Panel Decision for dispute CAC-ADREU-004843

Case number	**CAC-ADREU-004843**
Time of filing	**2007-12-17 10:33:11**
Domain names	**kornferry.eu**

Case administrator

Name	**Josef Herian**

Complainant

Organization / Name	**Korn/Ferry International, Corporation, Mr Julius Stobbs**

Respondent

Organization / Name	**Aphrodite Ventures, Limited, Aphrodite Ventures, Limited**

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 pending legal proceeding regarding the disputed domain name.

FACTUAL BACKGROUND

Aphrodite Ventures Limited (hereafter the Respondent) registered the domain name kornferry.eu (hereafter the Domain Name) on April 7, 2006, first day of the Landrush period for ".eu".

A complaint under the Principles and Rules of ADR was officially filed by KORN/FERRY International Corporation (hereafter the Complainant) on December 17, 2007.

The Respondent did not file any response within the 30 days time frame granted by the Court, which issued a notification of Respondent's default by April 1, 2008.

The Court appointed a single-member Panel on April 14, 2007.

A. COMPLAINANT

The Complainant has been acting in the business of executive search and recruitment since 1969, first in the United States where the Complainant is established as a company, thenafter throughout the world, especially in Europe.

It holds numerous trademark rights for, or containing the wording KORN/FERRY, notably in the European Union, including United Kingdom.

The Complainant claims it is also the propriator of unregistered trademark rights in relation to laws of the member states of the European Union and Community law by virtue of the substantial reputation that it has developed in the KORN/FERRY trademark.

The Complainant then asserts that the Domain Name in issue has been registered without rights or legitimate interestsin accordance with paragraph B1(b) 10(i)B of the ADR Rules.

According to the further statements of the Complainant the disputed Domain Name is pointing to a website that contains entirely generic content. The Complainant claims that the website attached to the Domain Name in issue does not relate to a legitimate business, at least concerning the KORN/FERRY trademark.

The Complainant believes that the Domain Name has been registered or is being used in bad faith in accordance with paragraph

B1(b)10(i)C of the ADR Rules.

It is also stated that as of September 2007, the Respondent was using a link on the website operated under the Domain Name in issue, entitled "Korn Ferry" pointing to Complainant's competitors. The Complainant claims that this usage constitutes a clear attempt either to diveert trade away from the Complainant or to get money from a domain name purchase.

At last the Complainant stresses the fact that the Respondent has been involved in several previous ADR proceedings where the Respondent has been found in bad faith by Panels.

Therefore the Complainant requests that the Domain Name be transferred.

B. RESPONDENT

The Respondent did not reply to the Complaint.

DISCUSSION AND FINDINGS

Article 22 of the EC Regulation 874/2004 states that an ADR procedure may be initiated by any party where the registration is speculative or abusive within the meaning of Article 21.

Article 21 (1) provides that a registered domain name shall be subject to revocation where the name is identical or confusingly similar to a name in respect of which a right is recognised or established by national and/or Community law, and where:

(a) it has been registered by its holder without rights or legitimate interests in the name; or

(b) it has been registered or is being used in bad faith.

With reference to the first element, the Panel finds that the Complainant has proved its rights on the name KORNFERRY within the meaning of Article 10 (1) of the Regulation.

Indeed the Complainant owns numerous trademarks consisting of, or including the wording KORN FERRY, among which Community trademarks KORN/FERRY and various national trademarks KORN/FERRY in United Kingdom where the Respondent is established.

The Panel is satisfied that the trademarks KORN/FERRY are identical, or at the very least confusingly similar to the disputed Domain Name KORNFERRY.EU. The slash has to be considered as being a non distinguishable feature, as previous decisions ruled with respect to hyphens.

With reference to the right or legitimate interest, Article 21 (2) of the Regulations states that “a legitimate interest may be demonstrated where:

(a) prior to any notice of an ADR procedure, the holder of the domain name has used the domain name or a name corresponding to it in connection with the offering of goods or services or has made demonstrable preparation to do so;

(b) it has been commonly known by the domain name;

(c) it 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 in which a right is recognised or established by national and/or community law.”

As previously ruled by the Panel, the Respondent is in default and thus has not proved any right or legitimate interest.

There is no relation, disclosed to the Panel, between the Complainant and the Respondent who did not contest any claim by the Complainant, or provide any evidence of right or legitimate interest in the Domain Name in issue. (see the Panel’s decision in similar case ADR 4049 BORMIOLI ROCCO).

Therefore, the Panel finds that the Respondent has no right or legitimate interests in the domain name KORNFERRY.EU.

The third requirement is that the domain name has been registered or is being used in bad faith.

As the Panel has already held that the Respondent has no right or legitimate interest in the disputed Domain Name there is no need to make a finding as to bad faith for the purposes of Article 21(1). However, as the issue has been argued by the Complainant the Panel finds it is relevant to provide its opinion.

First it appears that the Complainant's trademark acquired a strong reputation in the field of recruitment services. It is the Panel opinion that the Respondent could not ignore the Complainant at the time it registered the disputed Domain Name.

Then, the Domain Name is pointing to a parking web site, which is operated through what seems to be a pay per click system, displaying hyperlinks to Complainant's competitors. Even if the Respondent did not make a direct offer for sale to the Complainant, the Panel is at least of the opinion that the disputed Domain Name has been registered and is used in order to divert users to the web pages of potential competitors.

At last, according to statements made by Complainant and pursuant to the investigations made by the Panel, it appears that the Respondent has already been involved in previous ADR cases where it was found in bad faith in similar circumstances.
See ADR 04440 Salu Inc ./. Aphrodite Ventures Limited concerning SKINSTORE.EU (cancellation)
See ADR 04616 Micro Application SAS ./. Aphrodite Ventures Limited concerning MICROAPP (transfer)
See ADR 04723 BRISTOL-MYERS SQUIBB BELGIUM S.A. ./. Aphrodite Ventures Limited concerning VIDEX (transfer)

The Panel considers that the Complainant has established a prima facie evidence of the Respondent’s bad faith and the Respondent has failed to deny or contest the Complainant’s claims as well as failed to present any evidence to the contrary. The Panel therefore concludes that the Respondent has registered the domain name in bad faith.

As to the remedies requested

Article 22(11) of Commission regulation No. 874/2004 states that in the case of a procedure against a domain name holder, the ADR panel shall decide that the domain name shall be revoked if it finds that the registration is speculative or abusive as defined in Article 21. Furthermore, the domain name is to be transferred to the complainant if the complainant applies for it and satisfies the general eligibility criteria set out in Article 4(2)(b) of Regulation (EC) No 733/2002.

To satisfy those general eligibility criteria the Complainant must be one of the following:

1. an undertaking having its registered office, central administration or principal place of business within the European Community;

2. an organisation established within the European Community without prejudice to the application of national law; or

3. a natural person resident within the European Community.

In this case the Complainant requests that the contested domain name be transferred to it.

However, the Complainant is a U.S. company and has not provided any evidence to the Panel indicating that it satisfies any of the requirements laid down in Article 4(2)(b) of Regulation (EC) No 733/2002.

Consequently, in accordance with article 22, the domain name may not be transferred but only revoked.

DECISION

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

the domain name KORNFERRY be revoked

PANELISTS

Name	**Alexandre Nappey**

DATE OF PANEL DECISION 2008-05-18

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant in the proceedings is the owner of numerous prior trademarks on KORN/FERRY, notably registered in the united Kingdom where the Respondent is established.

The Complainant points out that the trademark and the domain name are identical and submits that the Respondent has no legitimate rights or interests in the name and has acted in bad faith, taking into account the fact that the disputed domain name is pointing to a parking website offering advertising to Complainant's competitors.

The Respondent did not reply to the complaint.

The Panel considers it proved that the trademark and the domain name have the same subject matter and, given the Respondent’s failure to respond, notes that the latter has not provided any plausible account of possible rights or legitimate interests in the domain name at issue and also deems it proved that the Respondent acted in bad faith, given that he was previously in turn the Respondent in other ADR proceedings addressing similar circumstances which concluded with decisions upholding the complaints.

As a result, the Panel rules that the domain name kornferry.eu must be revoked, but not transferred to the Complainant as requested by the latter given that the Complainant does not satisfy the general eligibility criteria as set out in Article 4(2)(b) of Regulation (EC) No 733/2002.