Panel Decision for dispute CAC-ADREU-004819

Case number	CAC-ADREU-004819
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Domain names	ambiencr.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	SANOFI-AVENTIS, Mrs. Bénédicte SIRVEN

Respondent

Organization / Name	UK Domain Developers, LTD - Web Master, Web Master

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 pending or decided legal proceedings which relate to the disputed domain name.

FACTUAL BACKGROUND

All capitalized terms not defined herein are used by reference to the various regulations and rules identified in this decision.

This complaint arises out of the interpretation and application of Commission Regulation (EC) No 874/2004 of 28 April 2004 (“Regulation”), European Parliament and Council Regulation (EC) No 733/2002 of April 22, 2002 (“EU Regulation”) and the .eu Domain Name ADR Rules and the Terms and Conditions (the “Rules” and “Conditions”).

The current Registrant of the domain name ambiencr.eu, (hereafter “the Domain Name”), registered on April 7, 2006 is UK Domain Developers, LTD, (“the Respondent”).
On November 23, 2007 SANOFI-AVENTIS, (“the Complainant”), submitted a complaint, (the “Complaint”), to the ADR Center requesting the transfer to it of the Domain Name.
On December 5, 2007 the ADR Center confirmed the receipt of the Complaint and requested verification information from Eurid about the Respondent. Eurid answered in a non-standard communication dated December 5, 2007 providing the requested information and confirming that the Domain Name would remain locked during the pending ADR Proceeding.
On December 12, 2007 the Complainant, in a non-standard communication, provided the appropriate identification of the Respondent.
On December 13, 2007, the ADR verified the Complaint.
The ADR Center then notified the Respondent that an ADR Proceeding had been commenced against it pursuant to Regulations (EC) No. 733/2002 and No. 874/2004.
Respondent failed to answer the notification of proceedings within the prescribed delay (See Article B 3(a) of the ADR Rules) and on February 14, 2008, the ADR Center notified the Respondent’s default.
The ADR Center notified the appointment of the ADR Panel and the projected decision date on February 25, 2008.

A. COMPLAINANT

The Complaint is below.
Introduction to the Complainant
During summer of 2004, SANOFI-SYNTHELABO, a French pharmaceutical company, announced the success of its offer for AVENTIS shares.
The name of the parent company adopted in August 20, 2004, is Sanofi-Aventis thus preserving the brand heritage of each of the constituent companies.
Completion of the transaction created the n° 1 pharmaceutical group in Europe, n° 3 in the world, with consolidated net sales of € 27,311

billion in 2005, in the core business and a strong direct presence on all major world markets, and € 4 billion Research and Development expenditure.
The Complainant Sanofi-Aventis is now a multinational company present in more than 100 countries across 5 continents.
The new group benefits from a large portfolio of high-growth drugs, with 8 blockbusters pharmaceuticals in 2005: Lovenox, Plavix, Taxotere, Eloxatin, Ambien, Allegra, Lantus and Tritace. It enjoys firmly established positions in 7 key fast-growth therapeutic fields: cardiovascular, thrombosis, metabolism, oncology, central nervous system, internal medicine and human vaccines.
Employing approximately 97181 people worldwide, Sanofi-Aventis has a sales force of 35 030 persons, as well as more than 17 600 research staff with 127 projects under development, 56 of which are at advanced stages and 71 in pre-clinical development.
The stock market capitalization of Sanofi-Aventis is 103 697 millions of Euros.
An extract of the Complainant's 2006 Annual Report is attached, see Annex [1].
The Complainant's presence in the United Kingdom
The Complainant's products are marketed in the United Kingdom through the Sanofi-Aventis affiliates. Sanofi-Aventis has been in the United Kingdom for 30 years.
Sanofi-Aventis, with more than 2.500 employees, is a major player on the pharmaceutical market in the United Kingdom, where the Respondent is located.
Sanofi-Aventis provides innovative medicines and is involved in major therapeutic areas: cardiovascular, thrombosis, oncology, metabolic diseases, central nervous system and internal medicine.
The main contributors to growth in 2004 were:
o Plavix®, still the Group's best-selling product in the United States with 34% sales growth;
o Ambien®, up by 21% and keeping its number one position on the hypnotics market;
o Lovenox®, which again outperformed the market with 20% growth sales.
A website specifically dedicated to the United Kingdom is accessible at the following address: www.sanofi-aventis.co.uk (see Annex [2]).
The AMBIEN product

AMBIEN is a product manufactured by SANOFI-AVENTIS and is indicated for the short-term treatment of insomnia.
This product was launched in the USA in 1993. In 1994, "AMBIEN was considered as the market leader with 27% of total prescriptions"(see Annex [3]).
According to a study carried out by IMS health in December 2003, it appears that AMBIEN is the leading prescription sleep aid in the US.
As a matter of fact, the product demonstrated safely and effectively that it treated insomnia intermittently with no evidence of tolerance or dose escalation.
In May 2004, a study was presented at the American Psychiatric Association Annual Meeting which evaluated up to 5 nights of dosing per week, as needed, and emphasized that the improvements in sleep provided by AMBIEN did not diminish over time and that symptoms did not worsen on the days the product was not used (see Annex [4]).
Since 20% to 30% of the population suffers from insomnia and AMBIEN is the leading prescription sleep aid, there is no doubt that AMBIEN is very well-known.
The Complainant's Trademark Registrations
The Complainant owns a large number of AMBIEN trademarks in more than 50 countries including the United Kingdom. A list of the Complainant's worldwide trademark applications or registrations for the AMBIEN trademark is attached at Annex [5] and copies of some of the Complainant's worldwide registration certificates and a copy of the CTM registration for the trademark AMBIEN are attached at Annex [6]. Given the large number of the Complainant's registrations for the AMBIEN trademark worldwide, it is not practicable to annex copies of all the global trademark filing or registrations.
The Complainant's Domain Name Registrations
The Complainant and its affiliates, which registered numerous domain names worldwide containing the AMBIEN trademark, for example www.ambien.fr; www.ambiencr.com; www.ambien.us; www.ambien.co.uk; www.ambien.net; www.ambien.biz. Copies of the WHOIS search results for a selection of those domain names are attached in Annex [7]. Given the large number of domain names registered by the Complainant, it is not practicable to annex details of all these domain names.
The Complainant AMBIEN WIPO decisions
Considering the huge number of domain names registrations infringing the Complainant prior rights since all of them include the trademark AMBIEN, the Complainant had to file many complaints before the WIPO so as to obtain the transfer of the contentious domain names.
To date, almost all the decisions rendered by WIPO in respect with the trademark AMBIEN, have ordered the transfer of the disputed domain names to the Complainant (see Annex [8]).
In particular, in WIPO Case No D2007-0652, Sanofi-Aventis v. Bobik Marley, Levitra Online Shop Inc, the Administrative Panel ordered that the domain name "ambien-s.biz" be transferred to the Complainant, in accordance with Paragraphs 4(i) of the Policy and 15 of the Rules.
Idem in WIPO Case No D2007-1005, Sanofi-Aventis v. Domain Specialists, the Administrative Panel ordered that the domain name "wwambiencr.com" be transferred to the Complainant.
The Complainant ADR.eu decision

The Complainant has also had to bring an action against registration of a domain names with the gTLD ".eu", which were infringing its prior intellectual property rights. As of today, the only decision rendered by ADR Center with respect to the Complainant's trademarks ordered the transfer of the disputed domain names to the Complainant (See Annex [14]).
Indeed, in ADR.eu case n° 04132, Sanofi-Aventis v. Mr De Jong, the Panel ordered that the domain names "acompliaoriginal.eu", "acompliacapsules.eu" and "acompliapills.eu" be transferred to the complainant, in accordance with § B12 of the .eu Dispute Resolution Rules.
In that case, it shall be demonstrated that the Complainant has a valid ground, since it satisfies the criteria set up within article 21 of the Public Policy Rules (EC Regulation 874/2004) which deals with speculative and abusive registration, and provides that:
"a registered domain name shall be subject to revocation, using an appropriate extra-judicial or judicial procedure, where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in article 10(1) 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."
1. The domain name "ambiencr.eu" is confusingly similar to the AMBIEN trademark in which the Complainant has rights for the following reasons:
The Complainant clearly has rights in the mark AMBIEN based on its long and extensive use and ownership of numerous trademark registrations worldwide.
The Respondent's registration consists of the Complainant's trademark with the addition of the letters "cr" and the gTLD ".eu".
The addition of the letters "cr" which follows the mark AMBIEN is of secondary importance and does not change the overall impression of the domain name as being confusingly similar to the Complainant's AMBIEN trademark. This adjunction "cr" means "controlled release" and it describes the specificity of the medicine. Incidentally, the trademark "Ambien CR", registered by the Complainant on August 7, 2007, expressly mentions a disclaimer to the exclusive right to use CR apart from the trademark as shown, which shows that the letters "cr" are indeed generic, and that "ambien" is the distinctive word.
This adjunction is not sufficient to suppress the likelihood of confusion which stems from the use of the word "ambien" which is the main and distinctive word.
The domain name "ambiencr.eu" wholly incorporates the Complainant's registered trademark which is sufficient to establish confusing similarity for the purpose of the Policy despite the addition of the letters "cr" to such mark. Many panels have decided in similar circumstances that the domain name is confusingly similar to the trademark (see in Sanofi-Aventis v. Bobik Marley, Levitra Online Shop Inc, WIPO Case No D2007-0652, hyphen and letter "s" were added to mark "ambient" in "ambien-s.biz"; Sanofi-Aventis v. Domain Specialists, WIPO Case No D2007-1005, letters "ww" and "cr" were added to mark "ambien" in "wwambiencr.com" and in Burberry Limited v. Conco, WIPO Case No. D2006-0095 word "dc" was added to mark Burberry in <dcburberry.com>). In such cases the Complainants were successful in getting the transfer of the domain names.
Therefore, and after analyzing these different WIPO cases, there is no doubt that the reproduction of the trademark AMBIEN, as the sole distinctive element of the domain name concerned, generates confusion. Indeed, persons accessing the domain name would be bound to think that the domain name has a connection with the Complainant.
Furthermore, the addition of the gTLD ".eu", which is required for registration of the domain name, has no distinguishing capacity in the context of domain name and do not alter the value of the trademark represented in the domain name.
Consequently, because of this identity, there is a high risk of confusion, since a consumer may think that the domain name directly refers to the Complainant's products.
In conclusion, the domain name "ambiencr.eu" generates confusion with the Complainant's trademark "AMBIEN".
2. The Respondent should be considered as having no right or legitimate interest in respect of the domain name "ambiencr.eu" that is the subject of the Complaint, for the following reasons:
The Complainant has prior rights in the trademark AMBIEN, which precede the Respondent's registration of the domain name.
Moreover, the Complainant's trademark is present in over 50 countries including the United Kingdom, where the Respondent is located, and is well-known throughout the world.
At this time, the contentious domain name leads to a web site which is a search engine, displaying links towards any kind of website (see Annex [9]). By entering the key word "AMBIEN" in the search engine, the page of results generated provides for many links which lead towards non official websites selling or offering for sale products which are in competition with AMBIEN products (see Annex [10]).
Since the contentious domain name contains the letters "cr" for "controlled release", there is no doubt that the Respondent is aware that AMBIEN corresponds to a medical product and therefore to a trademark. Indeed, the Respondent would not have registered the disputed domain name if it had not known that AMBIEN was a leading sleep-aid prescription.
Furthermore, the Respondent's site did nothing to disclaim any relationship with the trade mark owner. It did nothing to dispel any possible suggestion that it might be the trade mark owner, or that the website might be the, or an, official site of the Complainant.
Indeed, such element is usually taken into account by Panelist in WIPO cases when assessing whether there is a legitimate interest in the domain names or not (see WIPO case n° D2005-0769, Sanofi-Aventis v. ClickStream Marketing LLC).
Indeed, the notion of "bona fide" has notably been specified by the WIPO decision Oki Data Americas, Inc. v. ASD, Inc., WIPO Case No. D2001-0903, where it was held that, to be bona fide within paragraph 4(c)(i), the offering must meet several minimum requirements,

being that:
- the Respondent must actually be offering the goods or services at issue;
- the Respondent must use the site to sell only the trademarked goods; otherwise, it could be using the trademark to bait Internet users and then switch them to other goods;
- the site must accurately disclose the registrant's relationship with the trademark owner; it may not, for example, falsely suggest that it is the trademark owner, or that the website is the official site; and
- the Respondent must not try to corner the market in all domain names, thus depriving the trademark owner of reflecting its own mark in a domain name.
There is therefore no doubt that the Respondent does not use the domain name in connection with the bona fide offering of goods or services.
Furthermore, there is no license, consent or other right by which the Respondent would have been entitled to register or use the domain name incorporating the Complainant's trademark AMBIEN.
As a result, it seems that the Respondent, who has no right and legitimate interest in respect of the domain name "ambiencr.eu" has registered this domain name with the intention to divert consumers and to prevent the Complainant from reflecting the mark in corresponding domain name.
3. The domain name should be considered as having been registered and used in bad faith.
The obvious bad faith of the Respondent results from the following elements:
the Respondent has no prior right and no authorization given by the Complainant concerning the AMBIEN trademarks;
the Respondent's awareness that AMBIEN is a leading prescription sleep aid;
the addition of letters to the trademark AMBIEN misleading Internet users since it makes them believe it is an official web site of the Complainant;
The Respondent has no prior right and no authorization given by the Complainant concerning the AMBIEN trademark.
As it is demonstrated above, the Respondent has no prior right in respect of the sign AMBIEN, and no authorization to use this sign in any form and knows this sign perfectly well. Thus, the registration of the disputed domain name has not been made with bona fide intention.
The Respondent's awareness that AMBIEN is a leading prescription sleep-aid.
It is clear that the Respondent has registered the disputed domain name with the knowledge that AMBIEN was a medical product.
In the present case, there is no doubt that the Respondent, knowing the reputation and goodwill of the AMBIEN product, has registered the disputed domain name in order to prevent the Complainant from reflecting the mark in a corresponding domain name. It is an opportunistic act, which seeks to disrupt the Complainant's business.
Furthermore, the Respondent proposes on the contentious website links to competitive products, such as www.insomnia-help.com, which offers for sale the product Great Night Sleep ™ ; www.mellodyn.com, which offers for sale the product Mellodyn ™ and www.wholesalesupplementstore.com which offers for sale the product Tranquilnite ™ , all these products being presented as sleep aid prescriptions (See Annex [10]).
It is also important to state that the mere holding of a domain name that is identical or confusingly similar to a trademark belonging to a third party, in itself, can be considered as disrupting the business of the rightful owner.
The addition of letters to the trademark AMBIEN misleads internet users since it makes them believe that it is an official web site of SANOFI-AVENTIS.
Firstly, any Internet user who will try to connect to the above mentioned web site will believe that it is an official web site of the Complainant which offers AMBIEN since the domain name includes AMBIEN trademark (see Annex [11]).
Making believe that the web site is the official web site for AMBIEN products by adding letters which refer to medicine ("cr" meaning "controlled release") to the trademark "AMBIEN" is another relevant element to establish the bad faith registration of the above mentioned domain name.
Moreover, the Complainant owns the domain name "ambiencr.com", used for providing information to Internet users about the AMBIEN product (See Annex [12]). The Respondent could not ignore the existence of such website. Therefore, the registration and use of the domain name "ambiencr.eu" was made in bad faith, as it was made in order to mislead internet users.
Finally, on January 23, 2007, the Complainant sent a cease and desist letter to the Respondent, requiring the transfer of the contentious domain name. The Respondent did not answer to this letter (see Annex [13]).
It appears from these facts that the domain name "ambiencr.eu" constitutes an opportunistic registration, which has been made and used in bad faith.
In accordance with article 21 (1) of EC Regulation N° 874/2004, the Complainant requests the Administrative Panel appointed in this administrative proceeding to issue a decision that the contested domain name "ambiencr.eu" be transferred to the Complainant.

B. RESPONDENT

No response or other communication has been received from the Respondent in respect of the Complaint within the delays prescribed by Article B3(a) of the ADR Rules.
Further, the Respondent failed to challenge the Notification of Respondent's Default as prescribed under Article B3 (g) of the ADR Rules.

As per Article B 10 (a) of the ADR Rules the Panel can proceed to a decision.

DISCUSSION AND FINDINGS

1/ It should be noted that the Respondent did not file any Response to the Complaint. This entitles the Panel to proceed to a decision based on the Complaint alone and to consider this failure to respond as grounds to accept the claims of the Complainant. This is stated under Article B 10 (a) of the ADR Rules. Consequently, the Panel accepts the claims of the Complainant, provided however, that these claims are valid, coherent and, in respect to the transfer, that the Complainant fulfils the eligibility criteria for registering a .eu domain name as established by Article 4 (2) (b) of the EU Regulation.

2/ According to Article 22(11) of the Regulation, in the case of a procedure against a domain name holder, the domain name will be revoked if the registration is speculative or abusive as defined in Article 21 and it will be transferred to the Complainant if the complainant requests the transfer of domain name and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.
In the present case the issue at hand is whether the registration is speculative or abusive within the meaning of Article 21 of the Regulation.

According to Article 21(1) of the Regulation, a domain name shall be subject to revocation and/or transfer, where that name is identical or confusingly similar to a name in respect to which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1) of the Regulation, and where it:
has been registered without rights or a legitimate interest in the name, or
has been registered or is being used in bad faith.

3/ First, the Panel must determine whether the Domain Name is identical or confusingly similar to Complainant's product name in respect of which a right is recognized or established by the national law of a Member State and/or Community law.

The Complainant has asserted that it owns several registered trademarks in the name AMBIEN and has provided evidence of this. The Complainant is furthermore owner of numerous domain names containing the word "AMBIEN".

The Complainant owns the International Registration for the trademark AMBIEN and several National Trademarks.

However, contrary to what is affirmed in WIPO decision D2005-0660, Complainant did not own registered trademark in the name "ambiencr" at the time of registration of the domain name. The trademark "ambiencr" was filed prior to the registration of the domain name. It was not registered then. The Complainant does not argue that "ambiencr" is well-known or as then well-known.

Complainant is thus the holder of a right related to the expression "ambien" recognised by national and/or Community law, such as the rights mentioned in Article 10(1). There is no indication that Respondent is the holder of such a right or that it is an authorized licensee of such rights.

However, the Domain Name is not identical with Complainant's protected rights; but is it confusingly similar to these?

The trademarks owned by Complainant in the expression "ambien" and the Domain Name differ in the additional element "cr" and the extension ".eu".

In respect to the extension .eu added to the protected rights, it is widely accepted that the top level domain .eu is not considered under Article 10 of the Regulation as internet users see it as having only the function of an address and, hence being merely descriptive as affirmed in ADR.eu cases No. 00387 – gnc.eu and No. 02035 – warema.eu.

For the Complainant, the adjunction "cr" is the abbreviation of the expression "controlled release" which describes the specificity of the medicine.

When searching for “ambiencr” on the internet, it is clear that the relationship is overwhelmingly strong between the trademark owned by Complainant and the expression “ambiencr”.

Further, it is clear from searches conducted on the internet that the derivative brand “ambien cr” developed and marketed by Complainant from the registered trademark “ambien” increases the confusing aspect of the similarity.

Such searches also show that “ambiencr” is many times more confusingly similar to “ambien” than it is to the noun “ambience” or the adjective “ambient”.

Hence, it is likely that the public may type the Domain Name thinking that it would direct them to the website of Complainant.

As a result, the Panel concludes that “ambiencr” is confusingly similar to “ambien” and to the derivative brand “ambien cr” as developed and marketed by Complainant.

As a result the Panel considers that the Domain Name is identical or confusingly similar to Complainant’s name as protected by intellectual property rights.

4/ Does the Respondent have a right or a legitimate interest in the Domain Name?

First it should be noted that failure for the Panel to conclude that Respondent has a right or a legitimate interest in the Domain Name would in itself be sufficient to order the cancellation or transfer of the Domain Name since Article 21 (1) prescribes an alternative conditionality rather than a cumulative one.

Second, one should not confuse having a legitimate interest in a Domain Name and registering or using it in bad faith. These are often confused and arguments used for one indifferently used for the other.
Article 21 (2) of the Regulation states that:
“A legitimate interest within the meaning of point (a) of paragraph 1 may be demonstrated where:
(a) Prior to any notice of an alternative dispute resolution (ADR) procedure, the holder of a domain name has used the domain name or a name corresponding to the domain name in connection with the offering of goods or services or has made demonstrable preparation to do so;
(b) The holder of a domain name, being an undertaking, organisation or natural person, has been commonly known by the domain name, even in the absence of a right recognised or established by national and/or Community law;
(c) The holder of a domain name is making a legitimate and non-commercial or fair use of the domain name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law.”

Article 21 (2) of the Regulation implies a demonstration by Respondent rather than by Complainant. In the present case Respondent’s failure to respond to the Complaint should mean a failure to demonstrate the existence of a right or a legitimate interest in the Domain Name.

However, Article (B)(1)(b)(10)(i)(B) of the Rules states that Complainant must describe “why the domain name has been registered by its holder without rights or legitimate interests in respect of the domain name that is the subject of the Complaint”. The Complaint outlined the Complainant’s arguments for the lack of a right or a legitimate interest in the Domain Name.

Does Respondent have a right in the Domain Name?

Complainant argues that Respondent has no right in the Domain Name and declares that it has not licensed or assigned its rights to Complainant.

Respondent is thus not affiliated with Complainant and it seems has never sought or obtained the consent of Complainant to register the Domain Name. Respondent is not a licensee or otherwise permitted use of Complainant’s trademark.

No evidence has been provided to this Panel in respect to any other rights that Respondent may have in the Domain Name.

Finally, this Panel concludes that Respondent has no right in the Domain Name.

Does Respondent have a legitimate interest in the Domain Name?

In respect to the issue of a legitimate interest, this Panel cannot disregard the existence of the Website that is linked to the Domain Name. The Panel will consider this in relation to Complainant's arguments as the Website is part of Complainant's argument.

Nothing precludes the Panel from considering that a domain name that is used as a web directory is evidence of a legitimate interest. However, a legitimate interest is generally defined as either (i) a use or planned use of a domain name in connection with an offering of goods and services (ii) being commonly known by the domain name or (iii) using the name through a legitimate non-commercial or fair use, without tarnishing, misleading or diverting consumers.

Is Respondent using or planning to use the Domain Name in connection with an offering of goods and services?

Respondent has not responded to the Complaint. This Panel must thus rely on the evidence presented to it and on its own research. The Website appears to be the main evidence of any use made of the domain name. The Website does not in itself appear to be providing goods or services. It contains no indication of general terms and conditions or terms of service that usually come with such provision and no specific goods or services are identified. Further, there is no indication as to the relationship between the owners of the Website and the owner of the Domain Name. At no point does the Website clearly identify who runs it.

Complainant argues that Respondent is not using the Domain Name is connection with a bona fide offering of goods and services and that the Website is a directory that redirects to links that promote Complainant's competitors' products and that as such Respondent is either cornering the Domain Name or generating traffic through the confusion in the public's mind that is created by the similarity between the Domain Name and Complainant's rights.

Based on the little evidence that it has, the Panel can only conclude that the Respondent of the Domain Name has not used the Domain Name or a name corresponding to the Domain Name in connection with the offering of goods and services and has made no demonstrable preparation to do so.

Is Respondent commonly known by the Domain Name?

There is no indication from the facts that Respondent is commonly known by the Domain Name. Respondent's name has little to do with the expression "ambiencr". It does not appear to be a brand or a business or trading name of Respondent. Further, the Website does not mention the Respondent as if the Respondent did not wish to be known by the Domain Name. Even the "copyright" notice for the Website only mentions the Domain Name which as far as this Panel can tell is not in itself a legal entity.

Complainant states that it has granted Respondent no right or license in its trademarks.
Based on this evidence, the Panel concludes that the Respondent has not been commonly known by the Domain Name.

Is Respondent making a legitimate and non-commercial or fair use of the Domain Name, without intent to mislead consumers or harm the reputation of a name on which a right is recognised or established by national and/or Community law?

Complainant points to the fact that it is possible from Respondent's Website to obtain links to Complainant's competitors' products by typing "AMBIEN" into a search browser located on the Website. This is true although it is also indicated that the search browser does not operate a site search but a web search. In fact, many websites contain a "Google type" web browser imbedded in their framework. This does not mean that they subscribe to the information obtained from the result. However, the Website does not provide any disclaimer which it should. And it appears that the Website generates incomes from redirections to such links as the links are in fact "sponsored results for ambient". It would not be fair use for the Respondent to benefit in any way from such links.

Further, Respondent has received Complainant's cease and desist letter and has failed to respond to it or make any changes to the Website. It is difficult in that case for the Panel to consider that Respondent has no intent to mislead consumers or harm the reputation of Complainant's name. Respondent was given the opportunity to respond and justify its position. Complainant stated in its letter that the name was in its view infringing on its rights and that the Website was causing it harm. Still Respondent failed to respond or to make appropriate changes to the Website.

Based on the available evidence, this Panel is of the view that Respondent is not making a legitimate, non-commercial or fair use of the Domain Name.

As a result the Panel finds that the Respondent has not met the requirement set under Article 21(1)(a) and therefore there is no obligation under Article 21(1) to consider the issue of bad faith.
Finally, the Complainant has demonstrated fulfilling the eligibility criteria of Article 4 (2) (b) of Regulation and requests orders the transfer of the Domain Name 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 AMBIENCR be transferred to the Complainant

PANELISTS

Name	**Jean Albert**

DATE OF PANEL DECISION 2008-03-20

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

A domain name shall be subject to revocation and/or transfer, (1) where that name is identical or confusingly similar to a name in respect of which a right is recognized or established by national and/or Community law, such as the rights mentioned in Article 10(1) of the Regulation, (2) and where it has been registered without rights or a legitimate interest in the name or (3) has been registered or is being used in bad faith.

AMBIENCR is confusingly similar to a protected trademark that belongs to Complainant.

Respondent has failed to answer the Complaint and based on the available evidence the Panel finds that Respondent registered the Domain Name without rights or a legitimate interest in the name.