Panel Decision for dispute CAC-ADREU-004949

Case number	**CAC-ADREU-004949**
Time of filing	**2008-02-26 11:05:28**
Domain names	**buchbinder.eu**

Case administrator

Name	**Tereza Bartošková**

Complainant

Organization / Name	**CharterLine Fuhrpark-Service GmbH**

Respondent

Organization / Name	**Fienna.com, Fienna.com**

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 legal proceedings, pending or decided, which relate to the disputed domain name “buchbinder.eu”.

FACTUAL BACKGROUND

The present ADR proceeding was commenced by CharterLine Fuhrpark-Service GmbH, Regensburg, Germany (the “Complainant”) against Fienna.com, Leeds, Great Britain (the “Respondent”). The Complaint relates to the domain name “buchbinder.eu” (the “Domain Name”) which was registered by Respondent on April 7, 2006.

Complainant is a rental company for cars and trucks, active in Germany, Austria, and Italy, and is expanding its business to other countries in Europe. It is the proprietor of the German wordmark “Buchbinder” No.30542396.7, with filing date July 15, 2005, and of the Community trademark “Buchbinder” No.004841573, with filing date January 9, 2006.

A. COMPLAINANT

Complainant submits that the Domain Name is subject to revocation and transfer to Complainant for the following reasons:

a) The Domain Name is identical to Complainant’s trademarks “Buchbinder”.

b) Respondent has no rights or legitimate interest in the Domain Name. It is not using the Domain Name in connection with the offering of goods and services, and has made no demonstrable preparation to do so. The Domain Name has not been used since its registration, and there is no website available at it. Complainant has found no indications of a connection between the Respondent and the Domain Name. These circumstances demonstrate that the Domain Name has been registered by Respondent without any right or legitimate interest in it.

c) Complainant submits that, given its reputation in the business of rental services, Respondent registered the Domain Name in bad faith. Absent a bona fide use of the Domain Name, the only reason why Respondent registered the Domain Name was to prevent Complainant from doing so.

According to Complainant, various other ADR proceedings have already been brought against Respondent. In all these proceedings, Respondent was found to have registered the respective domain names without any legitimate interests or rights, and these domain names were transferred to the complainants.

Remedy requested by Complainant

Complainant asserts its eligibility to register .eu domain names under Article 4 (2) (b) of Regulation (EC) No. 733/2002, stating that it is a company incorporated in Germany, with registered office and principal place of business in the city of Regensburg. On these grounds, a request for the transfer of the Domain Name to Complainant is made.

B. RESPONDENT

Respondent did not submit a Response in this ADR proceeding.

DISCUSSION AND FINDINGS

According to Article B11(d)(1) of the ADR Rules, the Panel shall issue a decision granting the remedies requested under the Procedural Rules in the event that Complainant proves in the ADR proceeding that:

(i) the domain 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 and; either

(ii) the domain name has been registered by the Respondent without rights or legitimate interest in the name; or

(iii) the domain name has been registered or is being used in bad faith.

Identity or Confusing Similarity

Complainant has submitted printouts from the OHIM trademark register and from the German trademark register for two registered word trademarks “Buchbinder”.

These documents show Complainant as owner of two valid trademarks, so the Panel is satisfied that Complainant has proven its rights to the name “buchbinder” as recognized by national law of a Member State (German trademark No. 30542396.7) and Community law (CTM 004841573).

Comparing these trademarks to the Domain Name, the Panel finds that the relevant part of the Domain Name – “buchbinder”, is identical to them. As widely accepted, the suffix “.eu” is not relevant for the purposes of the test for identity or confusing similarity. See, e.g., ADR Case No. 04410 for the domain name “4711.eu”.

Therefore, the Domain Name is identical to a name in respect of which a right of Complainant is established by national and Community law, and the condition set forth under Article B11(d)(1)(i) of the ADR Rules is fulfilled.

Rights and Legitimate Interests

Under the ADR Rules, the burden of proof for the lack of rights and legitimate interests of Respondent lies with Complainant. However, the existence of negative facts is difficult to prove, and the relevant information for Respondent is mostly in its sole possession. Therefore, the Panel holds that it is sufficient for the Complainant to make a prima facie demonstration that Respondent lacks rights or legitimate interests in the Domain Name. The burden of proof then shifts to Respondent to substantiate its rights or legitimate interests in the Domain Name.

In this case, Complainant has submitted that Respondent is not using the Domain Name in connection with the offering of goods and services, and has made no demonstrable preparation to do so. The Domain Name has not been used since its registration, and there are no indications of a connection between the Respondent and the Domain Name. In this way, Complainant has made the prima facie showing discussed above. Respondent, although given a reasonable opportunity to present its case, chose to file no Response in this ADR proceeding, and provided no evidence of rights or legitimate interests in the Domain Name. Thus, Respondent left Complainant’s allegations uncontroverted, and accepted them indirectly.

Therefore, the Panel finds the Respondent has no rights or legitimate interest in the Domain Name.

Bad Faith

The Panel notes that, in case Respondent is found to have registered the Domain Name without rights or legitimate interests in it, it is not necessary to investigate Respondent’s possible bad faith under Article B11(d)(1)(iii) of the ADR Rules.

However, for the sake of completeness, the Panel decided to rule on this issue as well.

As noted in ADR Case No.02235 in relation to the same Respondent: “Given the Complainant’s rights to the use the name “Palmer’s Cocoa Butter” in Europe, there are only a limited number of ways in which the Respondent could use the domain name that would not be in bad faith. ... 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.” The Panel finds that the same reasoning applies here as well. Complainant having established its rights in the name “buchbinder” for the territory of the European Union, it is very hard to conceive of a good faith use of the Domain Name by Respondent.

Therefore, and in the absence of any denial of Complainant’s allegations by Respondent, the Panel accepts that Respondent registered the Domain Name in bad faith.

As Complainant is a company established in Germany, it satisfies the general eligibility criteria for registration of the Domain Name set out in Paragraph 4(2)(b) of Regulation (EC) No 733/2002. Therefore, Complainant is entitled to request the transfer of the Domain Name to itself.

DECISION

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

This decision shall be implemented by the Registry within thirty (30) days after the notification of the decision to the Parties, unless Respondent initiates court proceedings in a Mutual Jurisdiction as defined in the ADR Rules.

PANELISTS

Name	**Assen Zahariev Alexiev**

DATE OF PANEL DECISION 2008-05-21

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant is a rental company for cars and trucks. It is the proprietor of the German wordmark “Buchbinder” No.30542396.7 and of the Community trademark “Buchbinder” No.004841573.

The Complaint relates to the domain name “buchbinder.eu” which was registered by Respondent on April 7, 2006.

Complainant submits that the Domain Name is subject to revocation and transfer to Complainant because the Domain Name is identical to Complainant’s “Buchbinder” trademarks, Respondent is not using the Domain Name in connection with the offering of goods and services, and has made no demonstrable preparation to do so, and there is no connection between the Respondent and the Domain Name. Complainant also submits that, given its reputation in the business of rental services, Respondent registered the Domain Name in bad faith.

Respondent filed no Response in the ADR proceedings.

The Panel found that the Domain Name is identical to Complainant's trademarks, that Respondent has no rights or legitimate interests in the Domain Name, and that Respondent has registered the Domain Name in bad faith.

The Panel also found that Complainant is eligible to request the transfer of the Domain Name to itself.

On these grounds, the Panel decided that the Domain name be transferred to Complainant.