Panel Decision for dispute CAC-ADREU-004950

Case number	CAC-ADREU-004950
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Domain names	gbo.eu

Case administrator

Name	Tereza Bartošková

Complainant

Organization / Name	GBO Design - Engineering, Hans Maas

Respondent

Organization / Name	Guidance International AB, Daniel Anderson

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 other legal proceedings related to the disputed domain name.

FACTUAL BACKGROUND

Complainant is a company specialized in product development. As it is founded by Jacques Gramser, Erwin Boes and Jeroen op ten Berg, the name of the company is abbreviated to GBO. Complainant exists since 1989 and is nowadays a company with 24 employees specialized in design and engineering. Complainant is part of the GBO Group (the parent company). This GBO Group consists of GBO Vastgoed B.V. and GBO Design-Engineering BV. In Belgium there is a third GBO company called GBO Design-Engineering BVBA. All the companies have the abbreviation GBO in their names.

A. COMPLAINANT

Complainant registered the domain name <gbo.nl> in December 1997. Since 2 January 2002 Complainant is also registrant of the domain name <gbo.be>. Complainant uses these domains and has offices in the Netherlands and Belgium. Complainant has planned to setup a German office.
In Spring 2006, during the Sunrise period, Complainant applied for the domain name <gbo.eu>. On 25 October Complainant received a rejection of their application. Complainant did not initiate for an ADRprocedure, because the reason for the rejection - GBO is only part of the registered company name - was evident. Moreover, Complainant applied again for the domain name <gbo.eu> through its provider WideXS.nl. Complainant has never received a confirmation of its application. In January 2007 it discovered that the domain name <gbo.eu> was already registered by Respondent in December 2006.
Complainant argues that the letters G, B and O are the first letters of the last names of the founders of GBO Design – Engineering, i.e. J.A.F. Gramser, E.P. Boes and J.J.T. Op ten Berg. Complainant submitted an extract from the trade register of the Chambers of Commerce.

Furthermore, Complainant argues that Respondent neither has reference to the abbreviation GBO nor uses or has used the domain <gbo.eu>.

Moreover, Complainant argues that Respondent is willing to sell the domain name <gbo.eu> for a substantial amount. Complainant offered EUR 1,500 but Respondent was not willing to accept this offer. Respondent would be willing to sell the domain name for EUR 5,000 – 10,000. As evidence Complainant provided e-mail correspondence about the offers. Complainant is under the impression that Respondent is a trader in .eu-domains. Complainant argues that this information is confirmed by the registar (Premium Registrations) in a telephone conversation.

B. RESPONDENT

The Respondent did not submit any response within the given deadline.

DISCUSSION AND FINDINGS

Pursuant to Article 22 (10) of the Regulation (EC) No. 874/2004 of 28 April 2004 and Paragraph B10 (a) of the ADR Rules, in a situation where Respondent fails to respond within the given deadlines, this may be considered as grounds to accept that claims of the Complaint. In this case Respondent did not submit any response within the given deadline.

The foregoing does not mean, whenever a Respondent fails to respond, a Complaint should be upheld. Therefore, Complainant is still required to demonstrate that the provisions of Article 21.1 of the Regulation (EC) No. 874/2004 and Paragraph B11 (d) (1) of the ADR Rules are satisfied.
The Complaint was filed pursuant to Article 22 (1) (a) of the Regulation EC No. 874/2004, which provides that an ADR procedure may be initiated by any party where the registration of a domain name is speculative or abusive within the meaning of Article 21 of the Regulation (EC) No. 874/2004.

Accordingly, the Panel's decision, as mentioned before, has to be based on the provisions of Article 21 (1) of the Regulation (EC) no. 874/2004. The domain name has therefore to be transferred if the domain name:
i. 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
ii. has been registered by its holder without rights or legitimate interests in the domain name; or
iii. has been registered or being used in bad faith.

-- Identity or Confusingly Similarity

Complainant has provided an extract from the commecial register of the relevant Dutch Chamber of Commerce. This extract shows that the company GBO Design-Engineering is registered with the Dutch Chamber of Commerce. As the respondent did not submit any response, the Panel accepts that the trade name GBO Design-Engineering is used by Complainant. Pursuant to the Dutch Trade Name Act, as the company uses the trade name GBO Design-Engineering, it has rights to the trade name. The disputed domain name <gbo.eu> is confusingly similar to the most significant part of the trade name, namely GBO. It is well-established that the specific top level of a domain name <.eu> does not affect the domain name for the purpose of determining whether it is identical of confusingly similar pursuant to Article 21 (1) of the Regulation (EC) No. 874/2004.

The Panel thus finds that the domain name <gbo.eu> is confusingly similar to the trade name GBO Design-Engineering and that therefore the first provision of Article 21 (1) of the Regulation (EC) No. 874/2004 is satisfied.

--Right to or legitimate interest in the domain name

Article 21 (1) (a) of the Regulation (EC) No. 874/2004 requires Complainant to prove that Respondent has no rights or legitimate interests in the disputed domain name. However, as it is often an impossible task of proving a negative, requiring information that is often within the knowledge of Respondent, it is the Panel's view that if Respondent has no rights or legitimate interests and Respondent fails to show one of the circumstance under Article 21 (2) of the Regulation (EC) No. 874/2004, then Respondent may lack a legitimate interest in the domain name.

Although Complainant alleges that Respondent neither uses or has used the domain name <gbo.eu> nor has any reference to the abbreviation GBO, Complainant has not submitted any supporting evidence that Respondent has registered the domain name without rights or legitimate interests in the name. However, in the absence of the response from Respondent to the claims of Complainant, the Panel finds that Complainant has made a sufficient prima facie showing – although very weak - that Respondent has no rights or legitimate interests in the domain name <gbo.eu>.

The Panel therefore accepts Complainants' contention that Respondent has no rights or legitimate interests in the domain name and that the requirements of Article 21 (1) (a) of the Regulation (EC) No. 874/2004 is also satisfied.

-- Bad faith registration and use

The above finding that Respondent does not have rights or legitimate interests in the domain name is enough to satisfy the requirements of Article 21 (1) of the Regulation (EC) No. 874/2004. However, for completeness, the Panel also considers whether the domain name was registered or is being used in bad faith.

Complainant set that the domain name has been registered or is being used in bad faith by Respondent. Complainant provided as evidence an email-correspondence between Respondent and Complainant. In this email-correspondence Respondent indicates that he was willing to sell the domain name for a substantial amount. Complainant concluded from this that Respondent is a trader in .eu domain names.
Although Complainant provided some evidence, this evidence does not support this allegation.

Complainant initiated the email-correspondence with Respondent and Complainant asked Respondent if he would sell the domain name. As Respondent did not take the initiative to sell the domain name, the Panel finds, in this case, that Complainant cannot prove that the domain name has been registered or is being used in bad faith by Respondent.

The Panel therefore does not accept Complainants' contention that Respondent has registered or used the domain name in bad faith.

DECISION

As Complainant is a private company with limited liability established in the Netherlands, 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.

For all the foregoing reasons, in accordance with Paragraph B12 (b) of the Rules, the Panel orders that the domain name <gbo.eu> to be transferred to Complainant.

PANELISTS

Name	**Willem Leppink**

DATE OF PANEL DECISION 2008-05-30

Summary

ENGLISH SUMMARY OF THIS DECISION IS HEREBY ATTACHED AS ANNEX 1

Complainant, a company specialized in product development, GBO Design-Engineering , requested that the domain name <gbo.eu> was transferred to Complainant on the grounds that Complainant had a prior right pursuant to Article 21 (1) of the Regulation (EC) No. 874/2004 and that Respondent had no rights or legitimate interest in the domain name and had acted in bad faith, cf. Article 21 (1) of the Regulation (EC) No. 874/2004.

The Panel found that Complainant had demonstrated that the domain name <gbo.eu> is confusingly similar to the trade name GBO Design – Engineering pursuant to Article 21 (1) of the Regulation (EC) No. 874/2004.

Respondent had not disputed the factual information that Complainant had provided in the Complaint.

The Panel found that Complainant had demonstrated prima facie that Respondent had registered the domain name without rights or legitimate interests in the name.
The Panel does not accept Complainants' contention that Respondent has registered or used the domain name in bad faith as Complainant could not establish that Respondent has registered or used the domain name in bad faith.

Finally, the Panel ordered that the domain name <gbo.eu> was to be transferred to Complainant.