Panel Decision for dispute CAC-ADREU-004880

Case number	CAC-ADREU-004880
Time of filing	2007-12-28 09:34:17
Domain names	labco.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	Labco SAS, Lucie Boedts

Respondent

Organization / Name	Qingying Zheng

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 disputed domain name is currently marked a being 'on hold' which could mean that it is currently the subject of other legal proceedings, but no evidence was adduced for this.

FACTUAL BACKGROUND

The Complainant is Labco SAS, a company incorporated under French law, and registered at 34, boulevard Haussmann, F- 75009 Paris, FRANCE and having its central administration, or operating head office, at 480 avenue Louise, Brussels, BELGIUM.

The Respondent is Qingying Zheng of 204 Woolwich Road, London SE7 7QY, United Kingdom.

The Complaint was originally filed on December 21, 2007 and an amended complaint was filed on January 8, 2008.

The Respondent did not file any Response, and a Notification of Respondent’s default was issued on April 1, 2008.

On April 9, 2008 the Panelist, David H Tatham, lodged a Statement of Acceptance and Declaration of Impartiality and Independence and he was appointed as the Panelist for these proceedings on the next day.

The Case File was submitted to the Panelist on April 14, 2008.

A. COMPLAINANT

In its Complaint, the Complainant made the following statements –

1. The Complainant is an organisation established within the Community, being active in the field of laboratory medicine across the European Union (especially in France, Italy, Germany, Spain, Belgium), and rapidly expanding its operations into further EU countries.

2. The Complainant currently owns the domain name <www.labco.fr> but, due to the rapid expansion of its business in the EU, the disputed domain name <www.labco.eu> would be a more relevant and more appropriate name, so as to reflect the European dimension of the Complainant's activities and projects.

3. The Complainant's objectives, pursued within the EU, are supported by the European Commission, and the trade mark LABCO has been registered with the Office for Harmonisation in the Internal Market (OHIM).

4. The domain name <www.labco.fr> has been registered with AFNIC and <www.labco-diagnostics.eu> has been registered with EURid,

and the Complainant contends that it should therefore be entitled to wider European recognition through an eu.domain name.

5. Annexed to the Complaint were copies of: Community trade mark registration No. 4341202, and not only of the above mentioned domain name registrations, but also of a number of other domain name registrations.

B. RESPONDENT

On January 30, 2008 a Commencement of ADR Proceeding was served on Respondent giving him 30 working days to respond. The Respondent did not file any Response, and a Notification of Respondent's Default was issued on April 1, 2008.

DISCUSSION AND FINDINGS

Article B.1 (b) (10) of the .eu Alternative Dispute Resolution Rules ("ADR Rules") specifies that a Complaint against a domain name holder shall describe the grounds on which the Complaint is made including, in particular –

A. Why the domain name is identical or confusingly similar to the name or names on which the Complaint is based; and either
B. Why the registrant has no rights or legitimate interests in it; or
C. Why it should be considered as having been registered in bad faith.

Article B.11 (d) (1) of the ADR Rules provides that a Panel shall issue a Decision granting the remedies requested in the event that the Complainant has proved the above three requirements.

In the present case, the Complainant has submitted some evidence in support of A above, but none in connection with either B or C. However paragraph B10(a) of the ADR Rules – which echoes the wording of Article 22.10 of Commission Regulation (EC) No. 874/2004 ("Regulation 874/2004") – are clear that, in a situation where a Respondent does not respond to a Complaint, a Panel may "consider this failure to comply as grounds to accept the claim of the other Party".

However this does not mean that a Complaint should be upheld whenever a Respondent fails to respond, for a Complainant is still required to prove the above three requirements Thus, in this case, the Panel must still be satisfied that the disputed 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.

The Complainant has provided the Panel with the following evidence –

• that it is the registered proprietor of a European Communion trade mark No. 4341202 which consists of the word "Labco" in large letters over the much smaller phrase "RESEAU DIAGNOSTIC", and which was filed on March 15, 2005 and registered on March 30, 2007; it is clear that the dominant portion of this mark and the name by which it will be known by, recognised, and spoken of is "Labco";
• that it is the owner of the following domain names –
labco.fr; labco-membres.fr; labco-diagnostic.eu; labco-diagnostic.com; labco-diagnostic.net; labco-diagnostic.org; labco-diagnostic.info; labco-diagnostic.biz; labco-diagnostic.fr; labco-diagnostic.be; labco-job.fr; the earliest of these (labco.fr) was created on July 22, 2003;
• that it was registered Iin France under the name "Labco SAS" as a Société par actions simplifiéé on June 5, 2003.

It is clear from all this that the Complainant has rights in the name "Labco", possibly from as early as June 2003. Therefore, as this is identical to the disputed domain name, the Panel finds that paragraph B 11 (d) (i) of the ADR Rules has been proved.

The Complainant has not provided the Panel with any evidence that "the Respondent has registered the domain name without rights or legitimate interests in the name" or that "the domain name has been registered or is being used in bad faith". However, given the Complainant's long-standing rights to the name LABCO in France and 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 Regulation 874/2004 and Paragraph B11(f)(4) of the ADR Rules are relevant, for they 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. Using trade marks or a URL as a search engine adword e.g. as a "sponsored link", is a variation on the doctrine and jurisprudence known as "Passing Off".

The Panel notes, in addition, that according to information provided by EURid, the disputed domain name is currently put "on hold" which would seem to indicate that it is currently subject to other judicial proceedings. However the Panel has not been provided with any

additional information in this regard.

In all of these circumstances, the Panel finds that there has been bad faith on the part of the Respondent and that he is in breach of Article B.11 (d) (iii) of the ADR Rules. Consequently there is no need for the Panel to consider the question of a possible lack of rights or legitimate interests.

In conclusion, the Panel therefore finds, as a result of all this, that Complainant has satisfied the requirements of Article 21.1 of Regulation 874/2004 and Paragraph B11(d)(1) of the ADR Rules, and that the disputed domain name should be transferred to the 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 LABCO be transferred to the Complainant

PANELISTS

Name	David Tatham

DATE OF PANEL DECISION 2008-04-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant originally filed a Complaint against the Respondent under the ADR Rules on December 21 2007, claiming that the domain name <abco.eu> should be transferred to it. No evidence was provided by the Complainant to support the proposition either that the Respondent has no rights or legitimate interests in the name, or that the Respondent registered the domain name in bad faith. 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 as 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 that –
(1) The Complainant is the owner not only of the Community registered trade mark ABCO, but also a number a domain names in different ccTLDs and gTLDs all containing the name ‘abco’, as well as the registered company name ‘ABCO SAS’ in Franceand that the domain name is identical to the Complainant’s registered right.
(2) Using trademarks or a URL as a search engine adword e.g. as a sponsored link woule be evidence and an example of use of the domain name in bad faith.
(3) The Respondent appears to have registered the domain name in bad faith.

The Panel further noted that the disputed domain name is currently ‘on hold’ although no evidence was adduced as to the reason for this.

Accordingly, the Panel ordered the transfer of the disputed domain name <abco.eu> to the Complainant.