Panel Decision for dispute CAC-ADREU-004859

Case number	CAC-ADREU-004859
Time of filing	2007-12-17 10:18:54
Domain names	labiosthetique.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Laboratoire Biosthétique Kosmetik GmbH & Co. KG, Laboratoire Biosthétique Kosmetik GmbH & Co. KG

Respondent

Organization / Name	Zheng Qingying

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

1. None that the Panel is aware of.

FACTUAL BACKGROUND

2. The Complaint is filed in the name of Laboratiore Biostéthique Kosmetik GmbH & Co. KG of Pforzheim, Germany, (hereinafter refered to as „first Complainant“) and MCE S.A.S. of Paris, France, (hereinafter referred to as „second Complainant“), together referred to as („the Complainants“).

3. The Complainants belong to the la biosthétique company group. They have been producing and selling beauty care products under the brand name “La Biosthétique” for more than fifty years and exporting them into many countries, mainly Europe, North America and Asia.

4. The second Complainant is registered owner of a number of trademark registrations, all predating the Respondent’s registration of the disputed domain name, inter alia CTM no. 000839640 “la biosthetique”, IR no. 508233 “la biosthetique”, IR no. 192829 “la biosthetique”, IR no. 839640 “la biosthetique” and German trademark no. DD648182 “la biosthetique”. The first Complainant is entitled to use these trademarks as eclusive licensee.

5. The Respondent did not provide any information concerning its business. However, the Respondent is known for trying to make money by registering third parties’ trademarks as domain names. He was involved in at least 15 ADR proceedings in which the domain names were all transferred to complainants based on the identity with prior rights, namely

- CAC Case No. 02429, Ericpol Telecom sp. z o.o. v. Zheng Qingying – ERICPOOL;
- CAC Case No. 02325, Glen Dimplex UK Limited v. Zheng Qingying – GLENDIMPLEX;
- CAC Case No. 03588, Merck KGaA v. Zheng Qingying - XIRONA, LEVOTHYROX;
- CAC Case No. 03444, Ursula Hahn v. Zheng Qingying – OCUNET;
- CAC Case No. 03510, Big Dutchman AG v. Zheng Qingying – BIGDUTCHMAN;
- CAC Case No. 02986, Security Center GmbH & Co. KG v. Zheng Qin – TERXON;
- CAC Case No. 03368, BB C - SERVICES, s.r.o. v. Zheng Qingying – BBCENTRUM;
- CAC Case No. 03885, FGSPORT S.r.l. v. Zheng Qingying – WORLDSBK;
- CAC Case No. 03773, Merck Santé v. Zheng Qingying – MONOT;
- CAC Case No. 03641, Fundació Esade v. Zheng Qingying – ESADE;
- CAC Case No. 02651, LEGUIDE.COM SA v. Zheng Qingying – ANTAG;
- CAC Case No. 04229, Ornellaia Società Agricola S.r.l. v. Zheng Qingying – ORNELLAIA;
- CAC Case No. 04309, OSRAM GmbH v. Zheng Qingying – OSRAM-OS;

- CAC Case No. 04187, DEG - Deutsche Investitions- und Entwicklungsgesellschaft mbH v. Zheng Qingying – DEGINVEST; and
- CAC Case No. 01185, Degussa GmbH v. Zheng Qingying – AQURA, CHEMSITE.

6. The Respondent registered the disputed domain name on October 3, 2006. The domain name is offered for sale.

A. COMPLAINANT

7. The Complainants assert that each of the elements specified in Article 21 (1) of the Regulation (EC) No. 874/2004 has been satisfied.

8. In reference to Article 21 (1) of the Regulation (EC) No. 874/2004 the Complainants argue that the disputed domain name "labiosthetique.eu" is identical to the second Complainant's trademarks "la biosthetique" because it fully includes the trademarks and the addition of ".eu" is not a distinguishing difference, since it is technically required.

9. In reference to the element specified in Article 21 (1) (a) of the Regulation (EC) No. 874/2004, the Complainants state that the Respondent has no rights or legitimate interests with regard to the domain name. In support of this assertion the Complainants argue that

- there is no evidence of the Respondent's use of, or demonstrable preparations to use, the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services;
- the Respondent (as an individual, business, or other organization) has not been commonly known by the domain name;
- there is no connection or affiliation with the Complainants;and
- there is no evidence that the Respondent is making a legitimate non-commercial or fair use of the domain name, without intent for commercial gain misleadingly to divert consumers or to tarnish the trademark or service mark at issue.

10. In reference to the element in Article 21 (1) (b) of the Regulation (EC) No. 874/2004, the Complainants assert that

- the "la biosthetique" trademark is registered and widely known and it consists of a created, invented word, not a descriptive or generic word;
- the Respondent is not using the website with meaningful contents referring to the domain name, but offers the domain for sale to capitalize on the goodwill of the Complainant's trademarks and traffic intended for the Complainants' website; and
- the Respondent demonstrated a pattern of engaging in bad faith registration and use of domain names which violate third party's rights.

B. RESPONDENT

11. The Respondent did not reply to the Complainants' contentions.

DISCUSSION AND FINDINGS

12. The Complaint was filed pursuant to Article 22 (1) (a) of the Regulation (EC) No. 874/2004, which provides that an ADR procedure may be initiated by any party where the registration of a domain name is speculative or abusive within the meaning of Article 21 of the Regulation (EC) No. 874/2004.

13. Accordingly, the Panel's decision has to be based on the provisions of Art. 21 of the Regulation (EC) No. 874/2004. The domain name has therefore to be transferred if the domain name

i. 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
ii. has been registered by its holder without rights or legitimate interests in the name; or
iii. has been registered or is being used in bad faith.

A. Identity or Confusingly Similarity

14. The test of confusing similarity under the Regulation is confined to a comparison of the disputed domain name and the trademark alone, independent of the products for which the domain name is used or other marketing and use factors, usually considered in trademark infringement cases.

15. The disputed domain name <labiosthetique.eu> wholly incorporates the second Complainant's trademarks "la biosthetique". It is well-established that the specific top level of a domain name <.eu> does not affect the domain name for the purpose of determining

whether it is identical or confusingly similar pursuant to Article 21 (1) of the Regulation (EC) No. 874/2004 (See CAC Case. No. 00227 - kunst.eu; CAC Case No. 00387 - gnc.eu; CAC Case No. 00596 - restaurants.eu; CAC Case No. 01584 – ksb.eu; CAC Case No. 02438 – ask.eu; CAC Case No. 00283 – lastminute.eu).

16. The Panel thus finds that the domain name <labiosthetique.eu> is identical to the second Complainant's trademarks "la biosthetique" and that therefore the first requirement of Article 21 (1) of the Regulation (EC) No. 874/2004 is satisfied.

B. Respondent's rights or legitimate interests with regard to the domain name

17. Article 21 (1) (a) of the Regulation (EC) No. 874/2004 requires the Complainant to prove that the Respondent has no rights or legitimate interests in the disputed domain name. However, as it is often an impossible task of proving a negative, requiring information that is often primarily within the knowledge of the respondent, it is the Panel's view that if the complainant makes a prima facie case that the Respondent has no rights or legitimate interests and the Respondent fails to show one of the circumstances under Article 21 (2) of the Regulation No. 874/2004, then the Respondent may lack a legitimate interest in the domain name.

18. The domain name <labiosthetique.eu> is identical with the second Complainant's trademarks. The Complainants show that the Respondent has neither a license nor any other permission to use the trademark "la biosthetique" in which the Complainants have exclusive rights. The Panel thus finds that the Complainants have made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name <labiosthetique.eu>.

19. The Respondent does not dispute these assertions. Before notice of the dispute, there is no evidence of its use, or demonstrable preparations to use the domain name or a name corresponding to the domain name in connection with a bona fide offering of goods or services. Further, nothing in the record suggests that the Respondent trades under the domain name or the name "la biosthetique" or is commonly known by the disputed domain name.

20. The Panel therefore accepts the Complainants' contention that the Respondent has no rights or legitimate interests in the domain name and that the requirement of Article 21 (1) (a) of the Regulation (EC) No. 874/2004 is also satisfied.

C. Bad faith registration and use

21. Because the Complainants need to show either a lack of rights or legitimate interests on the part of the Respondent or bad faith registration or use and given the Panel's finding on rights and legitimate interests set out above the Panel need not make a finding concerning bad faith use and registration.

D. Transfer of the domain name

22. The first Complainant is a limited partnership with a limited liability company as general partner incorporated under German law and having its place of business within the European Community, Art 4 (2) (b) (i) of the Regulation (EC) No. 733/2002. Therefore, the requirements for the requested transfer of the domain name to the first Complainant are satisfied (Section B No. 1 (b) (12) of the ADR Rules).

DECISION

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

PANELISTS

Name	Torsten Bettinger

DATE OF PANEL DECISION 2008-05-09

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

24. The Complainants are doing business in the field of beauty care products. The second Complainant is the registered owner of numerous trademark registration "la biosthetique", which are used by the first Complainant as exclusive licensee. The Complainants assert that each of the elements specified in Article 21 (1) of the Regulation (EC) No. 874/2004 has been satisfied.

25. The Respondent did not dispute the Complainants' assertions.

26. The Panel found that the domain name <labiosthetique.eu> is identical to the second Complainant's trademark "la biosthetique".

27. Furthermore, the Panel found that the Complainants have made a prima facie showing that the Respondent has no rights or legitimate interests in the domain name <labiosthetique.eu>. As the Respondent did not dispute these assertions, the Panel accepted the Complainants' contention that the Respondent has no rights or legitimate interests in the domain name and ordered that the disputed domain name shall be transferred to the first Complainant.