Panel Decision for dispute CAC-ADREU-004895

Case number	CAC-ADREU-004895
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Domain names	arbonne.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	ARBONNE INTERNATIONAL, LLC.

Respondent

Organization / Name	WorldOnlineEndeavours.com, Domain Handler

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

FACTUAL BACKGROUND

1. The Complainant distributes cosmetic products in several countries of the world, such as the United States, Canada, Australia and is also active on the European market, namely in the United Kingdom. The Complainant is operating internationally and has presence in the EU.
2. The Complainant is the owner of a number of national, international and Community trade mark registrations consisting of or containing the word element ARBONNE mainly for cosmetics and related goods. As evidenced by the Complainant, its earliest trade mark rights to the mark ARBONNE date back to 1980 (Irish trade mark registration No. 1345514 registered on 30 April 1980; Finnish trade mark registration No. 83303, filed on 24 October 1980 and registered on 5 November 1982; Swedish trade mark registration No. 175741, filed on 24 October1980 and registered on 13 March 1981).
3. The domain name arbonne.eu was registered by the Respondent on 7 April 2006 with the registrar Entertainment Names, Inc. The website under the domain name arbonne.eu is displaying sponsored click-through links mainly related to skin care and cosmetic products and directing the visitors of this website to websites of other companies offering those products.
4. On 8 November 2007 the representative of the Complainant referred to the Respondent with a letter informing about trade mark infringement and requesting to transfer the domain name arbonne.eu to the Complainant. The Respondent never replied or took requested action.
5. On 27 January 2009 the Complainant issued the Complaint in the present ADR proceedings and on 16 February 2009 amended it. The Respondent did not submit its Response. On 16 April 2009 the Czech Arbitration Court issued a Notification of Respondent's Default.

A. COMPLAINANT

The Complainant asserts that:
6. The domain name arbonne.eu, registered by the Respondent is identical / confusingly similar to the Complainant's trade marks, which are all dominated by the element ARBONNE.
7. The Respondent holds no right in the domain name arbonne.eu, has no legitimate interests in the domain name, has not been commonly known by the respective name, and is not making a legitimate non-commercial or fair use of the domain name. The Respondent uses the web-site under the domain name arbonne.eu for sponsored links.
8. The Respondent uses the domain name arbonne.eu in bad faith. The Respondent intentionally exploits the term ARBONNE (as falling within the scope of protection of the Complainant's trade marks), which is known for high-quality cosmetic products, to generate more traffic for the web-site under the domain name arbonne.eu. No other explanations why Respondent has chose the domain name arbonne.eu can be found.
9. The domain name arbonne.eu was registered in bad faith by the Respondent. The Respondent has already been involved in several

ADR proceedings under Article 21 of Commission Regulation (EC) No 874/2004, namely the proceedings with case No. 04339 - MERCI-PUR, No. 04588 - RIEKE, No. 04336 - NIMM2-LACHGUMMI, No. 04037 - AOLIRELAND, and No. 04008 - SIRENA of ADR Center for .eu Disputes. In all these proceedings Respondent had registered domain names that were identical or confusingly similar to trade marks of the respective Complainants. This evidences the Respondent's engagement in a pattern of conduct preventing trade mark holders from reflecting their rights in corresponding domain names by registering such domain names for itself.

B. RESPONDENT

10. The Respondent has not provided a Response to the Claim.

DISCUSSION AND FINDINGS

11. Paragraph B 10 (a) of the .eu Alternative Dispute Resolution Rules (the "ADR Rules) allows the Panel to proceed to a decision on the Complaint in the event where a Party does not comply with the time limits established by the ADR Rules. Moreover, the same paragraph and Article 22.10 of the Commission Regulation (EC) No. 874/2004 stipulate that the failure to respond within the given deadlines may be considered as grounds to accept the claims of the counterparty.
12. The Panel issues a decision granting the remedies requested in the event the Complainant demonstrates that certain requirements of Paragraph B 11 (d) of the ADR Rules and Article 21.1 of the Commission Regulation (EC) No. 874/2004 are satisfied. Namely, the Complainant must prove that (i) the disputed domain 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 (ii) the domain name has been registered by its holder without rights or legitimate interest in the name or (iii) has been registered or is being used in bad faith.
13. The Complainant is the owner of a number of national (UK, Irish, Finnish, Danish, Swedish, German, etc.), international and Community trade mark registrations consisting of or containing the word element ARBONNE. The disputed domain name is arbonne.eu. The suffix .eu is irrelevant for determining the identity / similarity between the domain name and the respective trade marks.
14. Accordingly, the Panel concludes that the domain name is identical and, with respect to certain trade mark registrations, confusingly similar to trade marks of the Complainant within the meaning of Paragraph B 11 (d)(1)(i) of the ADR Rules and Article 21.1 of the Commission Regulation (EC) No. 874/2004.
15. The Complainant asserts that the Respondent has no trade mark or other rights that would justify its right in the domain name arbonne.eu, has no legitimate interests in the domain name, has not been commonly known by the respective name, and is not making a legitimate non-commercial or fair use of the domain name and provides convincing arguments to support its assertions.
16. On the opposite, the Respondent failed to respond both to the letter of the Complainant's representative and the Complaint in these ADR proceedings. In accordance with Paragraph B 10 (a) of the ADR Rules and Article 22.10 of the Commission Regulation (EC) No. 874/2004, the Panel considers that the Respondent accepts the Complainant's statement that the Respondent does not have any rights or legitimate interest in the name within the meaning of Paragraph B 11 (d)(ii) and Paragraph B 11 (e) of the ADR Rules or Articles 21.1 (a) and 21.2 of the Commission Regulation (EC) No. 874/2004.
Bad faith
17. Even though the above findings are sufficient to satisfy the requirements of Paragraph B 11 (d)(1) of the ADR Rules and Article 21.1 of the Commission Regulation (EC) No. 874/2004 in order to satisfy Complainant's request for remedies, for completeness reasons and to address all assertions of the Complainant, the Panel further considers the argument of the Complainant that the domain name arbonne.eu has been registered and is used in bad faith.
18. The Complainant provided information that the Respondent has already been involved in several ADR proceedings under Article 21 of the Commission Regulation (EC) No. 874/2004 under similar circumstances as in the present case, thus demonstrating a pattern of the Respondent's conduct. This circumstance is one of the grounds to find that the domain name has been registered in order to prevent the holder of such name in respect of which a right is recognised or established by national and/or Community law from reflecting this name in a corresponding domain name under of Paragraph B 11 (f)(2)(i) of the ADR Rules and Article 21.3(b)(i) of the Commission Regulation (EC) No. 874/2004.
19. The Complainant has also provided information about the use of the web-site under the domain name arbonne.eu for listing of sponsored click-through links thus evidencing that the domain name was intentionally used to attract Internet users, for commercial gain, to the Respondent, by creating a likelihood of confusion with the Complainant's mark, which is an indication of bad faith behaviour under Paragraph B 11 (f)(4) of the ADR Rules and Article 21.3(d) of the Commission Regulation (EC) No. 874/2004.
20. In view of the above and in the absence of the response from the Respondent, the Panel finds that the Respondent accepts that the domain name arbonne.eu was registered in bad faith.
21. In light of these findings, the Panel concludes that the Complainant has satisfied the requirements set forth in Paragraph B 11 (d)(1) of the ADR Rules and Article 21.1 of the Commission Regulation (EC) No. 874/2004.

DECISION

22. For all of the foregoing reasons and in accordance with Paragraph 11(b) of the ADR Rules and Article 22.11 of the Commission Regulation (EC) No. 874/2004 the Panel orders that

the domain name ARBONNE be revoked.

PANELISTS

Name	**Renata Berzanskiene**

DATE OF PANEL DECISION 2009-04-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant is the owner of a number of national, international and Community trade mark registrations consisting of or containing the word element ARBONNE mainly for cosmetics and related goods. As evidenced by the Complainant, its earliest trade mark rights to the mark ARBONNE date back to 1980 (Irish trade mark registration No. 1345514 registered on 30 April 1980; Finnish trade mark registration No. 83303, filed on 24 October 1980 and registered on 5 November 1982; Swedish trade mark registration No. 175741, filed on 24 October1980 and registered on 13 March 1981).

The domain name arbonne.eu was registered by the Respondent on 7 April 2006 with the registrar Entertainment Names, Inc. The website under the domain name arbonne.eu is displaying sponsored click-through links mainly related to skin care and cosmetic products and directing the visitors of this website to websites of other companies offering those products.

On 8 November 2007 the Complainant referred to the Respondent with a letter informing about the trade mark infringement and requesting to transfer the domain name arbonne.eu to the Complainant. The Respondent never replied or took requested action. On 27 January 2009 the Complainant issued the Complaint on in the present ADR proceedings which was amended on 16 February 2009. The Respondent did not submit its Response.

On 28 April 2009 and as it is indicated in the Decision also in accordance with Paragraph 11(b) of the ADR Rules and Article 22.11 of the Commission Regulation (EC) No. 874/2004 the Panel orders that the domain name ARBONNE registration in the name of the Respondent is revoked.