Panel Decision for dispute CAC-ADREU-004910

Case number	**CAC-ADREU-004910**
Time of filing	**2008-02-22 09:09:25**
Domain names	**ferriera-valsabbia.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**Valsabbia Praha, s.r.o., Vojta**

Respondent

Organization / Name	**Lexicon Media, Ltd., Lexicon Media, Ltd.**

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

The Complainant is the limited liability company with a company name Valsabbia Praha, s.r.o. with the registered office in the Czech republic and claims the transfer of the disputed domain „ferriera – valsabbia.eu“.
The company name Valsabbia Praha, s.r.o. has been recorded as an entry in the Commercial register of the Regional Court of Prague and therefore the corporate name enjoys the legal protection in accordance with the provisions of § 12 of the Commercial Code and § 19b of the Civil Code.
The Complainant is already operating a web presentation under the domain valsabbia.cz (see http://www.valsabbia.cz) and has intention to register a .eu domain to represent him on the international market. From all the possible domains, related to its business name (valsabbia.eu, ferrieravalsabbia.eu - already registered, with web presentations operating under these domains), the only choice for the Complainant is a domain ferriera-valsabbia.eu (disputed domain).
The Complainant argued that the current registration of the disputed domain name was speculative and abusive.
The Respondent did not file any response and therefore is considered in default.

A. COMPLAINANT

The Complainant is a limited liability company, based in Czech Republic, and a daughter company of VALSABBIA DEUTSCHLAND, GmbH. The right to use company name “Valsabbia” dates from its registration in the Trades register, on September the 9, 1996. The company, specialized in the metal construction, is known on the market under its business firm “Valsabbia”.

The Complainant is already operating a web presentation under the domain valsabbia.cz (see http://www.valsabbia.cz) and has intention to register a .eu domain to represent him on the international market. From all the possible domains, related to its business name (valsabbia.eu, ferrieravalsabbia.eu - already registered, with web presentations operating under these domains), the only choice is a domain ferriera-valsabbia.eu (disputed domain).

The Respondent registered the domain “ferriera-valsabbia.eu” on April the 7, 2006.

The Complainant argues that the disputed domain is identical to the Complainant’s business-firm („Valsabbia“), well-known to the consumers and partners, associated with a word „ferriera“ which means "ironworks" in Italian language, accentuating the Complainant’s specialization on the market with iron products.
The Complainant has learned, that the disputed domain is already registered by the Respondent, and there is no web presentation running under this domain.

The Respondent doesn't use the registered domain for nearly 2 years, and even he doesn't use any name corresponding to this domain name in any commercial relations, nor makes any preparations for that use. The respondent is neither an undertaking, an organization nor a natural person that is generally known under the domain name.

Complainant argues that his right to the business name and to the denomination of a legal entity is protected by the provisions of the Czech Commercial Code (§ 12) and of the Civil code (§19b).
The Complainant further argues that in Internet it isn't possible to find any reference to the commercial use of the name corresponding to the domain name by the Respondent.

The Complainant has expressed his conviction, that the Respondent registered the disputed domain in bad faith, for the only purpose of the occupation and eventual sale.

From the ADR´s decisions database the Complainant has learned about the existence of two decisions against the same Respondent - decision No. 04141, concerning the domain names airfrancesucks.eu and aifrance-jp.eu, and the decision No. 04371, in the matter of the domain name simtek.eu. In both cases the Panel has concluded, that the Respondent didn't present any justification for the use of the disputed domain names, and for the conclusion that the Respondent has any rights to or legitimate interests in the respective domain name.

Foregoing decisions indicates, that the Respondent was created to hijack the .eu domains.

The Complainant suggests, that the Panel orders the transfer of the domain "ferriera-valsabbia.eu" from the Respondent to the Complainant.

B. RESPONDENT

CAC notified the Respondent that an ADR Proceeding has been commenced against the Respondent pursuant to the Regulations (EC) No. 733/2002 and No. 874/2004 (the Regulations). The Respondent was notified about the formal date of the commencement of the ADR Proceeding - 2008-03-05. The Respondent did not file any response. The Respondent was notified by CAC that he failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding for the submission of his Response. The Complainant is considered in default.

DISCUSSION AND FINDINGS

The Complainant is the limited liability company with a company name Valsabbia Praha, s.r.o. with the registered office in the Czech republic and claims the transfer of a disputed domain "ferriera – valsabbia.eu". The argumentation of this party results from the fact that the company name Valsabbia Praha, s.r.o. has been recorded as an entry in the Commercial register of the Regional Court of Prague and therefore the corporate name enjoys the legal protection in accordance with the provisions of § 12 of the Commercial Code and § 19b of the Civil Code of the Czech Republic.

The Complainant alleges that the disputed domain "ferriera – valsabbia.eu" is only one possible domain .eu, which is still available. The Complainant is aware that the domains ferrieravalsabbia.eu and valsabia.eu are already occupied.

EURid confirmed that the Respondent is the current registrant of the disputed domain name.

The Respondent did not file any response and therefore is considered in default. The Panel will decide the Complaint on its merits under the assumption that the facts forwarded by the Complainant are not contended by the Respondent.

The Complainant further argued that the Respondent:

- has not used the respective domain name

- has not used any name corresponding to respective domain name in connection with the selling of goods or services and has not probably made any preparation to that effect

- is neither an undertaking, an organization or a natural person that is generally known under the respective domain name

- does not operate a web presence under the respective domain name.

The Respondent was notified that he failed to comply with the deadline indicated in the Notification of Complaint and Commencement of ADR Proceeding for the submission of Response. The Respondent has not presented any justification for holding the disputed domain The Panel concludes that the disputed domain name does not correspond to any web presence, which would indicate that the Respondent has any kind of trademark, or business name rights in the disputed domain or which would contain any reference to a commercial use of the same name. Thus, the Panel therefore considers that there is no element, which could be interpreted as justifying a conclusion that the Respondent has any rights to or legitimate interests in the respective domain name.

In the past, the Respondent was ordered to transfer two domain names to the respective complainants in other ADR disputes (cases 04141, 4371), which shows a pattern of unlawful behavior.

In disputes on transferring a domain name from a person who registered an .eu domain name, the Complainant must establish facts under Article 21/1 of the Regulation:

"1. A registered domain name shall be subject to revocation, using an approximate extra-judicial or judicial procedure, where the 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 at the rights mentioned on Article 10/1, and 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."

To succeed with the complaint, the Complainant must prove its right or interest in the name and identity or similarity of the domain name to such name and then, at least one of the two following elements:

(a) registration of the domain name without right or legitimate interest; and/or

(b) registration or use of the domain name in bad faith.

The Complainant enclosed to the complaint Complainant's statement from the Companies Register of the Czech Republic to prove its right in the name and its identity or similarity with the domain name.

From the statement of the Companies Register of the Czech Republic the Panel found out that the business name of the Complainant contains only word "Valsabbia". The disputed domain name „ferriera-valsabbia.eu" consists from further more word „ferriera" which explains Complainant as „...a word which means „ironworks" in Italian language, accentuating the Complainant's specialization on the market with iron products".

The Panel finds that the word „ferriera" is not part of the company name and as such is also not registered in the Czech Company Register. It is apparent that the disputed domain name is only partly identical with the company name, which is registered in Company Register of the Czech Republic. Therefore the Complainant did not fulfill requirements under Article 21/1 of the Regulation as well as under Section B11 (d)(1)(i) of the ADR Rules.

The Complainant did not prove the registration of the whole name corresponding to the disputed domain in the Commercial register of the Czech republic. The Panel enunciates that the legal protection of the registered name of the company belongs to the Complainant only as far as the part of the wording of the disputed domain is concerned, namely regarding the word "valsabbia". The second part of the disputed domain - the word "ferriera" - does not form the company name of the Complainant and therefore it does not enjoy legal protection pursuant to the Czech law.

The Complainant thus did not fulfill the conditions stated in the Regulation in order to prove his prior right to the disputed domain. The Complainant did not satisfy neither the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002 nor rights mentioned in Art. 10(1) Regulation 874/2004.

DECISION

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel orders that the Complaint is Denied.

PANELISTS

Name	**Vladimir Bulinsky**

DATE OF PANEL DECISION 2008-06-17

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

The Complainant with the company name Valsabbia Praha, s.r.o. with the registered office in the Czech republic claims the transfer of the disputed domain „ferriera – valsabbia.eu“.
The Respondent did not file any response and therefore is considered in default.
The Panel finds that the Respondent had no rights or legitimate interest in the disputed domain name and in the past, the Respondent was ordered to transfer two domain names to the respective complainants in other ADR disputes (cases 04141, 4371), which shows a pattern of unlawful behavior.

The Panel concluded that the disputed domain name is only partly identical with the company name of the Complainant. The second part of the disputed domain - the word “ferriera” - does not form the corporate name of the Complainant and therefore it does not enjoy any legal protection pursuant to the Czech law. The Complainant did not satisfy neither the general eligibility criteria for registration set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002 nor rights mentioned in Art. 10(1) Regulation 874/2004.

The Panel concludes that the Complainant did not fulfill the conditions stated in the Regulation in order to prove his prior right to the disputed domain and therefore the Complaint had to be denied.