and is being used in bad faith.

Secondly, The Complainant has satisfied his general eligibility criteria set out in Article 4(2)b(ii) of the Regulation (EC) no 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain and the disputed domain name shall be transferred to the Complainant.

One of the Rotary international local branches (Copenhagen Rotary Club), such as the Complainant, is established in Denmark. Consequently the Complainant is organisation established within the European Community.

DECISION

For all the foregoing reasons, in accordance with Paragraphs B12 (b) and (c) of the Rules, the Panel orders that

the domain name ROTARY be revoked and be transferred to the Complainant.

This decision shall by implemented within 15 (fifteen) days after the notification of the decision to the Parties.

PANELISTS

Name	Ivo Telec

DATE OF PANEL DECISION 2008-04-24

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The complainant has prima facie reasonable demonstrated his claims without any doubt. The disputed domain name is identical to the name “ROTARY” in which the Complainant has established relevant registered trade mark rights. See f.i. the Community Trade Marks "ROTARY" (No. 003201456, No. 000897843 or 001973049).

Cosequently the Panel has taken into consideration the respondent`s failure to respond within the given deadline as grounds to accept claims of the Complainant.

The disputed domain name has been registered by the Respondent without rights or legitimate interest in the name and moreover has been registered and is being used in bad faith.

One of the Rotary international local branches (Copenhagen Rotary Club), such as the Complainant, is established in Denmark. Consequently the Complainant is organisation established within the European Community.

The Complainant has satisfied his general eligibility criteria set out in Article 4(2)b of the Regulation (EC) no 733/2002 of the European Parliament and of the Council of 22 April 2002 on the implementation of the .eu Top Level Domain and the disputed domain name shall be transferred to the Complainant.