Panel Decision for dispute CAC-ADREU-004928

Case number	CAC-ADREU-004928
Time of filing	2008-02-26 11:29:29
Domain names	nature-et-decouverte.eu

Case administrator

Name	Josef Herian

Complainant

Organization / Name	NATURE ET DECOUVERTES

Respondent

Organization / Name	LES SOURCES, Guillaume SICARD

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

None

FACTUAL BACKGROUND

The Complainant is a French company making business since early nineties on the idea of nature, protection of environment and earth and life sciences. It is well known if France (65 shops) and in Belgium (2 shops). Through its foundation, it also supports several associations acting for the defense the environment.

The Complainant is the owner of a dozen of domain names (several combinations of its name “Nature et Decouvertes” -- with and without hyphen and with or without an “s” at the end of “Decouvertes”).

The Complainant is the owner of at least four trademarks in France and abroad, including international trademark NATURE ET DECOUVERTES (word mark) n° 757 573 (extension of the French trademark n° 00 3 058 757) in classes 38, 41 and 42 and claiming protection for Benelux, Switzerland (except for class 41), Germany, Spain, Italy and Portugal.

The domain at stake (i.e. “nature-et-decouverte.eu”) gives access to a parking page allowing to click on other Internet addresses and to advertise the services of others. Under the title, it is mentioned that nature-et-decouverte.eu is on sale.

A. COMPLAINANT

The Complainant contends that the domain name at stake is identical or confusingly similar to several of its rights recognized or established by national and/or Community law, including the trademark mentioned here above and its trade/company name.

The Complainant insists of the fact that the three words “nature”, “et” and “découvertes” composing the trademarks of the complainant are totally reproduced in the disputed domain name.

As to the absence of an “s” at the end of “Decouvertes” in the domain name at stake, the Complainant states that: “The fact that the letter “s” is not reproduced in the disputed domain name is of no impact, visually as well as phonetically, as stated in the decision Nature et Découvertes vs. Découverte 3 Vallées Ballon d’Alsace (WIPO case n° D2004-0143) and cannot avoid the risk of confusion between the trademarks of the complainant and the disputed domain name registered by the respondent”.

Also, the Complainant states that the hyphens are of little importance since a trademark such as NATURE ET DECOUVERTES has to be modified to be converted into a domain name. Indeed, spaces are not allowed in domain names: “Then, the owner has to choose to joint side by side all the elements of the trademark, or to separate them by dots or dashes. One conversion would be nature-et-decouvertes

that is almost identical to nature-et-decouverte. The only difference is the absence of reproduction of the letter S at the end of nature-et-decouverte. This will have no incidence on the phonetical point of view. It is visually and intellectually of no importance and anyway, not sufficient to avoid a risk of confusion with the prior trademarks". The Complainant refers notably to WIPO case n° D2004-0364 of July 7, 2004.

The complainant stress that it has not granted any license to the respondent and that there is no business between the complainant and the respondent explaining the registration of the domain name at stake.

Also, based on the Complainant assertions, the respondent is not known by the name NATURE ET DECOUVERTE.

Moreover, the Complainant insists on the fact that the respondent does not use the domain name nature-et-decouverte.eu with a bona fide intention to offer goods or services. Indeed, www.nature-et-decouverte.eu gives access to a parking page allowing to click on other Internet addresses and to advertise the services of others.

Under the title of the web page, it is mentioned that nature-et-decouverte.eu is on sale. In this respect, it is worth taking note of the fact that the Complainant offered 60, then 100 euros and obtained a response that the price of the owner is 1500 euros.

B. RESPONDENT

The Respondent did not respond.

DISCUSSION AND FINDINGS

Concerning the Respondent's default

When the Czech Arbitration Court (CAC) receives a complaint, it follows a strict procedure including the notification of the complaint to the Respondent.

Said notification notably states that:

"Default. If your Response is not sent in the period of time above or if it will not comply with all administrative requirements mentioned in the ADR Rules and/or ADR Supplemental Rules even after granting additional time period to remedy the non compliance under Paragraph B3 (d) of the ADR Rules, you will be considered in default. We will still appoint an ADR Panel to review the facts of the dispute and to decide the case. The Panel will not be required to consider a Response filed late or not administratively compliant, but will have the discretion to decide whether to do so and may draw such inferences from your default as it considers appropriate, as provided for by ADR Rules, Paragraph B10. There is a possibility to challenge the Notice of Respondent Default according to Paragraph B3 (g) of the ADR Rules."

The Respondent also received a "non-standard communication" from the CAC to inform it of the deadline to submit its response.

When a Respondent doesn't answer within the delay, it also receives a "notification of Respondent's default" informing it of the consequences of said default. This notification notably stipulates that:

(begin of quote)

1. We shall go forward and appoint an ADR Panel based on the number of panelists designated by the Complainant. As the Complainant has designated a single-member Panel, we shall appoint the panelist from our published list. / As the Complainant has designated three-member Panel, we shall appoint a Panelist from the list of Candidates provided by Complainant and 2 Panelists from our published list. In case we are unable within five (5) calendar days to secure the appointment of a Panelist from the list of Candidates, we shall appoint a Panelist from our published list of Panelists.

2. The ADR Panel and the Complainant will be informed of your default. The ADR Panel will decide in its sole discretion whether or not to consider your defective Response (if submitted) in deciding the case.

3. Notwithstanding your default, we shall continue to send you all case-related communications to your contact details and using the methods you have specified in your Response (if submitted later), or as we consider appropriate in our discretion (if not submitted).

4. You have a right under Paragraph B3 (g) of the ADR Rules to challenge this Notification in a written submission to the Czech

Arbitration Court filed within 5 days from receiving this notification. The Czech Arbitration Court shall acknowledge receiving your challenge and shall forward it to the Panel within 3 days from its receipt. In submitting your potential challenge, you must use Form "Challenge of Notification of Respondent Default" available on the Online Arbitration Platform of the Czech Arbitration Court.

(end of quote)

Pursuant to this, this Panel has discretion to draw such inferences from the respondent's default as it considers appropriate. In this case, the Panel shall infer from Respondent's default that it does not question the facts of the case.

Concerning the grounds of the claim

For any French speaker, the words "Nature", "Et" and "Decouvertes" (with or without an "s") are obviously generics when considered separately. But, when they are used together, they may acquire legal protection under French trademark law.

Although this Panel has no intention and power to assess the validity of the trademark, it considers that the three words, taken as a whole, has undoubtedly acquired a reputation on the French and Belgian territories for the products and services of the Complainant.

This Panel agrees with the Complainant as to the little importance of: (A) the "s" at the end of "Decouvertes", and (B) the hyphens.

Indeed:

- A) The fact that the letter "s" is not reproduced in the disputed domain name is of no impact, visually as well as phonetically, and cannot avoid the risk of confusion between the trademarks of the complainant and the disputed domain name registered by the respondent.

- B) The presence of hyphens between each word composing the trademarks of the complainant, in the disputed domain name, does not change the sequence of these words that are visually or at least phonetically and intellectually, identical.

The same apply to the trade/company name of the Complainant.

This Panel concludes that the Complainant has demonstrated that the domain name is identical or confusingly similar to a name on which a right is recognized or established by national and/or Community law.

As far as the bad faith and the right/legitimate interest are concerned, it must be stressed that in most cases, it is impossible for a Complainant to demonstrate with an absolute certainty the absence of right and legitimate interest and/or the bad faith of a Respondent.

This is why the Panels usually require the Complainant to make a reasonable demonstration rather than to bring absolute evidence. This demonstration lays on the various facts and legal elements of each case.

The response is then the occasion for the Respondent to challenge and contradict the reasonable demonstration of the Complainant and to draw the Panel's attention on other facts and legal elements to support its view.

In this case, the least that can be said is that the complaint is quite persuasive.

It underlines facts and legal elements that are indeed good signs that the domain name "has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith" (art. 21 of EC regulation 874/2004). (See here above "Parties' contentions" for factual and legal details).

The respondent had a chance to reply; it chose not to.

This case is also remarkable because there is no active website under the domain name at stake.

Note: In the absence of any explanation provided for by the Respondent, this Panel is convinced that the mere use of the domain name to forward to a parking page allowing to click on other Internet addresses and to advertise the services of others, or to make a proposal for a “domain name for sale”, doesn’t amount to bona fide use in connection with the offering of any goods or services. The absence of a bona fide provision of service has always been considered as a strong sign of a possible cyber squatting. This was one more reason for the Respondent to answer to the complaint and to explain its project (if any).

Based on the sole complaint, this Panel is convinced that the domain name “has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith” (art. 21 of EC regulation 874/2004).

DECISION

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

the domain name NATURE-ET-DECOUVERTE be transferred to the Complainant

PANELISTS

Name	**Etienne Wery**

DATE OF PANEL DECISION 2008-05-28

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

In respect of the applicable Rules, the Panel has discretion to draw such inferences from the respondent’s default as it considers appropriate. In this case, the Panel shall infer from Respondent’s default that it does not question the facts of the case.

Altough the three words composing the Complainant's trademark are obviously generics when considered separately, they may acquire legal protection under French trademark law when they are used together. Although this Panel has no intention and power to assess the validity of the trademark, it considers that the three words, taken as a whole, has undoubtedly acquired a reputation on the French and Belgian territories for the products and services of the Complainant.

In the absence of any explanation provided for by the Respondent, this Panel is convinced that the mere use of the domain name to forward to a parking page allowing to click on other Internet addresses and to advertise the services of others, or to make a proposal for a “domain name for sale”, doesn’t amount to bona fide use in connection with the offering of any goods or services. The absence of a bona fide provision of service has always been considered as a strong sign of a possible cyber squatting. This was one more reason for the Respondent to answer to the complaint and to explain its project (if any).

Based on the sole complaint, this Panel is convinced that the domain name “has been registered by its holder without rights or legitimate interest in the name; or has been registered or is being used in bad faith” (art. 21 of EC regulation 874/2004).